



Notice of Intent to Adopt Rules

1. General Information

a. Agency/Board Name: <i>See attached list for references</i>		
b. Agency/Board Address	c. Agency/Board City	d. Agency/Board Zip Code
e. Name of Contact Person	f. Contact Telephone Number	
g. Contact Email Address		
h. Date of Public Notice:		i. Comment Period Ends:
j. Program(s) <i>See attached list for references</i>		

2. Rule Type and Information

a. Choose all that apply: New Rules* Amended Rules Repealed Rules

** "New" rules means the first set of regular rules to be promulgated by the Agency after the Legislature adopted a new statutory provision or significantly amended an existing statute.*

If "New," provide the Enrolled Act number and year enacted:

b. Provide the Chapter Number, and Short Title of Each Chapter being Created/Amended/Repealed (*if more than 5 chapters are being created/amended/repealed, please use the Additional Rule Information form and attach it to this certification*)

Chapter Number:	Short Title:
Chapter Number:	Short Title:
Chapter Number:	Short Title:
Chapter Number:	Short Title:
Chapter Number:	Short Title:

c. The Statement of Reasons is attached to this certification.

d. N/A In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Section 5 of the Rules on Rules).

e. A copy of the proposed rules* may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

* If Item "d" above is not checked, the proposed rules shall be in strike and underscore format.

3. Public Comments and Hearing Information

a. A public hearing on the proposed rules has been scheduled. Yes No

	If "Yes:"	Date:	Time:	City:	Location:

b. What is the manner in which interested person may present their views on the rulemaking action?
 By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.
 At the following URL: _____

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members.
Requests for a public hearing may be submitted:
 To the Agency at the physical and/or email address listed in Section 1 above.
 At the following URL: _____

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days, after adoption of the rule, addressed to the Agency and Contact Person listed in Section 1 above.

4. Federal Law Requirements

a. These rules are created/amended/repealed to comply with federal law or regulatory requirements. Yes No

	If "Yes:"	Applicable Federal Law or Regulation Citation:

Indicate one (1):
 The proposed rules meet, but do not exceed, minimum federal requirements.
 The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:
 To the Agency at the physical and/or email address listed in Section 1 above.
 At the following URL: _____

5. State Statutory Requirements

a. Indicate one (1):
 The proposed rule change *MEETS* minimum substantive statutory requirements.
 The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please provide a statement explaining the reason the rules exceeds the requirements:

6. Authorization

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	

Distribution List:

- Attorney General and LSO: Hard copy of Notice of Intent; Statement of Reasons; Clean copy of the rules; and Strike-through and underline version of rules (if applicable).
- Secretary of State: Electronic version of Notice of Intent sent to rules@state.wy.us

Federal Regulation Citations for Regulation Changes
to Wyoming Air Quality Standards and Regulations

Chapter 2, Ambient Standards, Section 3, Ambient standards for nitrogen oxides, is amended, in part, to comply with portions of 40 Code of Federal Regulations (CFR) part 50 and appendices to part 50, July 1, 2011;

Chapter 2, Ambient Standards, Section 4, Ambient standards for sulfur oxides, is amended, in part, to comply with portions of 40 CFR part 50 and appendices to part 50, July 1, 2011;

Chapter 2, Ambient Standards, Section 6, Ambient standards for ozone, is amended, in part, to comply with portions of 40 CFR part 50 and appendices to part 50, July 1, 2011;

Chapter 2, Ambient Standards, Section 12, Incorporation by reference, adopts by reference portions of 40 CFR parts 50 and 53 and appendices to parts 50 and 53, July 1, 2011;

Chapter 3, General Emission Standards, Section 9, Incorporation by reference, adopts by reference portions of 40 CFR part 51 and appendices to part 51, July 1, 2011;

Chapter 5, National Emission Standards, Section 3, National emission standards for hazardous air pollutants, is amended, in part, to comply with portions of 40 CFR part 63 and appendices to part 63, July 1, 2010;

Chapter 8, Nonattainment Area Regulations, Section 3, Conformity of general federal actions to state implementation plans, is amended, in part, to comply with portions of 40 CFR part 51 Subpart W and appendices to part 51, and 40 CFR part 93, July 1, 2011;

Chapter 8, Nonattainment Area Regulations, Section 5, Incorporation by reference, adopts by reference portions of 40 CFR part 93, July 1, 2011.

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF REVISIONS TO SECTIONS)	
THREE, FOUR, SIX AND TWELVE OF CHAPTER)	
TWO; REVISIONS TO SECTIONS FOUR AND NINE)	STATEMENT OF
OF CHAPTER THREE; REVISIONS TO SECTION)	PRINCIPAL REASONS
THREE OF CHAPTER FIVE; AND REVISIONS TO)	FOR ADOPTION
SECTIONS ONE, THREE AND FIVE OF CHAPTER)	
EIGHT OF THE WYOMING AIR QUALITY)	
STANDARDS AND REGULATIONS)	

1. The Environmental Quality Council, pursuant to the authority vested in it by the Wyoming Statutes 35-11-112 (a) (i), has revised or removed the following chapters and sections to the Wyoming Air Quality Standards and Regulations. The following sections have been revised: Chapter 2, Ambient Standards, Section 3, Ambient standards for nitrogen oxides, Section 4, Ambient standards for sulfur oxides, Section 6, Ambient standards for ozone, and Section 12, Incorporation by reference; Chapter 3, General Emission Standards, Section 9, Incorporation by reference; Chapter 5, National Emission Standards, Section 3, National emission standards for hazardous air pollutants; and Chapter 8, Nonattainment Area Regulations, Section 1, Introduction to nonattainment area regulations, and Section 3, Conformity of general federal actions to state implementation plans. Chapter 3, General Emission Standards, Section 4, Emission standards for sulfur oxides, has been removed. Chapter 8, Nonattainment Area Regulations, Section 5, Incorporation by reference, has been added.

2. Section 35-11-202 (a) of the Environmental Quality Act states that the Administrator, after consultation with the Advisory Board, shall recommend to the Director such ambient air standards and regulations that may be necessary to prevent, abate, or control pollution.

Section 35-11-202 (b) of the Act states that in recommending such standards the Administrator shall consider all facts and circumstances bearing upon the reasonableness of the emissions involved including:

- (A) The character and degree of injury to, or interference with the health and physical well being of the people, animals, wildlife and plant life;
- (B) The social and economic value of the source of pollution;
- (C) The priority of location in the area involved;
- (D) The technical practicability and economic reasonableness of reducing or eliminating the pollution; and
- (E) The social welfare and aesthetic value.

3. Chapter 2, Ambient Standards, Section 3, Ambient standards for nitrogen oxides, and Section 4, Ambient standards for sulfur oxides, have been revised to bring the 1-hour annual ambient standards up to date with the National Ambient Air Quality Standards (NAAQS). Section 4, Ambient standards for sulfur oxides, has also been revised to remove the annual and 24-hour standards, and designate the 3-hour standard as a secondary standard in order to maintain consistency with the NAAQS. Section 6, Ambient standards for ozone, has been revised to bring the 8-hour primary and secondary standards up to date with the NAAQS. Section 12, Incorporation by reference, was updated to adopt by reference from the Code of Federal Regulations (CFR) for July 1, 2011. The revisions to Section 3, Ambient standards for nitrogen oxides, Section 4, Ambient standards for sulfur oxides, Section 6, Ambient standards for ozone, and Section 12, Incorporation by reference, involve changes to the State Implementation Plan (SIP).

4. Chapter 3, General Emission Standards, Section 4, Emission standards for sulfur oxides, has been removed. These regulations have been superseded by more updated regulations. Section 9, Incorporation by reference, was updated to adopt by reference from the CFR for July 1, 2011. The revisions to Section 4, Emission standards for sulfur oxides, and Section 9, Incorporation by reference, involve changes to the SIP.
5. Chapter 5, National Emission Standards, Section 3, National emission standards for hazardous air pollutants, has been revised to remove vacated 40 CFR part 63, Subpart DDDDD (Boiler MACT). The version of Subpart DDDDD that was adopted by reference from the 2004 Federal Register has been superseded by a more recent rule. However, the more recent rule is currently under reconsideration, so it will not be adopted by reference in this rulemaking.
6. Chapter 8, Nonattainment Area Regulations, Section 1, Introduction to nonattainment area regulations, has been revised to reflect the addition of Section 5, Incorporation by reference. Section 3, Conformity of general federal actions to state implementation plans, has been revised to maintain consistency with the federal regulations. Section 5, Incorporation by reference, has been added to reference all CFR citations in Chapter 8. The revisions to Section 3, Conformity of general federal actions to state implementation plans, and Section 5, Incorporation by reference, involve changes to the SIP.

The Council finds that these regulations are reasonable and necessary to accomplish the policy and purpose of the ACT, as stated in W.S. 35-11-102, and that they have been promulgated in accordance with rulemaking provisions of the Wyoming Administrative Procedures Act.

Dated this _____ day of _____, 2012.

Hearing Examiner - *Printed Name*
Wyoming Environmental Quality Council

Hearing Examiner - *Signed Name*
Wyoming Environmental Quality Council

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

Ambient Standards

CHAPTER 2

TABLE OF CONTENTS

Section 1.	Introduction to ambient standards	2-1
Section 2.	Ambient standards for particulate matter	2-1
Section 3.	Ambient standards for nitrogen oxides	2-2
Section 4.	Ambient standards for sulfur oxides	2-3
Section 5.	Ambient standards for carbon monoxide	2-4
Section 6.	Ambient standards for ozone	2-4
Section 7.	Ambient standards for hydrogen sulfide	2-5
Section 8.	Ambient standards for suspended sulfates	2-5
Section 9.	Ambient standards for fluorides	2-5
Section 10.	Ambient standards for lead	2-6
Section 11.	Ambient standards for odors	2-7
Section 12.	Incorporation by reference	2-8
Appendix 1.	Interpretation of the Annual State Ambient Air Quality Standards for PM ₁₀	2-9

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

Ambient Standards

CHAPTER 2

Section 1. Introduction to ambient standards.

(a) This Chapter establishes standards of ambient air quality necessary to protect public health and welfare. Such standards are subject to revision. The term “ambient air” refers to that portion of the atmosphere, external to buildings, to which the general public has access. Section 12 incorporates by reference all Code of Federal Regulations (CFRs) cited in this chapter, including their Appendices.

Section 2. Ambient standards for particulate matter.

(a) PM_{10} : The ambient air standards for PM_{10} particulate matter are:

(i) 150 micrograms per cubic meter--24-hour average concentration with not more than one expected exceedance per year.

(A) Attainment of the 24-hour standard is determined in accordance with Appendix K of 40 CFR part 50.

(ii) 50 micrograms per cubic meter--annual arithmetic mean.

(A) Attainment of the annual standard is determined in accordance with Appendix 1 of this chapter.

(iii) For the purpose of determining attainment of the standards, particulate matter shall be measured in the ambient air as PM_{10} (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers), by a reference method based on 40 CFR part 50, Appendix J and designated in accordance with 40 CFR part 53 or an equivalent or alternate method designated in accordance with 40 CFR part 53.

(b) $PM_{2.5}$: The primary and secondary ambient air quality standards for $PM_{2.5}$ particulate matter are:

(i) 15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) annual arithmetic mean concentration and;

(ii) 35 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)--98th percentile 24-hour average concentration.

(iii) Attainment of the annual and 24-hour standards is determined in accordance with Appendix N of 40 CFR part 50.

(iv) For the purpose of determining attainment of the standards, particulate matter shall be measured in the ambient air as $\text{PM}_{2.5}$ (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers), by a reference method based on 40 CFR part 50, Appendix L and designated in accordance with 40 CFR part 53 or an equivalent or alternate method designated in accordance with 40 CFR part 53.

(c) Ambient air, for the area bounded by Townships 40 through 52 North, and Ranges 69 through 73 West, inclusive, of the Sixth Principal Meridian, Campbell and Converse Counties, in the Powder River Coal Basin, is defined as that portion of the atmosphere, external to buildings, to which the general public has access. For surface mining operations, the application of this definition will be limited to only those lands that are necessary to conduct mining operations as determined by the Administrator of the Wyoming Air Quality Division.

Section 3. Ambient standards for nitrogen oxides.

(a) ~~The ambient air standard for nitrogen dioxide, measured by the reference method described in 40 CFR part 50, Appendix F, or by an equivalent method designated in accordance with 40 CFR part 53, is:~~ The level of the primary annual ambient air quality standard for oxides of nitrogen is 53 parts per billion (ppb, which is 1 part in 1,000,000,000), annual average concentration, measured in the ambient air as nitrogen dioxide.

~~(i) 100 micrograms per cubic meter (0.05 ppm) annual arithmetic mean.~~

(b) The level of the primary 1-hour ambient air quality standard for oxides of nitrogen is 100 ppb, 1-hour average concentration, measured in the ambient air as nitrogen dioxide.

(c) The level of the secondary ambient air quality standard for nitrogen dioxide is 0.053 parts per million (ppm, which is 1 part in 1,000,000), annual arithmetic mean concentration.

(d) The levels of the standards shall be measured by:

(i) A reference method based on 40 CFR part 50, Appendix F; or

(ii) A Federal equivalent method (FEM) designated in accordance with 40 CFR part 53.

(e) The annual primary standard is met when the annual average concentration in a calendar year is less than or equal to 53 ppb, as determined in accordance with Appendix S of 40 CFR part 50 for the annual standard.

(f) The 1-hour primary standard is met when the three-year average of the annual 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 100 ppb, as determined in accordance with Appendix S of 40 CFR part 50 for the 1-hour standard.

(g) The secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm must be rounded up). To demonstrate attainment, an annual mean must be based upon hourly data that are at least 75 percent complete or upon data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.

Section 4. **Ambient standards for sulfur oxides.**

~~(a) The ambient air standards for sulfur oxides measured by the pararosaniline (West Gaeke) method given in 40 CFR part 50, Appendix A, or an equivalent method designated in accordance with 40 CFR part 53, are:~~

~~(i) 60 micrograms per cubic meter (0.02 ppm) annual arithmetic mean;~~

~~(ii) 260 micrograms per cubic meter (0.10 ppm) maximum 24-hour concentration not to be exceeded more than once per year;~~

~~(iii) 1,300 micrograms per cubic meter (0.50 ppm) maximum 3-hour concentration not to be exceeded more than once per year.~~

(a) The level of the primary 1-hour annual ambient air quality standard for oxides of sulfur is 75 parts per billion (ppb, which is 1 part in 1,000,000,000), measured in the ambient air as sulfur dioxide (SO₂).

(i) The 1-hour primary standard is met at an ambient air quality monitoring site when the three-year average of the annual (99th percentile) of the daily maximum 1-hour average concentrations is less than or equal to 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50.

(ii) The level of the standard shall be measured by a reference method based on 40 CFR part 50, Appendix A or A-1, or by a Federal Equivalent Method (FEM) designated in accordance with 40 CFR part 53.

(b) The level of the secondary 3-hour ambient air quality standard for oxides of sulfur is 0.5 parts per million (ppm, which is 1 part in 1,000,000), not to be exceeded more than once per calendar year. The 3-hour averages shall be determined from successive nonoverlapping 3-hour blocks starting at midnight each calendar day and shall be rounded to 1 decimal place (fractional parts equal to or greater than 0.05 ppm shall be rounded up).

(i) Sulfur oxides shall be measured in the ambient air as sulfur dioxide by the reference method described in Appendix A of 40 CFR part 50 or by an equivalent method designated in accordance with 40 CFR part 53.

(ii) To demonstrate attainment, the second-highest 3-hour average must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 3-hour block average shall be considered valid only if all three hourly averages for the 3-hour period are available. If only one or two hourly averages are available, but the 3-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding rule of paragraph (b) of this section, then this shall be considered a valid 3-hour average. In all cases, the 3-hour block average shall be computed as the sum of the hourly averages divided by 3.

Section 5. Ambient standards for carbon monoxide.

(a) The ambient air standard for carbon monoxide, measured by nondispersive infrared spectrometry, as described in 40 CFR part 50, Appendix C, or by an equivalent method designated in accordance with 40 CFR part 53, is:

(i) 10 milligrams per cubic meter (9 ppm)--maximum 8-hour concentration not to be exceeded more than once per year;

(ii) 40 milligrams per cubic meter (35 ppm)--maximum 1-hour concentration not to be exceeded more than once per year.

Section 6. Ambient standards for ozone.

~~(a) The level of the 8-hour primary and secondary ambient air quality standards for ozone, measured by a reference method based on 40 CFR part 50, Appendix D and designated in accordance with 40 CFR part 53 is 0.08 parts per million (ppm), daily maximum 8-hour average.~~ The level of the 8-hour primary and secondary ambient air quality standards for ozone (O₃) is 0.075 parts per million (ppm, which is 1 part in 1,000,000), daily maximum 8-hour average, measured by a reference method based on Appendix D to 40 CFR part 50 and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53.

(b) The 8-hour primary and secondary standard ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to ~~0.08~~ 0.075 ppm, as determined in accordance with 40 CFR part 50, Appendix I.

Section 7. Ambient standards for hydrogen sulfide.

(a) The ambient air standards for hydrogen sulfide, measured by the mercuric chloride method, methylene blue method, or by an equivalent method are:

(i) 70 micrograms H₂S per cubic meter, ½-hour average not to be exceeded more than 2 times per year;

(ii) 40 micrograms H₂S per cubic meter, ½-hour average not to be exceeded more than 2 times in any five consecutive days.

Section 8. Ambient standards for suspended sulfates.

(a) The ambient air standards for suspended sulfate measured as a sulfation rate by the lead peroxide method are:

(i) 0.25 milligrams SO₃ per 100 square centimeters per day, maximum annual average;

(ii) 0.50 milligrams SO₃ per 100 square centimeters per day, maximum 30-day value.

Section 9. Ambient standards for fluorides.

(a) The ambient air standards for fluorides, measured as hydrogen fluoride through methods approved by the Administrator are:

(i) Statewide Standard:

Averaging Time	Maximum Allowable Concentration for Averaging Time
12 hours	3.0 µg/m ³
24 hours	1.8 µg/m ³
7 days	0.5 µg/m ³
30 days	0.4 µg/m ³

(ii) Regional Standard:

Averaging Time	Maximum Allowable Concentration for Averaging Time
12 hours	10.0 $\mu\text{g}/\text{m}^3$
24 hours	4.0 $\mu\text{g}/\text{m}^3$
7 days	1.8 $\mu\text{g}/\text{m}^3$
30 days	1.2 $\mu\text{g}/\text{m}^3$

The Regional Standard applies to the area encompassing the following lands in Sweetwater County, Wyoming:

T19N R104W, E1/2 Section 31 & Sections 32, 33, 34, 35, 36;
 T19N R103W, Section 31;
 T18N R105W, S1/2 Section 1 & Sections 12, 13, 24, 25, 35, 36;
 T18N R104W, All Sections 1 through 36;
 T18N R103W, Sections 6, 7, 18, 19, 30, 31, 32, 33;
 T17N R105W, Sections 1, 2, 11, 12, 13, 14, 23, 24, 25, 26;
 T17N R104W, Sections 1 through 30;
 T17N R103W, Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30

(b) The standards for fluoride in forage for animal consumption measured as fluorine, dry weight basis, are:

Averaging Time	Maximum Allowable Concentration for Averaging Time
One year	30 ppm
60 days	60 ppm
30 days	80 ppm

The concentration of fluoride in forage shall be determined through sampling and analysis methods approved by the Administrator.

Section 10. **Ambient standards for lead.**

(a) The primary and secondary ambient air quality standards for lead (Pb) and its compounds are 0.15 micrograms per cubic meter, arithmetic mean concentration over a 3-month period, measured in the ambient air as Pb either by:

(i) A reference method based on 40 CFR part 50, Appendix G (Reference Method for the Determination of Lead in Suspended Particulate Matter Collected From Ambient Air), and designated in accordance with 40 CFR part 53 or;

(ii) An equivalent method designated in accordance with 40 CFR part 53.

(b) The primary and secondary ambient air quality standards for Pb are met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with Appendix R (Interpretation of the National Ambient Air Quality Standards for Lead) of 40 CFR part 50, is less than or equal to 0.15 micrograms per cubic meter.

Section 11. Ambient standards for odors.

(a) The ambient air standard for odors from any source shall be limited to:

(i) An odor emission at the property line which is undetectable at seven dilutions with odor free air as determined by a scentometer as manufactured by the Barnebey-Cheney Company or any other instrument, device, or technique designated by the Division as producing equivalent results. The occurrence of odors shall be measured so that at least two measurements can be made within a period of one hour, these determinations being separated by at least 15 minutes.

(b) No person shall operate or use any device, machine, equipment, or other contrivance for the reduction of animal matter unless all gases, vapors and gas entrained effluents from such facility are incinerated at a temperature of not less than 1200 degrees Fahrenheit for a period not less than 0.3 second, or processed by condensation or such manner as determined by the Division to be equally or more effective for the purpose of controlling such emissions.

(i) A person incinerating or processing gases, vapors, or gas entrained effluents pursuant to this rule shall provide, properly install, and maintain in good working order and in operation, devices as specified by the Division for indicating temperature, pressure, or other operating conditions.

(ii) Effective odor control devices, systems, or measures shall be installed and operated such that no vent, exhaust pipe, blowoff pipe, or opening of any kind shall discharge into the outdoor air any odorous matter, vapors, gases, or dusts, or any combination thereof, which create odors in areas adjacent to the plant in excess of the limits described in Chapter 2, Section 11(a)(i) of this regulation.

(c) Odor producing materials shall be stored, transported, and handled in a manner that:

(i) Odors produced from such materials are confined and that accumulation of such materials resulting from spillage or other escape is prevented.

(d) Whenever dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape from a building used for processing animal matter in such manner and amount as to cause a violation of Subsection (a)(i) of this regulation, the

Division may require that the building or buildings in which processing, handling, and storage are done be tightly closed and ventilated in such a manner that all airborne effluent materials leaving the building be treated by an effective means for removal or destruction of odorous matter before release to the open air.

Section 12. Incorporation by reference.

(a) Code of Federal Regulations (CFR). All Code of Federal Regulations (CFRs) cited in this chapter, including their Appendices, revised and published as of July 1, ~~2008~~ 2011, not including any later amendments, are incorporated by reference. Copies of the Code of Federal Regulations are available for public inspection and copies can be obtained at cost from the Department of Environmental Quality, Division of Air Quality, 122 W. 25th Street, Cheyenne, Wyoming 82002. Copies of the CFRs can also be obtained at cost from Government Institutes, 15200 NBN Way, Building B, Blue Ridge Summit, PA 17214.

APPENDIX 1
INTERPRETATION OF THE ANNUAL STATE
AMBIENT AIR QUALITY STANDARD FOR PM₁₀

1.0 *General.*

(a) This appendix explains the computations necessary for analyzing particulate matter data to determine attainment of the annual standard. For the primary standard, particulate matter is measured in the ambient air as PM₁₀ (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) by a reference method based on 40 CFR part 50, Appendix J, and designated in accordance with 40 CFR part 53, or by an equivalent method designated in accordance with 40 CFR part 53. The required frequency of measurements is specified in 40 CFR part 58.

(b) The terms used in this appendix are defined as follows:

Average refers to an arithmetic mean. The particulate matter standard is expressed in terms of the annual arithmetic mean.

Daily value for PM₁₀ refers to the 24-hour average concentration of PM₁₀ calculated or measured from midnight to midnight (local time).

Expected annual value is the number approached when the annual values from an increasing number of years are averaged, in the absence of long-term trends in emissions or meteorological conditions.

Year refers to a calendar year.

(c) Although the discussion in this appendix focuses on monitored data, the same principles apply to modeling data, subject to EPA modeling guidelines.

2.0 *Attainment Determinations.*

2.1 *Annual Primary Standard.*

The annual primary standard is attained when the expected annual arithmetic mean PM₁₀ concentration is less than or equal to the level of the standard. In the simplest case, the expected annual arithmetic mean is determined by averaging the annual arithmetic mean PM₁₀ concentrations for the past 3 calendar years. Because of the potential for incomplete data and the possible seasonality in PM₁₀ concentrations, the annual mean shall be calculated by averaging the four quarterly means of PM₁₀ concentrations within the calendar year. The equations for calculating the annual arithmetic mean are given in Section 3.0 of this appendix. Situations in which 3 years of data are not available and possible adjustments for unusual events or trends are discussed in Sections 2.2 and 2.3 of this appendix. The expected annual arithmetic mean is rounded to the nearest 1 µg/m³ before comparison with the annual standard (fractional values equal to or greater than 0.5 are to be rounded up).

2.2 *Data Requirements.*

(a) A minimum of 75 percent of the scheduled PM₁₀ samples per quarter are required.

(b) To demonstrate attainment of the annual standard at a monitoring site, the monitor must provide sufficient data to perform the required calculations of Section 3.0 of this appendix. The amount of data required varies with the sampling frequency, data capture rate and the number of years of record. In all cases, 3 years of representative monitoring data that meet the 75 percent criterion of the previous paragraph should be utilized, if available, and would suffice. More than 3 years may be considered, if all additional

representative years of data meeting the 75 percent criterion are utilized. Data not meeting these criteria may also suffice to show attainment; however, such exceptions will have to be approved by the Air Quality Division Administrator.

(c) There are less stringent data requirements for showing that a monitor has failed an attainment test and thus has recorded a violation of the particulate matter standard. Although it is generally necessary to meet the minimum 75 percent data capture requirement per quarter to use the computational equations described in Section 3.0 of this appendix, this criterion does not apply when less data is sufficient to unambiguously establish nonattainment. The following examples illustrate how nonattainment can be demonstrated when a site fails to meet the completeness criteria. Nonattainment of the annual standard can be demonstrated on the basis of quarterly mean concentrations developed from observed data combined with one-half the minimum detectable concentration substituted for missing values. Expected annual values must exceed the levels allowed by the standard.

2.3 Adjustment for Exceptional Events and Trends.

(a) An exceptional event is an uncontrollable event caused by natural sources of particulate matter or an event that is not expected to recur at a given location. Inclusion of such a value in the computation of exceedances or averages could result in inappropriate estimates of their respective expected annual values. To reduce the effect of unusual events, more than 3 years of representative data may be used. Alternatively, other techniques, such as the use of statistical models or the use of historical data could be considered so that the event may be discounted or weighted according to the likelihood that it will recur. The use of such techniques is subject to the approval of the Air Quality Division Administrator.

(b) In cases where long-term trends in emissions and air quality are evident, mathematical techniques should be applied to account for the trends to ensure that the expected annual values are not inappropriately biased by unrepresentative data. In the simplest case, if 3 years of data are available under stable emission conditions, this data should be used. In the event of a trend or shift in emission patterns, either the most recent representative year(s) could be used or statistical techniques or models could be used in conjunction with previous years of data to adjust for trends. The use of less than 3 years of data, and any adjustments are subject to the approval of the Air Quality Division Administrator.

3.0 Computational Equations for Annual Standard.

3.1 Calculation of the Annual Arithmetic Mean.

(a) An annual arithmetic mean value for PM_{10} is determined by averaging the quarterly means for the 4 calendar quarters of the year. The following equation is to be used for calculation of the mean for a calendar quarter:

Equation 1

$$\bar{x}_q = (1/n_q) \times \sum_{i=1}^{n_q} x_i$$

where:

\bar{x}_q = the quarterly mean concentration for quarter q, q=1, 2, 3, or 4,

n_q = the number of samples in the quarter, and

x_i = the *i*th concentration value recorded in the quarter.

(b) The quarterly mean, expressed in $\mu\text{g}/\text{m}^3$, must be rounded to the nearest tenth (fractional values of 0.05 should be rounded up).

(c) The annual mean is calculated by using the following equation:

Equation 2

$$\bar{x} = (1/4) \times \sum_{q=1}^4 \bar{x}_q$$

where:

\bar{x} = the annual mean; and

\bar{x}_q = the mean for calendar quarter q.

(d) The average of quarterly means must be rounded to the nearest tenth (fractional values of 0.05 should be rounded up).

(e) The use of quarterly averages to compute the annual average will not be necessary for monitoring or modeling data which results in a complete record, i.e., 365 days per year.

(f) The expected annual mean is estimated as the average of three or more annual means. This multi-year estimate, expressed in $\mu\text{g}/\text{m}^3$, shall be rounded to the nearest integer for comparison with the annual standard (fractional values of 0.5 should be rounded up).

Example 1

Using Equation 1, the quarterly means are calculated for each calendar quarter. If the quarterly means are 52.4, 75.3, 82.1, and 63.2 $\mu\text{g}/\text{m}^3$, then the annual mean is:

$$\bar{X} = (1/4) \times (52.4 + 75.3 + 82.1 + 63.2) = 68.25 \text{ or } 68.3.$$

3.2 Adjustments for Non-scheduled Sampling Days.

(a) An adjustment in the calculation of the annual mean is needed if sampling is performed on days in addition to the days specified by the systematic sampling schedule. The quarterly averages would be calculated by using the following equation:

Equation 3

$$\bar{x}_q = \left(\frac{1}{m_q} \right) \times \sum_{j=1}^{m_q} \sum_{i=1}^{k_j} (x_{ij} / k_j)$$

where:

\bar{x}_q = the quarterly mean concentration for quarter q, q=1, 2, 3, or 4;

x_{ij} = the *i*th concentration value recorded in stratum *j*;

k_j = the number of actual samples in stratum *j*; and

m_q = the number of strata with data in the quarter.

(b) If one sample value is recorded in each stratum, Equation 3 reduces to a simple arithmetic average of the observed values as described by Equation 1.

Example 2

a. During one calendar quarter, 9 observations were recorded. These samples were distributed among 7 sampling strata, with 3 observations in one stratum. The concentrations of the 3 observations in the single stratum were 202, 242, and 180 $\mu\text{g}/\text{m}^3$. The remaining 6 observed concentrations were 55, 68, 73, 92, 120, and 155 $\mu\text{g}/\text{m}^3$. Applying the weighting factors specified in Equation 3, the quarterly mean is:

$$\bar{X}_q = (1/7) \times [(1/3) \times (202 + 242 + 180) + 155 + 68 + 73 + 92 + 120 + 155] = 110.1$$

b. Note that these values are rounded to the nearest 1 $\mu\text{g}/\text{m}^3$ for the calculation of means.

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

Ambient Standards

CHAPTER 2

TABLE OF CONTENTS

Section 1.	Introduction to ambient standards	2-1
Section 2.	Ambient standards for particulate matter	2-1
Section 3.	Ambient standards for nitrogen oxides	2-2
Section 4.	Ambient standards for sulfur oxides	2-3
Section 5.	Ambient standards for carbon monoxide	2-4
Section 6.	Ambient standards for ozone	2-4
Section 7.	Ambient standards for hydrogen sulfide	2-4
Section 8.	Ambient standards for suspended sulfates	2-4
Section 9.	Ambient standards for fluorides	2-5
Section 10.	Ambient standards for lead	2-6
Section 11.	Ambient standards for odors	2-6
Section 12.	Incorporation by reference	2-7
Appendix 1.	Interpretation of the Annual State Ambient Air Quality Standards for PM ₁₀	2-8

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

Ambient Standards

CHAPTER 2

Section 1. Introduction to ambient standards.

(a) This Chapter establishes standards of ambient air quality necessary to protect public health and welfare. Such standards are subject to revision. The term “ambient air” refers to that portion of the atmosphere, external to buildings, to which the general public has access. Section 12 incorporates by reference all Code of Federal Regulations (CFRs) cited in this chapter, including their Appendices.

Section 2. Ambient standards for particulate matter.

(a) PM₁₀: The ambient air standards for PM₁₀ particulate matter are:

(i) 150 micrograms per cubic meter--24-hour average concentration with not more than one expected exceedance per year.

(A) Attainment of the 24-hour standard is determined in accordance with Appendix K of 40 CFR part 50.

(ii) 50 micrograms per cubic meter--annual arithmetic mean.

(A) Attainment of the annual standard is determined in accordance with Appendix 1 of this chapter.

(iii) For the purpose of determining attainment of the standards, particulate matter shall be measured in the ambient air as PM₁₀ (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers), by a reference method based on 40 CFR part 50, Appendix J and designated in accordance with 40 CFR part 53 or an equivalent or alternate method designated in accordance with 40 CFR part 53.

(b) PM_{2.5}: The primary and secondary ambient air quality standards for PM_{2.5} particulate matter are:

(i) 15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) annual arithmetic mean concentration and;

(ii) 35 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)--98th percentile 24-hour average concentration.

(iii) Attainment of the annual and 24-hour standards is determined in accordance with Appendix N of 40 CFR part 50.

(iv) For the purpose of determining attainment of the standards, particulate matter shall be measured in the ambient air as $\text{PM}_{2.5}$ (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers), by a reference method based on 40 CFR part 50, Appendix L and designated in accordance with 40 CFR part 53 or an equivalent or alternate method designated in accordance with 40 CFR part 53.

(c) Ambient air, for the area bounded by Townships 40 through 52 North, and Ranges 69 through 73 West, inclusive, of the Sixth Principal Meridian, Campbell and Converse Counties, in the Powder River Coal Basin, is defined as that portion of the atmosphere, external to buildings, to which the general public has access. For surface mining operations, the application of this definition will be limited to only those lands that are necessary to conduct mining operations as determined by the Administrator of the Wyoming Air Quality Division.

Section 3. **Ambient standards for nitrogen oxides.**

(a) The level of the primary annual ambient air quality standard for oxides of nitrogen is 53 parts per billion (ppb, which is 1 part in 1,000,000,000), annual average concentration, measured in the ambient air as nitrogen dioxide.

(b) The level of the primary 1-hour ambient air quality standard for oxides of nitrogen is 100 ppb, 1-hour average concentration, measured in the ambient air as nitrogen dioxide.

(c) The level of the secondary ambient air quality standard for nitrogen dioxide is 0.053 parts per million (ppm, which is 1 part in 1,000,000), annual arithmetic mean concentration.

(d) The levels of the standards shall be measured by:

(i) A reference method based on 40 CFR part 50, Appendix F; or

(ii) A Federal equivalent method (FEM) designated in accordance with 40 CFR part 53.

(e) The annual primary standard is met when the annual average concentration in a calendar year is less than or equal to 53 ppb, as determined in accordance with Appendix S of 40 CFR part 50 for the annual standard.

(f) The 1-hour primary standard is met when the three-year average of the annual 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 100 ppb, as determined in accordance with Appendix S of 40 CFR part 50 for the 1-hour standard.

(g) The secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm must be rounded up). To demonstrate attainment, an annual mean must be based upon hourly data that are at least 75 percent complete or upon data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.

Section 4. **Ambient standards for sulfur oxides.**

(a) The level of the primary 1-hour annual ambient air quality standard for oxides of sulfur is 75 parts per billion (ppb, which is 1 part in 1,000,000,000), measured in the ambient air as sulfur dioxide (SO₂).

(i) The 1-hour primary standard is met at an ambient air quality monitoring site when the three-year average of the annual (99th percentile) of the daily maximum 1-hour average concentrations is less than or equal to 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50.

(ii) The level of the standard shall be measured by a reference method based on 40 CFR part 50, Appendix A or A-1, or by a Federal Equivalent Method (FEM) designated in accordance with 40 CFR part 53.

(b) The level of the secondary 3-hour ambient air quality standard for oxides of sulfur is 0.5 parts per million (ppm, which is 1 part in 1,000,000), not to be exceeded more than once per calendar year. The 3-hour averages shall be determined from successive nonoverlapping 3-hour blocks starting at midnight each calendar day and shall be rounded to 1 decimal place (fractional parts equal to or greater than 0.05 ppm shall be rounded up).

(i) Sulfur oxides shall be measured in the ambient air as sulfur dioxide by the reference method described in Appendix A of 40 CFR part 50 or by an equivalent method designated in accordance with 40 CFR part 53.

(ii) To demonstrate attainment, the second-highest 3-hour average must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 3-hour block average shall be considered valid only if all three hourly averages for the 3-hour period are available. If only one or two hourly averages are available, but the 3-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding rule of paragraph (b) of this section, then this

shall be considered a valid 3-hour average. In all cases, the 3-hour block average shall be computed as the sum of the hourly averages divided by 3.

Section 5. Ambient standards for carbon monoxide.

(a) The ambient air standard for carbon monoxide, measured by nondispersive infrared spectrometry, as described in 40 CFR part 50, Appendix C, or by an equivalent method designated in accordance with 40 CFR part 53, is:

(i) 10 milligrams per cubic meter (9 ppm)--maximum 8-hour concentration not to be exceeded more than once per year;

(ii) 40 milligrams per cubic meter (35 ppm)--maximum 1-hour concentration not to be exceeded more than once per year.

Section 6. Ambient standards for ozone.

(a) The level of the 8-hour primary and secondary ambient air quality standards for ozone (O₃) is 0.075 parts per million (ppm, which is 1 part in 1,000,000), daily maximum 8-hour average, measured by a reference method based on Appendix D to 40 CFR part 50 and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53.

(b) The 8-hour primary and secondary standard ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR part 50, Appendix P.

Section 7. Ambient standards for hydrogen sulfide.

(a) The ambient air standards for hydrogen sulfide, measured by the mercuric chloride method, methylene blue method, or by an equivalent method are:

(i) 70 micrograms H₂S per cubic meter, ½-hour average not to be exceeded more than 2 times per year;

(ii) 40 micrograms H₂S per cubic meter, ½-hour average not to be exceeded more than 2 times in any five consecutive days.

Section 8. Ambient standards for suspended sulfates.

(a) The ambient air standards for suspended sulfate measured as a sulfation rate by the lead peroxide method are:

(i) 0.25 milligrams SO₃ per 100 square centimeters per day, maximum annual average;

(ii) 0.50 milligrams SO₃ per 100 square centimeters per day, maximum 30-day value.

Section 9. Ambient standards for fluorides.

(a) The ambient air standards for fluorides, measured as hydrogen fluoride through methods approved by the Administrator are:

(i) Statewide Standard:

Averaging Time	Maximum Allowable Concentration for Averaging Time
12 hours	3.0 µg/m ³
24 hours	1.8 µg/m ³
7 days	0.5 µg/m ³
30 days	0.4 µg/m ³

(ii) Regional Standard:

Averaging Time	Maximum Allowable Concentration for Averaging Time
12 hours	10.0 µg/m ³
24 hours	4.0 µg/m ³
7 days	1.8 µg/m ³
30 days	1.2 µg/m ³

The Regional Standard applies to the area encompassing the following lands in Sweetwater County, Wyoming:

- T19N R104W, E1/2 Section 31 & Sections 32, 33, 34, 35, 36;
- T19N R103W, Section 31;
- T18N R105W, S1/2 Section 1 & Sections 12, 13, 24, 25, 35, 36;
- T18N R104W, All Sections 1 through 36;
- T18N R103W, Sections 6, 7, 18, 19, 30, 31, 32, 33;
- T17N R105W, Sections 1, 2, 11, 12, 13, 14, 23, 24, 25, 26;
- T17N R104W, Sections 1 through 30;
- T17N R103W, Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30

(b) The standards for fluoride in forage for animal consumption measured as fluorine, dry weight basis, are:

Averaging Time	Maximum Allowable Concentration for Averaging Time
One year	30 ppm
60 days	60 ppm
30 days	80 ppm

The concentration of fluoride in forage shall be determined through sampling and analysis methods approved by the Administrator.

Section 10. Ambient standards for lead.

(a) The primary and secondary ambient air quality standards for lead (Pb) and its compounds are 0.15 micrograms per cubic meter, arithmetic mean concentration over a 3-month period, measured in the ambient air as Pb either by:

(i) A reference method based on 40 CFR part 50, Appendix G (Reference Method for the Determination of Lead in Suspended Particulate Matter Collected From Ambient Air), and designated in accordance with 40 CFR part 53 or;

(ii) An equivalent method designated in accordance with 40 CFR part 53.

(b) The primary and secondary ambient air quality standards for Pb are met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with Appendix R (Interpretation of the National Ambient Air Quality Standards for Lead) of 40 CFR part 50, is less than or equal to 0.15 micrograms per cubic meter.

Section 11. Ambient standards for odors.

(a) The ambient air standard for odors from any source shall be limited to:

(i) An odor emission at the property line which is undetectable at seven dilutions with odor free air as determined by a scentometer as manufactured by the Barnebey-Cheney Company or any other instrument, device, or technique designated by the Division as producing equivalent results. The occurrence of odors shall be measured so that at least two measurements can be made within a period of one hour, these determinations being separated by at least 15 minutes.

(b) No person shall operate or use any device, machine, equipment, or other contrivance for the reduction of animal matter unless all gases, vapors and gas entrained effluents from such facility are incinerated at a temperature of not less than 1200 degrees

Fahrenheit for a period not less than 0.3 second, or processed by condensation or such manner as determined by the Division to be equally or more effective for the purpose of controlling such emissions.

(i) A person incinerating or processing gases, vapors, or gas entrained effluents pursuant to this rule shall provide, properly install, and maintain in good working order and in operation, devices as specified by the Division for indicating temperature, pressure, or other operating conditions.

(ii) Effective odor control devices, systems, or measures shall be installed and operated such that no vent, exhaust pipe, blowoff pipe, or opening of any kind shall discharge into the outdoor air any odorous matter, vapors, gases, or dusts, or any combination thereof, which create odors in areas adjacent to the plant in excess of the limits described in Chapter 2, Section 11(a)(i) of this regulation.

(c) Odor producing materials shall be stored, transported, and handled in a manner that:

(i) Odors produced from such materials are confined and that accumulation of such materials resulting from spillage or other escape is prevented.

(d) Whenever dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape from a building used for processing animal matter in such manner and amount as to cause a violation of Subsection (a)(i) of this regulation, the Division may require that the building or buildings in which processing, handling, and storage are done be tightly closed and ventilated in such a manner that all airborne effluent materials leaving the building be treated by an effective means for removal or destruction of odorous matter before release to the open air.

Section 12. **Incorporation by reference.**

(a) Code of Federal Regulations (CFR). All Code of Federal Regulations (CFRs) cited in this chapter, including their Appendices, revised and published as of July 1, 2011, not including any later amendments, are incorporated by reference. Copies of the Code of Federal Regulations are available for public inspection and copies can be obtained at cost from the Department of Environmental Quality, Division of Air Quality, 122 W. 25th Street, Cheyenne, Wyoming 82002. Copies of the CFRs can also be obtained at cost from Government Institutes, 15200 NBN Way, Building B, Blue Ridge Summit, PA 17214.

APPENDIX 1
INTERPRETATION OF THE ANNUAL STATE
AMBIENT AIR QUALITY STANDARD FOR PM₁₀

1.0 *General.*

(a) This appendix explains the computations necessary for analyzing particulate matter data to determine attainment of the annual standard. For the primary standard, particulate matter is measured in the ambient air as PM₁₀ (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) by a reference method based on 40 CFR part 50, Appendix J, and designated in accordance with 40 CFR part 53, or by an equivalent method designated in accordance with 40 CFR part 53. The required frequency of measurements is specified in 40 CFR part 58.

(b) The terms used in this appendix are defined as follows:

Average refers to an arithmetic mean. The particulate matter standard is expressed in terms of the annual arithmetic mean.

Daily value for PM₁₀ refers to the 24-hour average concentration of PM₁₀ calculated or measured from midnight to midnight (local time).

Expected annual value is the number approached when the annual values from an increasing number of years are averaged, in the absence of long-term trends in emissions or meteorological conditions.

Year refers to a calendar year.

(c) Although the discussion in this appendix focuses on monitored data, the same principles apply to modeling data, subject to EPA modeling guidelines.

2.0 *Attainment Determinations.*

2.1 *Annual Primary Standard.*

The annual primary standard is attained when the expected annual arithmetic mean PM₁₀ concentration is less than or equal to the level of the standard. In the simplest case, the expected annual arithmetic mean is determined by averaging the annual arithmetic mean PM₁₀ concentrations for the past 3 calendar years. Because of the potential for incomplete data and the possible seasonality in PM₁₀ concentrations, the annual mean shall be calculated by averaging the four quarterly means of PM₁₀ concentrations within the calendar year. The equations for calculating the annual arithmetic mean are given in Section 3.0 of this appendix. Situations in which 3 years of data are not available and possible adjustments for unusual events or trends are discussed in Sections 2.2 and 2.3 of this appendix. The expected annual arithmetic mean is rounded to the nearest 1 µg/m³ before comparison with the annual standard (fractional values equal to or greater than 0.5 are to be rounded up).

2.2 *Data Requirements.*

(a) A minimum of 75 percent of the scheduled PM₁₀ samples per quarter are required.

(b) To demonstrate attainment of the annual standard at a monitoring site, the monitor must provide sufficient data to perform the required calculations of Section 3.0 of this appendix. The amount of data required varies with the sampling frequency, data capture rate and the number of years of record. In all cases, 3 years of representative monitoring data that meet the 75 percent criterion of the previous paragraph should be utilized, if available, and would suffice. More than 3 years may be considered, if all additional

representative years of data meeting the 75 percent criterion are utilized. Data not meeting these criteria may also suffice to show attainment; however, such exceptions will have to be approved by the Air Quality Division Administrator.

(c) There are less stringent data requirements for showing that a monitor has failed an attainment test and thus has recorded a violation of the particulate matter standard.

Although it is generally necessary to meet the minimum 75 percent data capture requirement per quarter to use the computational equations described in Section 3.0 of this appendix, this criterion does not apply when less data is sufficient to unambiguously establish nonattainment. The following examples illustrate how nonattainment can be demonstrated when a site fails to meet the completeness criteria. Nonattainment of the annual standard can be demonstrated on the basis of quarterly mean concentrations developed from observed data combined with one-half the minimum detectable concentration substituted for missing values. Expected annual values must exceed the levels allowed by the standard.

2.3 Adjustment for Exceptional Events and Trends.

(a) An exceptional event is an uncontrollable event caused by natural sources of particulate matter or an event that is not expected to recur at a given location. Inclusion of such a value in the computation of exceedances or averages could result in inappropriate estimates of their respective expected annual values. To reduce the effect of unusual events, more than 3 years of representative data may be used. Alternatively, other techniques, such as the use of statistical models or the use of historical data could be considered so that the event may be discounted or weighted according to the likelihood that it will recur. The use of such techniques is subject to the approval of the Air Quality Division Administrator.

(b) In cases where long-term trends in emissions and air quality are evident, mathematical techniques should be applied to account for the trends to ensure that the expected annual values are not inappropriately biased by unrepresentative data. In the simplest case, if 3 years of data are available under stable emission conditions, this data should be used. In the event of a trend or shift in emission patterns, either the most recent representative year(s) could be used or statistical techniques or models could be used in conjunction with previous years of data to adjust for trends. The use of less than 3 years of data, and any adjustments are subject to the approval of the Air Quality Division Administrator.

3.0 Computational Equations for Annual Standard.

3.1 Calculation of the Annual Arithmetic Mean.

(a) An annual arithmetic mean value for PM_{10} is determined by averaging the quarterly means for the 4 calendar quarters of the year. The following equation is to be used for calculation of the mean for a calendar quarter:

Equation 1

$$\bar{x}_q = (1/n_q) \times \sum_{i=1}^{n_q} x_i$$

where:

\bar{x}_q = the quarterly mean concentration for quarter q, q=1, 2, 3, or 4,

n_q = the number of samples in the quarter, and

x_i = the *i*th concentration value recorded in the quarter.

(b) The quarterly mean, expressed in $\mu\text{g}/\text{m}^3$, must be rounded to the nearest tenth (fractional values of 0.05 should be rounded up).

(c) The annual mean is calculated by using the following equation:

Equation 2

$$\bar{x} = (1/4) \times \sum_{q=1}^4 \bar{x}_q$$

where:

\bar{x} = the annual mean; and

\bar{x}_q = the mean for calendar quarter q.

(d) The average of quarterly means must be rounded to the nearest tenth (fractional values of 0.05 should be rounded up).

(e) The use of quarterly averages to compute the annual average will not be necessary for monitoring or modeling data which results in a complete record, i.e., 365 days per year.

(f) The expected annual mean is estimated as the average of three or more annual means. This multi-year estimate, expressed in $\mu\text{g}/\text{m}^3$, shall be rounded to the nearest integer for comparison with the annual standard (fractional values of 0.5 should be rounded up).

Example 1

Using Equation 1, the quarterly means are calculated for each calendar quarter. If the quarterly means are 52.4, 75.3, 82.1, and 63.2 $\mu\text{g}/\text{m}^3$, then the annual mean is:

$$\bar{X} = (1/4) \times (52.4 + 75.3 + 82.1 + 63.2) = 68.25 \text{ or } 68.3.$$

3.2 Adjustments for Non-scheduled Sampling Days.

(a) An adjustment in the calculation of the annual mean is needed if sampling is performed on days in addition to the days specified by the systematic sampling schedule. The quarterly averages would be calculated by using the following equation:

Equation 3

$$\bar{x}_q = \left(\frac{1}{m_q} \right) \times \sum_{j=1}^{m_q} \sum_{i=1}^{k_j} (x_{ij} / k_j)$$

where:

\bar{x}_q = the quarterly mean concentration for quarter q, q=1, 2, 3, or 4;

x_{ij} = the *i*th concentration value recorded in stratum *j*;

k_j = the number of actual samples in stratum *j*; and

m_q = the number of strata with data in the quarter.

(b) If one sample value is recorded in each stratum, Equation 3 reduces to a simple arithmetic average of the observed values as described by Equation 1.

Example 2

a. During one calendar quarter, 9 observations were recorded. These samples were distributed among 7 sampling strata, with 3 observations in one stratum. The concentrations of the 3 observations in the single stratum were 202, 242, and 180 $\mu\text{g}/\text{m}^3$. The remaining 6 observed concentrations were 55, 68, 73, 92, 120, and 155 $\mu\text{g}/\text{m}^3$. Applying the weighting factors specified in Equation 3, the quarterly mean is:

$$\bar{X}_q = (1/7) \times [(1/3) \times (202 + 242 + 180) + 155 + 68 + 73 + 92 + 120 + 155] = 110.1$$

b. Note that these values are rounded to the nearest 1 $\mu\text{g}/\text{m}^3$ for the calculation of means.

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

General Emission Standards

CHAPTER 3

TABLE OF CONTENTS

Section 1.	Introduction to general emission standards	3-1
Section 2.	Emission standards for particulate matter	3-1
Section 3.	Emission standards for nitrogen oxides	3-7
Section 4.	Emission standards for sulfur oxides <u>[Reserved]</u>	3-8
Section 5.	Emission standards for carbon monoxide	3-11
Section 6.	Emission standards for volatile organic compounds	3-11
Section 7.	Emission standards for hydrogen sulfide.....	3-11
Section 8.	Emission standards of asbestos for demolition, renovation, manufacturing, spraying and fabricating	3-12
Section 9.	Incorporation by reference	3-50

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

General Emission Standards

CHAPTER 3

Section 1. Introduction to general emission standards.

(a) This Chapter establishes limits on the quantity, rate, or concentration of emissions of air pollutants, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures. These general emission standards may be superseded by specific emission standards required in other Chapters of the Wyoming Air Quality Standards and Regulations. Section 9 incorporates by reference all Code of Federal Regulations (CFRs), including their Appendices, cited in this Chapter and all American Society for Testing and Materials (ASTM) standards cited in this Chapter.

Section 2. Emission standards for particulate matter.

(a) Visible emissions of any contaminant discharged into the atmosphere from any single new source of emission whatsoever as determined by a qualified observer shall be limited to 20 percent opacity;

Provided, however, that:

(i) An owner or operator of an affected facility of the type described in Chapter 3, Section 2(h)(i) hereof which has a heat input of not less than 2500×10^6 Btu per hour, may request the Administrator of the Division of Air Quality to determine opacity of emissions from such affected facility during initial performance tests required by Chapter 3, Section 2(i) or during other performance tests thereafter.

(ii) Upon receipt from such owner or operator of the written report of the results of the performance tests required by Chapter 6, Section 2(i) or later performance tests, the Administrator will make a finding concerning compliance with opacity and other applicable standards. If the Administrator finds that such affected facility is in compliance with all applicable standards for which performance tests are conducted but fails to meet any applicable opacity standard, he shall notify the owner or operator and advise him that he may petition the Administrator within 10 days of receipt of notification to make appropriate adjustment to the opacity standard for such affected facility.

(iii) The Administrator will grant such a petition upon a satisfactory demonstration by the owner or operator that such affected facility and associated air pollution control equipment was operated and maintained in a manner to minimize the

opacity of emissions during the performance tests; that the performance tests were performed under the conditions prescribed by the Administrator; and that such affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard at or near the facility's designed capacity.

(iv) The Administrator will establish an opacity standard for such affected facility meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity standard at all times during which the source is meeting the mass or concentration emission standard and during which the facility and air pollution equipment is being operated properly and maintained to minimize the opacity of emissions and mass emission rate.

(b) Visible emissions of any contaminant discharged into the atmosphere from any single existing source of emission whatsoever as determined by a qualified observer shall be limited to 40 percent opacity. This limitation shall not apply to existing incinerators or wood waste burners.

(c) The emissions of visible air pollutants from gasoline engines shall be eliminated except for periods not exceeding five consecutive seconds.

(d) The emissions of visible air pollutants from diesel engines as determined by a qualified observer shall be limited to 30 percent opacity below 7500 feet elevation except for periods not exceeding ten consecutive seconds. This limitation shall not apply during a reasonable period of warm-up following a cold start or where undergoing repairs and adjustment following a malfunction.

(e) Unless restricted by more stringent emission limits established elsewhere in the Wyoming Air Quality Standards and Regulations or permit conditions, any single source may discharge for a period or periods aggregating not more than 6 minutes in any hour contaminants;

(i) Having an equivalent opacity of not more than 40 percent as determined by a qualified observer.

(f) Fugitive Dust. Sources operating within the State of Wyoming are required to control fugitive dust emissions. The following control measures or any equivalent method approved by the Division Administrator shall be considered appropriate for minimizing fugitive dust:

(i) Construction/Demolition Activities.

(A) Any person engaged in clearing or leveling of land, earthmoving, excavation, or movement of trucks or construction equipment over access haul roads or cleared land shall take steps to minimize fugitive dust from such activities. Such control measures may include frequent watering and/or chemical stabilization.

(B) Any person engaged in demolition activities including razing of homes, buildings, or other structures; or removing paving material from roads and/or parking areas shall take steps to minimize fugitive dust from such activities. Such control measures may include frequent watering and/or chemical stabilization.

(C) Any person who is engaged in construction or demolition activities which tracks earth or other materials onto paved streets shall promptly remove such material by water or other means.

(D) Any person engaged in sandblasting or similar operations shall take steps to minimize fugitive dust from such activities. Such control measures may include the installation and use of hood, fans and fabric filters to enclose and vent the handling of dusty materials.

(ii) Handling and Transporting of Materials.

(A) Any person owning, operating or maintaining a new or existing material storage, handling and/or hauling operation shall minimize fugitive dust from such an operation. Such control measures may include the application of asphalt, oil, water or suitable chemicals on unpaved roads, material stockpiles and other surfaces which can give rise to airborne dusts. Control measures for material handling may also include installation and use of hoods, fans and fabric filters to enclose and vent dusty materials.

(B) When transporting materials likely to give rise to airborne dust, open bodied trucks shall be covered when in motion.

(iii) Agricultural Practices.

(A) Any person engaged in agricultural practices, such as tilling of land and application of fertilizers shall operate in a manner as to minimize fugitive dust emissions.

(g) The emission of particulate matter from any new source shall be limited as indicated in Table I. The emission of particulate matter from any existing source shall be limited as indicated in Table II.

(i) Process weight per hour means the total weight of all materials introduced into any specific process that may cause any emissions of particulate matter, including solid fuels, but excluding liquids or gases and used solely as fuels, and excluding air introduced for purposes of combustion, and excluding the weight of any water, water vapor or steam that may be introduced as part of the total materials. However, water contained as part of the normal input to a beet pulp dryer process shall be included as part of the process weight per hour. The process weight rate per hour

referred to in this section shall be based upon the maximum design production rate of the equipment unless otherwise restricted by enforceable limits on potential to emit.

(ii) For a cyclical or batch operation, the process weight per hour is derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment is idle.

(iii) For a continuous operation, the process weight per hour is derived by dividing the process weight for a typical period of time.

(iv) Emission tests related to this regulation shall be measured in accordance with the requirements of Chapter 3, Section 2(h)(iv).

TABLE I	
PROCESS WEIGHT RATE (lbs/hr)	EMISSION RATE (lbs/hr)
50	0.36
100	0.55
500	1.53
1,000	2.25
5,000	6.34
10,000	9.73
20,000	14.99
60,000	29.60
80,000	31.19
120,000	33.28
160,000	34.85
200,000	36.11
400,000	40.35
1,000,000	46.72

Interpolation of the data in Table I for the process weight rates up to 60,000 lbs/hr shall be accomplished by the use of the equation:

$$E = 3.59 P^{0.62} \quad P \leq 30 \text{ tons/hr}$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lbs/hr shall be accomplished by use of the equation:

$$E = 17.31 P^{0.16} \quad P > 30 \text{ tons/hr}$$

Where: E = Emissions in pounds per hour.
P = Process weight rate in tons per hour.

TABLE II					
PROCESS WEIGHT RATE		RATE OF EMISSION	PROCESS WEIGHT RATE		RATE OF EMISSION
lb/hr	tons/hr	lb/hr	lb/hr	tons/hr	lb/hr
100	0.05	0.551	16,000	8	16.5
200	0.10	0.877	18,000	9	17.9
400	0.20	1.40	20,000	10	19.2
600	0.30	1.83	30,000	15	25.2
800	0.40	2.22	40,000	20	30.5
1,000	0.50	2.58	50,000	25	35.4
1,500	0.75	3.38	60,000	30	40.0
2,000	1.00	4.10	70,000	35	41.3
2,500	1.25	4.76	80,000	40	42.5
3,000	1.50	5.38	90,000	45	43.6
3,500	1.75	5.96	100,000	50	44.6
4,000	2.00	6.52	120,000	60	46.3
5,000	2.50	7.58	140,000	70	47.8
6,000	3.00	8.56	160,000	80	49.0
7,000	3.50	9.49	200,000	100	51.2
8,000	4.00	10.4	1,000,000	500	69.0
9,000	4.50	11.2	2,000,000	1,000	77.6
10,000	5.00	12.0	6,000,000	3,000	92.7
12,000	6.00	13.6			

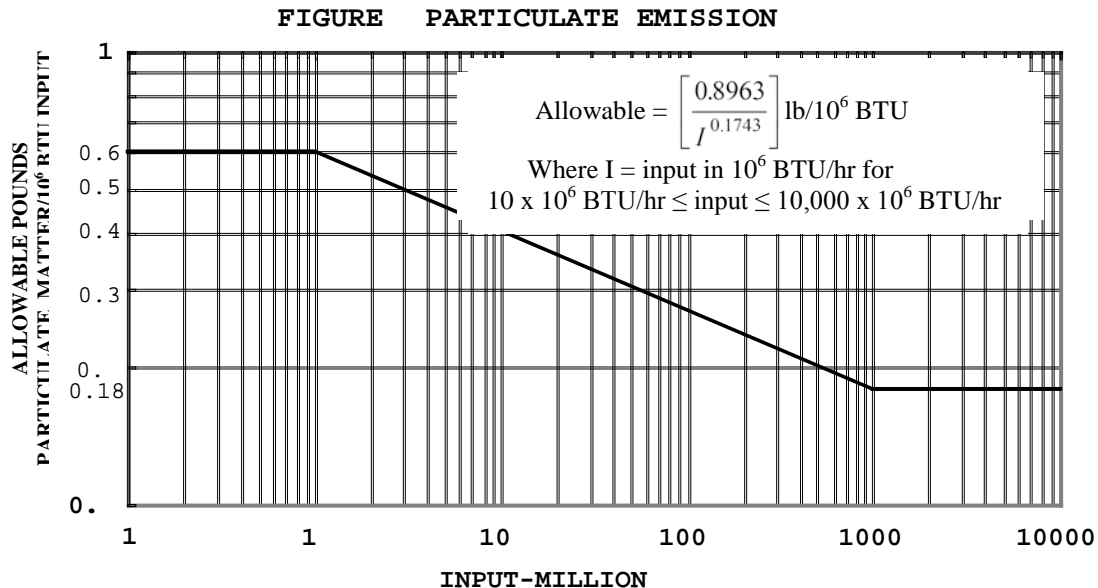
Interpolation of the data in Table II for process weight rates up to 60,000 lb/hr shall be accomplished by use of the equation $E = 4.10 P^{0.67}$, and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr shall be accomplished by use of the equation:

$$E = 55.0 P^{0.11} - 40, \text{ where } E = \text{rate of emission in lb/hr}$$

and P = process weight rate in tons/hr

Notwithstanding any other provision of this Table, any existing air contaminant source utilizing an air pollution control device having a collection efficiency of 99.5 percent or better, shall be deemed to be in compliance with all provisions of this regulation. Such efficiency shall be determined by a professional engineer licensed to practice in Wyoming and all expenses incurred in such determination shall be defrayed by the person responsible for the emission.

(h) The emissions of particulate matter from existing sources where fuel burning equipment is used for indirect heating shall be limited as shown in Figure 1 and shall be applicable to equipment burning solid fuel.



The emissions of particulate matter from new sources where fuel burning equipment is used for indirect heating shall be limited to 0.10 pound per million Btu input (0.18 grams per million calories) maximum 2-hour average. Except to the extent that an opacity standard has been established for an affected facility pursuant to Chapter 3, Section 2(a)(i) through (iv) hereof, the visible emissions of particulate matter from new sources where fuel burning equipment is used for indirect heating shall be no greater than 20 percent opacity, except that 40 percent opacity shall be permitted for not more than 2 minutes in any hour. This regulation is not applicable to residential or commercial fuel burning equipment with a heat input of less than 10 x 10⁶ Btu/hr and used exclusively to produce building heat.

(i) This regulation applies to installations in which fuel is burned for the primary purpose of producing steam, hot water, or hot air or other indirect heating of liquids, gases, or solids, and, in the course of doing so, the products of combustion do not come into direct contact with process materials. Fuels include those such as coal, coke, lignite, fuel oil, and wood, but do not include refuse. When any products or byproducts of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitations shall apply.

(ii) For purposes of this regulation, the heat input shall be the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks, or the heat input value used shall be the equipment manufacturer or designer's guaranteed maximum input, whichever is greater. The total heat input of all fuel burning units at a

plant or on a premise shall be used for determining the maximum allowable amount of particulate matter which may be emitted.

(iii) The amount of particulate matter emitted shall be measured by test Methods 1 through 5, Appendix A, 40 CFR part 60. Provided that the Administrator may require that variations to said methods be included or that entirely different methods be utilized if he determines that such variations or different methods are necessary in order for the test data to reflect the actual emission rate of particulate matter.

(i) The emission of particulate matter from any incinerator shall be limited to:

(i) 0.20 pound per 100 pounds (2 grams per kilogram) of refuse charged as determined by a source test method approved by the Division for stationary sources as described in Section 2(h)(ii) of this Chapter;

(ii) A shade or density equal to but not greater than 20 percent opacity as determined by a qualified observer.

Section 3. **Emission standards for nitrogen oxides.**

(a) The emission standards for nitrogen oxides, measured in accordance with Method 7 of 40 CFR part 60, Appendix A or by an equivalent method are:

(i) The emission of nitrogen oxides from new gas fired fuel burning equipment calculated as nitrogen dioxide shall be limited to 0.20 pound per million Btu (0.36 grams per million gram calories) of heat input.

(ii) The emission of nitrogen oxides from existing gas fired fuel burning equipment calculated as nitrogen dioxide shall be limited to 0.23 pound per million Btu (0.41 grams per million gram calories) of heat input.

(iii) The emission of nitrogen oxides from new oil fired fuel burning equipment calculated as nitrogen dioxide shall be limited to 0.30 pounds per million Btu (0.54 grams per million gram calories) of heat input for units having a heat input of 1.0 million Btu per hour (250 million gram calories/hour) or greater and 0.60 pounds per million Btu (1.08 grams per million gram calories) of heat input for units having a heat input less than 1.0 million Btu per hour (250 million gram calories/hour).

(iv) The emission of nitrogen oxides from existing oil fired fuel burning equipment calculated as nitrogen dioxide shall be limited to 0.46 pound per million Btu (0.83 grams per million gram calories) of heat input for units having a heat input of 250 million Btu per hour (62.5 billion gram calories/hour) or greater and 0.60 pound per million Btu (1.08 grams per million gram calories) of heat input for units having a heat input less than 250 million Btu per hour (62.5 billion gram calories/hour).

(v) The emission of nitrogen oxides from new nitric acid manufacturing plants, calculated as nitrogen dioxide shall be limited to 3 pounds per ton (1.5 kilograms per metric ton) of acid produced, maximum 2-hour average.

(vi) The emission of nitrogen oxides from new solid fossil fuel (except lignite) fired fuel burning equipment calculated as nitrogen dioxide shall be limited to 0.70 pounds per million Btu (1.26 grams per million gram calories) heat input.

(vii) The emission of nitrogen oxides from existing solid fossil fuel (except lignite) fired fuel burning equipment calculated as nitrogen dioxide shall be limited to 0.75 pounds per million Btu (1.35 grams per million gram calories) heat input.

(viii) The requirements of Chapter 3, Section 3(a) shall not apply to internal combustion engines having a heat input of less than 200 million Btu per hour.

Section 4. ~~Emission standards for sulfur oxides.~~ **[Reserved].**

~~(a) Any new facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides, mercaptans, or acid sludge shall limit the atmospheric discharge of sulfur dioxide in the effluent to not more than four pounds per ton of acid produced (2 kgm per metric ton) maximum 2-hour average.~~

~~(b) The emission of sulfur dioxide (SO₂) from fuel burning equipment, the construction of which commences on or after January 1, 1985, shall be limited to the values shown in Table 4a. Compliance with these emission limitations shall be determined on a 30-day rolling average basis and a fixed 3-hour basis, using the emission data obtained from an SO₂ continuous monitoring system installed and operated in accordance with Chapter 5, Section 2(j) of these regulations.~~

~~(i) Compliance with the 30-day rolling average shall be determined by calculating the arithmetic average of all hourly SO₂ emission rates for the most recent 30 successive operating days, except for data obtained during operation under Chapter 1, Section 5 of these regulations.~~

~~(A) The initial performance test period shall consist of the first 30 days of operation of the fuel burning equipment. Using the most recent 30 days of operation of the fuel burning equipment, a new 30-day average compliance determination for SO₂ is calculated for each successive operating day. These determinations will each constitute a separate performance test.~~

~~(B) For the purpose of calculating 30-day average emissions, the minimum amount of emissions data required is 75 percent of the operating hours during each operating day in at least 22 out of 30 successive operating days. A minimum of two data points are required to calculate each one-hour average. If, during any 30-day period, the minimum amount of emission data is not obtained because of continuous monitoring~~

system breakdowns, repairs, calibration checks, or zero and span adjustments, the owner or operator of the continuous monitoring system must notify the Administrator pursuant to Chapter 3, Section 4(b)(iii) of the cause(s) for such loss of data and must immediately initiate corrective action necessary to resume acceptable performance of the continuous monitoring system.

(ii) Compliance with the 3-hour SO₂ emission rate shall be determined for fixed 3-hour periods and shall use all hourly SO₂ emission rates including data obtained during periods of operation under Chapter 3, Section 4(b)(iii) and excluding periods of operation under Chapter 1, Section 5 of these regulations. The maximum 3-hour SO₂ emission rate is not to be exceeded more than once per calendar year.

(iii) The owner or operator shall, within 3 hours of malfunction or failure of the continuous emission monitors to operate, notify the Administrator of such malfunction or failure and shall utilize such alternate monitoring methods as may be required by the Administrator during such period. Emission rate data gathered during such periods pursuant to the alternate methods required by the Administrator shall be used in the determination of compliance with the 30-day rolling average value and the 3-hour value.

TABLE 4a		
TYPE OF FUEL	ALLOWABLE SO₂ EMISSION RATE⁽⁴⁾ (lb/10⁶ Btu Heat Input)	
	30-DAY ROLLING AVG.	MAXIMUM 3-HR AVG.
COAL	0.2	0.45
OIL	0.8	0.8

⁽⁴⁾ Applicable to individual fuel burning equipment units with a heat input of 250 x 10⁶ Btu/hr or greater.

(c) The emission of sulfur dioxide (SO₂) from fuel-burning equipment, the construction of which commenced after January 1, 1974 and prior to January 1, 1985, shall be limited to the 30-day rolling average values shown in Table 4a, calculated on the basis of a 2-hour average.

Provided, however, that the owner or operator of any facility subject to the compliance provisions of this section may elect by written notice to the Administrator, to be subject to the compliance provisions of Chapter 3, Section 4(b) of these regulations. Thirty days after such notification, the emission limitations and compliance determination methods and provisions of Chapter 3, Section 4(b), in their entirety, shall become applicable and binding upon such facility.

(d) The emission of sulfur dioxide (SO₂) from fuel-burning equipment, the construction of which commenced prior to January 1, 1974, shall be limited to the values shown in Table 4b, calculated on the basis of 2-hour averages or an equivalent method.

For the purpose of this section, operation of a continuous SO₂ emission monitoring system and the calculation of emission rates on the basis of 30-day rolling averages with a maximum 3-hour emission rate shown in Table 4c, when conducted in accordance with Chapter 3, Section 4(b) and Chapter 5, Section 2(j) of these regulations, is an equivalent method for determining compliance with the emission limitations specified in Table 4b. Upon written notice to the Administrator, the owner or operator of any facility that is subject to the compliance provisions of this section may elect the use of continuous emission monitoring systems with a 30-day averaging and maximum 3-hour emission rate as an equivalent method. Thirty days after such notification, the compliance determination method provision of Chapter 3, Section 4(b) shall become applicable and binding upon such facility.

TABLE 4B			
ALLOWABLE SO₂ EMISSION RATE⁽²⁾			
(LB/10⁶ BTU HEAT INPUT)			
FUEL	HEAT INPUT BETWEEN 250x10⁶ BTU/HR & 2500x10⁶ BTU/HR	HEAT INPUT BETWEEN 2500x10⁶ BTU/HR & 5000x10⁶ BTU/HR	HEAT INPUT GREATER THAN 5000x10⁶ BTU/HR
COAL	1.2	0.5	0.3

⁽²⁾ Applicable to individual fuel burning equipment units with the noted heat input values.

TABLE 4C				
ALLOWABLE SO₂ EMISSION RATE⁽³⁾				
(LB/10⁶ BTU HEAT INPUT)				
FUEL	AVERAGING PERIOD	HEAT INPUT BETWEEN 250x10⁶ BTU/HR & 2500x10⁶ BTU/HR	HEAT INPUT BETWEEN 2500x10⁶ BTU/HR & 5000x10⁶ BTU/HR	HEAT INPUT GREATER THAN 5000x10⁶ BTU/HR
COAL	30-DAY ROLLING	1.2	0.5	0.3
COAL	3-HOUR FIXED⁽⁴⁾	1.2	1.2	0.65

⁽³⁾ Applicable to individual fuel burning equipment units with the noted heat input values.

⁽⁴⁾ Not to be exceeded more than once per year.

(e) For purposes of Chapter 3, Section 4(b), 4(c), and 4(d) of these regulations, the heat input shall be the aggregate heat content of all fuels whose products of combustions pass through a stack or stacks, or the heat input value used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater.

~~(f) For the purposes of Chapter 3, Section 4(b), 4(c), and 4(d) of these regulations where a two-hour average, or a 3-hour average will be used, the SO₂ emission rate shall be determined in accordance with Reference Method 6, Appendix A, 40 CFR part 60 or an equivalent method or in accordance with the compliance provisions of Chapter 3, Section 4(b), if the notification provisions of 4(c) and 4(d) are followed.~~

Section 5. Emission standards for carbon monoxide.

(a) The emission of carbon monoxide in stack gases from any stationary source shall be limited as may be necessary to prevent ambient standards described in Chapter 2, Section 5 from being exceeded. Measures considered appropriate for such control are:

(i) Treatment of the waste gas stream by installation and use of a direct flame afterburner or other means which will achieve the required reduction as approved by the Division.

Section 6. Emission standards for volatile organic compounds.

(a) The term “*volatile organic compounds*” (*VOCs*) is defined in 40 CFR § 51.100(s), 51.100(s)(1), and 51.100(s)(5), incorporated by reference under Section 9(a) of this chapter.

(b) VOC emissions shall be limited through the application of Best Available Control Technology (BACT) in accordance with Chapter 6, Section 2 of these regulations. Notwithstanding the above, whenever acceptable control of VOC emissions from vapor blowdown, emergency relief systems, or VOC emissions generated from oil and gas production, storage, exploration, development, or processing operations is specified pursuant to these regulations as a flare, the flare shall not exceed a 20 percent opacity emission standard. If acceptable control of VOC emissions is specified as a smokeless flare, the definition given in subsection (i) of this section applies.

(i) For the purposes of this section, “*smokeless flare*” means a flare designed for and operated with no visible emissions except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(ii) Each flare subject to Chapter 3, Section 6(b) must be equipped and operated with an automatic igniter or a continuous burning pilot which must be maintained in good working order.

Section 7. Emission standards for hydrogen sulfide.

(a) Any exit process gas stream containing hydrogen sulfide which is discharged to the atmosphere from any source shall be vented, incinerated, flared or otherwise disposed of in such a manner that ambient sulfur dioxide and hydrogen sulfide standards described in Chapter 2, Sections 4 and 7 are not exceeded.

Section 8. Emission standards of asbestos for demolition, renovation, manufacturing, spraying and fabricating.

(a) Applicability. The provisions of this section are applicable to those sources specified in paragraphs (g) through (n), (q), and (r).

(b) Definitions. All terms that are used in this section and are not defined below are given the same meaning as in Chapter 1, Section 3 of these regulations.

“Active waste disposal site” means any disposal site other than an inactive site.

“Adequately wet” means sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

“Asbestos” means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

“Asbestos-containing waste materials” means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this section. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

“Asbestos tailings” means any solid waste that contains asbestos and is a product of asbestos mining or milling operations.

“Asbestos waste from control devices” means any waste material that contains asbestos and is collected by a pollution control device.

“Category I nonfriable asbestos-containing material (ACM)” means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in Appendix J to 29 CFR § 1910.1001, Polarized Light Microscopy of Asbestos.

“Category II nonfriable ACM” means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in Appendix J to 29 CFR § 1910.1001, Polarized Light Microscopy of Asbestos that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

“Commercial asbestos” means any material containing asbestos that is extracted from ore and has value because of its asbestos content.

“Cutting” means to penetrate with a sharp-edged instrument and includes sawing, but does not include shearing, slicing, or punching.

“Demolition” means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

“Emergency renovation operation” means a renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failures of equipment.

“Fabricating” means any processing (e.g., cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.

“Facility” means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For the purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this section is not excluded, regardless of its current use or function.

“Facility component” means any part of a facility including equipment.

“Friable asbestos material” means any material containing more than 1 percent asbestos as determined using the method specified in Appendix J to 29 CFR § 1910.1001, Polarized Light Microscopy of Asbestos, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

“Fugitive source” means any source of emissions not controlled by an air pollution control device.

“Glove bag” means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. Properly installed and used, glove bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove-bag installation, equipment and supplies, and work practices is contained in the Occupational Safety and Health Administration’s (OSHA’s) final rule on occupational exposure to asbestos (29 CFR § 1926.1101(g)(5)(ii)).

“Grinding” means to reduce to powder or small fragments and includes mechanical chipping or drilling.

“In poor condition” means the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.

“Inactive waste disposal site” means any disposal site or portion of it where additional asbestos-containing waste material has not been deposited within the past year.

“Installation” means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

“Leak-tight” means that solids or liquids cannot escape or spill out. It also means dust-tight.

“Malfunction” means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner so that emissions of asbestos are increased. Failures of equipment shall not be considered malfunctions if they are caused in any way by poor maintenance, careless operation, or any other preventable upset conditions, equipment breakdown, or process failure.

“Manufacturing” means the combining of commercial asbestos--or, in the case of woven friction products, the combining of textiles containing commercial asbestos--with any other material(s), including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.

“Natural barrier” means a natural object that effectively precludes or deters access. Natural barriers include physical obstacles such as cliffs, lakes or other large bodies of water, deep and wide ravines, and mountains. Remoteness by itself is not a natural barrier.

“Nonfriable asbestos-containing material” means any material containing more than 1 percent asbestos as determined using the method specified in Appendix J to 29 CFR § 1910.1001, Polarized Light Microscopy of Asbestos, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

“Nonscheduled renovation operation” means a renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.

“Outside air” means the air outside buildings and structures, including, but not limited to, the air under a bridge or in an open air ferry dock.

“Owner or operator of a demolition or renovation activity” means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

“Particulate asbestos material” means finely divided particles of asbestos or material containing asbestos.

“Planned renovation operations” means a renovation operation, or a number of such operations, in which some RACM will be removed or stripped within a given period of time and that can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.

“Regulated asbestos-containing material (RACM)” means: (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

“Remove” means to take out RACM or facility components that contain or are covered with RACM from any facility.

“Renovation” means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

“Resilient floor covering” means asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing more than 1 percent asbestos as determined using polarized light microscopy according to the method specified in Appendix J to 29 CFR § 1910.1001, Polarized Light Microscopy of Asbestos.

“Strip” means to take off RACM from any part of a facility or facility components.

“Structural member” means any load supporting member of a facility, such as beams and load supporting walls; or any nonload-supporting member, such as ceilings and nonload-supporting walls.

“Visible emissions” means any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operation. This does not include condensed, uncombined water vapor.

“Waste generator” means any owner or operator of a source covered by this section whose act or process produces asbestos-containing waste material.

“Waste shipment record” means the shipping document, required to be originated and signed by the waste generator, used to track and substantiate the disposal of asbestos-containing waste material.

“Working day” means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

(c) Units and Abbreviations: Used in this section are abbreviations and symbols of units of measure. These are defined as follows:

(i) System International (SI) Units of Measure:

g = gram
kg = kilogram
m = meter
m² = square meter
m³ = cubic meter

(ii) Other Units of Measure:

C = Celsius (centigrade)
F = Fahrenheit
ft² = square feet
ft³ = cubic feet
yd² = square yards
min = minute
oz = ounces

(d) Address: All requests, reports, applications, submittals, and other communications to the Administrator pursuant to this section shall be submitted to the following address:

(i) Wyoming Department of Environmental Quality, Air Quality Division, 122 West 25th Street, Cheyenne, Wyoming 82002.

(e) [Reserved]

(f) Circumvention: No owner or operator shall build, erect, install, or use any article, machine, equipment, process, or method, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous dilutants to achieve compliance with a visible emissions standard, and the piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.

(g) Standard for Waste Disposal for Non-Facility Owners and Operators.

(i) All owners and operators conducting an asbestos abatement project, including an abatement project on a residential building, shall be responsible for complying with Federal requirements and State standards for packaging, transportation, and delivery to an approved waste disposal facility as provided in paragraph (m) of this section. A non-facility is any other facility not defined under the definition of “facility” including residential buildings having four or fewer dwelling units.

(h) Standard for Manufacturing.

(i) Applicability. This paragraph applies to the following manufacturing operations using commercial asbestos.

(A) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials.

(B) The manufacture of cement products.

(C) The manufacture of fireproofing and insulating materials.

(D) The manufacture of friction products.

(E) The manufacture of paper, millboard, and felt.

(F) The manufacture of floor tile.

(G) The manufacture of paints, coatings, caulks, adhesives, and sealants.

(H) The manufacture of plastics and rubber materials.

(I) The manufacture of chlorine utilizing asbestos diaphragm technology.

(J) The manufacture of shotgun shell wads.

(K) The manufacture of asphalt concrete.

(ii) Standard. Each owner or operator of any of the manufacturing operations to which this paragraph applies shall either:

(A) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted or from any fugitive sources; or

(B) Use the methods specified by paragraph (o) of this section to clean emissions containing asbestos material from these operations before they escape to, or are vented to, the outside air.

(C) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be by the visual observation of at least 15 seconds duration per source of emissions.

(D) Inspect each air cleaning device at least once each week for proper operation and for changes that signal potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(I) Maintenance schedule.

(II) Recordkeeping plan.

(E) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(I) Date and time of each inspection.

(II) Presence or absence of visible emissions.

(III) Condition of fabric filters, including presence of any tears, holes and abrasions.

Figure 1. Record of Visible Emission Monitoring

Date of Inspection (MM/DD/YY)	Time of Inspection (a.m./p.m.)	Control Device or fugitive emission source designation or number	Visible Emissions Observed (yes/no) Corrective Action taken	Daily Operating Hours	Inspector's Initials

Figure 2. Air Pollution Control Device Inspection Checklist

1. Control Device Designation or Number:	_____			
2. Date of Inspection:	_____	_____	_____	_____
3. Time of Inspection:	_____	_____	_____	_____
4. Is Control Device Operating Properly (yes or no)	_____	_____	_____	_____
5. Abrasions in bags (yes or no)	_____	_____	_____	_____
6. Dust on Clean Side of bags (yes or no)	_____	_____	_____	_____
7. Other Signs of Malfunctions or Potential Malfunctions (yes or no)	_____	_____	_____	_____
8. Describe Other Malfunctions or Signs of Potential Malfunctions:	_____			
9. Describe Corrective Action(s) Taken:	_____			
10. Date and Time Corrective Action Taken:	_____	_____	_____	_____
11. Inspected By:	_____			
_____	_____	_____	_____	
(Print/Type Name)	(Title)	(Signature)	(Date)	
_____	_____	_____	_____	
(Print/Type Name)	(Title)	(Signature)	(Date)	

(IV) Presence of dust deposits on clean side of fabric filters.

(V) Brief description of corrective actions taken, including date and time.

(VI) Daily hours of operation for each air cleaning device.

(F) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this paragraph.

(G) Retain a copy of all monitoring and inspection records for at least 2 years.

(H) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

(i) Standard for Demolition and Renovation.

(i) Applicability. To determine which requirements of paragraphs (i)(i), (i)(ii), and (i)(iii) apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (i)(ii) and (i)(iii) apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

(A) In a facility being demolished, all the requirements of paragraphs (i)(ii) and (i)(iii) apply, except as provided in paragraph (i)(i)(C), if the combined amount of RACM is:

(I) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or

(II) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

(B) In a facility being demolished, only the notification requirements of paragraphs (i)(ii)(A), (B), (C)(I) and (IV), and (D)(I) through (D)(IX) and (XVI) apply, if the combined amount of RACM is:

(I) Less than 80 linear meters (260 linear feet) on pipes and less than 15 square meters (160 square feet) on other facility components, and

(II) Less than one cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously or there is no asbestos.

(C) If the facility is being demolished under an order of a State or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements of paragraphs (i)(ii)(A), (i)(ii)(B), (i)(ii)(C)(III), (i)(ii)(D) (except (i)(ii)(D)(VIII)), (i)(ii)(E), and (i)(iii)(D) through (i)(iii)(I) apply.

(D) In a facility being renovated, including any individual nonscheduled renovation operation, all the requirements of paragraphs (i)(ii) and (i)(iii) apply if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is:

(I) At least 80 linear meters (260 linear feet) on pipe or at least 15 square meters (160 square feet) on other facility components, or

(II) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

(III) To determine whether paragraph (i)(i)(D) applies to planned renovation operations involving individual nonscheduled operations, predict the combined additive amount of RACM to be removed or stripped during a calendar year or January 1 through December 31.

(IV) To determine whether paragraph (i)(i)(D) applies to emergency renovation operations, estimate the combined amount of RACM to be removed or stripped as a result of the sudden, unexpected event that necessitated the renovation.

(E) In a facility being renovated, only the notification requirements of paragraphs (i)(ii)(A), (B), (C)(I) and (IV), and (D)(I) through (IX) and (XVI) apply, if the combined amount of RACM is:

(I) Less than 80 linear meters (260 linear feet) on pipes or less than 15 square meters (160 square feet) on other facility components, and

(II) Less than 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously or there is no asbestos.

(ii) Notification Requirements. Each owner or operator of a demolition or renovation activity to which this section applies shall:

(A) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(B) Update notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.

(C) Postmark or deliver the notice as follows:

(I) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (i)(i)(A) and (D) (except (i)(i)(D)(III) and (i)(i)(D)(IV)). If the operation is as described in paragraph (i)(i)(B), notification is required 10 working days before demolition begins.

(II) At least 10 working days before the end of the calendar year preceding the year for which notice is being given for renovations described in paragraph (i)(i)(D)(III).

(III) As early as possible before, but not later than, the following working day if the operation is a demolition ordered according to paragraph (i)(i)(C) or, if the operation is a renovation described in paragraph (i)(i)(D)(IV).

(IV) For asbestos stripping or removal work in a demolition or renovation operation, described in paragraphs (i)(i)(A) and (D) (except (i)(i)(D)(III) and (i)(i)(D)(IV)), and for a demolition described in paragraph (i)(i)(B), that will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator as follows:

(1.) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin after the date contained in the notice,

a. Notify the Administrator of the new start date by telephone as soon as possible before the original start date, and

b. Provide the Administrator with a written notice of the new start date as soon as possible before, and no later than, the original start date. Delivery of the updated notice by the U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(2.) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin on a date earlier than the original start date,

a. Provide the Administrator with a written notice of the new start date at least 10 working days before asbestos stripping or removal work begins.

b. For demolitions covered by paragraph (i)(i)(B), provide the Administrator written notice of a new start date at least 10 working days before commencement of demolition. Delivery of updated notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(3.) In no event shall an operation covered by this paragraph begin on a date other than the date contained in the written notice of the new start date.

(D) Include the following in the notice:

(I) An indication of whether the notice is the original or a revised notification.

(II) Name, address, and telephone number of both the facility owner and operator and the asbestos removal contractor owner or operator.

(III) Type of operation: demolition or renovation.

(IV) Description of the facility or affected part of the facility including the size (square meters [square feet] and number of floors), age, and present and prior use of the facility.

(V) Procedure, including analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.

(VI) Estimate of the approximate amount of RACM to be removed from the facility in terms of length of pipe in linear meters (linear feet), surface area in square meters (square feet) on other facility components, or volume in cubic meters (cubic feet) if off the facility components. Also estimate the approximate amount of Category I and Category II nonfriable ACM in the affected part of the facility that will not be removed before demolition.

(VII) Location and street address (including building number or name and floor or room number, if appropriate), city, county, and state, or the facility being demolished or renovated.

(VIII) Scheduled starting and completion dates of asbestos removal work (or any other activity, such as site preparation that would break up, dislodge, or similarly disturb asbestos material) in a demolition or renovation; planned renovation operations involving individual nonscheduled operations shall only include

the beginning and ending dates of the report period as described in paragraph (i)(i)(D)(III).

(IX) Scheduled starting and completion dates of demolition or renovation.

(X) Description of planned demolition or renovation work to be performed and method(s) to be employed, including demolition or renovation techniques to be used and description of affected facility components.

(XI) Description of work practices and engineering controls to be used to comply with the requirements of this section, including asbestos removal and waste-handling emission control procedures.

(XII) Name and location of the waste disposal site where the asbestos-containing waste material will be deposited.

(XIII) A certification that the individuals supervising and performing the stripping and removal described by this notification have received the training required by paragraph (i)(iii)(H).

(XIV) For facilities described in paragraph (i)(i)(C), the name, title, and authority of the State or local government representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin. A copy of the order shall be attached to the notification.

(XV) For emergency renovations described in paragraph (b)(xii) of this section, the date and hour that the emergency occurred, a description of the sudden, unexpected event, and an explanation of how the event caused an unsafe condition, or would cause equipment damage or an unreasonable financial burden.

(XVI) Description of procedures to be followed in the event that unexpected RACM is found or Category II nonfriable ACM becomes crumbled, pulverized, or reduced to powder.

(XVII) Name, address, and telephone number of the waste transporter.

(E) The information required in paragraph (i)(ii)(D) must be reported using a form similar to that shown in Figure 3.

(iii) Procedures for Asbestos Emission Control. Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (i)(i), shall comply with the following procedures:

(A) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before demolition if:

(I) It is Category I nonfriable ACM that is not in poor condition and is not friable.

(II) It is on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed during demolition; or

(III) It was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. If not removed for safety reasons, the exposed RACM and any asbestos-contaminated debris must be treated as asbestos-containing waste material and adequately wet at all times until disposed of.

(IV) They are Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.

(B) When a facility component that contains, is covered with, or is coated with RACM is being taken out of the facility as a unit or in sections:

(I) Adequately wet all RACM exposed during cutting or disjuncting operations; and

(II) Carefully lower each unit or section to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the RACM.

(C) When RACM is stripped from a facility component while it remains in place in the facility, adequately wet the RACM during the stripping operation.

(I) In renovation operations, wetting is not required if:

(1.) The owner or operator has obtained prior written approval from the Administrator based on a written application that wetting to comply with this paragraph would unavoidably damage equipment or present a safety hazard; and

Figure 3
STATE OF WYOMING
 NOTIFICATION OF DEMOLITION AND RENOVATION

I. FACILITY DESCRIPTION (INCLUDE BUILDING NAME, NUMBER, AND FLOOR OR ROOM NUMBER)					
BLDG NAME:					
ADDRESS:					
CITY:		STATE:		CONTACT:	
SITE DESCRIPTION (type of material being removed)					
II. FACILITY INFORMATION (IDENTIFY OWNER, REMOVAL CONTRACTOR, AND OTHER OPERATOR)					
OWNER NAME:					
ADDRESS:					
CITY:		STATE:		ZIP:	
CONTACT:				TEL:	
REMOVAL CONTRACTOR:					
ADDRESS:					
CITY:		STATE:		ZIP:	
CONTACT:				TEL:	
OTHER OPERATOR:					
ADDRESS:					
CITY:		STATE:		ZIP:	
CONTACT:				TEL:	
BUILDING SIZE:		NUM OF FLOORS:		AGE IN YEARS:	
PRESENT USE:		PRIOR USE:			
III. TYPE OF OPERATION (D=DEMO O=ORDERED DEMO R=RENOVATION E=EMER. RENOVATION):					
IV. IS ASBESTOS PRESENT? (YES/NO)					
V. PROCEDURE, INCLUDING ANALYTICAL METHOD, IF APPROPRIATE, USED TO DETECT THE PRESENCE OF ASBESTOS MATERIAL:					
VI. SCHEDULED DATES ASBESTOS REMOVAL (MM/DD/YY) START: COMPLETE:					
VII. SCHEDULED DATES DEMO/RENOVATION (MM/DD/YY) START: COMPLETE:					
VIII. SCHEDULED WORK HOURS:		START:		COMPLETE:	
IX. APPROXIMATE AMOUNT OF ASBESTOS, INCLUDING: 1. REGULATED ACM TO BE REMOVED 2. CATEGORY I ACM NOT REMOVED 3. CATEGORY II ACM NOT REMOVED	RACM TO BE REMOVED	NONFRIABLE ASBESTOS MATERIAL TO BE REMOVED		NONFRIABLE ASBESTOS MATERIAL NOT TO BE REMOVED	
		CAT I	CAT II	CAT I	CAT II
PIPES					
SURFACE AREA					
VOL. RACM OFF FACILITY COMPONENT					
X. DESCRIPTION OF PLANNED DEMOLITION OR RENOVATION WORK, AND METHOD(S) TO BE USED:					
XI. DESCRIPTION OF WORK PRACTICES AND ENGINEERING CONTROLS TO BE USED TO PREVENT EMISSIONS OF ASBESTOS AT THE DEMOLITION AND RENOVATION SITE:					

Figure 3. NOTIFICATION OF DEMOLITION AND RENOVATION (continued)

XII. TYPE OF NOTIFICATION (O=ORIGINAL R=REVISED C=CANCELLED):		WPR Notice?
XIII. WASTE TRANSPORTER #1		
NAME:		
ADDRESS:		
CITY:	STATE:	ZIP:
CONTACT PERSON:		TELEPHONE:
WASTE TRANSPORTER #2		
NAME:		
ADDRESS:		
CITY:	STATE:	ZIP:
CONTACT PERSON:		TELEPHONE:
XIV. WASTE DISPOSAL SITE		
NAME:		
LOCATION:		
CITY:	STATE:	ZIP:
TELEPHONE:	CONTACT PERSON:	
XV. IF DEMOLITION ORDERED BY A GOVERNMENT AGENCY, PLEASE IDENTIFY THE AGENCY BELOW:		
NAME:		TITLE:
AUTHORITY:		
DATE OF ORDER (MM/DD/YY):		DATE ORDERED TO BEGIN (MM/DD/YY):
XVI. FOR EMERGENCY RENOVATIONS		
DATE AND HOUR OF EMERGENCY (MM/DD/YY):		
DESCRIPTION OF THE SUDDEN, UNEXPECTED EVENT:		
EXPLANATION OF HOW THE EVENT CAUSED UNSAFE CONDITIONS OR WOULD CAUSE EQUIPMENT DAMAGE OR AN UNREASONABLE FINANCIAL BURDEN:		
XVII. DESCRIPTION OF PROCEDURES TO BE FOLLOWED IN THE EVENT THAT UNEXPECTED ASBESTOS IS FOUND OR PREVIOUSLY NONFRIABLE ASBESTOS MATERIAL BECOMES CRUMBLED, PULVERIZED, OR REDUCED TO POWDER.		
XVIII. I CERTIFY THAT AN INDIVIDUAL TRAINED IN THE PROVISIONS OF THIS REGULATION (40 CFR PART 61, SUBPART M) WILL BE ON-SITE DURING THE DEMOLITION OR RENOVATION AND EVIDENCE THAT THE REQUIRED TRAINING HAS BEEN ACCOMPLISHED BY THIS PERSON WILL BE AVAILABLE FOR INSPECTION DURING NORMAL BUSINESS HOURS (REQUIRED 1 YEAR AFTER PROMULGATION).		
_____		(SIGNATURE OF OWNER/OPERATOR) (DATE)
XIX. I CERTIFY THAT THE ABOVE INFORMATION IS CORRECT.		
_____		(SIGNATURE OF OWNER/OPERATOR) (DATE)

(2.) The owner or operator uses one of the following emission control methods:

a. A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the asbestos materials. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in paragraph (o).

b. A glove-bag system designed and operated to contain the particulate asbestos material produced by the stripping of the asbestos materials.

c. Leak-tight wrapping to contain all RACM prior to dismantlement.

(II) In renovation operations where wetting would result in equipment damage or a safety hazard, and the methods allowed in paragraph (i)(iii)(C)(I) cannot be used, another method may be used after obtaining written approval from the Administrator based upon a determination that it is equivalent to wetting in controlling emissions or to the methods allowed in paragraph (i)(iii)(C)(I).

(III) A copy of the Administrator's written approval shall be kept at the worksite and made available for inspection.

(D) After a facility component covered with, coated with, or containing RACM has been taken out of the facility as a unit or in sections pursuant to paragraph (i)(iii)(B), it shall be stripped or contained in leak-tight wrapping, except as described in paragraph (i)(iii)(E). If stripped, either:

(I) Adequately wet the RACM during stripping; or

(II) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in paragraph (o).

(E) For large facility components such as reactor vessels, large tanks, and steam generators, but not beams (which must be handled in accordance with paragraphs (i)(iii)(B), (C), and (D)), the RACM is not required to be stripped if the following requirements are met:

(I) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the RACM.

(II) The component is encased in a leak-tight wrapping.

(III) The leak-tight wrapping is labeled according to paragraphs (m)(iv) during all loading and unloading operations and during storage.

(F) For all RACM, including material that has been removed or stripped:

(I) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with paragraph (m).

(II) Carefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.

(III) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections.

(IV) RACM contained in leak-tight wrapping that has been removed in accordance with paragraphs (i)(iii)(D) and (i)(iii)(C)(I)(2).c. need not be wetted.

(G) When the temperature at the point of wetting is below 0°C (32°F):

(I) The owner or operator need not comply with paragraph (i)(iii)(B)(I) and the wetting provisions of paragraph (i)(iii)(C).

(II) The owner or operator shall remove facility components containing, coated with, or covered with RACM as units or in sections to the maximum extent possible.

(III) During periods when wetting operations are suspended due to freezing temperatures, the owner or operator must record the temperature in the area containing the facility components at the beginning, middle, and end of each workday and keep daily temperature records available for inspection by the Administrator during normal business hours at the demolition or renovation site. The owner or operator shall retain the temperature records for at least 2 years.

(H) No RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless the individuals supervising and performing the operation have been trained in the provisions of this regulation and the means of complying with them. Asbestos School Hazard Abatement Reauthorization Act (ASHARA) training will be acceptable to meet this requirement. Every year, the individuals supervising and performing asbestos operations shall receive refresher training in the provisions of this regulation. The required training shall include as a

minimum: applicability; notifications; material identification; control procedures for removals including, at least, wetting, local exhaust ventilation, negative pressure enclosures, glove-bag procedures, and High Efficiency Particulate Air (HEPA) filters; waste disposal work practices; reporting and recordkeeping; and asbestos hazards and worker protection. Evidence that the required training has been completed shall be posted and made available for inspection by the Administrator at the demolition or renovation site.

(I) For facilities described in paragraph (i)(i)(C), adequately wet the portion of the facility that contains RACM during the wrecking operation.

(J) If a facility is demolished by intentional burning, all RACM including Category I and Category II nonfriable ACM must be removed in accordance with the NESHAP before burning.

(j) Standard for Spraying.

The owner or operator of an operation in which asbestos-containing materials are spray applied shall comply with the following requirements:

(i) For spray-on application on buildings, structures, pipes, and conduits do not use material containing more than 1 percent asbestos as determined using the method specified in Appendix J to 29 CFR § 1910.1001, Polarized Light Microscopy of Asbestos, except as provided in paragraph (j)(iii).

(ii) For spray-on application of materials that contain more than 1 percent asbestos as determined using the method specified in Appendix J to 29 CFR § 1910.1001, Polarized Light Microscopy of Asbestos, on equipment and machinery, except as provided in paragraph (j)(iii):

(A) Notify the Administrator at least 20 days before beginning the spraying operation. Include the following information in the notice:

(I) Name and address of owner or operator.

(II) Location of spraying operation.

(III) Procedures to be followed to meet the requirements of paragraph (j).

(B) Discharge no visible emissions to the outside air from spray-on application of the asbestos-containing material or use the methods specified by paragraph (o) to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(iii) The requirements of paragraphs (j)(i) and (j)(ii) do not apply to the spray-on application of materials where the asbestos fibers in the materials are encapsulated with a bituminous or resinous binder during spraying and the materials are not friable after drying.

(k) Standard for Fabricating.

(i) Applicability. This section applies to the following fabrication operations using commercial asbestos:

(A) The fabrication of cement building products.

(B) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles.

(C) The fabrication of cement on silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture, bulkheads, partitions, and ceilings for marine construction; and flow control devices for the molten metal industry.

(ii) Standard. Each owner or operator of any of the fabricating operations to which this section applies shall either:

(A) Discharge no visible emissions to the outside air from any of the operations or from any building or structure in which they are conducted or from any other fugitive sources; or

(B) Use the methods specified by paragraph (o) to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(C) Monitor each potential source of asbestos emissions from any part of the fabricating facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once a day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emission.

(D) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in the filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(I) Maintenance schedule.

(II) Recordkeeping plan.

(E) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(I) Date and time of each inspection.

(II) Presence or absence of visible emissions.

(III) Condition of fabric filters, including presence of any tears, holes, and abrasions.

(IV) Presence of dust deposits on clean side of fabric filters.

(V) Brief description of corrective actions taken, including date and time.

(VI) Daily hours of operation for each air cleaning device.

(F) Furnish upon request and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this paragraph.

(G) Retain a copy of all monitoring and inspection records for at least 2 years.

(H) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

(I) Standard for Insulating Materials. No owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this paragraph do not apply to spray-applied insulating materials regulated under paragraph (j).

(m) Standard for Waste Disposal for Non-facilities, Manufacturing, Demolition, Renovation, Spraying, and Fabricating. Each owner or operator of any source covered under the provisions of paragraphs (g), (h), (i), (j), or (k) shall meet the requirements of the Solid Waste Division of the Wyoming Department of Environmental Quality or, at a minimum, the requirements of the following:

(i) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in paragraphs (m)(i)(A) through (D).

(A) Adequately wet asbestos-containing waste material as follows:

(I) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and

(II) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by paragraph (o) to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

(III) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and

(IV) Label the containers or wrapped materials specified in paragraph (m)(i)(A)(III) using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR § 1910.1001(j)(4) or § 1926.1101(k)(8). The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

(V) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(B) Process asbestos-containing waste material into nonfriable forms as follows:

(I) Form all asbestos-containing waste material into nonfriable pellets or other shapes;

(II) Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified by paragraph (o) to clean emissions containing particulate asbestos materials before they escape to, or are vented to, the outside air.

(C) For facilities demolished where the RACM is not removed prior to demolition, adequately wet asbestos-containing waste material at all times after demolition and keep wet during handling and loading for transport to a disposal site. Asbestos-containing waste materials covered by this paragraph do not have to be sealed in leak-tight containers or wrapping but may be transported and disposed of in bulk.

(D) Use an alternative emission control and waste treatment method that has received prior written approval by the EPA Administrator.

(E) As applied to demolition and renovation, the requirements of paragraph (m)(i) do not apply to Category I and Category II nonfriable ACM waste that did not become crumbled, pulverized, or reduced to powder.

(ii) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

(A) A waste disposal site operated in accordance with the provisions of paragraph (q), or

(B) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of paragraph (r).

(C) The requirements of paragraph (m)(ii) do not apply to Category I nonfriable ACM that is not RACM.

(iii) Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The markings must:

(A) Be displayed in such a manner and location that a person can easily read the legend.

(B) Conform to the requirements for 51 cm X 36 cm (20 in X 14 in) upright format signs specified in 29 CFR § 1910.145(d)(2) and this paragraph; and

(C) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified below.

Legend
DANGER
ASBESTOS DUST HAZARD
CANCER AND LUNG DISEASE HAZARD
Authorized Personnel Only

Notation
2.5 cm (1 inch) Sans Serif, Gothic or Block
2.5 cm (1 inch) Sans Serif, Gothic or Block
1.9 cm (3/4 inch) Sans Serif, Gothic or Block
14 Point Gothic

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

(iv) For All Asbestos-Containing Waste Material Transported Off the Facility Site:

(A) Maintain waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(I) The name and telephone number of the disposal site operator.

(II) The name and physical site location of the disposal site.

(III) The date transported.

(IV) The name, address, and telephone number of the transporter(s).

GENERATOR		
1. Work site name and mailing address	Owner's name	Owner's telephone no.
2. Operator's name and address		Operator's telephone no.
3. Waste disposal site (WDS) name, mailing address, and physical site location		WDS telephone no.
4. Name and address of responsible agency		
5. Description of materials	6. Containers No. Type	7. Total quantity m ³ (yd ³)
8. Special handling instructions and additional information		
9. OPERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.		
Printed/typed name & title	Signature	Month Day Year
Transporter		
10. Transporter 1 (Acknowledgment of receipt of materials)		
Printed/typed name & title Address and telephone no.	Signature	Month Day Year
11. Transporter 2 (Acknowledgment of receipt of materials)		
Printed/typed name & title Address and telephone no.	Signature	Month Day Year
Disposal Site		
12. Discrepancy indication space		
13. Waste disposal site owner or operator: Certification of receipt of asbestos materials covered by this manifest except as noted in item 12.		
Printed/typed name & title	Signature	Month Day Year

Figure 4. Waste Shipment Record

(V) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and governmental regulations.

(B) Provide a copy of the waste shipment record, described in paragraph (m)(iv)(A), to the disposal site owners or operators at the same time as the asbestos-containing waste material is delivered to the disposal site.

(C) For waste shipments where a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received by the waste generator within 35 days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the designated disposal site to determine the status of the waste shipment.

(D) Report in writing to the Wyoming Department of Environmental Quality, Air Quality Division, if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report the following information:

(I) A copy of the waste shipment record for which a confirmation of delivery was not received, and

(II) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(E) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(v) Furnish upon request, and make available for inspection by the Administrator, all records required under this section.

(n) Standard for Inactive Waste Disposal Sites for Manufacturing and Fabricating Operations. Each owner or operator of any inactive waste disposal site that was operated by sources covered under paragraphs (h) or (k) and received deposits of asbestos-containing waste material generated by the sources, shall meet the requirements of the Solid Waste Division of the Wyoming Department of Environmental Quality or at a minimum:

(i) Comply With One of the Following:

(A) Either discharge no visible emissions to the outside air from an inactive waste disposal site subject to the paragraph; or

(B) Cover the asbestos-containing waste material with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material. In desert areas where vegetation would be difficult to maintain, at least 8 additional centimeters (3 inches) of well-graded, nonasbestos crushed rock may be placed on top of the final cover instead of vegetation and maintained to prevent emissions; or

(C) Cover the asbestos-containing waste material with at least 60 centimeters (2 feet) of compacted nonasbestos-containing material, and maintain it to prevent exposure of the asbestos-containing waste; or

(D) For inactive waste disposal sites for asbestos tailings, a resinous or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions may be used instead of the methods in paragraphs (n)(i)(A), (B), and (C). Use the agent in the manner and frequency recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent to achieve and maintain dust control. Obtain prior written approval of the Administrator to use other equally effective dust suppression agents. For purposes of this paragraph, any used, spent, or other waste oil is not considered a dust suppression agent.

(ii) Unless a natural barrier adequately deters access by the general public, install and maintain warning signs and fencing as follows, or comply with paragraph (n)(i)(B) or (n)(i)(C).

(A) Display warning signs at all entrances and at intervals of 100 m (328 feet) or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material was deposited. The warning signs must:

(I) Be posted in such a manner and location that a person can easily read the legend;

(II) Conform to the requirements of 51 cm x 36 cm (20" x 14") upright format signs specified in 29 CFR § 1910.145(d)(4) and this paragraph; and

(III) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend
ASBESTOS WASTE DISPOSAL SITE
DO NOT CREATE DUST
Breathing Asbestos is Hazardous to Your Health

Notation

2.5 cm (1 inch) Sans Serif, Gothic or Block
1.9 cm (3/4 inch) Sans Serif, Gothic or Block
14 point Gothic

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

(B) Fence the perimeter of the site in a manner adequate to deter access by the general public.

(C) When requesting a determination on whether a natural barrier adequately deters public access, supply information enabling the Administrator to determine whether a fence or a natural barrier adequately deters access by the general public.

(iii) The owner or operator may use an alternative control method that has received prior approval of the EPA Administrator rather than comply with the requirements of paragraph (n)(i) or (n)(ii).

(iv) Notify the Administrator in writing at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site under this section, and follow the procedures specified in the notification. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator at least 10 working days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

(A) Scheduled starting and completion dates.

(B) Reason for disturbing the waste.

(C) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the Administrator may require changes in the emission control procedures to be used.

(D) Location of any temporary storage site and the final disposal site.

(v) Within 60 days of a site becoming inactive and after the effective date of this subpart, record, in accordance with State law, a notation on the deed to the facility property and on any other instrument that would normally be examined during a title search; this notation will in perpetuity notify any potential purchaser of the property that:

(A) The land has been used for the disposal of asbestos-containing waste material;

(B) The survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required in paragraph (q)(vi) have been filed with the Administrator; and

(C) The site is subject to Chapter 3, Section 8 of the Wyoming Air Quality Standards and Regulations and to 40 CFR part 61, Subpart M.

(o) Air Cleaning.

(i) The owner or operator who uses air cleaning, as specified in paragraphs (h)(ii)(B), (i)(iii)(C)(I)(2).a., (i)(iii)(D)(II), (j)(ii)(B), (k)(ii)(B), (m)(i)(A)(II), (m)(i)(B)(II) and (r)(v) shall:

(A) Use fabric filter collection devices, except as noted in paragraph (o)(ii), doing all of the following:

(I) Ensuring that the airflow permeability, as determined by ASTM Method D737-04 Test Method for Air Permeability of Textile Fabrics, does not exceed $9 \text{ m}^3/\text{min}/\text{m}^2$ ($30 \text{ ft}^3/\text{min}/\text{ft}^2$) for woven fabrics or $11 \text{ m}^3/\text{min}/\text{m}^2$ ($35 \text{ ft}^3/\text{min}/\text{ft}^2$) for felted fabrics, except that $12 \text{ m}^3/\text{min}/\text{m}^2$ ($40 \text{ ft}^3/\text{min}/\text{ft}^2$) for woven and $14 \text{ m}^3/\text{min}/\text{m}^2$ ($45 \text{ ft}^3/\text{min}/\text{ft}^2$) for felted fabrics is allowed for filtering air from asbestos ore dryers;

(II) Ensuring that felted fabric weighs at least 475 grams per square meter (14 ounces per square yard) and is at least 1.6 millimeters (one-sixteenth inch) thick throughout; and

(III) Avoiding the use of synthetic fabrics that contain fill yarn other than that which is spun.

(B) Properly install, use, operate, and maintain all air-cleaning equipment authorized by this paragraph. Bypass devices may be used only during upset or emergency conditions and then only for so long as it takes to shut down the operation generating the particulate asbestos material.

(C) For fabric filter collection devices installed after January 10, 1989, provide for easy inspection for faulty bags.

(ii) There are the following exceptions to paragraph (o)(i)(A):

(A) After January 10, 1989, if the use of fabric creates a fire or explosion hazard, or the Administrator determines that a fabric filter is not feasible, the

Administrator may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals (40 inches water gage pressure).

(B) Use a HEPA filter that is certified to be at least 99.97 percent efficient for 0.3 micron particles.

(C) The EPA Administrator may authorize the use of filtering equipment other than described in paragraphs (o)(i)(A) and (o)(ii)(A) and (B) if the owner or operator demonstrates to the EPA Administrator's satisfaction that it is equivalent to the described equipment in filtering particulate asbestos material.

(p) Reporting.

(i) Any new source to which this section applies (with the exception of sources subject to paragraphs (i), (j), and (l)), which has an initial startup date preceding the effective date of this revision, shall provide the following information to the Administrator postmarked or delivered within 90 days of the effective date. In the case of a new source that does not have an initial startup date preceding the effective date, the information shall be provided, postmarked or delivered, within 90 days of the initial startup date. Any owner or operator of an existing source shall provide the following information to the Administrator within 90 days of the effective date of this subpart unless the owner or operator of the existing source has previously provided this information to the Administrator. Any changes in the information provided by any existing source shall be provided to the Administrator, postmarked or delivered, within 30 days after the change.

(A) A description of the emission control equipment used for each process; and

(I) If the fabric device uses a woven fabric, the airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ and; if the fabric is synthetic, whether the fill yarn is spun or not spun; and

(II) If the fabric filter device uses a felted fabric, the density in g/m^2 , the minimum thickness in inches and the airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$.

(B) If a fabric filter device is used to control emissions,

(I) The airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ ($\text{ft}^3/\text{min}/\text{ft}^2$) if the fabric filter device uses a woven fabric, and, if the fabric is synthetic, whether the fill yarn is spun or not spun; and

(II) If the fabric filter device uses a felted fabric, the density in g/m^2 (oz/yd^2), the minimum thickness in millimeters (inches), and the airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ ($\text{ft}^3/\text{min}/\text{ft}^2$).

(C) If a HEPA filter is used to control emissions, the certified efficiency.

(D) For sources subject to paragraph (m):

(I) A brief description of each process that generates asbestos-containing waste material;

(II) The average volume of asbestos-containing waste material disposed of measured in m³/day (yd³/day);

(III) The emission control methods used in all stages of waste disposal; and

(IV) The type of disposal site or incineration site used for ultimate disposal, the name of the site operator, and the name and location of the disposal site.

(E) For sources subject to paragraphs (n) and (q):

(I) A brief description of the site; and

(II) The method or methods used to comply with the standard, or alternate procedures to be used.

(ii) The information required by paragraph (p)(i) must accompany the information required by 40 CFR part 61, Subpart A, § 61.10. Active waste disposal sites subject to paragraph (q) shall also comply with this provision. Demolition and renovation, spraying, and insulating materials are exempted from the requirements of 40 CFR § 61.10(a). The information described in this paragraph must be reported using the format of Appendix A of CFR 40 part 61 as a guide.

(q) Standard for Active Waste Disposal Sites. Each owner or operator of an active waste disposal site that receives asbestos-containing waste material from a source covered under paragraphs (m) or (r) shall meet the requirements of the Solid Waste Division of the Wyoming Department of Environmental Quality, or at a minimum the following:

(i) Either there must be no visible emissions to the outside air from any active waste disposal site where asbestos-containing waste material has been deposited, or the requirements of paragraph (q)(iii) or (q)(iv) must be met.

(ii) Unless a natural barrier adequately deters access by the general public, either warning signs and fencing must be installed and maintained as follows, or the requirements of paragraph (q)(iii)(A) must be met.

(A) Warning signs must be displayed at all entrances and at intervals of 100 m (330 ft) or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material is deposited. The warning signs must:

(I) Be posted in such a manner and location that a person can easily read the legend;

(II) Conform to the requirements of 51 cm x 36 cm (20" x 14") upright format signs specified in 29 CFR § 1910.145(d)(4) and this paragraph; and

(III) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified below.

Legend
ASBESTOS WASTE DISPOSAL SITE
DO NOT CREATE DUST
Breathing Asbestos is Hazardous to Your Health

Notation
2.5 cm (1 inch) Sans Serif, Gothic or Block
1.9 cm (3/4 inch) Sans Serif, Gothic or Block
14 point Gothic

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

(B) The perimeter of the disposal site must be fenced in a manner adequate to deter access by the general public.

(C) Upon request and supply of appropriate information, the Administrator will determine whether a fence or a natural barrier adequately deters access by the general public.

(iii) Rather than meet the no visible emission requirement of paragraph (q)(i), at the end of each operating day, or at least once every 24-hour period while the site is in continuous operation, the asbestos-containing waste material that has been deposited at the site during the operating day or previous 24-hour period shall:

(A) Be covered with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, or

(B) Be covered with a resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. Such an agent shall be used in the manner and frequency recommended for the particular dust by the

dust suppression agent manufacturer to achieve and maintain dust control. Other equally effective dust suppression agents may be used upon prior approval by the Administrator. For purposes of this paragraph, any used, spent, or other waste oil is not considered a dust suppression agent.

(iv) Rather than meet the no visible emission requirement of paragraph (q)(i), use an alternative emissions control method that has received prior written approval by the EPA Administrator.

(v) For all asbestos-containing waste material received, the owner or operator of the active waste disposal site shall:

(A) Maintain waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(I) The name, address, and telephone number of the waste generator.

(II) The name, address, and telephone number of the transporter(s).

(III) The quantity of the asbestos-containing waste material in cubic meters (cubic yards).

(IV) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in leak-tight containers.

(V) The date of the receipt.

(B) Upon discovering the presence of a significant amount of improperly enclosed or uncovered waste, report in writing by the following working day to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator (identified in the waste shipment record), and, if that office is outside the State of Wyoming, also report in writing by the following working day to the Wyoming Department of Environmental Quality, Air Quality Division. Submit a copy of the waste shipment record along with the report.

(C) As soon as possible and no longer than 30 days after receipt of the waste, send a copy of the signed waste shipment record to the waste generator.

(D) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within 15 days after receiving the waste, immediately report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator (identified in the waste shipment record), and, if that office is outside

the State of Wyoming, also report in writing to the Wyoming Department of Environmental Quality, Air Quality Division. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report.

(E) Retain a copy of all records and reports required by this paragraph for at least 2 years.

(vi) Maintain, until closure, records of the location, depth and area, and quantity in cubic meters (cubic yards) of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

(vii) Upon closure, comply with all the provisions of paragraph (n).

(viii) Submit to the Administrator, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.

(ix) Furnish upon request, and make available during normal business hours for inspection by the Administrator, all records required under this paragraph.

(x) Notify the Administrator in writing at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site and is covered. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date must be provided at least 10 working days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice.

(A) Scheduled starting and completion dates.

(B) Reason for disturbing the waste.

(C) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the Administrator may require changes in the emission control procedures to be used.

(D) Location of any temporary storage site and the final disposal site.

(r) Standard for Operations That Convert Asbestos-Containing Waste Material Into Nonasbestos (Asbestos-Free) Material. Each owner or operator of an operation that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material shall:

(i) Obtain the prior written approval of the EPA Administrator to construct the facility. To obtain approval, the owner or operator shall provide the EPA Administrator with the following information:

(A) Application to construct pursuant to 40 CFR § 61.07.

(B) In addition to the information requirements of 40 CFR § 61.07(b)(3), a

(I) Description of waste feed handling and temporary storage.

(II) Description of process operating conditions.

(III) Description of the handling and temporary storage of the end product.

(IV) Description of the protocol to be followed when analyzing output materials by transmission electron microscopy.

(C) Performance test protocol, including provisions for obtaining information required under paragraph (r)(ii).

(D) The EPA Administrator may require that a demonstration of the process be performed prior to approval of the application to construct.

(ii) Conduct a Start-up Performance Test. Test Results Shall Include:

(A) A detailed description of the types and quantities of nonasbestos material, RACM, and asbestos-containing waste material processed, e.g., asbestos cement products, friable asbestos insulation, plaster, wood, plastic, wire, etc. Test feed is to include the full range of materials that will be encountered in actual operation of the process.

(B) Results of analyses, using polarized light microscopy, that document the asbestos content of the wastes processed.

(C) Results of analyses, using transmission electron microscopy, that document that the output materials are free of asbestos. Samples for analysis are to be collected as 8-hour composite samples (one 200-gram (7-ounce) sample per hour), beginning with the initial introduction of RACM or asbestos-containing waste material and continuing until the end of the performance test.

(D) A description of operation parameters, such as temperature and residence time, defining the full range over which the process is expected to operate

to produce nonasbestos (asbestos-free) materials. Specify the limits for each operating parameter within which the process will produce nonasbestos (asbestos-free) materials.

(E) The length of the test.

(iii) During the initial 90 days of operation,

(A) Continuously monitor and log the operating parameters identified during start-up performance tests that are intended to ensure the production of nonasbestos (asbestos-free) output material.

(B) Monitor input materials to ensure that they are consistent with the test feed materials described during start-up performance tests in paragraph (r)(ii)(A).

(C) Collect and analyze samples, taken as 10-day composite samples (one 200-gram (7-ounce) sample collected every 8 hours of operation) of all output material for the presence of asbestos. Composite samples may be for fewer than 10 days. Transmission electron microscopy (TEM) shall be used to analyze the output material for the presence of asbestos. During the initial 90-day period, all output materials must be stored on-site until analysis shows the material to be asbestos-free or disposed of as asbestos-containing waste material according to paragraph (m).

(iv) After the initial 90 days of operation,

(A) Continuously monitor and record the operating parameters identified during start-up performance testing and any subsequent performance testing. Any output produced during a period of deviation from the range of operating conditions established to ensure the production of nonasbestos (asbestos-free) output materials shall be:

(I) Disposed of as asbestos-containing waste material according to paragraph (m), or

(II) Recycled as waste feed during process operation within the established range of operation conditions, or

(III) Stored temporarily on-site in a leak-tight container until analyzed for asbestos content. Any product material that is not asbestos-free shall be either disposed of as asbestos-containing waste material or recycled as waste feed to the process.

(B) Collect and analyze monthly composite samples (one 200-gram (7-ounce) sample collected every 8 hours of operation) of the output material. Transmission electron microscopy shall be used to analyze the output material for the presence of asbestos.

(v) Discharge no visible emissions to the outside air from any part of the operation, or use the methods specified in paragraph (o) to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(vi) Maintain Records On-site and Include the Following Information:

(A) Results of start-up performance testing and all subsequent performance testing, including operating parameters, feed characteristic, and analyses of output materials.

(B) Results of the composite analyses required during the initial 90 days of operation under paragraph (r)(iii).

(C) Results of the monthly composite analyses required under paragraph (r)(iv).

(D) Results of continuous monitoring and logs of process operating parameters required under paragraph (r)(iii) and (iv).

(E) The information on waste shipments received as required in paragraph (q).

(F) For output materials where no analyses were performed to determine the presence of asbestos, record the name and location of the purchaser or disposal site to which the output materials were sold or deposited, and the date of sale or disposal.

(G) Retain records required by paragraph (r)(vi) for at least 2 years.

(vii) Submit the Following Reports to the Administrator:

(A) A report for each analysis of product composite samples performed during the initial 90 days of operation.

(B) A quarterly report, including the following information concerning activities during each consecutive 3-month period:

(I) Results of analyses of monthly product composite samples.

(II) A description of any deviation from the operating parameters established during performance testing, the duration of the deviation, and steps taken to correct the deviation.

(III) Disposition of any product produced during a period of deviation, including whether it was recycled, disposed of as asbestos-containing waste material, or stored temporarily on-site until analyzed for asbestos content.

(IV) The information on waste disposal activities as required in paragraph (q).

(viii) Nonasbestos (asbestos-free) output material is not subject to any of the provisions of this section. Output materials in which asbestos is detected, or output materials produced when the operating parameters deviated from those established during the start-up performance testing, unless shown by TEM analysis to be asbestos-free, shall be considered to be asbestos-containing waste and shall be handled and disposed of according to paragraphs (m) and (q) or reprocessed while all of the established operating parameters are being met.

Section 9. **Incorporation by reference.**

(a) Code of Federal Regulations (CFR). All Code of Federal Regulations (CFR), including their Appendices, cited in this Chapter, revised and published as of July 1, ~~2010~~ 2011, not including any later amendments, are incorporated by reference. Copies of the Code of Federal Regulations are available for public inspection and copies can be obtained at cost from the Department of Environmental Quality, Division of Air Quality, 122 W. 25th Street, Cheyenne, Wyoming 82002. Copies of the CFRs can also be obtained at cost from Government Institutes, 15200 NBN Way, Building B, Blue Ridge Summit, PA 17214.

(b) American Society for Testing and Materials (ASTM). All ASTM standards cited in this Chapter, revised and published as of July 1, ~~2010~~ 2011, not including any later amendments, are incorporated by reference. Copies of the ASTM standards are available for public inspection and copies can be obtained at cost from the Department of Environmental Quality, Division of Air Quality, 122 W. 25th Street, Cheyenne, Wyoming 82002. Copies can also be obtained at cost from the American Society for Testing and Materials, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959.

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

General Emission Standards

CHAPTER 3

TABLE OF CONTENTS

Section 1.	Introduction to general emission standards	3-1
Section 2.	Emission standards for particulate matter	3-1
Section 3.	Emission standards for nitrogen oxides	3-7
Section 4.	[Reserved]	3-8
Section 5.	Emission standards for carbon monoxide.....	3-8
Section 6.	Emission standards for volatile organic compounds	3-8
Section 7.	Emission standards for hydrogen sulfide.....	3-9
Section 8.	Emission standards of asbestos for demolition, renovation, manufacturing, spraying and fabricating	3-9
Section 9.	Incorporation by reference.....	3-47

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

General Emission Standards

CHAPTER 3

Section 1. Introduction to general emission standards.

(a) This Chapter establishes limits on the quantity, rate, or concentration of emissions of air pollutants, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures. These general emission standards may be superseded by specific emission standards required in other Chapters of the Wyoming Air Quality Standards and Regulations. Section 9 incorporates by reference all Code of Federal Regulations (CFRs), including their Appendices, cited in this Chapter and all American Society for Testing and Materials (ASTM) standards cited in this Chapter.

Section 2. Emission standards for particulate matter.

(a) Visible emissions of any contaminant discharged into the atmosphere from any single new source of emission whatsoever as determined by a qualified observer shall be limited to 20 percent opacity;

Provided, however, that:

(i) An owner or operator of an affected facility of the type described in Chapter 3, Section 2(h)(i) hereof which has a heat input of not less than 2500×10^6 Btu per hour, may request the Administrator of the Division of Air Quality to determine opacity of emissions from such affected facility during initial performance tests required by Chapter 3, Section 2(i) or during other performance tests thereafter.

(ii) Upon receipt from such owner or operator of the written report of the results of the performance tests required by Chapter 6, Section 2(i) or later performance tests, the Administrator will make a finding concerning compliance with opacity and other applicable standards. If the Administrator finds that such affected facility is in compliance with all applicable standards for which performance tests are conducted but fails to meet any applicable opacity standard, he shall notify the owner or operator and advise him that he may petition the Administrator within 10 days of receipt of notification to make appropriate adjustment to the opacity standard for such affected facility.

(iii) The Administrator will grant such a petition upon a satisfactory demonstration by the owner or operator that such affected facility and associated air pollution control equipment was operated and maintained in a manner to minimize the

opacity of emissions during the performance tests; that the performance tests were performed under the conditions prescribed by the Administrator; and that such affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard at or near the facility's designed capacity.

(iv) The Administrator will establish an opacity standard for such affected facility meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity standard at all times during which the source is meeting the mass or concentration emission standard and during which the facility and air pollution equipment is being operated properly and maintained to minimize the opacity of emissions and mass emission rate.

(b) Visible emissions of any contaminant discharged into the atmosphere from any single existing source of emission whatsoever as determined by a qualified observer shall be limited to 40 percent opacity. This limitation shall not apply to existing incinerators or wood waste burners.

(c) The emissions of visible air pollutants from gasoline engines shall be eliminated except for periods not exceeding five consecutive seconds.

(d) The emissions of visible air pollutants from diesel engines as determined by a qualified observer shall be limited to 30 percent opacity below 7500 feet elevation except for periods not exceeding ten consecutive seconds. This limitation shall not apply during a reasonable period of warm-up following a cold start or where undergoing repairs and adjustment following a malfunction.

(e) Unless restricted by more stringent emission limits established elsewhere in the Wyoming Air Quality Standards and Regulations or permit conditions, any single source may discharge for a period or periods aggregating not more than 6 minutes in any hour contaminants;

(i) Having an equivalent opacity of not more than 40 percent as determined by a qualified observer.

(f) Fugitive Dust. Sources operating within the State of Wyoming are required to control fugitive dust emissions. The following control measures or any equivalent method approved by the Division Administrator shall be considered appropriate for minimizing fugitive dust:

(i) Construction/Demolition Activities.

(A) Any person engaged in clearing or leveling of land, earthmoving, excavation, or movement of trucks or construction equipment over access haul roads or cleared land shall take steps to minimize fugitive dust from such activities. Such control measures may include frequent watering and/or chemical stabilization.

(B) Any person engaged in demolition activities including razing of homes, buildings, or other structures; or removing paving material from roads and/or parking areas shall take steps to minimize fugitive dust from such activities. Such control measures may include frequent watering and/or chemical stabilization.

(C) Any person who is engaged in construction or demolition activities which tracks earth or other materials onto paved streets shall promptly remove such material by water or other means.

(D) Any person engaged in sandblasting or similar operations shall take steps to minimize fugitive dust from such activities. Such control measures may include the installation and use of hood, fans and fabric filters to enclose and vent the handling of dusty materials.

(ii) Handling and Transporting of Materials.

(A) Any person owning, operating or maintaining a new or existing material storage, handling and/or hauling operation shall minimize fugitive dust from such an operation. Such control measures may include the application of asphalt, oil, water or suitable chemicals on unpaved roads, material stockpiles and other surfaces which can give rise to airborne dusts. Control measures for material handling may also include installation and use of hoods, fans and fabric filters to enclose and vent dusty materials.

(B) When transporting materials likely to give rise to airborne dust, open bodied trucks shall be covered when in motion.

(iii) Agricultural Practices.

(A) Any person engaged in agricultural practices, such as tilling of land and application of fertilizers shall operate in a manner as to minimize fugitive dust emissions.

(g) The emission of particulate matter from any new source shall be limited as indicated in Table I. The emission of particulate matter from any existing source shall be limited as indicated in Table II.

(i) Process weight per hour means the total weight of all materials introduced into any specific process that may cause any emissions of particulate matter, including solid fuels, but excluding liquids or gases and used solely as fuels, and excluding air introduced for purposes of combustion, and excluding the weight of any water, water vapor or steam that may be introduced as part of the total materials. However, water contained as part of the normal input to a beet pulp dryer process shall be included as part of the process weight per hour. The process weight rate per hour

referred to in this section shall be based upon the maximum design production rate of the equipment unless otherwise restricted by enforceable limits on potential to emit.

(ii) For a cyclical or batch operation, the process weight per hour is derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment is idle.

(iii) For a continuous operation, the process weight per hour is derived by dividing the process weight for a typical period of time.

(iv) Emission tests related to this regulation shall be measured in accordance with the requirements of Chapter 3, Section 2(h)(iv).

TABLE I	
PROCESS WEIGHT RATE (lbs/hr)	EMISSION RATE (lbs/hr)
50	0.36
100	0.55
500	1.53
1,000	2.25
5,000	6.34
10,000	9.73
20,000	14.99
60,000	29.60
80,000	31.19
120,000	33.28
160,000	34.85
200,000	36.11
400,000	40.35
1,000,000	46.72

Interpolation of the data in Table I for the process weight rates up to 60,000 lbs/hr shall be accomplished by the use of the equation:

$$E = 3.59 P^{0.62} \quad P \leq 30 \text{ tons/hr}$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lbs/hr shall be accomplished by use of the equation:

$$E = 17.31 P^{0.16} \quad P > 30 \text{ tons/hr}$$

Where: E = Emissions in pounds per hour.
P = Process weight rate in tons per hour.

TABLE II					
PROCESS WEIGHT RATE		RATE OF EMISSION	PROCESS WEIGHT RATE		RATE OF EMISSION
lb/hr	tons/hr	lb/hr	lb/hr	tons/hr	lb/hr
100	0.05	0.551	16,000	8	16.5
200	0.10	0.877	18,000	9	17.9
400	0.20	1.40	20,000	10	19.2
600	0.30	1.83	30,000	15	25.2
800	0.40	2.22	40,000	20	30.5
1,000	0.50	2.58	50,000	25	35.4
1,500	0.75	3.38	60,000	30	40.0
2,000	1.00	4.10	70,000	35	41.3
2,500	1.25	4.76	80,000	40	42.5
3,000	1.50	5.38	90,000	45	43.6
3,500	1.75	5.96	100,000	50	44.6
4,000	2.00	6.52	120,000	60	46.3
5,000	2.50	7.58	140,000	70	47.8
6,000	3.00	8.56	160,000	80	49.0
7,000	3.50	9.49	200,000	100	51.2
8,000	4.00	10.4	1,000,000	500	69.0
9,000	4.50	11.2	2,000,000	1,000	77.6
10,000	5.00	12.0	6,000,000	3,000	92.7
12,000	6.00	13.6			

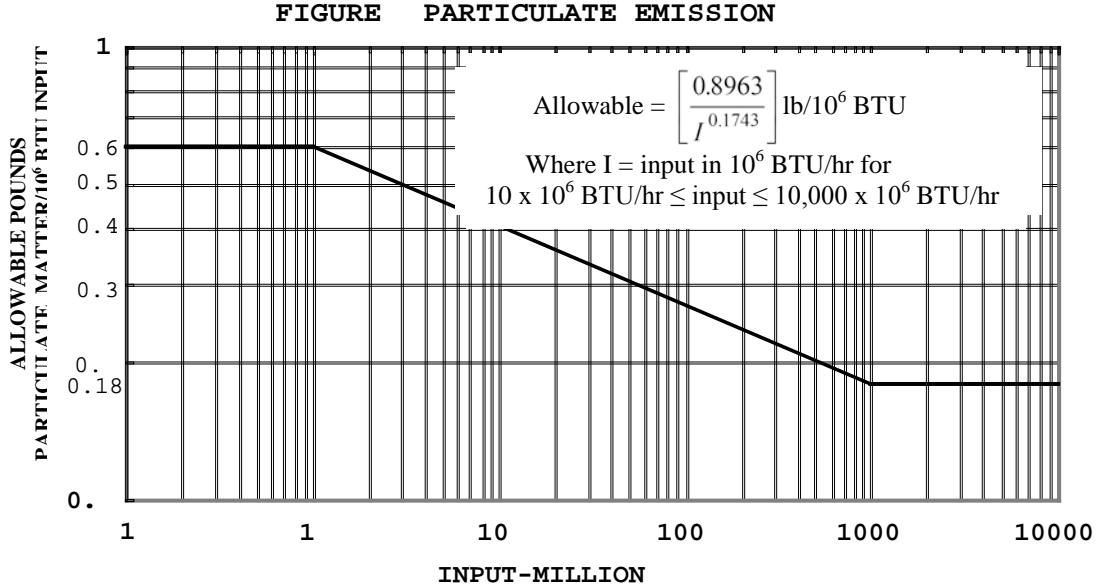
Interpolation of the data in Table II for process weight rates up to 60,000 lb/hr shall be accomplished by use of the equation $E = 4.10 P^{0.67}$, and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr shall be accomplished by use of the equation:

$$E = 55.0 P^{0.11} - 40, \text{ where } E = \text{rate of emission in lb/hr}$$

and P = process weight rate in tons/hr

Notwithstanding any other provision of this Table, any existing air contaminant source utilizing an air pollution control device having a collection efficiency of 99.5 percent or better, shall be deemed to be in compliance with all provisions of this regulation. Such efficiency shall be determined by a professional engineer licensed to practice in Wyoming and all expenses incurred in such determination shall be defrayed by the person responsible for the emission.

(h) The emissions of particulate matter from existing sources where fuel burning equipment is used for indirect heating shall be limited as shown in Figure 1 and shall be applicable to equipment burning solid fuel.



The emissions of particulate matter from new sources where fuel burning equipment is used for indirect heating shall be limited to 0.10 pound per million Btu input (0.18 grams per million calories) maximum 2-hour average. Except to the extent that an opacity standard has been established for an affected facility pursuant to Chapter 3, Section 2(a)(i) through (iv) hereof, the visible emissions of particulate matter from new sources where fuel burning equipment is used for indirect heating shall be no greater than 20 percent opacity, except that 40 percent opacity shall be permitted for not more than 2 minutes in any hour. This regulation is not applicable to residential or commercial fuel burning equipment with a heat input of less than 10×10^6 Btu/hr and used exclusively to produce building heat.

(i) This regulation applies to installations in which fuel is burned for the primary purpose of producing steam, hot water, or hot air or other indirect heating of liquids, gases, or solids, and, in the course of doing so, the products of combustion do not come into direct contact with process materials. Fuels include those such as coal, coke, lignite, fuel oil, and wood, but do not include refuse. When any products or byproducts of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitations shall apply.

(ii) For purposes of this regulation, the heat input shall be the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks, or the heat input value used shall be the equipment manufacturer or designer's guaranteed maximum input, whichever is greater. The total heat input of all fuel burning units at a

plant or on a premise shall be used for determining the maximum allowable amount of particulate matter which may be emitted.

(iii) The amount of particulate matter emitted shall be measured by test Methods 1 through 5, Appendix A, 40 CFR part 60. Provided that the Administrator may require that variations to said methods be included or that entirely different methods be utilized if he determines that such variations or different methods are necessary in order for the test data to reflect the actual emission rate of particulate matter.

(i) The emission of particulate matter from any incinerator shall be limited to:

(i) 0.20 pound per 100 pounds (2 grams per kilogram) of refuse charged as determined by a source test method approved by the Division for stationary sources as described in Section 2(h)(ii) of this Chapter;

(ii) A shade or density equal to but not greater than 20 percent opacity as determined by a qualified observer.

Section 3. **Emission standards for nitrogen oxides.**

(a) The emission standards for nitrogen oxides, measured in accordance with Method 7 of 40 CFR part 60, Appendix A or by an equivalent method are:

(i) The emission of nitrogen oxides from new gas fired fuel burning equipment calculated as nitrogen dioxide shall be limited to 0.20 pound per million Btu (0.36 grams per million gram calories) of heat input.

(ii) The emission of nitrogen oxides from existing gas fired fuel burning equipment calculated as nitrogen dioxide shall be limited to 0.23 pound per million Btu (0.41 grams per million gram calories) of heat input.

(iii) The emission of nitrogen oxides from new oil fired fuel burning equipment calculated as nitrogen dioxide shall be limited to 0.30 pounds per million Btu (0.54 grams per million gram calories) of heat input for units having a heat input of 1.0 million Btu per hour (250 million gram calories/hour) or greater and 0.60 pounds per million Btu (1.08 grams per million gram calories) of heat input for units having a heat input less than 1.0 million Btu per hour (250 million gram calories/hour).

(iv) The emission of nitrogen oxides from existing oil fired fuel burning equipment calculated as nitrogen dioxide shall be limited to 0.46 pound per million Btu (0.83 grams per million gram calories) of heat input for units having a heat input of 250 million Btu per hour (62.5 billion gram calories/hour) or greater and 0.60 pound per million Btu (1.08 grams per million gram calories) of heat input for units having a heat input less than 250 million Btu per hour (62.5 billion gram calories/hour).

(v) The emission of nitrogen oxides from new nitric acid manufacturing plants, calculated as nitrogen dioxide shall be limited to 3 pounds per ton (1.5 kilograms per metric ton) of acid produced, maximum 2-hour average.

(vi) The emission of nitrogen oxides from new solid fossil fuel (except lignite) fired fuel burning equipment calculated as nitrogen dioxide shall be limited to 0.70 pounds per million Btu (1.26 grams per million gram calories) heat input.

(vii) The emission of nitrogen oxides from existing solid fossil fuel (except lignite) fired fuel burning equipment calculated as nitrogen dioxide shall be limited to 0.75 pounds per million Btu (1.35 grams per million gram calories) heat input.

(viii) The requirements of Chapter 3, Section 3(a) shall not apply to internal combustion engines having a heat input of less than 200 million Btu per hour.

Section 4. **[Reserved].**

Section 5. **Emission standards for carbon monoxide.**

(a) The emission of carbon monoxide in stack gases from any stationary source shall be limited as may be necessary to prevent ambient standards described in Chapter 2, Section 5 from being exceeded. Measures considered appropriate for such control are:

(i) Treatment of the waste gas stream by installation and use of a direct flame afterburner or other means which will achieve the required reduction as approved by the Division.

Section 6. **Emission standards for volatile organic compounds.**

(a) The term “*volatile organic compounds*” (*VOCs*) is defined in 40 CFR § 51.100(s), 51.100(s)(1), and 51.100(s)(5), incorporated by reference under Section 9(a) of this chapter.

(b) VOC emissions shall be limited through the application of Best Available Control Technology (BACT) in accordance with Chapter 6, Section 2 of these regulations. Notwithstanding the above, whenever acceptable control of VOC emissions from vapor blowdown, emergency relief systems, or VOC emissions generated from oil and gas production, storage, exploration, development, or processing operations is specified pursuant to these regulations as a flare, the flare shall not exceed a 20 percent opacity emission standard. If acceptable control of VOC emissions is specified as a smokeless flare, the definition given in subsection (i) of this section applies.

(i) For the purposes of this section, “*smokeless flare*” means a flare designed for and operated with no visible emissions except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(ii) Each flare subject to Chapter 3, Section 6(b) must be equipped and operated with an automatic igniter or a continuous burning pilot which must be maintained in good working order.

Section 7. Emission standards for hydrogen sulfide.

(a) Any exit process gas stream containing hydrogen sulfide which is discharged to the atmosphere from any source shall be vented, incinerated, flared or otherwise disposed of in such a manner that ambient sulfur dioxide and hydrogen sulfide standards described in Chapter 2, Sections 4 and 7 are not exceeded.

Section 8. Emission standards of asbestos for demolition, renovation, manufacturing, spraying and fabricating.

(a) Applicability. The provisions of this section are applicable to those sources specified in paragraphs (g) through (n), (q), and (r).

(b) Definitions. All terms that are used in this section and are not defined below are given the same meaning as in Chapter 1, Section 3 of these regulations.

“Active waste disposal site” means any disposal site other than an inactive site.

“Adequately wet” means sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

“Asbestos” means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

“Asbestos-containing waste materials” means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this section. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

“Asbestos tailings” means any solid waste that contains asbestos and is a product of asbestos mining or milling operations.

“Asbestos waste from control devices” means any waste material that contains asbestos and is collected by a pollution control device.

“Category I nonfriable asbestos-containing material (ACM)” means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in Appendix J to 29 CFR § 1910.1001, Polarized Light Microscopy of Asbestos.

“Category II nonfriable ACM” means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in Appendix J to 29 CFR § 1910.1001, Polarized Light Microscopy of Asbestos that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

“Commercial asbestos” means any material containing asbestos that is extracted from ore and has value because of its asbestos content.

“Cutting” means to penetrate with a sharp-edged instrument and includes sawing, but does not include shearing, slicing, or punching.

“Demolition” means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

“Emergency renovation operation” means a renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failures of equipment.

“Fabricating” means any processing (e.g., cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.

“Facility” means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For the purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this section is not excluded, regardless of its current use or function.

“Facility component” means any part of a facility including equipment.

“Friable asbestos material” means any material containing more than 1 percent asbestos as determined using the method specified in Appendix J to 29 CFR § 1910.1001, Polarized Light Microscopy of Asbestos, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

“Fugitive source” means any source of emissions not controlled by an air pollution control device.

“Glove bag” means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. Properly installed and used, glove bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove-bag installation, equipment and supplies, and work practices is contained in the Occupational Safety and Health Administration’s (OSHA’s) final rule on occupational exposure to asbestos (29 CFR § 1926.1101(g)(5)(ii)).

“Grinding” means to reduce to powder or small fragments and includes mechanical chipping or drilling.

“In poor condition” means the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.

“Inactive waste disposal site” means any disposal site or portion of it where additional asbestos-containing waste material has not been deposited within the past year.

“Installation” means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

“Leak-tight” means that solids or liquids cannot escape or spill out. It also means dust-tight.

“Malfunction” means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner so that emissions of asbestos are increased. Failures of equipment shall not be considered malfunctions if they are caused in any way by poor maintenance, careless operation, or any other preventable upset conditions, equipment breakdown, or process failure.

“Manufacturing” means the combining of commercial asbestos--or, in the case of woven friction products, the combining of textiles containing commercial asbestos--with any other material(s), including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.

“Natural barrier” means a natural object that effectively precludes or deters access. Natural barriers include physical obstacles such as cliffs, lakes or other large bodies of water, deep and wide ravines, and mountains. Remoteness by itself is not a natural barrier.

“Nonfriable asbestos-containing material” means any material containing more than 1 percent asbestos as determined using the method specified in Appendix J to 29 CFR § 1910.1001, Polarized Light Microscopy of Asbestos, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

“Nonscheduled renovation operation” means a renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.

“Outside air” means the air outside buildings and structures, including, but not limited to, the air under a bridge or in an open air ferry dock.

“Owner or operator of a demolition or renovation activity” means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

“Particulate asbestos material” means finely divided particles of asbestos or material containing asbestos.

“Planned renovation operations” means a renovation operation, or a number of such operations, in which some RACM will be removed or stripped within a given period of time and that can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.

“Regulated asbestos-containing material (RACM)” means: (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

“Remove” means to take out RACM or facility components that contain or are covered with RACM from any facility.

“Renovation” means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component.

Operations in which load-supporting structural members are wrecked or taken out are demolitions.

“Resilient floor covering” means asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing more than 1 percent asbestos as determined using polarized light microscopy according to the method specified in Appendix J to 29 CFR § 1910.1001, Polarized Light Microscopy of Asbestos.

“Strip” means to take off RACM from any part of a facility or facility components.

“Structural member” means any load supporting member of a facility, such as beams and load supporting walls; or any nonload-supporting member, such as ceilings and nonload-supporting walls.

“Visible emissions” means any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operation. This does not include condensed, uncombined water vapor.

“Waste generator” means any owner or operator of a source covered by this section whose act or process produces asbestos-containing waste material.

“Waste shipment record” means the shipping document, required to be originated and signed by the waste generator, used to track and substantiate the disposal of asbestos-containing waste material.

“Working day” means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

(c) Units and Abbreviations: Used in this section are abbreviations and symbols of units of measure. These are defined as follows:

(i) System International (SI) Units of Measure:

g = gram
kg = kilogram
m = meter
m² = square meter
m³ = cubic meter

(ii) Other Units of Measure:

C = Celsius (centigrade)
F = Fahrenheit
ft² = square feet
ft³ = cubic feet

yd² = square yards

min = minute

oz = ounces

(d) Address: All requests, reports, applications, submittals, and other communications to the Administrator pursuant to this section shall be submitted to the following address:

(i) Wyoming Department of Environmental Quality, Air Quality Division, 122 West 25th Street, Cheyenne, Wyoming 82002.

(e) [Reserved]

(f) Circumvention: No owner or operator shall build, erect, install, or use any article, machine, equipment, process, or method, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous dilutants to achieve compliance with a visible emissions standard, and the piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.

(g) Standard for Waste Disposal for Non-Facility Owners and Operators.

(i) All owners and operators conducting an asbestos abatement project, including an abatement project on a residential building, shall be responsible for complying with Federal requirements and State standards for packaging, transportation, and delivery to an approved waste disposal facility as provided in paragraph (m) of this section. A non-facility is any other facility not defined under the definition of “facility” including residential buildings having four or fewer dwelling units.

(h) Standard for Manufacturing.

(i) Applicability. This paragraph applies to the following manufacturing operations using commercial asbestos.

(A) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials.

(B) The manufacture of cement products.

(C) The manufacture of fireproofing and insulating materials.

(D) The manufacture of friction products.

(E) The manufacture of paper, millboard, and felt.

- (F) The manufacture of floor tile.
- (G) The manufacture of paints, coatings, caulks, adhesives, and sealants.
- (H) The manufacture of plastics and rubber materials.
- (I) The manufacture of chlorine utilizing asbestos diaphragm technology.
- (J) The manufacture of shotgun shell wads.
- (K) The manufacture of asphalt concrete.

(ii) Standard. Each owner or operator of any of the manufacturing operations to which this paragraph applies shall either:

(A) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted or from any fugitive sources; or

(B) Use the methods specified by paragraph (o) of this section to clean emissions containing asbestos material from these operations before they escape to, or are vented to, the outside air.

(C) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be by the visual observation of at least 15 seconds duration per source of emissions.

(D) Inspect each air cleaning device at least once each week for proper operation and for changes that signal potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(I) Maintenance schedule.

(II) Recordkeeping plan.

(E) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(I) Date and time of each inspection.

(II) Presence or absence of visible emissions.

(III) Condition of fabric filters, including presence of any tears, holes and abrasions.

Figure 1. Record of Visible Emission Monitoring

Date of Inspection (MM/DD/YY)	Time of Inspection (a.m./p.m.)	Control Device or fugitive emission source designation or number	Visible Emissions Observed (yes/no) Corrective Action taken	Daily Operating Hours	Inspector's Initials

Figure 2. Air Pollution Control Device Inspection Checklist

1. Control Device Designation or Number:	_____			
2. Date of Inspection:	_____	_____	_____	_____
3. Time of Inspection:	_____	_____	_____	_____
4. Is Control Device Operating Properly (yes or no)	_____	_____	_____	_____
5. Abrasions in bags (yes or no)	_____	_____	_____	_____
6. Dust on Clean Side of bags (yes or no)	_____	_____	_____	_____
7. Other Signs of Malfunctions or Potential Malfunctions (yes or no)	_____	_____	_____	_____
8. Describe Other Malfunctions or Signs of Potential Malfunctions:	_____			
9. Describe Corrective Action(s) Taken:	_____			
10. Date and Time Corrective Action Taken:	_____	_____	_____	_____
11. Inspected By:	_____			
_____	_____	_____	_____	_____
(Print/Type Name)	(Title)	(Signature)	(Date)	
_____	_____	_____	_____	_____
(Print/Type Name)	(Title)	(Signature)	(Date)	

(IV) Presence of dust deposits on clean side of fabric filters.

(V) Brief description of corrective actions taken, including date and time.

(VI) Daily hours of operation for each air cleaning device.

(F) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this paragraph.

(G) Retain a copy of all monitoring and inspection records for at least 2 years.

(H) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

(i) Standard for Demolition and Renovation.

(i) Applicability. To determine which requirements of paragraphs (i)(i), (i)(ii), and (i)(iii) apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (i)(ii) and (i)(iii) apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

(A) In a facility being demolished, all the requirements of paragraphs (i)(ii) and (i)(iii) apply, except as provided in paragraph (i)(i)(C), if the combined amount of RACM is:

(I) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or

(II) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

(B) In a facility being demolished, only the notification requirements of paragraphs (i)(ii)(A), (B), (C)(I) and (IV), and (D)(I) through (D)(IX) and (XVI) apply, if the combined amount of RACM is:

(I) Less than 80 linear meters (260 linear feet) on pipes and less than 15 square meters (160 square feet) on other facility components, and

(II) Less than one cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously or there is no asbestos.

(C) If the facility is being demolished under an order of a State or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements of paragraphs (i)(ii)(A), (i)(ii)(B), (i)(ii)(C)(III), (i)(ii)(D) (except (i)(ii)(D)(VIII)), (i)(ii)(E), and (i)(iii)(D) through (i)(iii)(I) apply.

(D) In a facility being renovated, including any individual nonscheduled renovation operation, all the requirements of paragraphs (i)(ii) and (i)(iii) apply if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is:

(I) At least 80 linear meters (260 linear feet) on pipe or at least 15 square meters (160 square feet) on other facility components, or

(II) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

(III) To determine whether paragraph (i)(i)(D) applies to planned renovation operations involving individual nonscheduled operations, predict the combined additive amount of RACM to be removed or stripped during a calendar year or January 1 through December 31.

(IV) To determine whether paragraph (i)(i)(D) applies to emergency renovation operations, estimate the combined amount of RACM to be removed or stripped as a result of the sudden, unexpected event that necessitated the renovation.

(E) In a facility being renovated, only the notification requirements of paragraphs (i)(ii)(A), (B), (C)(I) and (IV), and (D)(I) through (IX) and (XVI) apply, if the combined amount of RACM is:

(I) Less than 80 linear meters (260 linear feet) on pipes or less than 15 square meters (160 square feet) on other facility components, and

(II) Less than 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously or there is no asbestos.

(ii) Notification Requirements. Each owner or operator of a demolition or renovation activity to which this section applies shall:

(A) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(B) Update notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.

(C) Postmark or deliver the notice as follows:

(I) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (i)(i)(A) and (D) (except (i)(i)(D)(III) and (i)(i)(D)(IV)). If the operation is as described in paragraph (i)(i)(B), notification is required 10 working days before demolition begins.

(II) At least 10 working days before the end of the calendar year preceding the year for which notice is being given for renovations described in paragraph (i)(i)(D)(III).

(III) As early as possible before, but not later than, the following working day if the operation is a demolition ordered according to paragraph (i)(i)(C) or, if the operation is a renovation described in paragraph (i)(i)(D)(IV).

(IV) For asbestos stripping or removal work in a demolition or renovation operation, described in paragraphs (i)(i)(A) and (D) (except (i)(i)(D)(III) and (i)(i)(D)(IV)), and for a demolition described in paragraph (i)(i)(B), that will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator as follows:

(1.) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin after the date contained in the notice,

a. Notify the Administrator of the new start date by telephone as soon as possible before the original start date, and

b. Provide the Administrator with a written notice of the new start date as soon as possible before, and no later than, the original start date. Delivery of the updated notice by the U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(2.) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin on a date earlier than the original start date,

a. Provide the Administrator with a written notice of the new start date at least 10 working days before asbestos stripping or removal work begins.

b. For demolitions covered by paragraph (i)(i)(B), provide the Administrator written notice of a new start date at least 10 working days before commencement of demolition. Delivery of updated notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(3.) In no event shall an operation covered by this paragraph begin on a date other than the date contained in the written notice of the new start date.

(D) Include the following in the notice:

(I) An indication of whether the notice is the original or a revised notification.

(II) Name, address, and telephone number of both the facility owner and operator and the asbestos removal contractor owner or operator.

(III) Type of operation: demolition or renovation.

(IV) Description of the facility or affected part of the facility including the size (square meters [square feet] and number of floors), age, and present and prior use of the facility.

(V) Procedure, including analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.

(VI) Estimate of the approximate amount of RACM to be removed from the facility in terms of length of pipe in linear meters (linear feet), surface area in square meters (square feet) on other facility components, or volume in cubic meters (cubic feet) if off the facility components. Also estimate the approximate amount of Category I and Category II nonfriable ACM in the affected part of the facility that will not be removed before demolition.

(VII) Location and street address (including building number or name and floor or room number, if appropriate), city, county, and state, or the facility being demolished or renovated.

(VIII) Scheduled starting and completion dates of asbestos removal work (or any other activity, such as site preparation that would break up, dislodge, or similarly disturb asbestos material) in a demolition or renovation; planned renovation operations involving individual nonscheduled operations shall only include

the beginning and ending dates of the report period as described in paragraph (i)(i)(D)(III).

(IX) Scheduled starting and completion dates of demolition or renovation.

(X) Description of planned demolition or renovation work to be performed and method(s) to be employed, including demolition or renovation techniques to be used and description of affected facility components.

(XI) Description of work practices and engineering controls to be used to comply with the requirements of this section, including asbestos removal and waste-handling emission control procedures.

(XII) Name and location of the waste disposal site where the asbestos-containing waste material will be deposited.

(XIII) A certification that the individuals supervising and performing the stripping and removal described by this notification have received the training required by paragraph (i)(iii)(H).

(XIV) For facilities described in paragraph (i)(i)(C), the name, title, and authority of the State or local government representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin. A copy of the order shall be attached to the notification.

(XV) For emergency renovations described in paragraph (b)(xii) of this section, the date and hour that the emergency occurred, a description of the sudden, unexpected event, and an explanation of how the event caused an unsafe condition, or would cause equipment damage or an unreasonable financial burden.

(XVI) Description of procedures to be followed in the event that unexpected RACM is found or Category II nonfriable ACM becomes crumbled, pulverized, or reduced to powder.

(XVII) Name, address, and telephone number of the waste transporter.

(E) The information required in paragraph (i)(ii)(D) must be reported using a form similar to that shown in Figure 3.

(iii) Procedures for Asbestos Emission Control. Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (i)(i), shall comply with the following procedures:

(A) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before demolition if:

(I) It is Category I nonfriable ACM that is not in poor condition and is not friable.

(II) It is on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed during demolition; or

(III) It was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. If not removed for safety reasons, the exposed RACM and any asbestos-contaminated debris must be treated as asbestos-containing waste material and adequately wet at all times until disposed of.

(IV) They are Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.

(B) When a facility component that contains, is covered with, or is coated with RACM is being taken out of the facility as a unit or in sections:

(I) Adequately wet all RACM exposed during cutting or disjuncting operations; and

(II) Carefully lower each unit or section to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the RACM.

(C) When RACM is stripped from a facility component while it remains in place in the facility, adequately wet the RACM during the stripping operation.

(I) In renovation operations, wetting is not required if:

(1.) The owner or operator has obtained prior written approval from the Administrator based on a written application that wetting to comply with this paragraph would unavoidably damage equipment or present a safety hazard; and

Figure 3
STATE OF WYOMING
 NOTIFICATION OF DEMOLITION AND RENOVATION

I. FACILITY DESCRIPTION (INCLUDE BUILDING NAME, NUMBER, AND FLOOR OR ROOM NUMBER)					
BLDG NAME:					
ADDRESS:					
CITY:		STATE:		CONTACT:	
SITE DESCRIPTION (type of material being removed)					
II. FACILITY INFORMATION (IDENTIFY OWNER, REMOVAL CONTRACTOR, AND OTHER OPERATOR)					
OWNER NAME:					
ADDRESS:					
CITY:		STATE:		ZIP:	
CONTACT:				TEL:	
REMOVAL CONTRACTOR:					
ADDRESS:					
CITY:		STATE:		ZIP:	
CONTACT:				TEL:	
OTHER OPERATOR:					
ADDRESS:					
CITY:		STATE:		ZIP:	
CONTACT:				TEL:	
BUILDING SIZE:		NUM OF FLOORS:		AGE IN YEARS:	
PRESENT USE:		PRIOR USE:			
III. TYPE OF OPERATION (D=DEMO O=ORDERED DEMO R=RENOVATION E=EMER. RENOVATION):					
IV. IS ASBESTOS PRESENT? (YES/NO)					
V. PROCEDURE, INCLUDING ANALYTICAL METHOD, IF APPROPRIATE, USED TO DETECT THE PRESENCE OF ASBESTOS MATERIAL:					
VI. SCHEDULED DATES ASBESTOS REMOVAL (MM/DD/YY) START: COMPLETE:					
VII. SCHEDULED DATES DEMO/RENOVATION (MM/DD/YY) START: COMPLETE:					
VIII. SCHEDULED WORK HOURS: START: COMPLETE:					
IX. APPROXIMATE AMOUNT OF ASBESTOS, INCLUDING: 1. REGULATED ACM TO BE REMOVED 2. CATEGORY I ACM NOT REMOVED 3. CATEGORY II ACM NOT REMOVED	RACM TO BE REMOVED	NONFRIABLE ASBESTOS MATERIAL TO BE REMOVED		NONFRIABLE ASBESTOS MATERIAL NOT TO BE REMOVED	
		CAT I	CAT II	CAT I	CAT II
PIPES					
SURFACE AREA					
VOL. RACM OFF FACILITY COMPONENT					
X. DESCRIPTION OF PLANNED DEMOLITION OR RENOVATION WORK, AND METHOD(S) TO BE USED:					
XI. DESCRIPTION OF WORK PRACTICES AND ENGINEERING CONTROLS TO BE USED TO PREVENT EMISSIONS OF ASBESTOS AT THE DEMOLITION AND RENOVATION SITE:					

Figure 3. NOTIFICATION OF DEMOLITION AND RENOVATION (continued)

XII. TYPE OF NOTIFICATION (O=ORIGINAL R=REVISED C=CANCELLED):		WPR Notice?
XIII. WASTE TRANSPORTER #1		
NAME:		
ADDRESS:		
CITY:	STATE:	ZIP:
CONTACT PERSON:		TELEPHONE:
WASTE TRANSPORTER #2		
NAME:		
ADDRESS:		
CITY:	STATE:	ZIP:
CONTACT PERSON:		TELEPHONE:
XIV. WASTE DISPOSAL SITE		
NAME:		
LOCATION:		
CITY:	STATE:	ZIP:
TELEPHONE:	CONTACT PERSON:	
XV. IF DEMOLITION ORDERED BY A GOVERNMENT AGENCY, PLEASE IDENTIFY THE AGENCY BELOW:		
NAME:		TITLE:
AUTHORITY:		
DATE OF ORDER (MM/DD/YY):		DATE ORDERED TO BEGIN (MM/DD/YY):
XVI. FOR EMERGENCY RENOVATIONS		
DATE AND HOUR OF EMERGENCY (MM/DD/YY):		
DESCRIPTION OF THE SUDDEN, UNEXPECTED EVENT:		
EXPLANATION OF HOW THE EVENT CAUSED UNSAFE CONDITIONS OR WOULD CAUSE EQUIPMENT DAMAGE OR AN UNREASONABLE FINANCIAL BURDEN:		
XVII. DESCRIPTION OF PROCEDURES TO BE FOLLOWED IN THE EVENT THAT UNEXPECTED ASBESTOS IS FOUND OR PREVIOUSLY NONFRIABLE ASBESTOS MATERIAL BECOMES CRUMBLED, PULVERIZED, OR REDUCED TO POWDER.		
XVIII. I CERTIFY THAT AN INDIVIDUAL TRAINED IN THE PROVISIONS OF THIS REGULATION (40 CFR PART 61, SUBPART M) WILL BE ON-SITE DURING THE DEMOLITION OR RENOVATION AND EVIDENCE THAT THE REQUIRED TRAINING HAS BEEN ACCOMPLISHED BY THIS PERSON WILL BE AVAILABLE FOR INSPECTION DURING NORMAL BUSINESS HOURS (REQUIRED 1 YEAR AFTER PROMULGATION).		
_____		(SIGNATURE OF OWNER/OPERATOR) (DATE)
XIX. I CERTIFY THAT THE ABOVE INFORMATION IS CORRECT.		
_____		(SIGNATURE OF OWNER/OPERATOR) (DATE)

(2.) The owner or operator uses one of the following emission control methods:

a. A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the asbestos materials. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in paragraph (o).

b. A glove-bag system designed and operated to contain the particulate asbestos material produced by the stripping of the asbestos materials.

c. Leak-tight wrapping to contain all RACM prior to dismantlement.

(II) In renovation operations where wetting would result in equipment damage or a safety hazard, and the methods allowed in paragraph (i)(iii)(C)(I) cannot be used, another method may be used after obtaining written approval from the Administrator based upon a determination that it is equivalent to wetting in controlling emissions or to the methods allowed in paragraph (i)(iii)(C)(I).

(III) A copy of the Administrator's written approval shall be kept at the worksite and made available for inspection.

(D) After a facility component covered with, coated with, or containing RACM has been taken out of the facility as a unit or in sections pursuant to paragraph (i)(iii)(B), it shall be stripped or contained in leak-tight wrapping, except as described in paragraph (i)(iii)(E). If stripped, either:

(I) Adequately wet the RACM during stripping; or

(II) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in paragraph (o).

(E) For large facility components such as reactor vessels, large tanks, and steam generators, but not beams (which must be handled in accordance with paragraphs (i)(iii)(B), (C), and (D)), the RACM is not required to be stripped if the following requirements are met:

(I) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the RACM.

(II) The component is encased in a leak-tight wrapping.

(III) The leak-tight wrapping is labeled according to paragraphs (m)(iv) during all loading and unloading operations and during storage.

(F) For all RACM, including material that has been removed or stripped:

(I) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with paragraph (m).

(II) Carefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.

(III) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections.

(IV) RACM contained in leak-tight wrapping that has been removed in accordance with paragraphs (i)(iii)(D) and (i)(iii)(C)(I)(2).c. need not be wetted.

(G) When the temperature at the point of wetting is below 0°C (32°F):

(I) The owner or operator need not comply with paragraph (i)(iii)(B)(I) and the wetting provisions of paragraph (i)(iii)(C).

(II) The owner or operator shall remove facility components containing, coated with, or covered with RACM as units or in sections to the maximum extent possible.

(III) During periods when wetting operations are suspended due to freezing temperatures, the owner or operator must record the temperature in the area containing the facility components at the beginning, middle, and end of each workday and keep daily temperature records available for inspection by the Administrator during normal business hours at the demolition or renovation site. The owner or operator shall retain the temperature records for at least 2 years.

(H) No RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless the individuals supervising and performing the operation have been trained in the provisions of this regulation and the means of complying with them. Asbestos School Hazard Abatement Reauthorization Act (ASHARA) training will be acceptable to meet this requirement. Every year, the individuals supervising and performing asbestos operations shall receive refresher training in the provisions of this regulation. The required training shall include as a

minimum: applicability; notifications; material identification; control procedures for removals including, at least, wetting, local exhaust ventilation, negative pressure enclosures, glove-bag procedures, and High Efficiency Particulate Air (HEPA) filters; waste disposal work practices; reporting and recordkeeping; and asbestos hazards and worker protection. Evidence that the required training has been completed shall be posted and made available for inspection by the Administrator at the demolition or renovation site.

(I) For facilities described in paragraph (i)(i)(C), adequately wet the portion of the facility that contains RACM during the wrecking operation.

(J) If a facility is demolished by intentional burning, all RACM including Category I and Category II nonfriable ACM must be removed in accordance with the NESHAP before burning.

(j) Standard for Spraying.

The owner or operator of an operation in which asbestos-containing materials are spray applied shall comply with the following requirements:

(i) For spray-on application on buildings, structures, pipes, and conduits do not use material containing more than 1 percent asbestos as determined using the method specified in Appendix J to 29 CFR § 1910.1001, Polarized Light Microscopy of Asbestos, except as provided in paragraph (j)(iii).

(ii) For spray-on application of materials that contain more than 1 percent asbestos as determined using the method specified in Appendix J to 29 CFR § 1910.1001, Polarized Light Microscopy of Asbestos, on equipment and machinery, except as provided in paragraph (j)(iii):

(A) Notify the Administrator at least 20 days before beginning the spraying operation. Include the following information in the notice:

(I) Name and address of owner or operator.

(II) Location of spraying operation.

(III) Procedures to be followed to meet the requirements of paragraph (j).

(B) Discharge no visible emissions to the outside air from spray-on application of the asbestos-containing material or use the methods specified by paragraph (o) to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(iii) The requirements of paragraphs (j)(i) and (j)(ii) do not apply to the spray-on application of materials where the asbestos fibers in the materials are encapsulated with a bituminous or resinous binder during spraying and the materials are not friable after drying.

(k) Standard for Fabricating.

(i) Applicability. This section applies to the following fabrication operations using commercial asbestos:

(A) The fabrication of cement building products.

(B) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles.

(C) The fabrication of cement on silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture, bulkheads, partitions, and ceilings for marine construction; and flow control devices for the molten metal industry.

(ii) Standard. Each owner or operator of any of the fabricating operations to which this section applies shall either:

(A) Discharge no visible emissions to the outside air from any of the operations or from any building or structure in which they are conducted or from any other fugitive sources; or

(B) Use the methods specified by paragraph (o) to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(C) Monitor each potential source of asbestos emissions from any part of the fabricating facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once a day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emission.

(D) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in the filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(I) Maintenance schedule.

(II) Recordkeeping plan.

(E) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(I) Date and time of each inspection.

(II) Presence or absence of visible emissions.

(III) Condition of fabric filters, including presence of any tears, holes, and abrasions.

(IV) Presence of dust deposits on clean side of fabric filters.

(V) Brief description of corrective actions taken, including date and time.

(VI) Daily hours of operation for each air cleaning device.

(F) Furnish upon request and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this paragraph.

(G) Retain a copy of all monitoring and inspection records for at least 2 years.

(H) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

(I) Standard for Insulating Materials. No owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this paragraph do not apply to spray-applied insulating materials regulated under paragraph (j).

(m) Standard for Waste Disposal for Non-facilities, Manufacturing, Demolition, Renovation, Spraying, and Fabricating. Each owner or operator of any source covered under the provisions of paragraphs (g), (h), (i), (j), or (k) shall meet the requirements of the Solid Waste Division of the Wyoming Department of Environmental Quality or, at a minimum, the requirements of the following:

(i) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in paragraphs (m)(i)(A) through (D).

(A) Adequately wet asbestos-containing waste material as follows:

(I) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and

(II) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by paragraph (o) to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

(III) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and

(IV) Label the containers or wrapped materials specified in paragraph (m)(i)(A)(III) using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR § 1910.1001(j)(4) or § 1926.1101(k)(8). The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

(V) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(B) Process asbestos-containing waste material into nonfriable forms as follows:

(I) Form all asbestos-containing waste material into nonfriable pellets or other shapes;

(II) Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified by paragraph (o) to clean emissions containing particulate asbestos materials before they escape to, or are vented to, the outside air.

(C) For facilities demolished where the RACM is not removed prior to demolition, adequately wet asbestos-containing waste material at all times after demolition and keep wet during handling and loading for transport to a disposal site. Asbestos-containing waste materials covered by this paragraph do not have to be sealed in leak-tight containers or wrapping but may be transported and disposed of in bulk.

(D) Use an alternative emission control and waste treatment method that has received prior written approval by the EPA Administrator.

(E) As applied to demolition and renovation, the requirements of paragraph (m)(i) do not apply to Category I and Category II nonfriable ACM waste that did not become crumbled, pulverized, or reduced to powder.

(ii) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

(A) A waste disposal site operated in accordance with the provisions of paragraph (q), or

(B) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of paragraph (r).

(C) The requirements of paragraph (m)(ii) do not apply to Category I nonfriable ACM that is not RACM.

(iii) Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The markings must:

(A) Be displayed in such a manner and location that a person can easily read the legend.

(B) Conform to the requirements for 51 cm X 36 cm (20 in X 14 in) upright format signs specified in 29 CFR § 1910.145(d)(2) and this paragraph; and

(C) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified below.

Legend
DANGER
ASBESTOS DUST HAZARD
CANCER AND LUNG DISEASE HAZARD
Authorized Personnel Only

Notation
2.5 cm (1 inch) Sans Serif, Gothic or Block
2.5 cm (1 inch) Sans Serif, Gothic or Block
1.9 cm (3/4 inch) Sans Serif, Gothic or Block
14 Point Gothic

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

(iv) For All Asbestos-Containing Waste Material Transported Off the Facility Site:

(A) Maintain waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(I) The name and telephone number of the disposal site operator.

(II) The name and physical site location of the disposal site.

(III) The date transported.

(IV) The name, address, and telephone number of the transporter(s).

GENERATOR		
1. Work site name and mailing address	Owner's name	Owner's telephone no.
2. Operator's name and address		Operator's telephone no.
3. Waste disposal site (WDS) name, mailing address, and physical site location		WDS telephone no.
4. Name and address of responsible agency		
5. Description of materials	6. Containers No. Type	7. Total quantity m ³ (yd ³)
8. Special handling instructions and additional information		
9. OPERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.		
Printed/typed name & title	Signature	Month Day Year
Transporter		
10. Transporter 1 (Acknowledgment of receipt of materials)		
Printed/typed name & title Address and telephone no.	Signature	Month Day Year
11. Transporter 2 (Acknowledgment of receipt of materials)		
Printed/typed name & title Address and telephone no.	Signature	Month Day Year
Disposal Site		
12. Discrepancy indication space		
13. Waste disposal site owner or operator: Certification of receipt of asbestos materials covered by this manifest except as noted in item 12.		
Printed/typed name & title	Signature	Month Day Year

Figure 4. Waste Shipment Record

(V) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and governmental regulations.

(B) Provide a copy of the waste shipment record, described in paragraph (m)(iv)(A), to the disposal site owners or operators at the same time as the asbestos-containing waste material is delivered to the disposal site.

(C) For waste shipments where a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received by the waste generator within 35 days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the designated disposal site to determine the status of the waste shipment.

(D) Report in writing to the Wyoming Department of Environmental Quality, Air Quality Division, if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report the following information:

(I) A copy of the waste shipment record for which a confirmation of delivery was not received, and

(II) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(E) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(v) Furnish upon request, and make available for inspection by the Administrator, all records required under this section.

(n) Standard for Inactive Waste Disposal Sites for Manufacturing and Fabricating Operations. Each owner or operator of any inactive waste disposal site that was operated by sources covered under paragraphs (h) or (k) and received deposits of asbestos-containing waste material generated by the sources, shall meet the requirements of the Solid Waste Division of the Wyoming Department of Environmental Quality or at a minimum:

(i) Comply With One of the Following:

(A) Either discharge no visible emissions to the outside air from an inactive waste disposal site subject to the paragraph; or

(B) Cover the asbestos-containing waste material with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material. In desert areas where vegetation would be difficult to maintain, at least 8 additional centimeters (3 inches) of well-graded, nonasbestos crushed rock may be placed on top of the final cover instead of vegetation and maintained to prevent emissions; or

(C) Cover the asbestos-containing waste material with at least 60 centimeters (2 feet) of compacted nonasbestos-containing material, and maintain it to prevent exposure of the asbestos-containing waste; or

(D) For inactive waste disposal sites for asbestos tailings, a resinous or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions may be used instead of the methods in paragraphs (n)(i)(A), (B), and (C). Use the agent in the manner and frequency recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent to achieve and maintain dust control. Obtain prior written approval of the Administrator to use other equally effective dust suppression agents. For purposes of this paragraph, any used, spent, or other waste oil is not considered a dust suppression agent.

(ii) Unless a natural barrier adequately deters access by the general public, install and maintain warning signs and fencing as follows, or comply with paragraph (n)(i)(B) or (n)(i)(C).

(A) Display warning signs at all entrances and at intervals of 100 m (328 feet) or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material was deposited. The warning signs must:

(I) Be posted in such a manner and location that a person can easily read the legend;

(II) Conform to the requirements of 51 cm x 36 cm (20" x 14") upright format signs specified in 29 CFR § 1910.145(d)(4) and this paragraph; and

(III) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend
ASBESTOS WASTE DISPOSAL SITE
DO NOT CREATE DUST
Breathing Asbestos is Hazardous to Your Health

Notation

2.5 cm (1 inch) Sans Serif, Gothic or Block
1.9 cm (3/4 inch) Sans Serif, Gothic or Block
14 point Gothic

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

(B) Fence the perimeter of the site in a manner adequate to deter access by the general public.

(C) When requesting a determination on whether a natural barrier adequately deters public access, supply information enabling the Administrator to determine whether a fence or a natural barrier adequately deters access by the general public.

(iii) The owner or operator may use an alternative control method that has received prior approval of the EPA Administrator rather than comply with the requirements of paragraph (n)(i) or (n)(ii).

(iv) Notify the Administrator in writing at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site under this section, and follow the procedures specified in the notification. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator at least 10 working days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

(A) Scheduled starting and completion dates.

(B) Reason for disturbing the waste.

(C) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the Administrator may require changes in the emission control procedures to be used.

(D) Location of any temporary storage site and the final disposal site.

(v) Within 60 days of a site becoming inactive and after the effective date of this subpart, record, in accordance with State law, a notation on the deed to the facility property and on any other instrument that would normally be examined during a title search; this notation will in perpetuity notify any potential purchaser of the property that:

(A) The land has been used for the disposal of asbestos-containing waste material;

(B) The survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required in paragraph (q)(vi) have been filed with the Administrator; and

(C) The site is subject to Chapter 3, Section 8 of the Wyoming Air Quality Standards and Regulations and to 40 CFR part 61, Subpart M.

(o) Air Cleaning.

(i) The owner or operator who uses air cleaning, as specified in paragraphs (h)(ii)(B), (i)(iii)(C)(I)(2).a., (i)(iii)(D)(II), (j)(ii)(B), (k)(ii)(B), (m)(i)(A)(II), (m)(i)(B)(II) and (r)(v) shall:

(A) Use fabric filter collection devices, except as noted in paragraph (o)(ii), doing all of the following:

(I) Ensuring that the airflow permeability, as determined by ASTM Method D737-04 Test Method for Air Permeability of Textile Fabrics, does not exceed $9 \text{ m}^3/\text{min}/\text{m}^2$ ($30 \text{ ft}^3/\text{min}/\text{ft}^2$) for woven fabrics or $11 \text{ m}^3/\text{min}/\text{m}^2$ ($35 \text{ ft}^3/\text{min}/\text{ft}^2$) for felted fabrics, except that $12 \text{ m}^3/\text{min}/\text{m}^2$ ($40 \text{ ft}^3/\text{min}/\text{ft}^2$) for woven and $14 \text{ m}^3/\text{min}/\text{m}^2$ ($45 \text{ ft}^3/\text{min}/\text{ft}^2$) for felted fabrics is allowed for filtering air from asbestos ore dryers;

(II) Ensuring that felted fabric weighs at least 475 grams per square meter (14 ounces per square yard) and is at least 1.6 millimeters (one-sixteenth inch) thick throughout; and

(III) Avoiding the use of synthetic fabrics that contain fill yarn other than that which is spun.

(B) Properly install, use, operate, and maintain all air-cleaning equipment authorized by this paragraph. Bypass devices may be used only during upset or emergency conditions and then only for so long as it takes to shut down the operation generating the particulate asbestos material.

(C) For fabric filter collection devices installed after January 10, 1989, provide for easy inspection for faulty bags.

(ii) There are the following exceptions to paragraph (o)(i)(A):

(A) After January 10, 1989, if the use of fabric creates a fire or explosion hazard, or the Administrator determines that a fabric filter is not feasible, the

Administrator may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals (40 inches water gage pressure).

(B) Use a HEPA filter that is certified to be at least 99.97 percent efficient for 0.3 micron particles.

(C) The EPA Administrator may authorize the use of filtering equipment other than described in paragraphs (o)(i)(A) and (o)(ii)(A) and (B) if the owner or operator demonstrates to the EPA Administrator's satisfaction that it is equivalent to the described equipment in filtering particulate asbestos material.

(p) Reporting.

(i) Any new source to which this section applies (with the exception of sources subject to paragraphs (i), (j), and (l)), which has an initial startup date preceding the effective date of this revision, shall provide the following information to the Administrator postmarked or delivered within 90 days of the effective date. In the case of a new source that does not have an initial startup date preceding the effective date, the information shall be provided, postmarked or delivered, within 90 days of the initial startup date. Any owner or operator of an existing source shall provide the following information to the Administrator within 90 days of the effective date of this subpart unless the owner or operator of the existing source has previously provided this information to the Administrator. Any changes in the information provided by any existing source shall be provided to the Administrator, postmarked or delivered, within 30 days after the change.

(A) A description of the emission control equipment used for each process; and

(I) If the fabric device uses a woven fabric, the airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ and; if the fabric is synthetic, whether the fill yarn is spun or not spun; and

(II) If the fabric filter device uses a felted fabric, the density in g/m^2 , the minimum thickness in inches and the airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$.

(B) If a fabric filter device is used to control emissions,

(I) The airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ ($\text{ft}^3/\text{min}/\text{ft}^2$) if the fabric filter device uses a woven fabric, and, if the fabric is synthetic, whether the fill yarn is spun or not spun; and

(II) If the fabric filter device uses a felted fabric, the density in g/m^2 (oz/yd^2), the minimum thickness in millimeters (inches), and the airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ ($\text{ft}^3/\text{min}/\text{ft}^2$).

(C) If a HEPA filter is used to control emissions, the certified efficiency.

(D) For sources subject to paragraph (m):

(I) A brief description of each process that generates asbestos-containing waste material;

(II) The average volume of asbestos-containing waste material disposed of measured in m³/day (yd³/day);

(III) The emission control methods used in all stages of waste disposal; and

(IV) The type of disposal site or incineration site used for ultimate disposal, the name of the site operator, and the name and location of the disposal site.

(E) For sources subject to paragraphs (n) and (q):

(I) A brief description of the site; and

(II) The method or methods used to comply with the standard, or alternate procedures to be used.

(ii) The information required by paragraph (p)(i) must accompany the information required by 40 CFR part 61, Subpart A, § 61.10. Active waste disposal sites subject to paragraph (q) shall also comply with this provision. Demolition and renovation, spraying, and insulating materials are exempted from the requirements of 40 CFR § 61.10(a). The information described in this paragraph must be reported using the format of Appendix A of CFR 40 part 61 as a guide.

(q) Standard for Active Waste Disposal Sites. Each owner or operator of an active waste disposal site that receives asbestos-containing waste material from a source covered under paragraphs (m) or (r) shall meet the requirements of the Solid Waste Division of the Wyoming Department of Environmental Quality, or at a minimum the following:

(i) Either there must be no visible emissions to the outside air from any active waste disposal site where asbestos-containing waste material has been deposited, or the requirements of paragraph (q)(iii) or (q)(iv) must be met.

(ii) Unless a natural barrier adequately deters access by the general public, either warning signs and fencing must be installed and maintained as follows, or the requirements of paragraph (q)(iii)(A) must be met.

(A) Warning signs must be displayed at all entrances and at intervals of 100 m (330 ft) or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material is deposited. The warning signs must:

(I) Be posted in such a manner and location that a person can easily read the legend;

(II) Conform to the requirements of 51 cm x 36 cm (20" x 14") upright format signs specified in 29 CFR § 1910.145(d)(4) and this paragraph; and

(III) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified below.

Legend
ASBESTOS WASTE DISPOSAL SITE
DO NOT CREATE DUST
Breathing Asbestos is Hazardous to Your Health

Notation
2.5 cm (1 inch) Sans Serif, Gothic or Block
1.9 cm (3/4 inch) Sans Serif, Gothic or Block
14 point Gothic

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

(B) The perimeter of the disposal site must be fenced in a manner adequate to deter access by the general public.

(C) Upon request and supply of appropriate information, the Administrator will determine whether a fence or a natural barrier adequately deters access by the general public.

(iii) Rather than meet the no visible emission requirement of paragraph (q)(i), at the end of each operating day, or at least once every 24-hour period while the site is in continuous operation, the asbestos-containing waste material that has been deposited at the site during the operating day or previous 24-hour period shall:

(A) Be covered with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, or

(B) Be covered with a resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. Such an agent shall be used in the manner and frequency recommended for the particular dust by the

dust suppression agent manufacturer to achieve and maintain dust control. Other equally effective dust suppression agents may be used upon prior approval by the Administrator. For purposes of this paragraph, any used, spent, or other waste oil is not considered a dust suppression agent.

(iv) Rather than meet the no visible emission requirement of paragraph (q)(i), use an alternative emissions control method that has received prior written approval by the EPA Administrator.

(v) For all asbestos-containing waste material received, the owner or operator of the active waste disposal site shall:

(A) Maintain waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(I) The name, address, and telephone number of the waste generator.

(II) The name, address, and telephone number of the transporter(s).

(III) The quantity of the asbestos-containing waste material in cubic meters (cubic yards).

(IV) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in leak-tight containers.

(V) The date of the receipt.

(B) Upon discovering the presence of a significant amount of improperly enclosed or uncovered waste, report in writing by the following working day to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator (identified in the waste shipment record), and, if that office is outside the State of Wyoming, also report in writing by the following working day to the Wyoming Department of Environmental Quality, Air Quality Division. Submit a copy of the waste shipment record along with the report.

(C) As soon as possible and no longer than 30 days after receipt of the waste, send a copy of the signed waste shipment record to the waste generator.

(D) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within 15 days after receiving the waste, immediately report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator (identified in the waste shipment record), and, if that office is outside

the State of Wyoming, also report in writing to the Wyoming Department of Environmental Quality, Air Quality Division. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report.

(E) Retain a copy of all records and reports required by this paragraph for at least 2 years.

(vi) Maintain, until closure, records of the location, depth and area, and quantity in cubic meters (cubic yards) of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

(vii) Upon closure, comply with all the provisions of paragraph (n).

(viii) Submit to the Administrator, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.

(ix) Furnish upon request, and make available during normal business hours for inspection by the Administrator, all records required under this paragraph.

(x) Notify the Administrator in writing at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site and is covered. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date must be provided at least 10 working days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice.

(A) Scheduled starting and completion dates.

(B) Reason for disturbing the waste.

(C) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the Administrator may require changes in the emission control procedures to be used.

(D) Location of any temporary storage site and the final disposal site.

(r) Standard for Operations That Convert Asbestos-Containing Waste Material Into Nonasbestos (Asbestos-Free) Material. Each owner or operator of an operation that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material shall:

(i) Obtain the prior written approval of the EPA Administrator to construct the facility. To obtain approval, the owner or operator shall provide the EPA Administrator with the following information:

(A) Application to construct pursuant to 40 CFR § 61.07.

(B) In addition to the information requirements of 40 CFR § 61.07(b)(3), a

(I) Description of waste feed handling and temporary storage.

(II) Description of process operating conditions.

(III) Description of the handling and temporary storage of the end product.

(IV) Description of the protocol to be followed when analyzing output materials by transmission electron microscopy.

(C) Performance test protocol, including provisions for obtaining information required under paragraph (r)(ii).

(D) The EPA Administrator may require that a demonstration of the process be performed prior to approval of the application to construct.

(ii) Conduct a Start-up Performance Test. Test Results Shall Include:

(A) A detailed description of the types and quantities of nonasbestos material, RACM, and asbestos-containing waste material processed, e.g., asbestos cement products, friable asbestos insulation, plaster, wood, plastic, wire, etc. Test feed is to include the full range of materials that will be encountered in actual operation of the process.

(B) Results of analyses, using polarized light microscopy, that document the asbestos content of the wastes processed.

(C) Results of analyses, using transmission electron microscopy, that document that the output materials are free of asbestos. Samples for analysis are to be collected as 8-hour composite samples (one 200-gram (7-ounce) sample per hour), beginning with the initial introduction of RACM or asbestos-containing waste material and continuing until the end of the performance test.

(D) A description of operation parameters, such as temperature and residence time, defining the full range over which the process is expected to operate

to produce nonasbestos (asbestos-free) materials. Specify the limits for each operating parameter within which the process will produce nonasbestos (asbestos-free) materials.

(E) The length of the test.

(iii) During the initial 90 days of operation,

(A) Continuously monitor and log the operating parameters identified during start-up performance tests that are intended to ensure the production of nonasbestos (asbestos-free) output material.

(B) Monitor input materials to ensure that they are consistent with the test feed materials described during start-up performance tests in paragraph (r)(ii)(A).

(C) Collect and analyze samples, taken as 10-day composite samples (one 200-gram (7-ounce) sample collected every 8 hours of operation) of all output material for the presence of asbestos. Composite samples may be for fewer than 10 days. Transmission electron microscopy (TEM) shall be used to analyze the output material for the presence of asbestos. During the initial 90-day period, all output materials must be stored on-site until analysis shows the material to be asbestos-free or disposed of as asbestos-containing waste material according to paragraph (m).

(iv) After the initial 90 days of operation,

(A) Continuously monitor and record the operating parameters identified during start-up performance testing and any subsequent performance testing. Any output produced during a period of deviation from the range of operating conditions established to ensure the production of nonasbestos (asbestos-free) output materials shall be:

(I) Disposed of as asbestos-containing waste material according to paragraph (m), or

(II) Recycled as waste feed during process operation within the established range of operation conditions, or

(III) Stored temporarily on-site in a leak-tight container until analyzed for asbestos content. Any product material that is not asbestos-free shall be either disposed of as asbestos-containing waste material or recycled as waste feed to the process.

(B) Collect and analyze monthly composite samples (one 200-gram (7-ounce) sample collected every 8 hours of operation) of the output material. Transmission electron microscopy shall be used to analyze the output material for the presence of asbestos.

(v) Discharge no visible emissions to the outside air from any part of the operation, or use the methods specified in paragraph (o) to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(vi) Maintain Records On-site and Include the Following Information:

(A) Results of start-up performance testing and all subsequent performance testing, including operating parameters, feed characteristic, and analyses of output materials.

(B) Results of the composite analyses required during the initial 90 days of operation under paragraph (r)(iii).

(C) Results of the monthly composite analyses required under paragraph (r)(iv).

(D) Results of continuous monitoring and logs of process operating parameters required under paragraph (r)(iii) and (iv).

(E) The information on waste shipments received as required in paragraph (q).

(F) For output materials where no analyses were performed to determine the presence of asbestos, record the name and location of the purchaser or disposal site to which the output materials were sold or deposited, and the date of sale or disposal.

(G) Retain records required by paragraph (r)(vi) for at least 2 years.

(vii) Submit the Following Reports to the Administrator:

(A) A report for each analysis of product composite samples performed during the initial 90 days of operation.

(B) A quarterly report, including the following information concerning activities during each consecutive 3-month period:

(I) Results of analyses of monthly product composite samples.

(II) A description of any deviation from the operating parameters established during performance testing, the duration of the deviation, and steps taken to correct the deviation.

(III) Disposition of any product produced during a period of deviation, including whether it was recycled, disposed of as asbestos-containing waste material, or stored temporarily on-site until analyzed for asbestos content.

(IV) The information on waste disposal activities as required in paragraph (q).

(viii) Nonasbestos (asbestos-free) output material is not subject to any of the provisions of this section. Output materials in which asbestos is detected, or output materials produced when the operating parameters deviated from those established during the start-up performance testing, unless shown by TEM analysis to be asbestos-free, shall be considered to be asbestos-containing waste and shall be handled and disposed of according to paragraphs (m) and (q) or reprocessed while all of the established operating parameters are being met.

Section 9. **Incorporation by reference.**

(a) Code of Federal Regulations (CFR). All Code of Federal Regulations (CFR), including their Appendices, cited in this Chapter, revised and published as of July 1, 2011, not including any later amendments, are incorporated by reference. Copies of the Code of Federal Regulations are available for public inspection and copies can be obtained at cost from the Department of Environmental Quality, Division of Air Quality, 122 W. 25th Street, Cheyenne, Wyoming 82002. Copies of the CFRs can also be obtained at cost from Government Institutes, 15200 NBN Way, Building B, Blue Ridge Summit, PA 17214.

(b) American Society for Testing and Materials (ASTM). All ASTM standards cited in this Chapter, revised and published as of July 1, 2011, not including any later amendments, are incorporated by reference. Copies of the ASTM standards are available for public inspection and copies can be obtained at cost from the Department of Environmental Quality, Division of Air Quality, 122 W. 25th Street, Cheyenne, Wyoming 82002. Copies can also be obtained at cost from the American Society for Testing and Materials, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959.

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

National Emission Standards

CHAPTER 5

TABLE OF CONTENTS

Section 1.	Introduction to national emission standards	5-1
Section 2.	New source performance standards	5-1
Section 3.	National emission standards for hazardous air pollutants.....	5-35
Section 4.	Incorporation by reference.....	5-45

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

National Emission Standards

CHAPTER 5

Section 1. Introduction to national emission standards.

(a) This Chapter incorporates emission control regulations developed by the Environmental Protection Agency for specific source categories. The State of Wyoming, Air Quality Division adopts these Federal Regulations in order to maintain administrative authority with regards to the standards. Section 2 contains New Source Performance Standards (NSPS) which regulate criteria pollutant emissions from specific categories of new sources. Section 3 contains National Emission Standards for Hazardous Air Pollutants (NESHAP) which regulates hazardous air pollutant emissions from specific categories of new and existing sources. Section 4 incorporates by reference all Code of Federal Regulations (CFRs), including their Appendices, cited in this Chapter and all American Society for Testing and Materials (ASTM) standards cited in this Chapter.

Section 2. New source performance standards.

(a) General: The U.S. Environmental Protection Agency regulations on Standards of Performance for New Stationary Sources, designated in Chapter 5, Section 2(b) and as amended by the word or phrase “substitutions” given in Chapter 5, Section 2(c), are incorporated into these regulations. The specific documents containing the complete text of the regulations are found in 40 CFR part 60.

(b) Designated Standards of Performance: The following Standards of Performance are incorporated by reference under Section 4(a) of this Chapter.

- | | |
|------------------------------|---|
| 40 CFR part 60, Subpart D - | Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971 |
| 40 CFR part 60, Subpart Da - | Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978 |
| 40 CFR part 60, Subpart Db - | Standards of performance for Industrial-Commercial-Institutional Steam Generating Units |

40 CFR part 60, Subpart Dc -	Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units
40 CFR part 60, Subpart Ea -	Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994
40 CFR part 60, Subpart Eb -	Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996
40 CFR part 60, Subpart Ec -	Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996
40 CFR part 60, Subpart F -	Standards of Performance for Portland Cement Plants
40 CFR part 60, Subpart G -	Standards of Performance for Nitric Acid Plants
40 CFR part 60, Subpart H -	Standards of Performance for Sulfuric Acid Plants
40 CFR part 60, Subpart I -	Standards of Performance for Hot Mix Asphalt Facilities
40 CFR part 60, Subpart J -	Standards of Performance for Petroleum Refineries
40 CFR part 60, Subpart Ja -	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007
40 CFR part 60, Subpart K -	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978

40 CFR part 60, Subpart Ka -	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984
40 CFR part 60, Subpart Kb -	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984
40 CFR part 60, Subpart T -	Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants
40 CFR part 60, Subpart U -	Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants
40 CFR part 60, Subpart V -	Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants
40 CFR part 60, Subpart W -	Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants
40 CFR part 60, Subpart X -	Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
40 CFR part 60, Subpart Y -	Standards of Performance for Coal Preparation Plants
40 CFR part 60, Subpart DD -	Standards of Performance for Grain Elevators
40 CFR part 60, Subpart GG -	Standards of Performance for Stationary Gas Turbines
40 CFR part 60, Subpart HH -	Standards of Performance for Lime Manufacturing Plants

40 CFR part 60, Subpart NN -	Standards of Performance for Phosphate Rock Plants
40 CFR part 60, Subpart VV -	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006
40 CFR part 60, Subpart VVa -	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
40 CFR part 60, Subpart WW -	Standards of Performance for the Beverage Can Surface Coating Industry
40 CFR part 60, Subpart XX -	Standards of Performance for Bulk Gasoline Terminals
40 CFR part 60, Subpart AAA -	Standards of Performance for New Residential Wood Heaters
40 CFR part 60, Subpart GGG -	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006
40 CFR part 60, Subpart GGGa -	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
40 CFR part 60, Subpart JJJ -	Standards of Performance for Petroleum Dry Cleaners
40 CFR part 60, Subpart KKK -	Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants

40 CFR part 60, Subpart LLL -	Standards of Performance for Onshore Natural Gas Processing: SO ₂ Emissions
40 CFR part 60, Subpart OOO -	Standards of Performance for Nonmetallic Mineral Processing Plants
40 CFR part 60, Subpart QQQ -	Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems
40 CFR part 60, Subpart UUU -	Standards of Performance for Calciners and Dryers in Mineral Industries
40 CFR part 60, Subpart WWW -	Standards of Performance for Municipal Solid Waste Landfills
40 CFR part 60, Subpart AAAA -	Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001
40 CFR part 60, Subpart CCCC -	Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced on or After June 1, 2001
40 CFR part 60, Subpart EEEE -	Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006
40 CFR part 60, Subpart IIII -	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines
40 CFR part 60, Subpart JJJJ -	Standards of Performance for Stationary Spark Ignition Internal Combustion Engines
40 CFR part 60, Subpart KKKK -	Standards of Performance for Stationary Combustion Turbines

(i) Designated Appendices. The following appendices are incorporated by reference under Section 4(a) of this Chapter.

40 CFR part 60, Appendix A - Test Methods

40 CFR part 60, Appendix B - Performance Specifications

40 CFR part 60, Appendix C - Determination of Emission Rate Change

40 CFR part 60, Appendix D - Required Emission Inventory Information

40 CFR part 60, Appendix F - Quality Assurance Procedures

40 CFR part 60, Appendix I - Removable Label and Owner's Manual

(c) Word or Phrase Substitutions: In the standards designated in Chapter 5, Section 2(b) substitute:

- (i) Chapter 5, Section 2 for Subpart A
- (ii) Chapter 5, Section 2(h) for 60.8
- (iii) Chapter 5, Section 2(g) for 60.7
- (iv) Chapter 5, Section 2(m) for 60.18
- (v) Chapter 5, Section 2(e)(i) for 60.2
- (vi) Chapter 5, Section 2(e)(ii) for 60.3
- (vii) Chapter 5, Section 2(i) for 60.11
- (viii) Chapter 5, Section 2(j) for 60.13
- (ix) Chapter 5, Section 2(k) for 60.14
- (x) Chapter 5, Section 2(l) for 60.15
- (xi) Chapter 6, Section 2(b)(i) for 60.5 and 60.6
- (xii) Chapter 6, Section 2(i) for 60.7(a)(2) and (3)
- (xiii) Chapter 6, Section 2(j) for 60.8(a) and (d)
- (xiv) Section 35-11-1101 Environmental Quality Act for 60.9
- (xv) Chapter 1, Section 4 for 60.12
- (xvi) Chapter 5, Section 2(n) for 60.19

(d) Applicability: The provisions of Chapter 5, Section 2 are applicable to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication of any proposed standard as designated in the applicable subparts of the Standards of Performance referenced in Chapter 5, Section 2(b) and contained in 40 CFR part 60.

(i) In addition to complying with the provisions of this section, the Owner or Operator of an affected facility may be required to obtain an operating permit issued to stationary sources by the Administrator pursuant to Title V of the Clean Air Act (Act) as

amended November 15, 1990 (42 U.S.C. 7661). For more information about obtaining an operating permit see Chapter 6, Section 3.

(e) Definitions and Abbreviations: The following terms are explicitly defined for use in this section. As used in this section, all terms not defined herein shall have the meaning given to them in Chapter 1, Section 3.

(i) Definitions:

“Act” means the Clean Air Act (42 U.S.C. 7401 et seq.).

“Administrator” means the Administrator of the Division of Air Quality, Wyoming Department of Environmental Quality, except for those authorities which cannot be delegated to the state, in which case “administrator” means both the administrator of the Environmental Protection Agency and the Administrator of the Division of Air Quality, Wyoming Department of Environmental Quality.

“Affected facility” means, with reference to a stationary source, any apparatus to which a standard is applicable.

“Alternative method” means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the Administrator’s satisfaction to, in some specific cases, produce results adequate for his determination of compliance.

“Capital expenditure” means an expenditure for a physical or operational change to an existing facility which exceeds the product of the applicable “annual asset guideline repair allowance percentage” specified in the latest edition of Internal Revenue Service (IRS) Publication 534 and the existing facility’s basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any “excluded additions” as defined in IRS Publication 534, as would be done for tax purposes.

“Clean coal technology demonstration project” means a project using funds appropriated under the heading ‘Department of Energy-Clean Coal Technology’, up to a total amount of \$2,500,000,000 for commercial demonstrations of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency.

“Commenced”, as applied to construction or modification of any new facility or source, means that the owner or operator has obtained a Construction Permit required by Chapter 6, Section 2 or either has (i) begun, or caused to begin, a continuous program of physical on-site construction or modification of the facility or (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction or modification of the facility to be completed within a reasonable time.

“Construction” means fabrication, erection, or installation of an affected facility.

“Continuous monitoring system” means the total equipment, required under the emission monitoring sections, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

“Electric utility steam generating unit” means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

“Equivalent method” means any method of sampling and analyzing for an air pollutant which has been demonstrated to the Administrator’s satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

“Excess emissions and monitoring systems performance report” is a report that must be submitted periodically by a source in order to provide data on its compliance with stated emission limits and operating parameters, and on the performance of its monitoring systems.

“Existing facility” means, with reference to a stationary source, any apparatus of the type for which a standard is promulgated in this section, and the construction or modification of which was commenced before the date of proposal of that standard; or any apparatus which could be altered in such a way as to be of that type.

“Isokinetic sampling” means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

“Issuance” of an operating permit will occur, in accordance with Chapter 6, Section 3.

“Malfunction” means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

“Monitoring device” means the total equipment, required under the monitoring of operations sections, used to measure and record (if applicable) process parameters.

“Nitrogen oxides” means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in this section.

“One-hour period” means any 60-minute period commencing on the hour.

“Opacity” means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

“Operating permit” or “part 70 permit” means any permit or group of permits covering a source under Chapter 6, Section 3 that is issued, renewed, amended or revised pursuant to Chapter 6, Section 3.

“Owner or operator” means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part.

“Particulate matter” means any finely divided solid or liquid material, other than uncombined water, as measured by the reference methods specified under each subpart, or an equivalent or alternative method.

“Permit program” means the comprehensive State operating permit system established pursuant to Title V of the Act (42 U.S.C. 7661) and regulations in Chapter 6, Section 3.

“Proportional sampling” means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.

“Reactivation of a very clean coal-fired electric utility steam generating unit” means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(A) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority’s emissions inventory at the time of enactment;

(B) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(C) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(D) Is otherwise in compliance with the requirements of the Clean Air Act.

“Reference method” means any method of sampling and analyzing for an air pollutant as specified in the applicable subpart.

“Repowering” means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator of EPA, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

“Run” means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

“Shutdown” means the cessation of operation of an affected facility for any purpose.

“Six-minute period” means any one of the 10 equal parts of a one-hour period.

“Standard” means a standard of performance proposed or promulgated under this section.

“Standard conditions” means a temperature of 293°K (68°F) and a pressure of 101.3 Kilopascals of Hg (29.92 in. of Hg).

“Start-up” means the setting in operation of an affected facility for any purpose.

“State” means the Wyoming Air Quality Division which has been delegated authority to implement:

(A) The provisions of this section; and/or

(B) The permit program established under 40 CFR part 70.

“Stationary source” means any building, structure, facility, or installation which emits or may emit any air pollutant.

“Volatile organic compounds” means any organic compound which participates in atmospheric photochemical reactions; or which is measured by a reference method, an equivalent method, an alternative method, or which is determined by procedures specified under any subpart.

(ii) Abbreviations:

A	ampere
A.S.T.M.	American Society for Testing and Materials
Btu	British thermal unit
cal	calorie
CdS	Cadmium sulfide
cfm	cubic feet per minute
CO	carbon monoxide
CO ₂	carbon dioxide
°C	degree Celsius (centigrade)
°F	degree Fahrenheit
°K	degree Kelvin
°R	degree Rankine
dscm	dry cubic meter(s) at standard conditions
dscf	dry cubic feet at standard conditions
eq	equivalents
g	gram(s)
gal	gallon(s)
g eq	gram equivalents
gr	grain(s)
HCl	hydrochloric acid
Hg	mercury
hr	hour(s)
H ₂ O	water
H ₂ S	hydrogen sulfide
H ₂ SO ₄	sulfuric acid
Hz	hertz
in	inch(es)
J	joule
k	1,000
kg	kilogram(s)
l	liters
lb	pound(s)
lpm	Liter(s) per minute
m	meter(s)
meq	milliequivalent(s)
mg	milligram(s)
Mg	megagram - 10 ⁶ gram
min	minute(s)

ml	milliliter(s)
mm	millimeter(s)
mol. wt.	molecular weight
mv	millivolt
N	newton
N	nitrogen
ng	nanogram - 10^{-9} gram
nm	nanometer(s) - 10^{-9} meter
NO	nitric oxide
NO ₂	nitrogen dioxide
NO _x	nitrogen oxides
O ₂	oxygen
Pa	pascal
ppb	parts per billion
ppm	parts per million
psia	pounds per square inch absolute
s	second
sec	second
SO ₂	sulfur dioxide
SO ₃	sulfur trioxide
STD	at standard conditions
µg	microgram(s) - 10^{-6} gram
V	volt
W	watt

(f) Permit Requirements: Compliance with the provisions of this section shall in no way relieve the owner or operator of responsibility for compliance with other applicable sections of these regulations. The permit requirements of Chapter 6, Section 2 are specifically applicable to affected facilities subject to the requirements of this section.

(g) Notification and Recordkeeping:

(i) Any owner or operator subject to the provisions of this section shall furnish the Administrator written notification as follows:

(A) A notification of the date construction (or reconstruction as defined under Chapter 1, Section 3) of an affected facility is commenced postmarked no later than 30 days after such date. This requirement shall not apply in the case of mass-produced facilities which are purchased in completed form.

(B) A notification of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies, unless that change is specifically exempted under an applicable subpart or in Chapter 5, Section 2(k). This notice shall be postmarked 60 days or as soon as practicable before the change is commenced and shall include information describing the precise nature of the change, present and proposed emission control systems, productive

capacity of the facility before and after the change, and the expected completion date of the change. The Administrator may request additional relevant information subsequent to this notice.

(C) A notification of the date upon which demonstration of the continuous monitoring system performance commences in accordance with Chapter 5, Section 2(j)(iii). Notification shall be postmarked not less than 30 days prior to such date.

(D) A notification of the anticipated date for conducting the opacity observations required by Chapter 5, Section 2(i)(v) of this section. The notification shall be postmarked not less than 30 days prior to such date.

(E) A notification that continuous opacity monitoring system data results will be used to determine compliance with the applicable opacity standard during a performance test required by Chapter 5, Section 2(h) in lieu of Method 9 observation data as allowed by Chapter 5, Section 2(i)(v)(D). This notification shall be postmarked not less than 30 days prior to the date of the performance test.

(ii) Any owner or operator subject to the provisions of this section shall maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in the operation of an affected facility; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

(iii) Each owner or operator required to install a continuous monitoring system (CMS) or monitoring device shall submit an excess emissions and monitoring systems performance report (excess emissions are defined in applicable subparts) and/or a summary report form (see paragraph E of this section) to the Administrator semiannually, except when: more frequent reporting is specifically required by an applicable subpart; or the CMS data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; or the Administrator, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. All reports shall be postmarked by the 30th day following the end of each calendar half (or quarter, as appropriate). Written reports of excess emissions shall include the following information:

(A) The magnitude of excess emissions computed in accordance with Chapter 5, Section 2(j)(viii), any conversion factor(s) used, and the date and time of commencement and completion of each time period of excess emissions. The process operating time during the reporting period.

(B) Specific identification of each period of excess emissions that occurs during start-ups, shutdowns, malfunctions of the affected facility. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

(C) The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

(D) When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

(E) The summary report form shall contain the information and be in the format shown in Form B unless otherwise specified by the Administrator. One summary report form shall be submitted for each pollutant monitored at each affected facility.

(I) If the total duration of excess emissions for the reporting period is less than 1 percent of the total operating time for the reporting period and CMS downtime for the reporting period is less than 5 percent of the total operating time for the reporting period, only the summary report form shall be submitted and the excess emission report described in paragraph (iii) of this subsection need not be submitted unless requested by the Administrator.

(II) If the total duration of excess emissions for the reporting period is 1 percent or greater of the total operating time for the reporting period or the total CMS downtime for the reporting period is 5 percent or greater of the total operating time for the reporting period, the summary report form and the excess emission report described in paragraph (iii) of this subsection shall both be submitted.

Form B
EXCESS EMISSION SUMMARY REPORT

Emission Data Summary		CMS Performance Summary	
I. Duration of Excess Emissions in Reporting Period Due to:		I. CMS Downtime in Reporting Period Due to:	
A. Startup/Shutdown	_____	A. Monitor Equipment Malfunctions	_____
B. Control Equipment Problems	_____	B. Non-Monitor Equipment Malfunctions	_____
C. Process Problems	_____	C. Quality Assurance Calibration	_____
D. Other Known Causes	_____	D. Other Known Causes	_____
E. Unknown Causes	_____	E. Unknown Causes	_____
II. Total Duration of Excess Emission	_____	II. Total CMS Downtime	_____
III. Total Duration of Excess Emissions x 100 divided by Total Source Operating Time minus Total CMS Downtime	_____	III. Total CMS Downtime x 100 divided by Total Source Operating Time	_____

Total time of excess emission events due to emergency/abnormal operations _____.

NOTE:

1. Only report excess emissions which occur when the unit/process is operating. Include all excess emissions in the Emission Data Summary including those excess emissions associated with startup/shutdown and those excess emissions associated with Chapter 1, Section 5 (Emergency/Abnormal) operations. **Report times in hours for gaseous monitors and in tenths of an hour for opacity monitors.** Include detailed excess emission information and causes in the Excess Emission Table (Form C).
2. Only report CEM downtime which occurs while the unit/process is operating. **Report time in hours to one decimal point.** Include detailed CEM downtime and causes in the Monitor Outage Table (Form D).
3. Include an explanation of what corrective actions were taken for total excess emissions or monitor downtime for the quarter (Emission Data Summary and CMS Performance Summary, Item III) greater than 5%. **(See Instructions for further details.)**

On a separate page, describe any changes since last quarter in CMS, process or controls. I certify that the information contained in this report is true, accurate, and complete.

Name

Signature

Title

Date

(iv) (A) Notwithstanding the frequency of reporting requirements specified in paragraph (iii) of this subsection, an owner or operator who is required by an applicable subpart to submit excess emissions and monitoring systems performance reports (and summary reports) on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(I) For 1 full year (e.g., 4 quarterly or 12 monthly reporting periods) the affected facility's excess emissions and monitoring systems reports submitted to comply with a standard under this section continually demonstrate that the facility is in compliance with the applicable standard;

(II) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this section and the applicable standard; and

(III) The Administrator does not object to a reduced frequency of reporting for the affected facility, as provided in paragraph (iv)(B) of this subsection.

(B) The frequency of reporting of excess emissions and monitoring systems performance (and summary) reports may be reduced only after the owner or operator notifies the Administrator in writing of the intent to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the required recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the ground on which the disapproval is based. In the absence of a notice of disapproval within 45 days, approval is automatically granted.

(C) As soon as monitoring data indicate that the affected facility is not in compliance with any emission limitation or operating parameter specified in the applicable standard, the frequency of reporting shall revert to the frequency specified in the applicable standard, and the owner or operator shall submit an excess emissions and monitoring systems performance report (and summary report, if required) at the next appropriate reporting period following the noncomplying event. After demonstrating compliance with the applicable standard for another full year, the owner or operator may again request approval from the Administrator to reduce the frequency of reporting for that standard as provided for in paragraphs (iv)(A) and (iv)(B) of this subsection.

(v) Any owner or operator subject to the provisions of this section shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this section recorded in a permanent form suitable for inspection. The file shall be retained for at least two years following the date of such measurements, maintenance, reports, and record.

(vi) Individual subparts of 40 CFR part 60 may include specific provisions which clarify or made inapplicable the provisions set forth in this section.

(h) Performance Tests:

(i) The owner or operator of an affected facility shall conduct performance test(s) within the times specified in Chapter 6, Section 2(j) and furnish the Administrator a written report of the results of such performance test(s).

(ii) Performance tests shall be conducted and data reduced in accordance with the test methods and procedures contained in each applicable subpart unless the Administrator (1) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology; (2) obtains approval from the EPA Administrator for use of an equivalent method; (3) obtains approval from the EPA Administrator for use of an alternative method the results of which he had determined to be adequate for indicating whether a specific source is in compliance; (4) waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means to the Administrator's satisfaction that the affected facility is in compliance with the standard; or (5) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Nothing in this paragraph shall be construed to abrogate the Administrator's authority to require other testing.

(iii) Performance tests shall be conducted under such conditions as the Administrator shall specify to the plant operator based on representative performance of the affected facility. The owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of the performance tests. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of start-up, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.

(iv) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(A) Sampling ports adequate for test methods applicable to such facility. This includes:

(I) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and;

(II) Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

(B) Safe sampling platform(s);

(C) Safe access to sampling platform(s);

(D) Utilities for sampling and testing equipment.

(v) Unless otherwise specified in the applicable subpart, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's control, compliance may, upon the Administrator's approval, be determined using the arithmetic mean of the results of the two other runs.

(i) Compliance With Standards and Maintenance Requirements:

(i) Compliance with standards in this section, other than opacity standards, shall be determined by performance tests established by Chapter 5, Section 2(h), unless otherwise specified in the applicable standard.

(ii) Compliance with opacity standards in this section shall be determined by conducting observations in accordance with Reference Method 9 in 40 CFR part 60, Appendix A or any alternative method that is approved by the EPA Administrator, or as provided in paragraph (v)(D) of this section. For purposes of determining initial compliance, the minimum total time of observations shall be 3 hours (30 6-minute averages) for the performance test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard).

(iii) The opacity standards set forth in this section shall apply at all times except during periods of start-up, shutdown, malfunction, and as otherwise provided in the applicable standard.

(iv) At all times, including periods of start-up, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(v) (A) For the purpose of demonstrating initial compliance, opacity observations shall be conducted concurrently with the initial performance test required in Chapter 5, Section 2(h) unless one of the following conditions apply. If no performance test under Chapter 5, Section 2(h) is required, then opacity observations shall be conducted within 60 days after achieving the maximum production rate at which the affected facility will be operated but no later than 180 days after initial start-up of the facility. If visibility or other conditions prevent the opacity observations from being conducted concurrently with the initial performance test required under Chapter 5, Section 2(h), the source owner or operator shall reschedule the opacity observations as soon after the initial performance test as possible, but not later than 30 days thereafter, and shall advise the Administrator of the rescheduled date. In these cases, the 30-day prior notification to the Administrator required in Chapter 5, Section 2(g)(i)(D) shall be waived. The rescheduled opacity observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under Chapter 5, Section 2(h). The visible emissions observer shall determine whether visibility or other conditions prevent the opacity observations from being made concurrently with the initial performance test in accordance with procedures contained in Reference Method 9 of 40 CFR part 60, Appendix A. Opacity reading of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. The owner or operator of an affected facility shall make available, upon request by the Administrator, any records as may be necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification. Except as provided in paragraph (v)(D) of this section, the results of continuous monitoring by transmissometer which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the source shall meet the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in 40 CFR part 60, Appendix B, has been properly maintained and (at the time of the alleged violation) that the resulting data have not been altered in any way.

(I) The inability of an owner or operator to secure a visible emissions observer shall not be considered a reason for not conducting the opacity observations concurrent with the initial performance test.

(B) The owner or operator of an affected facility to which an opacity standard in this section applies shall conduct opacity observations in accordance with Chapter 5, Section 2(i)(ii), shall record the opacity of emissions, and shall report to the Administrator the opacity results along with the results of the initial performance test required under Chapter 5, Section 2(h).

(C) An owner or operator of an affected facility using a continuous opacity monitor (transmissometer) shall record the monitoring data produced during the initial performance test required by Chapter 5, Section 2(h) and furnish the Administrator a written report of the monitoring results along with Method 9 and Chapter 5, Section 2(h) performance test results.

(D) An owner or operator of an affected facility subject to an opacity standard may submit, for compliance purposes, continuous opacity monitoring system (COMS) data results produced during any performance test required under Chapter 5, Section 2(h) in lieu of Method 9 observation data. If an owner or operator elects to submit COMS data for compliance with the opacity standard, he shall notify the Administrator of that decision in writing, at least 30 days before any performance test required under Chapter 5, Section 2(h) is conducted. Once the owner or operator of an affected facility has notified the Administrator to that Effect, the COMS data results will be used to determine opacity compliance during subsequent tests required under Chapter 5, Section 2(h) until the owner or operator notifies the Administrator in writing to the contrary. For the purpose of determining compliance with the opacity standard during a performance test required under Chapter 5, Section 2(h) using COMS data the minimum total time of COMS data collection shall be averages of all 6-minute continuous periods within the duration of the mass emission performance test. Results of the COMS opacity determinations shall be submitted along with the results of the performance test required under Chapter 5, Section 2(h). The owner or operator of an affected facility using a COMS for compliance purposes is responsible for demonstrating that the COMS meets the requirements specified in Chapter 5, Section 2(j)(iii) of this section, that the COMS has been properly maintained and operated, and that the resulting data have not been altered in any way. If COMS data results are submitted for compliance with the opacity standard for a period of time during which Method 9 data indicates noncompliance, the Method 9 data will be used to determine opacity compliance.

(E) Upon receipt from an owner or operator of the written reports of the results of the performance tests required by Chapter 5, Section 2(h), the opacity observation results and observer certification required by Chapter 5, Section 2(i)(v)(A) and the COMS results, if applicable, the Administrator will make a finding concerning compliance with opacity and other applicable standards. If COMS data results are used to comply with an opacity standard, only those results are required to be submitted along with the performance test results required by Chapter 5, Section 2(h). If the Administrator finds that an affected facility is in compliance with all applicable standards for which performance tests are conducted in accordance with Chapter 5, Section 2(h) of this section but during the time such performance tests are being conducted fails to meet any applicable opacity standard, he shall notify the owner or operator and advise him that

he may petition the Administrator within 10 days of receipt of notification to make appropriate adjustment to the opacity standard for the affected facility. The notifications received requesting adjustments to the opacity standard of the affected facility will be forwarded to EPA for resolution.

(vi) Special provisions set forth under an applicable subpart in 40 CFR part 60 shall supersede any conflicting provisions in this section.

(vii) For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this section, nothing in this section shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with the applicable requirements if the appropriate performance or compliance test or procedure had been performed.

(j) Monitoring Requirements:

(i) For the purposes of this section, all continuous monitoring systems required under applicable subparts shall be subject to the provisions of this section upon promulgation of performance specifications for continuous monitoring systems under 40 CFR part 60, Appendix B and, if the continuous monitoring system is used to demonstrate compliance with emission limits on a continuous basis, 40 CFR part 60, Appendix F, unless otherwise specified in an applicable subpart or by the Administrator. Appendix F is applicable December 4, 1987.

(ii) All continuous monitoring systems and monitoring devices shall be installed and operational prior to conducting performance tests under Chapter 5, Section 2(h). Verification of operational status shall, as a minimum, include completion of manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(iii) If the owner or operator of an affected facility elects to submit continuous opacity monitoring system (COMS) data for compliance with the opacity standard as provided under Chapter 5, Section 2(i)(v)(D), he shall conduct a performance evaluation of the COMS as specified in Performance Specification 1, 40 CFR part 60, Appendix B, before the performance test required under Chapter 5, Section 2(h) is conducted. Otherwise, the owner or operator of an affected facility shall conduct a performance evaluation of the COMS or continuous emission monitoring system (CEMS) during any performance test required under Chapter 5, Section 2(h) or within 30 days thereafter in accordance with the applicable performance specification in 40 CFR part 60, Appendix B. The owner or operator of an affected facility shall conduct COMS or CEMS performance evaluations at such other times as may be required by the Administrator.

(A) The owner or operator of an affected facility using a COMS to determine opacity compliance during any performance test required under Chapter 5,

Section 2(h) and as described in Chapter 5, Section 2(i)(v)(D) shall furnish the Administrator two or, upon request, more copies of a written report of the results of the COMS performance evaluation described in paragraph (iii) of this section at least 10 days before the performance test required under Chapter 5, Section 2(h) is conducted.

(B) Except as provided in paragraph (iii)(A) of this section, the owner or operator of an affected facility shall furnish the Administrator within 60 days of completion two or, upon request, more copies of a written report of the results of the performance evaluation.

(C) These continuous monitoring system performance evaluations, except as provided in paragraph (x) of this section shall be conducted in accordance with the requirements and procedures contained in the applicable performance specification of 40 CFR part 60, Appendix B as follows:

(I) Continuous monitoring systems for measuring opacity of emissions installed on or after March 30, 1983 shall comply with all the provisions and requirements in Performance Specification 1: continuous monitoring systems for measuring opacity of emissions installed before March 30, 1983 are required to comply with the provisions and requirements of Performance Specification 1 except for the following:

(1.) Section 4 - Installation specifications.

(2.) Paragraphs 5.1.4 - Optical alignment sight, 5.1.6 - Access to external optics, 5.1.7 - Automatic zero compensation indicator, and 5.1.8 - Slotted tube of Section 5 - Design and Performance Specification 1.

(3.) Paragraph 6.4 - Optical alignment sight of Section 6. Design specifications verification procedure.

If an existing opacity monitoring system is replaced on or after March 30, 1983, the new opacity monitoring system shall comply with the requirements of Performance Specification 1, except the new monitoring system may be located at the same measurement location as for the replaced monitoring system. If a new measurement location is to be determined at the time of replacement, the new location must meet the requirements of Performance Specification 1.

(II) Continuous monitoring systems for measuring nitrogen oxides emissions shall comply with Performance Specification 2.

(III) Continuous monitoring systems for measuring sulfur dioxide emissions shall comply with Performance Specification 2.

(IV) Continuous monitoring systems for measuring the oxygen content or carbon dioxide content of effluent gases shall comply with Performance Specification 3.

(iv) (A) Owners and operators of all continuous emission monitoring systems installed in accordance with the provisions of this section shall check the zero (or low-level value between 0 and 20 percent of span value) and span (50 to 100 percent of span value) calibration drifts at least once daily in accordance with a written procedure. The zero and span shall, as a minimum, be adjusted whenever the 24-hour zero drift or 24-hour span drift exceeds two times the limits of the applicable performance specifications in 40 CFR part 60, Appendix B. The system must allow the amount of excess zero and span drift measured at the 24-hour interval checks to be recorded and quantified, whenever specified. For continuous monitoring systems measuring opacity of emissions, the optical surfaces exposed to the effluent gases shall be cleaned prior to performing the zero and span drift adjustments except that for systems using automatic zero adjustments, the optical surfaces shall be cleaned when the cumulative zero compensation exceeds 4 percent opacity.

(B) Unless otherwise approved by the Administrator, the following procedures shall be followed for continuous monitoring systems measuring opacity of emissions. Minimum procedures shall include a method for producing a simulated zero opacity condition and an upscale (span value) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photodetector assembly.

(v) Except for system breakdown, repairs, calibration checks, and zero and span adjustments required under paragraph (iv) of this section, all continuous monitoring systems shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:

(A) All continuous monitoring systems referenced by paragraphs (iii)(A) and (B) of this section for measuring opacity of emissions shall complete a minimum of one cycle of sampling and analyzing for each successive ten-second period and one cycle of data recording for each successive six-minute period.

(B) All continuous monitoring systems referenced by paragraphs (iii)(A) and (B) of this section for measuring emissions, except opacity shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(vi) All continuous monitoring systems or monitoring devices shall be installed such that representative measurements of emissions or process parameters from the affected facility are obtained. Additional procedures for location of continuous

monitoring systems contained in the applicable Performance Specifications of 40 CFR part 60, Appendix B of this section shall be used.

(vii) When the effluents from a single affected facility or two or more affected facilities subject to the same emission standards are combined before being released to the atmosphere, the owner or operator may install applicable continuous monitoring systems on each effluent or on the combined effluent. When the affected facilities are not subject to the same emissions standards, separate continuous monitoring systems shall be installed on each effluent. When the effluent from one affected facility is released to the atmosphere through more than one point, the owner or operator shall install applicable continuous monitoring systems on each separate effluent unless the installation of fewer systems is approved by the Administrator. When more than one continuous monitoring system is used to measure the emissions from one affected facility (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required from each continuous monitoring system.

(viii) Owners or operators of all continuous monitoring systems for measurement of opacity shall reduce all data to six-minute averages and for systems other than opacity to one-hour averages for time period defined under Chapter 5, Section 2(c)(i). Six-minute opacity averages shall be calculated from 36 or more data points equally spaced over each six-minute period. For systems other than opacity, one-hour averages shall be computed from four or more data points equally spaced over each one-hour period. Data recorded during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in the data averages computed under this paragraph. An arithmetic or integrated average of all data may be used. The data output of all continuous monitoring systems may be recorded in reduced or non-reduced form (e.g., ppm pollutant and percent O₂ or lb/million Btu of pollutant). All excess emissions shall be converted into units of the standard using the applicable conversion procedures specified in subparts. After conversion into units of the standard, the data may be rounded to the same number of significant digits used in subparts to specify the applicable standard (e.g., rounded to the nearest one percent opacity).

(ix) Upon written application by an owner or operator, the Administrator may approve alternatives to any monitoring procedures or requirements of this section including, but not limited to the following:

(A) Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by this section would not provide accurate measurements due to liquid water or other interferences caused by substances with the effluent gases.

(B) Alternative monitoring requirements when the affected facility is infrequently operated.

(C) Alternative monitoring requirement to accommodate continuous monitoring systems that require additional measurements to correct for stack moisture conditions.

(D) Alternative locations for installing continuous monitoring systems or monitoring devices when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements.

(E) Alternative methods of converting pollutant concentration measurements to units of the standards.

(F) Alternative procedures for performing daily checks of zero and span drift that do not involve use of span gases or test cells.

(G) Alternatives to the A.S.T.M. test methods or sampling procedures specified by any subpart.

(H) Alternative continuous monitoring systems that do not meet the design or performance requirements in Performance Specification 1 of 40 CFR part 60, Appendix B, but adequately demonstrate a definite and consistent relationship between its measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1. The Administrator may require that such demonstration be performed for each affected facility.

(I) Alternative monitoring requirements when the effluent from a single affected facility or the combined effluent from two or more affected facilities are released to the atmosphere through more than one point.

(x) An alternative to the relative accuracy test specified in Performance Specification 2 of 40 CFR part 60, Appendix B may be requested as follows:

(A) An alternative to the reference method tests for determining relative accuracy is available for sources with emission rates demonstrated to be less than 50 percent of the applicable standard. A source owner or operator may petition the Administrator to waive the relative accuracy test in Section 7 of Performance Specification 2 and substitute the procedures in Section 10 if the results of the performance test conducted according to the requirements in Chapter 5, Section 2(h) of this section or other tests performed following the criteria in Chapter 5, Section 2(h) demonstrate that the emission rate of the pollutant of interest in the units of the applicable standard is less than 50 percent of the applicable standard. For sources subject to standards expressed as control efficiency levels, a source owner or operator may petition the Administrator to waive the relative accuracy test and substitute the procedures in Section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement. The alternative procedures do not apply if the continuous emission monitoring system is used to determine compliance continuously with the applicable standard. The petition to

waive the relative accuracy test shall include a detailed description of the procedures to be applied. Included shall be location and procedure for conducting the alternative, the concentration or response levels of the alternative RA materials, and the other equipment checks included in the alternative procedure. The Administrator will review the petition for completeness and applicability. The determination to grant a waiver will depend on the intended use of the CEMS data (e.g., data collection purposes other than NSPS) and may require specifications more stringent than in Performance Specification 2 (e.g., the applicable emission limit is more stringent than NSPS).

(B) The waiver of CEMS relative accuracy test will be reviewed and may be rescinded at such time following successful completion of the alternative RA procedure that the CEMS data indicate the source emissions approaching the level of the applicable standard. The criterion for reviewing the waiver is the collection of CEMS data showing that emissions have exceeded 70 percent of the applicable standard for seven consecutive averaging periods as specified by the applicable regulation(s). For sources subject to standards expressed as control efficiency levels, the criterion for reviewing the waiver is the collection of CEMS data showing that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for seven consecutive averaging periods as specified by the applicable regulation(s). It is the responsibility of the source operator to maintain records and determine the level of emissions relative to the criterion on the waiver of relative accuracy testing. If this criterion is exceeded, the owner or operator must notify the Administrator within 10 days of such occurrence and include a description of the nature and cause of increasing emissions. The Administrator will review the notification and may rescind the waiver and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in Section 7 of Performance Specification 2.

(k) Modification:

(i) Except as provided under paragraphs (iv) and (v) of this section, any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification. Upon modification, an existing facility shall become an affected facility for each pollutant to which a standard applies and for which there is an increase in the emission rate to the atmosphere.

(ii) Emission rate shall be expressed as kg/hr of any pollutant discharged into the atmosphere for which a standard is applicable. The Administrator shall use the following to determine emission rate:

(A) Emission factors as specified in the latest issue of "Compilation of Air Pollutant Emission Factors", EPA Publication No. AP-42, or other emission factors determined by the Administrator to be superior to AP-42 emission factors, in cases where utilization of emission factors demonstrate that the emission level resulting from the physical or operational change will either clearly increase or clearly not increase.

(B) Material balances, continuous monitor data, or manual emission tests in cases where utilization of emission factors as referenced in paragraph (ii)(A) of this section does not demonstrate to the Administrator's satisfaction whether the emission level resulting from the physical or operational change will either clearly increase or clearly not increase, or where an owner or operator demonstrates to the Administrator's satisfaction that there are reasonable grounds to dispute the result obtained by the Administrator utilizing emission factors as referenced in paragraph (ii)(A) of this section. When the emission rate is based on results from manual emission tests or continuous monitoring systems, the procedures specified in 40 CFR part 60, Appendix C shall be used to determine whether an increase in emission rate has occurred. Tests shall be conducted under such conditions as the Administrator shall specify to the owner or operator based on representative performance of the facility. At least three valid test runs must be conducted before and at least three after the physical or operational change. All operating parameters which may affect emissions must be held constant to the maximum feasible degree for all test runs.

(iii) The addition of an affected facility to a stationary source as an expansion to that source or as a replacement for an existing facility shall not by itself bring within the applicability of this section any other facility within that source.

(iv) The following shall not, by themselves, be considered modifications under this section:

(A) Maintenance, repair, and replacement which the Administrator determines to be routine for a source category, subject to the provisions of paragraph (iii) of this section and Chapter 5, Section 2(I).

(B) An increase in production rate of an existing facility, if that increase can be accomplished without a capital expenditure on that facility.

(C) An increase in the hours of operation.

(D) Use of an alternative fuel or raw material if, prior to the date any standard under this section becomes applicable to that source type, as provided by Chapter 5, Section 2(d), the existing facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications, as amended, prior to the change. Conversion to coal required for energy considerations as specified in section 111(a)(8) of the Act, shall not be considered a modification.

(E) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

(F) The relocation or change in ownership of an existing facility.

(v) Special provisions set forth under an applicable subpart shall supersede any conflicting provisions of Chapter 5, Section 2(k).

(vi) Within 180 days of the completion of any physical or operational change subject to the control measures specified in paragraphs 2(k)(i) of this section, compliance with all applicable standards must be achieved.

(vii) No physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for the purposes of this subsection provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this subsection above the maximum hourly emissions achievable at that unit during the 5 years prior to the change.

(viii) Repowering projects that are awarded funding from the Department of Energy as permanent clean coal technology demonstration projects (or similar projects funded by EPA) are exempt from the requirements of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the five years prior to the change.

(ix) (A) Repowering projects that qualify for an extension under section 409(b) of the Clean Air Act are exempt from the requirements of this section, provided that such change does not increase the actual hourly emissions of any pollutant regulated under this section above the actual hourly emissions achievable at that unit during the 5 years prior to the change.

(B) This exemption shall not apply to any new unit that:

(I) Is designated as a replacement for an existing unit;

(II) Qualifies under section 409(b) of the Clean Air Act for an extension of an emission limitation compliance date under section 405 of the Clean Air Act; and

(III) Is located at a different site than the existing unit.

(x) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project is exempt from the requirements of this section. A temporary clean coal control technology demonstration project, for the purposes of this section is a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plan for the state in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

(xi) The reactivation of a very clean coal-fired electric utility steam generating unit is exempt from the requirements of this section.

(l) Reconstruction:

(i) An existing facility, upon reconstruction, becomes an affected facility, irrespective of any change in emission rate.

(ii) **“Reconstruction”** means the replacement of components of an existing facility to such an extent that:

(A) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and

(B) It is technologically and economically feasible to meet the applicable standards set forth in this section.

(iii) **“Fixed capital cost”** means the capital needed to provide all the depreciable components.

(iv) If an owner or operator of an existing facility proposes to replace components, and the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, he shall notify the Administrator of the proposed replacements. The notice must be postmarked 60 days (or as soon as practicable) before construction of the replacements is commenced and must include the following information:

(A) Name and address of the owner or operator.

(B) The location of the existing facility.

(C) A brief description of the existing facility and the components which are to be replaced.

(D) A description of the existing air pollution control equipment and the proposed air pollution control equipment.

(E) An estimate of the fixed capital cost of the replacements and of constructing a comparable entirely new facility.

(F) The estimated life of the existing facility after the replacements.

(G) A discussion of any economic or technical limitations the facility may have in complying with the applicable standards of performance after the proposed replacements.

(v) The Administrator will determine, within 30 days of the receipt of the notice required by paragraph (iv) of this section and any additional information he may reasonably require, whether the proposed replacement constitutes reconstruction.

(vi) The Administrator's determination under paragraph (v) shall be based on:

(A) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(B) The estimated life of the facility after the replacements compared to the life of a comparable entirely new facility;

(C) The extent to which the components being replaced cause or contribute to the emissions from the facility and

(D) Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(vii) Individual subparts may include specific provisions which refine and delimit the concept of reconstruction set forth in this section.

(m) General Control Device Requirements:

(i) This section contains requirements for control devices used to comply with applicable subparts of Chapter 5, Section 2. The requirements are placed here for administrative convenience and only apply to facilities covered by subparts referring to this section.

(ii) Flares:

(A) General Design:

(I) Flares shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (D), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(II) Flares shall be operated with flame present at all times, as determined by the methods specified in paragraph (D).

(III) Flares shall be used only with the net heating value of the gas being combusted being 300 Btu/Scf (11.2 MJ/scm) or greater if the flare is steam-assisted or air-assisted or with the net heating value of the gas being combusted being 200 Btu/scf (7.45 MJ/scm) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (D).

(IV) Steam-assisted and nonassisted flare shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (D)(IV), less than 60 ft/sec (18.3 m/sec) except as follows:

(1.) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in paragraph (D)(IV) equal to or greater than 60 ft/sec (18.3 m/sec) but less than 400 ft/sec (122 m/sec) are allowed if the net heating value of the gas being combusted is greater than 1000 Btu/scf (37.3 MJ/scm).

(2.) Steam-assisted and nonassisted flares designed for and operated with an exit velocity as determined by the methods specified in paragraph (D)(IV), less than the velocity V_{max} , as determined by the method specified in paragraph (D)(V), and less than 400 ft/sec (122 m/sec) are allowed.

(V) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity, V_{max} , as determined by the method specified in paragraph (D)(VI).

(VI) Flares used to comply with this section shall be steam-assisted, air-assisted or nonassisted.

(B) Owners or operators of flares used to comply with the provisions of this section shall monitor these control devices to ensure that they are operated and maintained in conformance with their designs. Applicable subparts will provide provisions stating how owners or operators of flares shall monitor these control devices.

(C) Flares used to comply with the provisions of an applicable subpart shall be operated at all times when emissions may be vented to them.

(D) Determinations:

(I) Reference Method 22 shall be used to determine the compliance of flares with the visible emission provisions of this section. The observation period is 2 hours and shall be used according to Method 22.

(II) The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

(III) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K \sum_{i=1}^n C_i H_i$$

where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25°C and 760 mm Hg, but the standard temperature for determining the value corresponding to one mole is 20°C.

K = Constant,

$$1.740 \times 10^{-7} \left(\frac{1}{ppm} \right) \left(\frac{gmole}{scm} \right) \left(\frac{MJ}{kcal} \right)$$

Where the standard temperature of $\left(\frac{gmole}{scm} \right)$ is 20°C

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by reference method 18 and measured for hydrogen and carbon monoxide by ASTM D1946-90 (2006) Standard Practice for Analysis of Reformed Gas by Gas Chromatography.

H_i = Net heat of combustion of sample component i, kcal/g mole at 25°C and 760 mm Hg. The heats of combustion may be determined using ASTM D4809-00 (2005) Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method) if published values are not available or cannot be calculated.

(IV) The actual exit velocity of a flare shall be determined by dividing the volumetric flowrate (in units of standard temperature and pressure), as determined by reference methods 2, 2A, 2C, or 2D as appropriate; by the unobstructed (free) cross sectional area of the flare tip.

(V) The maximum permitted velocity V_{max} , for flares complying with paragraph (A)(IV)(2.) shall be determined by the following equation:

$$\text{Log}_{10}(V_{\max}) = \frac{H_T + 28.80}{31.7}$$

V_{\max} = Maximum permitted velocity, m/sec

28.8 = Constant

31.7 = Constant

H_T = The net heating value as determined in paragraph (D)(III)

(VI) The maximum permitted velocity, V_{\max} , for air-assisted flares shall be determined by the following equation:

$$V_{\max} = 8.706 + 0.7084(H_T)$$

V_{\max} = Maximum permitted velocity m/sec

8.706 = Constant

0.7084 = Constant

H_T = The net heating value as determined in paragraph (D)(III)

(n) General Notification and Reporting Requirements:

(i) For the purposes of this section, time periods specified in days shall be measured in calendar days, even if the word “calendar” is absent, unless otherwise specified in an applicable requirement.

(ii) For the purposes of this section, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be delivered or postmarked on or before 15 days following the end of the event. The use of reliable non-government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(iii) Notwithstanding time period or postmark deadlines specified in this section for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (vi) of this subsection.

(iv) The owner or operator may change the dates by which periodic reports under this section shall be submitted (without changing the frequency of reporting) to be consistent with the schedule specified in Chapter 5, Section 2, by mutual agreement between the owner or operator and the Administrator. The allowance in the

previous sentence applies in each state beginning 1 year after the affected facility is required to be in compliance with the applicable subpart in 40 CFR part 63. Procedures governing the implementation of this provision are specified in paragraph (vi) of this subsection.

(v) If an owner or operator supervises one or more stationary sources affected by standards set under this section and standards set under 40 CFR part 61, Chapter 5, Section 3 or both, may be arranged by mutual agreement between the owner or operator and the Administrator a common schedule on which periodic reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each state beginning 1 year after the stationary source is required to be in compliance with the applicable subpart in this section, or 1 year after the stationary source is required to be in compliance with the applicable 40 CFR part 61 or Chapter 5, Section 3, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (vi) of this subsection.

(vi) (A) (I) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (vi)(B) and (vi)(C) of this subsection, the owner or operator of an affected facility remains strictly subject to the requirements of this section.

(II) An owner or operator shall request the adjustment provided for in paragraphs (vi)(B) and (vi)(C) of this subsection each time changes to an applicable time period or postmark deadline specified in this section are desired.

(B) Notwithstanding time periods or postmark deadlines specified in this section for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information is considered useful to convince the Administrator that an adjustment is warranted.

(C) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(D) If the Administrator is unable to meet a specified deadline, the owner or operator will be notified of any significant delay and inform the owner or operator of the amended schedule.

Section 3. National emission standards for hazardous air pollutants.

(a) General: The U.S. Environmental Protection Agency regulations on national emission standards for hazardous air pollutants (NESHAP), established pursuant to section 112 of the Act as amended November 15, 1990, and amended by the word or phrase “substitutions” given in Chapter 5, Section 3(c) are incorporated into these regulations. The specific documents containing the complete text of the regulations are found in 40 CFR part 63. The standards designated in Chapter 5, Section 3(b) regulate specific categories of stationary sources that emit (or have the potential to emit) one or more of the hazardous air pollutants listed pursuant to section 112(b) of the Act, and presented in subsection (c)(i)(A) of Chapter 5, Section 3.

(b) Designated National Emission Standards for Hazardous Air Pollutants: The following standards for hazardous air pollutants, as revised and published in 40 CFR part 63, are incorporated by reference under Section 4(a) of this Chapter.

40 CFR part 63, Subpart A -	General Provisions
40 CFR part 63, Subpart D -	Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants
40 CFR part 63, Subpart F -	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
40 CFR part 63, Subpart G -	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
40 CFR part 63, Subpart H -	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks
40 CFR part 63, Subpart M -	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

40 CFR part 63, Subpart N -	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
40 CFR part 63, Subpart R -	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
40 CFR part 63, Subpart T -	National Emission Standards for Halogenated Solvent Cleaning
40 CFR part 63, Subpart AA -	National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants
40 CFR part 63, Subpart BB -	National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants
40 CFR part 63, Subpart CC -	National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries
40 CFR part 63, Subpart HH -	National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities
40 CFR part 63, Subpart JJ -	National Emission Standards for Wood Furniture Manufacturing Operations
40 CFR part 63, Subpart OO -	National Emission Standards for Tanks - Level 1
40 CFR part 63, Subpart PP -	National Emission Standards for Containers
40 CFR part 63, Subpart QQ -	National Emission Standards for Surface Impoundments

40 CFR part 63, Subpart RR -	National Emission Standards for Individual Drain Systems
40 CFR part 63, Subpart SS -	National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
40 CFR part 63, Subpart TT -	National Emission Standards for Equipment Leaks - Control Level 1
40 CFR part 63, Subpart UU -	National Emission Standards for Equipment Leaks - Control Level 2 Standards
40 CFR part 63, Subpart VV -	National Emission Standards for Oil-Water Separators and Organic-Water Separators
40 CFR part 63, Subpart WW -	National Emission Standards for Storage Vessels (Tanks) - Control Level 2
40 CFR part 63, Subpart YY -	National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards
40 CFR part 63, Subpart EEE -	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors
40 CFR part 63, Subpart HHH -	National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities
40 CFR part 63, Subpart LLL -	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

40 CFR part 63, Subpart UUU -	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units
40 CFR part 63, Subpart VVV -	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works
40 CFR part 63, Subpart AAAA -	National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills
40 CFR part 63, Subpart EEEE -	National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)
40 CFR part 63, Subpart KKKK -	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans
40 CFR part 63, Subpart TTTT -	National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations
40 CFR part 63, Subpart YYYY -	National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines
40 CFR part 63, Subpart ZZZZ -	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines
40 CFR part 63, Subpart AAAAA -	National Emissions Standards for Hazardous Air Pollutants for Lime Manufacturing Plants
40 CFR part 63, Subpart GGGGG -	National Emission Standards for Hazardous Air Pollutants: Site Remediation

40 CFR part 63, Subpart MMMMM -	National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations
40 CFR part 63, Subpart NNNNN -	National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production
40 CFR part 63, Subpart BBBBB -	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities
40 CFR part 63, Subpart WWWW -	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations

~~The following additional standard for hazardous air pollutants, not including later amendments, is adopted by reference from the *Federal Register*, as published by the National Archives and Records Administration. *Federal Register* publishing date, volume and pages for the standard is noted below.~~

~~September 13, 2004 40 CFR part 63 National Emission Standards for
Vol. 69, P. 55218 Subpart DDDDD Hazardous Air Pollutants for
Industrial, Commercial, and
Institutional Boilers and Process
Heaters~~

(i) Designated Appendices: The following appendices are incorporated by reference under Section 4(a) of this Chapter.

40 CFR part 63, Appendix A - Test Methods

40 CFR part 63, Appendix B - Sources Defined For Early Reduction Provisions

40 CFR part 63, Appendix C - Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit

40 CFR part 63, Appendix D - Alternative Validation Procedure for EPA Waste and Wastewater Methods

40 CFR part 63, Appendix E - Monitoring Procedure for Nonthoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions

(c) Initial Applicability Determination For This Section.

(i) The provisions of this section apply to the owner or operator of any stationary source that:

(A) Emits or has the potential to emit any hazardous air pollutant listed in or pursuant to section 112(b) of the Act, and identified below:

CAS Number	Chemical Name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane

CAS Number	Chemical Name
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)

CAS Number	Chemical Name
75003	Ethyl chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1, 6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea

CAS Number	Chemical Name
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
95476	o-Xylenes

CAS Number	Chemical Name
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds *1
0	Glycol ethers *2
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers *3
0	Nickel Compounds
0	Polycyclic Organic Matter *4
0	Radionuclides (including radon) *5
0	Selenium Compounds

NOTE: For all listings above which contain the word “compounds” and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical’s infrastructure.

*1 X'CN where X=H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂

*2 Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH₂CH₂)_n-OR' where

n = 1, 2, or 3

R = alkyl or aryl groups

R' = R, H, or groups which, when removed, yield glycol ethers with the structure:

R-(OCH₂CH₂)_n-OH. Polymers are excluded from the glycol category.

*3 Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

*4 Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

*5 A type of atom which spontaneously undergoes radioactive decay.

and,

(B) Is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to 40 CFR part 63.

(ii) In addition to complying with the provisions of this section, the owner or operator of any such source may need to obtain a permit for modification or construction in accordance with Chapter 6, Section 2 of the WAQSR. The owner or operator may also need to obtain an operating permit issued in accordance with Chapter 6, Section 3 of the WAQSR.

(d) General provisions for the subparts listed in Chapter 5, Section 3(b) are contained in Subpart A of 40 CFR part 63 and are incorporated by reference under Section 4(a) of this chapter, unless superseded by requirements in the specific subparts.

Section 4. Incorporation by reference.

(a) Code of Federal Regulations (CFR). All Code of Federal Regulations (CFRs), including their Appendices, cited in this Chapter, revised and published as of July 1, 2010, not including any later amendments, are incorporated by reference. Copies of the Code of Federal Regulations are available for public inspection and copies can be obtained at cost from the Department of Environmental Quality, Division of Air Quality, 122 W. 25th Street, Cheyenne, Wyoming 82002. Copies of the CFRs can also be obtained at cost from Government Institutes, 15200 NBN Way, Building B, Blue Ridge Summit, PA 17214.

(b) American Society for Testing and Materials (ASTM). All ASTM standards cited in this Chapter, revised and published as of July 1, 2010, not including any later amendments, are incorporated by reference. Copies of the ASTM standards are available for public inspection and copies can be obtained at cost from the Department of Environmental Quality, Division of Air Quality, 122 W. 25th Street, Cheyenne, Wyoming 82002. Copies can also be obtained at cost from the American Society for Testing and Materials, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959.

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

National Emission Standards

CHAPTER 5

TABLE OF CONTENTS

Section 1.	Introduction to national emission standards	5-1
Section 2.	New source performance standards	5-1
Section 3.	National emission standards for hazardous air pollutants.....	5-35
Section 4.	Incorporation by reference.....	5-45

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

National Emission Standards

CHAPTER 5

Section 1. Introduction to national emission standards.

(a) This Chapter incorporates emission control regulations developed by the Environmental Protection Agency for specific source categories. The State of Wyoming, Air Quality Division adopts these Federal Regulations in order to maintain administrative authority with regards to the standards. Section 2 contains New Source Performance Standards (NSPS) which regulate criteria pollutant emissions from specific categories of new sources. Section 3 contains National Emission Standards for Hazardous Air Pollutants (NESHAP) which regulates hazardous air pollutant emissions from specific categories of new and existing sources. Section 4 incorporates by reference all Code of Federal Regulations (CFRs), including their Appendices, cited in this Chapter and all American Society for Testing and Materials (ASTM) standards cited in this Chapter.

Section 2. New source performance standards.

(a) General: The U.S. Environmental Protection Agency regulations on Standards of Performance for New Stationary Sources, designated in Chapter 5, Section 2(b) and as amended by the word or phrase “substitutions” given in Chapter 5, Section 2(c), are incorporated into these regulations. The specific documents containing the complete text of the regulations are found in 40 CFR part 60.

(b) Designated Standards of Performance: The following Standards of Performance are incorporated by reference under Section 4(a) of this Chapter.

40 CFR part 60, Subpart D -	Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971
40 CFR part 60, Subpart Da -	Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978
40 CFR part 60, Subpart Db -	Standards of performance for Industrial-Commercial-Institutional Steam Generating Units

40 CFR part 60, Subpart Dc -	Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units
40 CFR part 60, Subpart Ea -	Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994
40 CFR part 60, Subpart Eb -	Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996
40 CFR part 60, Subpart Ec -	Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996
40 CFR part 60, Subpart F -	Standards of Performance for Portland Cement Plants
40 CFR part 60, Subpart G -	Standards of Performance for Nitric Acid Plants
40 CFR part 60, Subpart H -	Standards of Performance for Sulfuric Acid Plants
40 CFR part 60, Subpart I -	Standards of Performance for Hot Mix Asphalt Facilities
40 CFR part 60, Subpart J -	Standards of Performance for Petroleum Refineries
40 CFR part 60, Subpart Ja -	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007
40 CFR part 60, Subpart K -	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978

40 CFR part 60, Subpart Ka -	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984
40 CFR part 60, Subpart Kb -	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984
40 CFR part 60, Subpart T -	Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants
40 CFR part 60, Subpart U -	Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants
40 CFR part 60, Subpart V -	Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants
40 CFR part 60, Subpart W -	Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants
40 CFR part 60, Subpart X -	Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
40 CFR part 60, Subpart Y -	Standards of Performance for Coal Preparation Plants
40 CFR part 60, Subpart DD -	Standards of Performance for Grain Elevators
40 CFR part 60, Subpart GG -	Standards of Performance for Stationary Gas Turbines
40 CFR part 60, Subpart HH -	Standards of Performance for Lime Manufacturing Plants

40 CFR part 60, Subpart NN -	Standards of Performance for Phosphate Rock Plants
40 CFR part 60, Subpart VV -	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006
40 CFR part 60, Subpart VVa -	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
40 CFR part 60, Subpart WW -	Standards of Performance for the Beverage Can Surface Coating Industry
40 CFR part 60, Subpart XX -	Standards of Performance for Bulk Gasoline Terminals
40 CFR part 60, Subpart AAA -	Standards of Performance for New Residential Wood Heaters
40 CFR part 60, Subpart GGG -	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006
40 CFR part 60, Subpart GGGa -	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
40 CFR part 60, Subpart JJJ -	Standards of Performance for Petroleum Dry Cleaners
40 CFR part 60, Subpart KKK -	Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants

40 CFR part 60, Subpart LLL -	Standards of Performance for Onshore Natural Gas Processing: SO ₂ Emissions
40 CFR part 60, Subpart OOO -	Standards of Performance for Nonmetallic Mineral Processing Plants
40 CFR part 60, Subpart QQQ -	Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems
40 CFR part 60, Subpart UUU -	Standards of Performance for Calciners and Dryers in Mineral Industries
40 CFR part 60, Subpart WWW -	Standards of Performance for Municipal Solid Waste Landfills
40 CFR part 60, Subpart AAAA -	Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001
40 CFR part 60, Subpart CCCC -	Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced on or After June 1, 2001
40 CFR part 60, Subpart EEEE -	Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006
40 CFR part 60, Subpart IIII -	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines
40 CFR part 60, Subpart JJJJ -	Standards of Performance for Stationary Spark Ignition Internal Combustion Engines
40 CFR part 60, Subpart KKKK -	Standards of Performance for Stationary Combustion Turbines

(i) Designated Appendices. The following appendices are incorporated by reference under Section 4(a) of this Chapter.

40 CFR part 60, Appendix A - Test Methods

40 CFR part 60, Appendix B - Performance Specifications

40 CFR part 60, Appendix C - Determination of Emission Rate Change

40 CFR part 60, Appendix D - Required Emission Inventory Information

40 CFR part 60, Appendix F - Quality Assurance Procedures

40 CFR part 60, Appendix I - Removable Label and Owner's Manual

(c) Word or Phrase Substitutions: In the standards designated in Chapter 5, Section 2(b) substitute:

- (i) Chapter 5, Section 2 for Subpart A
- (ii) Chapter 5, Section 2(h) for 60.8
- (iii) Chapter 5, Section 2(g) for 60.7
- (iv) Chapter 5, Section 2(m) for 60.18
- (v) Chapter 5, Section 2(e)(i) for 60.2
- (vi) Chapter 5, Section 2(e)(ii) for 60.3
- (vii) Chapter 5, Section 2(i) for 60.11
- (viii) Chapter 5, Section 2(j) for 60.13
- (ix) Chapter 5, Section 2(k) for 60.14
- (x) Chapter 5, Section 2(l) for 60.15
- (xi) Chapter 6, Section 2(b)(i) for 60.5 and 60.6
- (xii) Chapter 6, Section 2(i) for 60.7(a)(2) and (3)
- (xiii) Chapter 6, Section 2(j) for 60.8(a) and (d)
- (xiv) Section 35-11-1101 Environmental Quality Act for 60.9
- (xv) Chapter 1, Section 4 for 60.12
- (xvi) Chapter 5, Section 2(n) for 60.19

(d) Applicability: The provisions of Chapter 5, Section 2 are applicable to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication of any proposed standard as designated in the applicable subparts of the Standards of Performance referenced in Chapter 5, Section 2(b) and contained in 40 CFR part 60.

(i) In addition to complying with the provisions of this section, the Owner or Operator of an affected facility may be required to obtain an operating permit issued to stationary sources by the Administrator pursuant to Title V of the Clean Air Act (Act) as

amended November 15, 1990 (42 U.S.C. 7661). For more information about obtaining an operating permit see Chapter 6, Section 3.

(e) Definitions and Abbreviations: The following terms are explicitly defined for use in this section. As used in this section, all terms not defined herein shall have the meaning given to them in Chapter 1, Section 3.

(i) Definitions:

“Act” means the Clean Air Act (42 U.S.C. 7401 et seq.).

“Administrator” means the Administrator of the Division of Air Quality, Wyoming Department of Environmental Quality, except for those authorities which cannot be delegated to the state, in which case “administrator” means both the administrator of the Environmental Protection Agency and the Administrator of the Division of Air Quality, Wyoming Department of Environmental Quality.

“Affected facility” means, with reference to a stationary source, any apparatus to which a standard is applicable.

“Alternative method” means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the Administrator’s satisfaction to, in some specific cases, produce results adequate for his determination of compliance.

“Capital expenditure” means an expenditure for a physical or operational change to an existing facility which exceeds the product of the applicable “annual asset guideline repair allowance percentage” specified in the latest edition of Internal Revenue Service (IRS) Publication 534 and the existing facility’s basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any “excluded additions” as defined in IRS Publication 534, as would be done for tax purposes.

“Clean coal technology demonstration project” means a project using funds appropriated under the heading ‘Department of Energy-Clean Coal Technology’, up to a total amount of \$2,500,000,000 for commercial demonstrations of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency.

“Commenced”, as applied to construction or modification of any new facility or source, means that the owner or operator has obtained a Construction Permit required by Chapter 6, Section 2 or either has (i) begun, or caused to begin, a continuous program of physical on-site construction or modification of the facility or (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction or modification of the facility to be completed within a reasonable time.

“Construction” means fabrication, erection, or installation of an affected facility.

“Continuous monitoring system” means the total equipment, required under the emission monitoring sections, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

“Electric utility steam generating unit” means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

“Equivalent method” means any method of sampling and analyzing for an air pollutant which has been demonstrated to the Administrator’s satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

“Excess emissions and monitoring systems performance report” is a report that must be submitted periodically by a source in order to provide data on its compliance with stated emission limits and operating parameters, and on the performance of its monitoring systems.

“Existing facility” means, with reference to a stationary source, any apparatus of the type for which a standard is promulgated in this section, and the construction or modification of which was commenced before the date of proposal of that standard; or any apparatus which could be altered in such a way as to be of that type.

“Isokinetic sampling” means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

“Issuance” of an operating permit will occur, in accordance with Chapter 6, Section 3.

“Malfunction” means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

“Monitoring device” means the total equipment, required under the monitoring of operations sections, used to measure and record (if applicable) process parameters.

“Nitrogen oxides” means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in this section.

“One-hour period” means any 60-minute period commencing on the hour.

“Opacity” means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

“Operating permit” or “part 70 permit” means any permit or group of permits covering a source under Chapter 6, Section 3 that is issued, renewed, amended or revised pursuant to Chapter 6, Section 3.

“Owner or operator” means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part.

“Particulate matter” means any finely divided solid or liquid material, other than uncombined water, as measured by the reference methods specified under each subpart, or an equivalent or alternative method.

“Permit program” means the comprehensive State operating permit system established pursuant to Title V of the Act (42 U.S.C. 7661) and regulations in Chapter 6, Section 3.

“Proportional sampling” means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.

“Reactivation of a very clean coal-fired electric utility steam generating unit” means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(A) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority’s emissions inventory at the time of enactment;

(B) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(C) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(D) Is otherwise in compliance with the requirements of the Clean Air Act.

“Reference method” means any method of sampling and analyzing for an air pollutant as specified in the applicable subpart.

“Repowering” means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator of EPA, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

“Run” means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

“Shutdown” means the cessation of operation of an affected facility for any purpose.

“Six-minute period” means any one of the 10 equal parts of a one-hour period.

“Standard” means a standard of performance proposed or promulgated under this section.

“Standard conditions” means a temperature of 293°K (68°F) and a pressure of 101.3 Kilopascals of Hg (29.92 in. of Hg).

“Start-up” means the setting in operation of an affected facility for any purpose.

“State” means the Wyoming Air Quality Division which has been delegated authority to implement:

(A) The provisions of this section; and/or

(B) The permit program established under 40 CFR part 70.

“Stationary source” means any building, structure, facility, or installation which emits or may emit any air pollutant.

“Volatile organic compounds” means any organic compound which participates in atmospheric photochemical reactions; or which is measured by a reference method, an equivalent method, an alternative method, or which is determined by procedures specified under any subpart.

(ii) Abbreviations:

A	ampere
A.S.T.M.	American Society for Testing and Materials
Btu	British thermal unit
cal	calorie
CdS	Cadmium sulfide
cfm	cubic feet per minute
CO	carbon monoxide
CO ₂	carbon dioxide
°C	degree Celsius (centigrade)
°F	degree Fahrenheit
°K	degree Kelvin
°R	degree Rankine
dscm	dry cubic meter(s) at standard conditions
dscf	dry cubic feet at standard conditions
eq	equivalents
g	gram(s)
gal	gallon(s)
g eq	gram equivalents
gr	grain(s)
HCl	hydrochloric acid
Hg	mercury
hr	hour(s)
H ₂ O	water
H ₂ S	hydrogen sulfide
H ₂ SO ₄	sulfuric acid
Hz	hertz
in	inch(es)
J	joule
k	1,000
kg	kilogram(s)
l	liters
lb	pound(s)
lpm	Liter(s) per minute
m	meter(s)
meq	milliequivalent(s)
mg	milligram(s)
Mg	megagram - 10 ⁶ gram
min	minute(s)

ml	milliliter(s)
mm	millimeter(s)
mol. wt.	molecular weight
mv	millivolt
N	newton
N	nitrogen
ng	nanogram - 10^{-9} gram
nm	nanometer(s) - 10^{-9} meter
NO	nitric oxide
NO ₂	nitrogen dioxide
NO _x	nitrogen oxides
O ₂	oxygen
Pa	pascal
ppb	parts per billion
ppm	parts per million
psia	pounds per square inch absolute
s	second
sec	second
SO ₂	sulfur dioxide
SO ₃	sulfur trioxide
STD	at standard conditions
µg	microgram(s) - 10^{-6} gram
V	volt
W	watt

(f) Permit Requirements: Compliance with the provisions of this section shall in no way relieve the owner or operator of responsibility for compliance with other applicable sections of these regulations. The permit requirements of Chapter 6, Section 2 are specifically applicable to affected facilities subject to the requirements of this section.

(g) Notification and Recordkeeping:

(i) Any owner or operator subject to the provisions of this section shall furnish the Administrator written notification as follows:

(A) A notification of the date construction (or reconstruction as defined under Chapter 1, Section 3) of an affected facility is commenced postmarked no later than 30 days after such date. This requirement shall not apply in the case of mass-produced facilities which are purchased in completed form.

(B) A notification of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies, unless that change is specifically exempted under an applicable subpart or in Chapter 5, Section 2(k). This notice shall be postmarked 60 days or as soon as practicable before the change is commenced and shall include information describing the precise nature of the change, present and proposed emission control systems, productive

capacity of the facility before and after the change, and the expected completion date of the change. The Administrator may request additional relevant information subsequent to this notice.

(C) A notification of the date upon which demonstration of the continuous monitoring system performance commences in accordance with Chapter 5, Section 2(j)(iii). Notification shall be postmarked not less than 30 days prior to such date.

(D) A notification of the anticipated date for conducting the opacity observations required by Chapter 5, Section 2(i)(v) of this section. The notification shall be postmarked not less than 30 days prior to such date.

(E) A notification that continuous opacity monitoring system data results will be used to determine compliance with the applicable opacity standard during a performance test required by Chapter 5, Section 2(h) in lieu of Method 9 observation data as allowed by Chapter 5, Section 2(i)(v)(D). This notification shall be postmarked not less than 30 days prior to the date of the performance test.

(ii) Any owner or operator subject to the provisions of this section shall maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in the operation of an affected facility; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

(iii) Each owner or operator required to install a continuous monitoring system (CMS) or monitoring device shall submit an excess emissions and monitoring systems performance report (excess emissions are defined in applicable subparts) and/or a summary report form (see paragraph E of this section) to the Administrator semiannually, except when: more frequent reporting is specifically required by an applicable subpart; or the CMS data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; or the Administrator, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. All reports shall be postmarked by the 30th day following the end of each calendar half (or quarter, as appropriate). Written reports of excess emissions shall include the following information:

(A) The magnitude of excess emissions computed in accordance with Chapter 5, Section 2(j)(viii), any conversion factor(s) used, and the date and time of commencement and completion of each time period of excess emissions. The process operating time during the reporting period.

(B) Specific identification of each period of excess emissions that occurs during start-ups, shutdowns, malfunctions of the affected facility. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

(C) The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

(D) When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

(E) The summary report form shall contain the information and be in the format shown in Form B unless otherwise specified by the Administrator. One summary report form shall be submitted for each pollutant monitored at each affected facility.

(I) If the total duration of excess emissions for the reporting period is less than 1 percent of the total operating time for the reporting period and CMS downtime for the reporting period is less than 5 percent of the total operating time for the reporting period, only the summary report form shall be submitted and the excess emission report described in paragraph (iii) of this subsection need not be submitted unless requested by the Administrator.

(II) If the total duration of excess emissions for the reporting period is 1 percent or greater of the total operating time for the reporting period or the total CMS downtime for the reporting period is 5 percent or greater of the total operating time for the reporting period, the summary report form and the excess emission report described in paragraph (iii) of this subsection shall both be submitted.

Form B
EXCESS EMISSION SUMMARY REPORT

Emission Data Summary		CMS Performance Summary	
I. Duration of Excess Emissions in Reporting Period Due to:		I. CMS Downtime in Reporting Period Due to:	
A. Startup/Shutdown	_____	A. Monitor Equipment Malfunctions	_____
B. Control Equipment Problems	_____	B. Non-Monitor Equipment Malfunctions	_____
C. Process Problems	_____	C. Quality Assurance Calibration	_____
D. Other Known Causes	_____	D. Other Known Causes	_____
E. Unknown Causes	_____	E. Unknown Causes	_____
II. Total Duration of Excess Emission	_____	II. Total CMS Downtime	_____
III. Total Duration of Excess Emissions x 100 divided by Total Source Operating Time minus Total CMS Downtime	_____	III. Total CMS Downtime x 100 divided by Total Source Operating Time	_____

Total time of excess emission events due to emergency/abnormal operations _____.

NOTE:

1. Only report excess emissions which occur when the unit/process is operating. Include all excess emissions in the Emission Data Summary including those excess emissions associated with startup/shutdown and those excess emissions associated with Chapter 1, Section 5 (Emergency/Abnormal) operations. **Report times in hours for gaseous monitors and in tenths of an hour for opacity monitors.** Include detailed excess emission information and causes in the Excess Emission Table (Form C).
2. Only report CEM downtime which occurs while the unit/process is operating. **Report time in hours to one decimal point.** Include detailed CEM downtime and causes in the Monitor Outage Table (Form D).
3. Include an explanation of what corrective actions were taken for total excess emissions or monitor downtime for the quarter (Emission Data Summary and CMS Performance Summary, Item III) greater than 5%. **(See Instructions for further details.)**

On a separate page, describe any changes since last quarter in CMS, process or controls. I certify that the information contained in this report is true, accurate, and complete.

Name

 Signature

 Title

 Date

(iv) (A) Notwithstanding the frequency of reporting requirements specified in paragraph (iii) of this subsection, an owner or operator who is required by an applicable subpart to submit excess emissions and monitoring systems performance reports (and summary reports) on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(I) For 1 full year (e.g., 4 quarterly or 12 monthly reporting periods) the affected facility's excess emissions and monitoring systems reports submitted to comply with a standard under this section continually demonstrate that the facility is in compliance with the applicable standard;

(II) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this section and the applicable standard; and

(III) The Administrator does not object to a reduced frequency of reporting for the affected facility, as provided in paragraph (iv)(B) of this subsection.

(B) The frequency of reporting of excess emissions and monitoring systems performance (and summary) reports may be reduced only after the owner or operator notifies the Administrator in writing of the intent to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the required recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the ground on which the disapproval is based. In the absence of a notice of disapproval within 45 days, approval is automatically granted.

(C) As soon as monitoring data indicate that the affected facility is not in compliance with any emission limitation or operating parameter specified in the applicable standard, the frequency of reporting shall revert to the frequency specified in the applicable standard, and the owner or operator shall submit an excess emissions and monitoring systems performance report (and summary report, if required) at the next appropriate reporting period following the noncomplying event. After demonstrating compliance with the applicable standard for another full year, the owner or operator may again request approval from the Administrator to reduce the frequency of reporting for that standard as provided for in paragraphs (iv)(A) and (iv)(B) of this subsection.

(v) Any owner or operator subject to the provisions of this section shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this section recorded in a permanent form suitable for inspection. The file shall be retained for at least two years following the date of such measurements, maintenance, reports, and record.

(vi) Individual subparts of 40 CFR part 60 may include specific provisions which clarify or made inapplicable the provisions set forth in this section.

(h) Performance Tests:

(i) The owner or operator of an affected facility shall conduct performance test(s) within the times specified in Chapter 6, Section 2(j) and furnish the Administrator a written report of the results of such performance test(s).

(ii) Performance tests shall be conducted and data reduced in accordance with the test methods and procedures contained in each applicable subpart unless the Administrator (1) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology; (2) obtains approval from the EPA Administrator for use of an equivalent method; (3) obtains approval from the EPA Administrator for use of an alternative method the results of which he had determined to be adequate for indicating whether a specific source is in compliance; (4) waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means to the Administrator's satisfaction that the affected facility is in compliance with the standard; or (5) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Nothing in this paragraph shall be construed to abrogate the Administrator's authority to require other testing.

(iii) Performance tests shall be conducted under such conditions as the Administrator shall specify to the plant operator based on representative performance of the affected facility. The owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of the performance tests. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of start-up, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.

(iv) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(A) Sampling ports adequate for test methods applicable to such facility. This includes:

(I) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and;

(II) Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

(B) Safe sampling platform(s);

(C) Safe access to sampling platform(s);

(D) Utilities for sampling and testing equipment.

(v) Unless otherwise specified in the applicable subpart, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's control, compliance may, upon the Administrator's approval, be determined using the arithmetic mean of the results of the two other runs.

(i) Compliance With Standards and Maintenance Requirements:

(i) Compliance with standards in this section, other than opacity standards, shall be determined by performance tests established by Chapter 5, Section 2(h), unless otherwise specified in the applicable standard.

(ii) Compliance with opacity standards in this section shall be determined by conducting observations in accordance with Reference Method 9 in 40 CFR part 60, Appendix A or any alternative method that is approved by the EPA Administrator, or as provided in paragraph (v)(D) of this section. For purposes of determining initial compliance, the minimum total time of observations shall be 3 hours (30 6-minute averages) for the performance test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard).

(iii) The opacity standards set forth in this section shall apply at all times except during periods of start-up, shutdown, malfunction, and as otherwise provided in the applicable standard.

(iv) At all times, including periods of start-up, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(v) (A) For the purpose of demonstrating initial compliance, opacity observations shall be conducted concurrently with the initial performance test required in Chapter 5, Section 2(h) unless one of the following conditions apply. If no performance test under Chapter 5, Section 2(h) is required, then opacity observations shall be conducted within 60 days after achieving the maximum production rate at which the affected facility will be operated but no later than 180 days after initial start-up of the facility. If visibility or other conditions prevent the opacity observations from being conducted concurrently with the initial performance test required under Chapter 5, Section 2(h), the source owner or operator shall reschedule the opacity observations as soon after the initial performance test as possible, but not later than 30 days thereafter, and shall advise the Administrator of the rescheduled date. In these cases, the 30-day prior notification to the Administrator required in Chapter 5, Section 2(g)(i)(D) shall be waived. The rescheduled opacity observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under Chapter 5, Section 2(h). The visible emissions observer shall determine whether visibility or other conditions prevent the opacity observations from being made concurrently with the initial performance test in accordance with procedures contained in Reference Method 9 of 40 CFR part 60, Appendix A. Opacity reading of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. The owner or operator of an affected facility shall make available, upon request by the Administrator, any records as may be necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification. Except as provided in paragraph (v)(D) of this section, the results of continuous monitoring by transmissometer which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the source shall meet the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in 40 CFR part 60, Appendix B, has been properly maintained and (at the time of the alleged violation) that the resulting data have not been altered in any way.

(I) The inability of an owner or operator to secure a visible emissions observer shall not be considered a reason for not conducting the opacity observations concurrent with the initial performance test.

(B) The owner or operator of an affected facility to which an opacity standard in this section applies shall conduct opacity observations in accordance with Chapter 5, Section 2(i)(ii), shall record the opacity of emissions, and shall report to the Administrator the opacity results along with the results of the initial performance test required under Chapter 5, Section 2(h).

(C) An owner or operator of an affected facility using a continuous opacity monitor (transmissometer) shall record the monitoring data produced during the initial performance test required by Chapter 5, Section 2(h) and furnish the Administrator a written report of the monitoring results along with Method 9 and Chapter 5, Section 2(h) performance test results.

(D) An owner or operator of an affected facility subject to an opacity standard may submit, for compliance purposes, continuous opacity monitoring system (COMS) data results produced during any performance test required under Chapter 5, Section 2(h) in lieu of Method 9 observation data. If an owner or operator elects to submit COMS data for compliance with the opacity standard, he shall notify the Administrator of that decision in writing, at least 30 days before any performance test required under Chapter 5, Section 2(h) is conducted. Once the owner or operator of an affected facility has notified the Administrator to that Effect, the COMS data results will be used to determine opacity compliance during subsequent tests required under Chapter 5, Section 2(h) until the owner or operator notifies the Administrator in writing to the contrary. For the purpose of determining compliance with the opacity standard during a performance test required under Chapter 5, Section 2(h) using COMS data the minimum total time of COMS data collection shall be averages of all 6-minute continuous periods within the duration of the mass emission performance test. Results of the COMS opacity determinations shall be submitted along with the results of the performance test required under Chapter 5, Section 2(h). The owner or operator of an affected facility using a COMS for compliance purposes is responsible for demonstrating that the COMS meets the requirements specified in Chapter 5, Section 2(j)(iii) of this section, that the COMS has been properly maintained and operated, and that the resulting data have not been altered in any way. If COMS data results are submitted for compliance with the opacity standard for a period of time during which Method 9 data indicates noncompliance, the Method 9 data will be used to determine opacity compliance.

(E) Upon receipt from an owner or operator of the written reports of the results of the performance tests required by Chapter 5, Section 2(h), the opacity observation results and observer certification required by Chapter 5, Section 2(i)(v)(A) and the COMS results, if applicable, the Administrator will make a finding concerning compliance with opacity and other applicable standards. If COMS data results are used to comply with an opacity standard, only those results are required to be submitted along with the performance test results required by Chapter 5, Section 2(h). If the Administrator finds that an affected facility is in compliance with all applicable standards for which performance tests are conducted in accordance with Chapter 5, Section 2(h) of this section but during the time such performance tests are being conducted fails to meet any applicable opacity standard, he shall notify the owner or operator and advise him that

he may petition the Administrator within 10 days of receipt of notification to make appropriate adjustment to the opacity standard for the affected facility. The notifications received requesting adjustments to the opacity standard of the affected facility will be forwarded to EPA for resolution.

(vi) Special provisions set forth under an applicable subpart in 40 CFR part 60 shall supersede any conflicting provisions in this section.

(vii) For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this section, nothing in this section shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with the applicable requirements if the appropriate performance or compliance test or procedure had been performed.

(j) Monitoring Requirements:

(i) For the purposes of this section, all continuous monitoring systems required under applicable subparts shall be subject to the provisions of this section upon promulgation of performance specifications for continuous monitoring systems under 40 CFR part 60, Appendix B and, if the continuous monitoring system is used to demonstrate compliance with emission limits on a continuous basis, 40 CFR part 60, Appendix F, unless otherwise specified in an applicable subpart or by the Administrator. Appendix F is applicable December 4, 1987.

(ii) All continuous monitoring systems and monitoring devices shall be installed and operational prior to conducting performance tests under Chapter 5, Section 2(h). Verification of operational status shall, as a minimum, include completion of manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(iii) If the owner or operator of an affected facility elects to submit continuous opacity monitoring system (COMS) data for compliance with the opacity standard as provided under Chapter 5, Section 2(i)(v)(D), he shall conduct a performance evaluation of the COMS as specified in Performance Specification 1, 40 CFR part 60, Appendix B, before the performance test required under Chapter 5, Section 2(h) is conducted. Otherwise, the owner or operator of an affected facility shall conduct a performance evaluation of the COMS or continuous emission monitoring system (CEMS) during any performance test required under Chapter 5, Section 2(h) or within 30 days thereafter in accordance with the applicable performance specification in 40 CFR part 60, Appendix B. The owner or operator of an affected facility shall conduct COMS or CEMS performance evaluations at such other times as may be required by the Administrator.

(A) The owner or operator of an affected facility using a COMS to determine opacity compliance during any performance test required under Chapter 5,

Section 2(h) and as described in Chapter 5, Section 2(i)(v)(D) shall furnish the Administrator two or, upon request, more copies of a written report of the results of the COMS performance evaluation described in paragraph (iii) of this section at least 10 days before the performance test required under Chapter 5, Section 2(h) is conducted.

(B) Except as provided in paragraph (iii)(A) of this section, the owner or operator of an affected facility shall furnish the Administrator within 60 days of completion two or, upon request, more copies of a written report of the results of the performance evaluation.

(C) These continuous monitoring system performance evaluations, except as provided in paragraph (x) of this section shall be conducted in accordance with the requirements and procedures contained in the applicable performance specification of 40 CFR part 60, Appendix B as follows:

(I) Continuous monitoring systems for measuring opacity of emissions installed on or after March 30, 1983 shall comply with all the provisions and requirements in Performance Specification 1: continuous monitoring systems for measuring opacity of emissions installed before March 30, 1983 are required to comply with the provisions and requirements of Performance Specification 1 except for the following:

(1.) Section 4 - Installation specifications.

(2.) Paragraphs 5.1.4 - Optical alignment sight, 5.1.6 - Access to external optics, 5.1.7 - Automatic zero compensation indicator, and 5.1.8 - Slotted tube of Section 5 - Design and Performance Specification 1.

(3.) Paragraph 6.4 - Optical alignment sight of Section 6. Design specifications verification procedure.

If an existing opacity monitoring system is replaced on or after March 30, 1983, the new opacity monitoring system shall comply with the requirements of Performance Specification 1, except the new monitoring system may be located at the same measurement location as for the replaced monitoring system. If a new measurement location is to be determined at the time of replacement, the new location must meet the requirements of Performance Specification 1.

(II) Continuous monitoring systems for measuring nitrogen oxides emissions shall comply with Performance Specification 2.

(III) Continuous monitoring systems for measuring sulfur dioxide emissions shall comply with Performance Specification 2.

(IV) Continuous monitoring systems for measuring the oxygen content or carbon dioxide content of effluent gases shall comply with Performance Specification 3.

(iv) (A) Owners and operators of all continuous emission monitoring systems installed in accordance with the provisions of this section shall check the zero (or low-level value between 0 and 20 percent of span value) and span (50 to 100 percent of span value) calibration drifts at least once daily in accordance with a written procedure. The zero and span shall, as a minimum, be adjusted whenever the 24-hour zero drift or 24-hour span drift exceeds two times the limits of the applicable performance specifications in 40 CFR part 60, Appendix B. The system must allow the amount of excess zero and span drift measured at the 24-hour interval checks to be recorded and quantified, whenever specified. For continuous monitoring systems measuring opacity of emissions, the optical surfaces exposed to the effluent gases shall be cleaned prior to performing the zero and span drift adjustments except that for systems using automatic zero adjustments, the optical surfaces shall be cleaned when the cumulative zero compensation exceeds 4 percent opacity.

(B) Unless otherwise approved by the Administrator, the following procedures shall be followed for continuous monitoring systems measuring opacity of emissions. Minimum procedures shall include a method for producing a simulated zero opacity condition and an upscale (span value) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photodetector assembly.

(v) Except for system breakdown, repairs, calibration checks, and zero and span adjustments required under paragraph (iv) of this section, all continuous monitoring systems shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:

(A) All continuous monitoring systems referenced by paragraphs (iii)(A) and (B) of this section for measuring opacity of emissions shall complete a minimum of one cycle of sampling and analyzing for each successive ten-second period and one cycle of data recording for each successive six-minute period.

(B) All continuous monitoring systems referenced by paragraphs (iii)(A) and (B) of this section for measuring emissions, except opacity shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(vi) All continuous monitoring systems or monitoring devices shall be installed such that representative measurements of emissions or process parameters from the affected facility are obtained. Additional procedures for location of continuous

monitoring systems contained in the applicable Performance Specifications of 40 CFR part 60, Appendix B of this section shall be used.

(vii) When the effluents from a single affected facility or two or more affected facilities subject to the same emission standards are combined before being released to the atmosphere, the owner or operator may install applicable continuous monitoring systems on each effluent or on the combined effluent. When the affected facilities are not subject to the same emissions standards, separate continuous monitoring systems shall be installed on each effluent. When the effluent from one affected facility is released to the atmosphere through more than one point, the owner or operator shall install applicable continuous monitoring systems on each separate effluent unless the installation of fewer systems is approved by the Administrator. When more than one continuous monitoring system is used to measure the emissions from one affected facility (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required from each continuous monitoring system.

(viii) Owners or operators of all continuous monitoring systems for measurement of opacity shall reduce all data to six-minute averages and for systems other than opacity to one-hour averages for time period defined under Chapter 5, Section 2(c)(i). Six-minute opacity averages shall be calculated from 36 or more data points equally spaced over each six-minute period. For systems other than opacity, one-hour averages shall be computed from four or more data points equally spaced over each one-hour period. Data recorded during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in the data averages computed under this paragraph. An arithmetic or integrated average of all data may be used. The data output of all continuous monitoring systems may be recorded in reduced or non-reduced form (e.g., ppm pollutant and percent O₂ or lb/million Btu of pollutant). All excess emissions shall be converted into units of the standard using the applicable conversion procedures specified in subparts. After conversion into units of the standard, the data may be rounded to the same number of significant digits used in subparts to specify the applicable standard (e.g., rounded to the nearest one percent opacity).

(ix) Upon written application by an owner or operator, the Administrator may approve alternatives to any monitoring procedures or requirements of this section including, but not limited to the following:

(A) Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by this section would not provide accurate measurements due to liquid water or other interferences caused by substances with the effluent gases.

(B) Alternative monitoring requirements when the affected facility is infrequently operated.

(C) Alternative monitoring requirement to accommodate continuous monitoring systems that require additional measurements to correct for stack moisture conditions.

(D) Alternative locations for installing continuous monitoring systems or monitoring devices when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements.

(E) Alternative methods of converting pollutant concentration measurements to units of the standards.

(F) Alternative procedures for performing daily checks of zero and span drift that do not involve use of span gases or test cells.

(G) Alternatives to the A.S.T.M. test methods or sampling procedures specified by any subpart.

(H) Alternative continuous monitoring systems that do not meet the design or performance requirements in Performance Specification 1 of 40 CFR part 60, Appendix B, but adequately demonstrate a definite and consistent relationship between its measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1. The Administrator may require that such demonstration be performed for each affected facility.

(I) Alternative monitoring requirements when the effluent from a single affected facility or the combined effluent from two or more affected facilities are released to the atmosphere through more than one point.

(x) An alternative to the relative accuracy test specified in Performance Specification 2 of 40 CFR part 60, Appendix B may be requested as follows:

(A) An alternative to the reference method tests for determining relative accuracy is available for sources with emission rates demonstrated to be less than 50 percent of the applicable standard. A source owner or operator may petition the Administrator to waive the relative accuracy test in Section 7 of Performance Specification 2 and substitute the procedures in Section 10 if the results of the performance test conducted according to the requirements in Chapter 5, Section 2(h) of this section or other tests performed following the criteria in Chapter 5, Section 2(h) demonstrate that the emission rate of the pollutant of interest in the units of the applicable standard is less than 50 percent of the applicable standard. For sources subject to standards expressed as control efficiency levels, a source owner or operator may petition the Administrator to waive the relative accuracy test and substitute the procedures in Section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement. The alternative procedures do not apply if the continuous emission monitoring system is used to determine compliance continuously with the applicable standard. The petition to

waive the relative accuracy test shall include a detailed description of the procedures to be applied. Included shall be location and procedure for conducting the alternative, the concentration or response levels of the alternative RA materials, and the other equipment checks included in the alternative procedure. The Administrator will review the petition for completeness and applicability. The determination to grant a waiver will depend on the intended use of the CEMS data (e.g., data collection purposes other than NSPS) and may require specifications more stringent than in Performance Specification 2 (e.g., the applicable emission limit is more stringent than NSPS).

(B) The waiver of CEMS relative accuracy test will be reviewed and may be rescinded at such time following successful completion of the alternative RA procedure that the CEMS data indicate the source emissions approaching the level of the applicable standard. The criterion for reviewing the waiver is the collection of CEMS data showing that emissions have exceeded 70 percent of the applicable standard for seven consecutive averaging periods as specified by the applicable regulation(s). For sources subject to standards expressed as control efficiency levels, the criterion for reviewing the waiver is the collection of CEMS data showing that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for seven consecutive averaging periods as specified by the applicable regulation(s). It is the responsibility of the source operator to maintain records and determine the level of emissions relative to the criterion on the waiver of relative accuracy testing. If this criterion is exceeded, the owner or operator must notify the Administrator within 10 days of such occurrence and include a description of the nature and cause of increasing emissions. The Administrator will review the notification and may rescind the waiver and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in Section 7 of Performance Specification 2.

(k) Modification:

(i) Except as provided under paragraphs (iv) and (v) of this section, any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification. Upon modification, an existing facility shall become an affected facility for each pollutant to which a standard applies and for which there is an increase in the emission rate to the atmosphere.

(ii) Emission rate shall be expressed as kg/hr of any pollutant discharged into the atmosphere for which a standard is applicable. The Administrator shall use the following to determine emission rate:

(A) Emission factors as specified in the latest issue of "Compilation of Air Pollutant Emission Factors", EPA Publication No. AP-42, or other emission factors determined by the Administrator to be superior to AP-42 emission factors, in cases where utilization of emission factors demonstrate that the emission level resulting from the physical or operational change will either clearly increase or clearly not increase.

(B) Material balances, continuous monitor data, or manual emission tests in cases where utilization of emission factors as referenced in paragraph (ii)(A) of this section does not demonstrate to the Administrator's satisfaction whether the emission level resulting from the physical or operational change will either clearly increase or clearly not increase, or where an owner or operator demonstrates to the Administrator's satisfaction that there are reasonable grounds to dispute the result obtained by the Administrator utilizing emission factors as referenced in paragraph (ii)(A) of this section. When the emission rate is based on results from manual emission tests or continuous monitoring systems, the procedures specified in 40 CFR part 60, Appendix C shall be used to determine whether an increase in emission rate has occurred. Tests shall be conducted under such conditions as the Administrator shall specify to the owner or operator based on representative performance of the facility. At least three valid test runs must be conducted before and at least three after the physical or operational change. All operating parameters which may affect emissions must be held constant to the maximum feasible degree for all test runs.

(iii) The addition of an affected facility to a stationary source as an expansion to that source or as a replacement for an existing facility shall not by itself bring within the applicability of this section any other facility within that source.

(iv) The following shall not, by themselves, be considered modifications under this section:

(A) Maintenance, repair, and replacement which the Administrator determines to be routine for a source category, subject to the provisions of paragraph (iii) of this section and Chapter 5, Section 2(I).

(B) An increase in production rate of an existing facility, if that increase can be accomplished without a capital expenditure on that facility.

(C) An increase in the hours of operation.

(D) Use of an alternative fuel or raw material if, prior to the date any standard under this section becomes applicable to that source type, as provided by Chapter 5, Section 2(d), the existing facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications, as amended, prior to the change. Conversion to coal required for energy considerations as specified in section 111(a)(8) of the Act, shall not be considered a modification.

(E) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

(F) The relocation or change in ownership of an existing facility.

(v) Special provisions set forth under an applicable subpart shall supersede any conflicting provisions of Chapter 5, Section 2(k).

(vi) Within 180 days of the completion of any physical or operational change subject to the control measures specified in paragraphs 2(k)(i) of this section, compliance with all applicable standards must be achieved.

(vii) No physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for the purposes of this subsection provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this subsection above the maximum hourly emissions achievable at that unit during the 5 years prior to the change.

(viii) Repowering projects that are awarded funding from the Department of Energy as permanent clean coal technology demonstration projects (or similar projects funded by EPA) are exempt from the requirements of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the five years prior to the change.

(ix) (A) Repowering projects that qualify for an extension under section 409(b) of the Clean Air Act are exempt from the requirements of this section, provided that such change does not increase the actual hourly emissions of any pollutant regulated under this section above the actual hourly emissions achievable at that unit during the 5 years prior to the change.

(B) This exemption shall not apply to any new unit that:

(I) Is designated as a replacement for an existing unit;

(II) Qualifies under section 409(b) of the Clean Air Act for an extension of an emission limitation compliance date under section 405 of the Clean Air Act; and

(III) Is located at a different site than the existing unit.

(x) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project is exempt from the requirements of this section. A temporary clean coal control technology demonstration project, for the purposes of this section is a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plan for the state in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

(xi) The reactivation of a very clean coal-fired electric utility steam generating unit is exempt from the requirements of this section.

(l) Reconstruction:

(i) An existing facility, upon reconstruction, becomes an affected facility, irrespective of any change in emission rate.

(ii) **“Reconstruction”** means the replacement of components of an existing facility to such an extent that:

(A) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and

(B) It is technologically and economically feasible to meet the applicable standards set forth in this section.

(iii) **“Fixed capital cost”** means the capital needed to provide all the depreciable components.

(iv) If an owner or operator of an existing facility proposes to replace components, and the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, he shall notify the Administrator of the proposed replacements. The notice must be postmarked 60 days (or as soon as practicable) before construction of the replacements is commenced and must include the following information:

(A) Name and address of the owner or operator.

(B) The location of the existing facility.

(C) A brief description of the existing facility and the components which are to be replaced.

(D) A description of the existing air pollution control equipment and the proposed air pollution control equipment.

(E) An estimate of the fixed capital cost of the replacements and of constructing a comparable entirely new facility.

(F) The estimated life of the existing facility after the replacements.

(G) A discussion of any economic or technical limitations the facility may have in complying with the applicable standards of performance after the proposed replacements.

(v) The Administrator will determine, within 30 days of the receipt of the notice required by paragraph (iv) of this section and any additional information he may reasonably require, whether the proposed replacement constitutes reconstruction.

(vi) The Administrator's determination under paragraph (v) shall be based on:

(A) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(B) The estimated life of the facility after the replacements compared to the life of a comparable entirely new facility;

(C) The extent to which the components being replaced cause or contribute to the emissions from the facility and

(D) Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(vii) Individual subparts may include specific provisions which refine and delimit the concept of reconstruction set forth in this section.

(m) General Control Device Requirements:

(i) This section contains requirements for control devices used to comply with applicable subparts of Chapter 5, Section 2. The requirements are placed here for administrative convenience and only apply to facilities covered by subparts referring to this section.

(ii) Flares:

(A) General Design:

(I) Flares shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (D), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(II) Flares shall be operated with flame present at all times, as determined by the methods specified in paragraph (D).

(III) Flares shall be used only with the net heating value of the gas being combusted being 300 Btu/Scf (11.2 MJ/scm) or greater if the flare is steam-assisted or air-assisted or with the net heating value of the gas being combusted being 200 Btu/scf (7.45 MJ/scm) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (D).

(IV) Steam-assisted and nonassisted flare shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (D)(IV), less than 60 ft/sec (18.3 m/sec) except as follows:

(1.) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in paragraph (D)(IV) equal to or greater than 60 ft/sec (18.3 m/sec) but less than 400 ft/sec (122 m/sec) are allowed if the net heating value of the gas being combusted is greater than 1000 Btu/scf (37.3 MJ/scm).

(2.) Steam-assisted and nonassisted flares designed for and operated with an exit velocity as determined by the methods specified in paragraph (D)(IV), less than the velocity V_{max} , as determined by the method specified in paragraph (D)(V), and less than 400 ft/sec (122 m/sec) are allowed.

(V) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity, V_{max} , as determined by the method specified in paragraph (D)(VI).

(VI) Flares used to comply with this section shall be steam-assisted, air-assisted or nonassisted.

(B) Owners or operators of flares used to comply with the provisions of this section shall monitor these control devices to ensure that they are operated and maintained in conformance with their designs. Applicable subparts will provide provisions stating how owners or operators of flares shall monitor these control devices.

(C) Flares used to comply with the provisions of an applicable subpart shall be operated at all times when emissions may be vented to them.

(D) Determinations:

(I) Reference Method 22 shall be used to determine the compliance of flares with the visible emission provisions of this section. The observation period is 2 hours and shall be used according to Method 22.

(II) The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

(III) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K \sum_{i=1}^n C_i H_i$$

where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25°C and 760 mm Hg, but the standard temperature for determining the value corresponding to one mole is 20°C.

K = Constant,

$$1.740 \times 10^{-7} \left(\frac{1}{ppm} \right) \left(\frac{gmole}{scm} \right) \left(\frac{MJ}{kcal} \right)$$

Where the standard temperature of $\left(\frac{gmole}{scm} \right)$ is 20°C

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by reference method 18 and measured for hydrogen and carbon monoxide by ASTM D1946-90 (2006) Standard Practice for Analysis of Reformed Gas by Gas Chromatography.

H_i = Net heat of combustion of sample component i, kcal/g mole at 25°C and 760 mm Hg. The heats of combustion may be determined using ASTM D4809-00 (2005) Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method) if published values are not available or cannot be calculated.

(IV) The actual exit velocity of a flare shall be determined by dividing the volumetric flowrate (in units of standard temperature and pressure), as determined by reference methods 2, 2A, 2C, or 2D as appropriate; by the unobstructed (free) cross sectional area of the flare tip.

(V) The maximum permitted velocity V_{max} , for flares complying with paragraph (A)(IV)(2.) shall be determined by the following equation:

$$\text{Log}_{10}(V_{\max}) = \frac{H_T + 28.80}{31.7}$$

V_{\max} = Maximum permitted velocity, m/sec

28.8 = Constant

31.7 = Constant

H_T = The net heating value as determined in paragraph (D)(III)

(VI) The maximum permitted velocity, V_{\max} , for air-assisted flares shall be determined by the following equation:

$$V_{\max} = 8.706 + 0.7084(H_T)$$

V_{\max} = Maximum permitted velocity m/sec

8.706 = Constant

0.7084 = Constant

H_T = The net heating value as determined in paragraph (D)(III)

(n) General Notification and Reporting Requirements:

(i) For the purposes of this section, time periods specified in days shall be measured in calendar days, even if the word “calendar” is absent, unless otherwise specified in an applicable requirement.

(ii) For the purposes of this section, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be delivered or postmarked on or before 15 days following the end of the event. The use of reliable non-government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(iii) Notwithstanding time period or postmark deadlines specified in this section for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (vi) of this subsection.

(iv) The owner or operator may change the dates by which periodic reports under this section shall be submitted (without changing the frequency of reporting) to be consistent with the schedule specified in Chapter 5, Section 2, by mutual agreement between the owner or operator and the Administrator. The allowance in the

previous sentence applies in each state beginning 1 year after the affected facility is required to be in compliance with the applicable subpart in 40 CFR part 63. Procedures governing the implementation of this provision are specified in paragraph (vi) of this subsection.

(v) If an owner or operator supervises one or more stationary sources affected by standards set under this section and standards set under 40 CFR part 61, Chapter 5, Section 3 or both, may be arranged by mutual agreement between the owner or operator and the Administrator a common schedule on which periodic reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each state beginning 1 year after the stationary source is required to be in compliance with the applicable subpart in this section, or 1 year after the stationary source is required to be in compliance with the applicable 40 CFR part 61 or Chapter 5, Section 3, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (vi) of this subsection.

(vi) (A) (I) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (vi)(B) and (vi)(C) of this subsection, the owner or operator of an affected facility remains strictly subject to the requirements of this section.

(II) An owner or operator shall request the adjustment provided for in paragraphs (vi)(B) and (vi)(C) of this subsection each time changes to an applicable time period or postmark deadline specified in this section are desired.

(B) Notwithstanding time periods or postmark deadlines specified in this section for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information is considered useful to convince the Administrator that an adjustment is warranted.

(C) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(D) If the Administrator is unable to meet a specified deadline, the owner or operator will be notified of any significant delay and inform the owner or operator of the amended schedule.

Section 3. National emission standards for hazardous air pollutants.

(a) General: The U.S. Environmental Protection Agency regulations on national emission standards for hazardous air pollutants (NESHAP), established pursuant to section 112 of the Act as amended November 15, 1990, and amended by the word or phrase “substitutions” given in Chapter 5, Section 3(c) are incorporated into these regulations. The specific documents containing the complete text of the regulations are found in 40 CFR part 63. The standards designated in Chapter 5, Section 3(b) regulate specific categories of stationary sources that emit (or have the potential to emit) one or more of the hazardous air pollutants listed pursuant to section 112(b) of the Act, and presented in subsection (c)(i)(A) of Chapter 5, Section 3.

(b) Designated National Emission Standards for Hazardous Air Pollutants: The following standards for hazardous air pollutants, as revised and published in 40 CFR part 63, are incorporated by reference under Section 4(a) of this Chapter.

40 CFR part 63, Subpart A -	General Provisions
40 CFR part 63, Subpart D -	Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants
40 CFR part 63, Subpart F -	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
40 CFR part 63, Subpart G -	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
40 CFR part 63, Subpart H -	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks
40 CFR part 63, Subpart M -	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

40 CFR part 63, Subpart N -	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
40 CFR part 63, Subpart R -	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
40 CFR part 63, Subpart T -	National Emission Standards for Halogenated Solvent Cleaning
40 CFR part 63, Subpart AA -	National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants
40 CFR part 63, Subpart BB -	National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants
40 CFR part 63, Subpart CC -	National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries
40 CFR part 63, Subpart HH -	National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities
40 CFR part 63, Subpart JJ -	National Emission Standards for Wood Furniture Manufacturing Operations
40 CFR part 63, Subpart OO -	National Emission Standards for Tanks - Level 1
40 CFR part 63, Subpart PP -	National Emission Standards for Containers
40 CFR part 63, Subpart QQ -	National Emission Standards for Surface Impoundments

40 CFR part 63, Subpart RR -	National Emission Standards for Individual Drain Systems
40 CFR part 63, Subpart SS -	National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
40 CFR part 63, Subpart TT -	National Emission Standards for Equipment Leaks - Control Level 1
40 CFR part 63, Subpart UU -	National Emission Standards for Equipment Leaks - Control Level 2 Standards
40 CFR part 63, Subpart VV -	National Emission Standards for Oil-Water Separators and Organic-Water Separators
40 CFR part 63, Subpart WW -	National Emission Standards for Storage Vessels (Tanks) - Control Level 2
40 CFR part 63, Subpart YY -	National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards
40 CFR part 63, Subpart EEE -	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors
40 CFR part 63, Subpart HHH -	National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities
40 CFR part 63, Subpart LLL -	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

40 CFR part 63, Subpart UUU -	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units
40 CFR part 63, Subpart VVV -	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works
40 CFR part 63, Subpart AAAA -	National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills
40 CFR part 63, Subpart EEEE -	National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)
40 CFR part 63, Subpart KKKK -	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans
40 CFR part 63, Subpart TTTT -	National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations
40 CFR part 63, Subpart YYYY -	National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines
40 CFR part 63, Subpart ZZZZ -	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines
40 CFR part 63, Subpart AAAAA -	National Emissions Standards for Hazardous Air Pollutants for Lime Manufacturing Plants
40 CFR part 63, Subpart GGGGG -	National Emission Standards for Hazardous Air Pollutants: Site Remediation

40 CFR part 63, Subpart MMMMM -	National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations
40 CFR part 63, Subpart NNNNN -	National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production
40 CFR part 63, Subpart BBBBB -	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities
40 CFR part 63, Subpart WWWW -	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations

(i) Designated Appendices: The following appendices are incorporated by reference under Section 4(a) of this Chapter.

40 CFR part 63, Appendix A - Test Methods

40 CFR part 63, Appendix B - Sources Defined For Early Reduction Provisions

40 CFR part 63, Appendix C - Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit

40 CFR part 63, Appendix D - Alternative Validation Procedure for EPA Waste and Wastewater Methods

40 CFR part 63, Appendix E - Monitoring Procedure for Nonthoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions

(c) Initial Applicability Determination For This Section.

(i) The provisions of this section apply to the owner or operator of any stationary source that:

(A) Emits or has the potential to emit any hazardous air pollutant listed in or pursuant to section 112(b) of the Act, and identified below:

CAS Number	Chemical Name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene

CAS Number	Chemical Name
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene

CAS Number	Chemical Name
67721	Hexachloroethane
822060	Hexamethylene-1, 6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone

CAS Number	Chemical Name
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds *1
0	Glycol ethers *2
0	Lead Compounds
0	Manganese Compounds

CAS Number	Chemical Name
0	Mercury Compounds
0	Fine mineral fibers *3
0	Nickel Compounds
0	Polycyclic Organic Matter *4
0	Radionuclides (including radon) *5
0	Selenium Compounds

NOTE: For all listings above which contain the word “compounds” and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical’s infrastructure.

*1 X'CN where X=H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂

*2 Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH₂CH₂)_n-OR' where

n = 1, 2, or 3

R = alkyl or aryl groups

R' = R, H, or groups which, when removed, yield glycol ethers with the structure:

R-(OCH₂CH₂)_n-OH. Polymers are excluded from the glycol category.

*3 Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

*4 Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

*5 A type of atom which spontaneously undergoes radioactive decay.

and,

(B) Is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to 40 CFR part 63.

(ii) In addition to complying with the provisions of this section, the owner or operator of any such source may need to obtain a permit for modification or construction in accordance with Chapter 6, Section 2 of the WAQSR. The owner or operator may also need to obtain an operating permit issued in accordance with Chapter 6, Section 3 of the WAQSR.

(d) General provisions for the subparts listed in Chapter 5, Section 3(b) are contained in Subpart A of 40 CFR part 63 and are incorporated by reference under Section 4(a) of this chapter, unless superseded by requirements in the specific subparts.

Section 4. **Incorporation by reference.**

(a) Code of Federal Regulations (CFR). All Code of Federal Regulations (CFRs), including their Appendices, cited in this Chapter, revised and published as of July 1, 2010, not including any later amendments, are incorporated by reference. Copies of the Code of Federal Regulations are available for public inspection and copies can be obtained at cost from the Department of Environmental Quality, Division of Air Quality, 122 W. 25th Street, Cheyenne, Wyoming 82002. Copies of the CFRs can also be obtained at cost from Government Institutes, 15200 NBN Way, Building B, Blue Ridge Summit, PA 17214.

(b) American Society for Testing and Materials (ASTM). All ASTM standards cited in this Chapter, revised and published as of July 1, 2010, not including any later amendments, are incorporated by reference. Copies of the ASTM standards are available for public inspection and copies can be obtained at cost from the Department of Environmental Quality, Division of Air Quality, 122 W. 25th Street, Cheyenne, Wyoming 82002. Copies can also be obtained at cost from the American Society for Testing and Materials, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959.

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

Nonattainment Area Regulations

CHAPTER 8

TABLE OF CONTENTS

Section 1.	Introduction to nonattainment area regulations	8-1
Section 2.	Sweetwater County particulate matter regulations	8-1
Section 3.	Conformity of general federal actions to state implementation plans	8-7
Section 4.	Transportation conformity	8-35
<u>Section 5.</u>	<u>Incorporation by reference.....</u>	<u>8-85</u>

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

Nonattainment Area Regulations

CHAPTER 8

Section 1. Introduction to nonattainment area regulations.

(a) Chapter 8 establishes regulations specific to areas not attaining the National Ambient Air Quality Standards. Section 2 applies exclusively to Sweetwater County, Wyoming particulate matter regulations. Section 3 applies to general federal actions, excluding those covered under Section 4, within any federally designated nonattainment area of the state. Section 4 applies to specific transportation projects within any federally designated nonattainment area of the state. Section 5 incorporates by reference all Code of Federal Regulations (CFRs) cited in this chapter, including their Appendices.

Section 2. Sweetwater County particulate matter regulations.

(a) Notwithstanding other provisions in these regulations concerning the emission of particulate matter or required fugitive dust control measures, the requirements and emission limitations set forth in Chapter 8, Section 2(b) and (c) for the specific sources and activities enumerated are applicable. Sources and/or activities which cause particulate matter to be emitted into the air and which are not addressed in this section are subject to the requirements of other sections.

(b) Point Source Particulate Matter Emission Rate Allowables:

The following tables specify the maximum allowable particulate matter emission rate for each of the listed sources. The emission of particulate matter is measured as specified in Chapter 3, Section 2(h)(iv) of these regulations.

(i) Stauffer Chemical Company of Wyoming, Green River Soda Ash Plant.

<u>Source Description</u>	<u>Allowable Emission Rate lb/hr</u>
#1 Boiler	3.00
#2 Boiler	3.00
#3 Boiler	N.A.
#4 Boiler	7.50
#5 Boiler	8.62
#6 Boiler	7.50
ES-1	30.6

(i) Stauffer Chemical Company of Wyoming, Green River Soda Ash Plant (Continued).

2ES-1	27.3
3ES-1	29.2
	Allowable Emission Rate
<u>Source Description</u>	<u>lb/hr</u>
3ES-2	34.5
4SC-2	51.6
4SC-3	5.2
4SC-4	52.6
4ES-201	23.1
Phase II Dryer-Cooler	12.0

(ii) Allied Chemical Corporation, Green River Works

		Allowable Emission Rate
<u>Source Description</u>		<u>lb/hr</u>
Crusher Building	GR-I-A	3.0
Prod. Loading	GR-I-B(1)	3.0
Prod. Loading	GR-I-B(2)	3.0
Calciner #1	GR-I-C	20.0
Calciner #2	GR-I-D	25.0
Calciner #3	GR-I-E	20.0
Dryer #1	GR-I-F	4.0
Dryer #2	GR-I-G	4.0
Dryer #3	GR-I-H	4.0
Housekeeping (North)	GR-I-J(1)	2.0
Housekeeping (South)	GR-I-J(2)	2.0
Product Cooler	GR-I-K	2.0
Coal Handling Tunnel	CH-1	1.7
Coal Handling Gallery	CH-2	1.0
Ore Bin Gallery	GR-II-A	3.0
Product Storage	GR-II-B	4.0
Calciner #4	GR-II-C	20.0
Calciner #5	GR-II-D	20.0
Dissolver #1	GR-II-E-1	3.0
Dissolver #2	GR-II-E-2	3.0
Dryer #4	GR-II-F	4.0
Dryer #5	GR-II-G	4.0
Dryer #6	GR-II-H	4.0
Housekeeping	GR-II-J	10.0

(ii) Allied Chemical Corporation, Green River Works (Continued)

<u>Source Description</u>		<u>Allowable Emission Rate</u> <u>lb/hr</u>
Product Cooler	GR-II-K	3.0
Lime Storage	GR-II-O	0.1
Reclaim Ore System	RO-1	1.4
Crusher	GR-III-A	3.0
Ore Conveyor	GR-III-B	1.0
Ore Gallery	GR-III-C	1.0
Calciner #1	GR-III-D	37.9
Calciner #2	GR-III-E	37.9
Dissolver #1 (East)	GR-III-F	2.0
Dissolver #2 (West)	GR-III-G	2.0
Filter Aid	GR-III-H	NIL
Dryer #1	GR-III-K	1.5
Dryer #2	GR-III-L	1.5
Dryer #3	GR-III-M	1.5
Dryer #4	GR-III-N	1.5
Dryer #5	GR-III-P	1.5
Dryer Vent	GR-III-R	2.0
Prod. Cooler #1	GR-III-S	1.0
Prod. Cooler #2	GR-III-T	1.0
Housekeeping #1	GR-III-U	3.0
Housekeeping #2	GR-III-V	3.0
Crusher	A-305	2.0
Crusher	A-309	2.0
“C” Boiler	GR-II-L	50.0
“D” Boiler	GR-III-W	80.0

(iii) FMC Corporation, Green River

<u>Source Description</u>		<u>Allowable Emission Rate</u> <u>lb/hr</u>
Crusher	PA-4; PA-5	2.5
Dissolver	PA-6	1.0
Dissolver	PA-7	1.0
Dissolver	PA-8	1.0
Dissolver	PA-9	1.0
Sesqui Dryer	RA-1	10.0
Dust Collector	RA-2	2.0
Calciner	RA-13	8.0

(iii) FMC Corporation, Green River (Continued)

Calciner	RA-14	4.0
Calciner	RA-15	4.0
Calciner	RA-16	4.0
Calciner Scrubber	RA-22	35.0

<u>Source Description</u>		<u>Allowable Emission Rate</u> <u>lb/hr</u>
Calciner Scrubber	RA-23	35.0
Calciner Scrubber	RA-24	45.0
Fluid Bed Calciner	RA-25	26.5
Dust Collector	RA-27	3.0
Dust Collector	RA-33	3.0
Phosphorus Furnace	PP-12	15.0
Spray Dryer	PP-21	28.0
Dust Collector	PP-24	4.0
Calciner	PP-25	15.0
Dust Collector	PP-26	2.0
Dust Collector	PP-27	2.0
Trona Calciner	NA-2	3.0
Dust Collection	NA-3	10.0
Cooler	NA-5	6.0
Dust Collection	Mono 2	2.6
Dust Collection	Mono 3	1.3
Dust Collection	Mono 4	2.0
Calciner	Mono 5	53.0
Dryer	Mono 6	20.0
Dust Collection	Mono 7	2.0
Dust Collection	Mono 8	1.9
Dust Collection	NS-2	0.5
Calciner	NS-3	41.0
Crusher	NS-4	1.0
Dissolver	NS-5	2.7
Dryer	NS-6	20.0
Coal Dust Collection	NS-7	0.5
Coal Dust Collection	NS-8	0.5
Coal Dust Collection	NS-9	0.5
Gas/Oil Boiler	PH-1	8.4
Gas/Oil Boiler	PH-2	4.2
Gas/Oil Boiler	PH-3	8.4
Gas/Oil Boiler	Mono I	7.5
Coal Boiler	NS-1A	45.0
Coal Boiler	NS-1B	45.0

(iv) Church and Dwight Company

<u>Source Description</u>		<u>Allowable Emission Rate</u> <u>lb/hr</u>
Soda Ash Unloading	SA	3.0
Throwing Box Scrubber	TB	2.0
Jeffrey Dryer Scrubber	JD	3.0
#1 Process Dryer	1PD	2.0
#2 Process Dryer	2PD	5.0
#3 Process Dryer	3PD	2.0
#1 House Dust System	1HDS	2.0
#2 House Dust System	2HDS	2.0
#3 House Dust System	3HDS	2.0

(c) Fugitive Dust Controls. The following subparagraphs specify fugitive dust control measures required for the delineated activities and sources and the schedules for completion of such measures. If, at any time, the Administrator is satisfied that the applicable suspended particulate matter standards have been attained and will be maintained, uncompleted programs may be completed at the option of the owner of the facility if failure to complete same will not in the opinion of the Administrator adversely affect such attainment status.

(i) Allied Chemical, Green River

Unpaved Roads – Pave all roads in facility area that encounter frequent traffic and maintain such roads in a clean condition through the use of a vacuum sweeper as required. Complete: November 30, 1980.

Distressed Area – Reclaim the distressed area outside the east fence or apply suitable soil binders. Complete: December 1, 1981.

Coal Stockpile – The active coal stockpile is to be enclosed or a dust suppression system installed and used during periods of activity. Complete: December 31, 1982.

Equipment Movement – Equipment movement around the periphery of the trona stockpile should be further reduced. Complete: June 1, 1979.

(ii) FMC Corporation

Stockpile – Installation and effective operation of the following abatement program elements is required to control excessive fugitive emissions from the coal handling facilities.

(A) Dust collectors with pick-ups at the transfer points.

(B) A dust suppression spray system to apply wetting agents to coal being unloaded, transferred, reclaimed, crushed and handled.

(C) Rapid unloading railroad cars.

(D) Use of counter weighted hood-type doors on the coal stacker.

Ore Stockpile – Install variable height booms so that the free fall distance of the ore is held to a minimum and install shroud (wind shield) to contain the ore as much as possible after it drops from the end of the boom. Complete: Sesqui Areas – January 1, 1981; Mono Areas – April 1, 1981.

Loadout Facilities – The mono loadout facilities are to be equipped with hoods around product chutes of adequate size to cap hatches of slot top or hatch top rail cars. The resultant dust generated due to displacement shall be aspirated to adequate dust collectors. The above requirements also apply to any truck bulk product loadout facilities. Complete: July 1, 1982.

Unpaved Roads – All unpaved roads that encounter frequent traffic in the facility area shall be paved and maintained in a clean condition through the use of a vacuum sweeper as required. Infrequently traveled roads are to be treated with oil or other suitable dust suppressants. Complete: October 1, 1980.

Overflow Chutes – Overflow or spillover chutes which discharge in the open, are to be eliminated or emptied into closed containers. Chutes for housekeeping purposes are to be eliminated and replaced with a vacuum dust system that utilizes a dust collector. Complete: October 1, 1980.

(iii) Stauffer Chemical, Green River

Ore Stockpile – Install and utilize a variable height boom so that the free fall distance of the ore is held to a minimum. A shroud (wind shield) to contain the ore as much as possible after it drops from the end of the boom is to be installed and utilized. Complete: July 1981.

Product Loadout – Rail loadout facilities are to be equipped with hoods around product chutes of adequate size to cap hatches of slot and portal top rail cars. The resultant dust generated due to displacement should be aspirated to adequate dust collectors. The above requirements will also apply to any truck bulk product loadout facilities. Maintenance or redesigning of existing baghouse collectors will also be necessary at these facilities. Complete: September 1982.

Product Handling and Storage – Product silo vents are to be equipped with dust collectors. Proper maintenance and/or redesign of existing dust collectors is also required in this area. Complete: September 1982.

Crusher Area – The removing of accumulated dust from crusher building by sweeping or dumping the material outside the building is to be eliminated. Housekeeping chores in this area as well as other areas are to be accomplished by the use of a vacuum system and dust collector. Existing baghouse collectors are to be properly maintained and if necessary other control measures installed and utilized at all transfer points in and around the crusher area. Complete: September 1982.

Overflow Chutes – Overflow or spillover chutes which discharge in the open are to be eliminated or emptied into closed containers. Complete: March 1979.

Unpaved Roads – All roads within the facility area that encounter frequent traffic are to be paved and maintained in a clean condition through the use of a vacuum sweeper as required. All other less frequently used roads are to be treated with oil or other suitable dust suppressants. Complete: September 1982.

Distressed Areas – Distressed areas to the south of the facility which contain distressed product piles and tailing pond dredgings are to be reclaimed and treated with dust suppressants. Complete: September 1979.

Section 3. Conformity of general federal actions to state implementation plans.

(a) Prohibition.

(i) No department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.

(ii) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this section before the action is taken.

(iii) [Reserved] Paragraph (ii) of this subsection, does not include Federal actions where either:

~~(A) A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994,~~

~~(B) — (I) Prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis;~~

~~(II) Sufficient environmental analysis is completed by March 15, 1994 so that the Federal agency may determine that the Federal action is in conformity with the specific requirements and the purposes of the applicable SIP~~

pursuant to the agency's affirmative obligation under §176(e) of the Clean Air Act (CAA), and

~~(III) A written determination of conformity under §176(e) of the CAA has been made by the Federal agency responsible for the Federal action by March 15, 1994.~~

(iv) Notwithstanding any provision of this section, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the National Environmental Policy Act (NEPA), or the CAA.

(v) If an action would result in emissions originating in more than one nonattainment or maintenance area, the conformity must be evaluated for each area separately.

(b) Definitions. Terms used but not defined in this ~~part~~ section shall have the meaning given them by the CAA and EPA's regulations (40 CFR Chapter I), in that order of priority.

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

"Applicability analysis" is the process of determining if your Federal action must be supported by a conformity determination.

"Applicable implementation plan or applicable SIP" means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under § section 110(k) of the CAA, or promulgated under § section 110(c) of the CAA (Federal implementation plan), or a plan promulgated or approved pursuant to ~~regulations promulgated under § section 301(d)~~ of the CAA (Tribal implementation plan or TIP) and which implements the relevant requirements of the CAA.

"Areawide air quality modeling analysis" means an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model or photochemical grid model to determine the effects of emissions on air quality, for example, an assessment using EPA's community multi-scale air quality (CMAQ) modeling system.

"CAA" means the Clean Air Act, as amended.

"Cause or contribute to a new violation" means a Federal action that:

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

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

“*Caused by*”, as used in the terms “direct emissions” and “indirect emissions,” means emissions that would not otherwise occur in the absence of the Federal action.

“*Confidential business information (CBI)*” means information that has been determined by a Federal agency, in accordance with its applicable regulations, to be a trade secret, or commercial or financial information obtained from a person and privileged or confidential and is exempt from required disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

“*Conformity determination*” is the evaluation (made after an applicability analysis is completed) that a Federal action conforms to the applicable implementation plan and meets the requirements of this section.

“*Conformity evaluation*” is the entire process from the applicability analysis through the conformity determination that is used to demonstrate that the Federal action conforms to the requirements of this section.

“*Continuing program responsibility*” means a Federal agency has responsibility for emissions caused by:

(i) Actions it takes itself; or

(ii) Actions of non-Federal entities that the Federal agency, in exercising its normal programs and authorities, approves, funds, licenses or permits, provided the agency can impose conditions on any portion of the action that could affect the emissions.

“*Continuous program to implement*” means that the Federal agency has started the action identified in the plan and does not stop the actions for more than an 18-month period, unless it can demonstrate that such a stoppage was included in the original plan.

“*Criteria pollutant or standard*” means any pollutant for which there is established a NAAQS at 40 CFR part 50.

“*Direct emissions*” means those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and originate in a nonattainment or

maintenance area and occur at the same time and place as the action and are reasonably foreseeable.

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

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

“Emission inventory” means a listing of information on the location, type of source, type and quantity of pollutant emitted as well as other parameters of the emissions.

“Emissions offsets”, for purposes of Subsection (h), are emissions reductions which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the timeframe specified by the program.

~~**“Emissions that a Federal agency has a continuing program responsibility for”** means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-Federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.~~

“EPA” means the U.S. Environmental Protection Agency.

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

“Federal agency” means, for purposes of this section, a Federal department, agency, or instrumentality of the Federal government.

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

“Indirect emissions” means those emissions of a criteria pollutant or its precursors that:

(A) That are caused or initiated by the Federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable, and originate in the same nonattainment or maintenance area but occur at a different time or place as the action;

(ii) That are reasonably foreseeable;

(B) That the Federal agency can practicably practically control; and will maintain control over due to a continuing program responsibility of the Federal agency.

(iv) For which the Federal agency has continuing program responsibility.

For the purposes of this definition, even if a Federal licensing, rulemaking or other approving action is a required initial step for a subsequent activity that causes emissions, such initial steps do not mean that a Federal agency can practically control any resulting emissions.

“Local air quality modeling analysis” means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadways on a Federal facility, intersections and highways or transit terminals, which uses an air quality dispersion model (e.g., Industrial Source Complex Model or Emission and Dispersion Model System) to determine the effects of emissions on air quality.

“Maintenance area” means ~~any geographic region of the United States~~ previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under §175A of the CAA, an area that was designated as nonattainment and has been re-designated in 40 CFR part 81 to attainment, meeting the provisions of section 107(d)(3)(E) of the CAA and has a maintenance plan approved under section 175A of the CAA.

“Maintenance plan” means a revision to the applicable SIP, meeting the requirements of § section 175A of the CAA.

“Metropolitan Planning Organization (MPO)” ~~is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative,~~

and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607 means the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).

“*Milestone*” has the meaning given in § sections 182(g)(1) and §189(c)(1) of the CAA. ~~A milestone consists of an emissions level and the date on which it is required to be achieved.~~

“*Mitigation measure*” means any method of reducing emissions of the pollutant or its precursor taken at the location of the Federal action and used to reduce the impact of the emissions of that pollutant caused by the action.

“*National ambient air quality standards (NAAQS)*” are those standards established pursuant to § section 109 of the CAA and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone, particulate matter (PM₁₀ and PM_{2.5}), and sulfur dioxide (SO₂).

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

“*Nonattainment area (NAA)*” means ~~any geographic area of the United States which has been~~ an area designated as nonattainment under § section 107 of the CAA and described in 40 CFR part 81.

“*Precursors of a criteria pollutant*” are:

(A~~i~~) For ozone, nitrogen oxides (NO_x), unless an area is exempted from NO_x requirements under § section 182(f) of the CAA, and volatile organic compounds (VOC). ~~and~~

(B~~ii~~) For PM₁₀, those pollutants described in the PM₁₀ nonattainment area applicable SIP as significant contributors to the PM₁₀ levels.

(iii) For PM_{2.5}:

(A) Sulfur dioxide (SO₂) in all PM_{2.5} nonattainment and maintenance areas.

(B) Nitrogen oxides in all PM_{2.5} nonattainment and maintenance areas unless both the State and EPA determine that it is not a significant precursor, and

(C) Volatile organic compounds (VOC) and ammonia (NH₃) only in PM_{2.5} nonattainment or maintenance areas where either the State or EPA determines that they are significant precursors.

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

“Regional water and/or wastewater projects” include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

“Regionally significant action” means a Federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area’s emissions inventory for that pollutant.

“Restricted information” is information that is privileged or that is otherwise protected from disclosure pursuant to applicable statutes, Executive Orders, or regulations. Such information includes, but is not limited to: Classified national security information, protected critical infrastructure information, sensitive security information, and proprietary business information.

“Take or start the Federal action” means the date that the Federal agency signs or approves the permit, license, grant or contract or otherwise physically begins the Federal action that requires a conformity evaluation under this section.

“Total of direct and indirect emissions” means the sum of direct and indirect emissions increases and decreases caused by the Federal action; i.e., the “net” emissions considering all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under Subsections (c)(iii), (iv), (v), or (vi) are not included in the “total of direct and indirect emissions.” The “total of direct and indirect emissions” includes emissions of criteria pollutants and emissions of precursors of criteria pollutants.

(c) Applicability.

(i) Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) must meet the procedures and criteria of Chapter 8, Section 4, in lieu of the procedures set forth in this section.

(ii) For Federal actions not covered by paragraph (i) of this subsection, a conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions of the criteria pollutant or precursor in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (ii)(A) or (B) of this subsection.

(A) For purposes of paragraph (ii) of this subsection, the following rates apply in nonattainment areas (NAAs):

	<u>Tons/Year</u>
Ozone (VOCs or NO _x):	
Serious NAAs	50
Severe NAAs	25
Extreme NAAs	10
Other ozone NAAs outside an ozone transport region	100
Marginal and moderate NAAs inside an ozone transport region:	
<u>Other ozone NAAs inside an ozone transport region:</u>	
VOC	50
NO _x	100
Carbon monoxide:	
All NAAs	100
SO ₂ or NO ₂ :	
All NAAs	100
PM ₁₀ :	
Moderate NAAs	100
Serious NAAs	70
<u>PM_{2.5}:</u>	
<u>Direct emissions</u>	<u>100</u>
<u>SO₂</u>	<u>100</u>
<u>NO_x (unless determined not to be significant precursors)</u>	<u>100</u>
<u>VOC or ammonia (if determined to be significant precursors)</u>	<u>100</u>
Pb:	
All NAAs	25

(B) For purposes of paragraph (ii) of this subsection, the following rates apply in maintenance areas:

	<u>Tons/Year</u>
Ozone (NO _x , SO ₂ or NO ₂):	
All Maintenance Areas	100
Ozone (VOCs):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide:	
All maintenance areas	100

PM ₁₀ :	All maintenance areas	100
<u>PM_{2.5}</u> :	<u>Direct emissions</u>	<u>100</u>
	<u>SO₂</u>	<u>100</u>
	<u>NO_x (unless determined not to be significant precursors)</u>	<u>100</u>
	<u>VOC or ammonia (if determined to be significant precursors)</u>	<u>100</u>
Pb:	All maintenance areas	25

(iii) The requirements of this section shall not apply to the following Federal actions:

(A) Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (ii) of this subsection.

(B) ~~The following are~~ Actions which would result in no emissions increase or an increase in emissions that is clearly de minimus:

(I) Judicial and legislative proceedings.

(II) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.

(III) Rulemaking and policy development and issuance.

(IV) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.

(V) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.

(VI) Administrative actions such as personnel actions, organization changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.

(VII) The routine, recurring transportation of material and personnel.

(VIII) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and/or for repair or overhaul.

(IX) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(X) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

(XI) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.

(XII) Planning, studies, and provision of technical assistance.

(XIII) Routine operation of facilities, mobile assets and equipment.

(XIV) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.

(XV) The designation of empowerment zones, enterprise communities, or viticultural areas.

(XVI) Actions by any of the Federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.

(XVII) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank necessary to effect monetary or exchange rate policy.

(XVIII) Actions that implement a foreign affairs function of the United States.

(XIX) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

(XX) Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.

(XXI) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

(XXII) Air traffic control activities and adopting approach, departure, and enroute procedures for aircraft operations above the mixing height specified in the applicable SIP. Where the applicable SIP does not specify a mixing height, the Federal agency can use the 3,000 feet above ground level as a default mixing height, unless the agency demonstrates that use of a different mixing height is appropriate because the change in emissions at and above that height caused by the Federal action is *de minimis*.

(C) Actions where the emissions are not reasonably foreseeable, such as the following:

(I) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.

(II) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.

(D) Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a conforming land management plan.

(iv) Notwithstanding the other requirements of this section, a conformity determination is not required for the following Federal actions (or portion thereof):

(A) The portion of an action that includes major or minor new or modified stationary sources that require a permit under the new source review (NSR)

program (Section 110(a)(2)(c) and section 173 of the CAA) or the prevention of significant deterioration (PSD) program (Title I, part C of the CAA);

(B) Actions in response to emergencies ~~or natural disasters such as hurricanes, earthquakes, etc.,~~ which are typically commenced on the order of hours or days after the emergency ~~or disaster~~ and, if applicable, which meet the requirements of paragraph (v) of this subsection;

(C) Research, investigations, studies, demonstrations, or training (other than those exempted under paragraph (iii)(B) of this subsection), where no environmental detriment is incurred and/or, the particular action furthers air quality research, as determined by the State agency primarily responsible for the applicable SIP;

(D) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions);

(E) Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(v) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (iv)(B) of this subsection and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under paragraph (iv)(B) of this subsection are exempt from the requirements of this section only if:

(A) The Federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or

(B) For actions which are to be taken after those actions covered by paragraph (v)(A) of this subsection, the Federal agency makes a new determination as provided in paragraph (v)(A) of this subsection and:

(I) Provides a draft copy of the written determinations required to affected EPA Regional office(s), the affected State(s) and/or air pollution control agencies, and any Federal recognized Indian tribal government in the nonattainment or maintenance area. Those organizations must be allowed 15 days from the beginning of the extension period to comment on the draft determination; and

(II) Within 30 days after making the determination, publish a notice of the determination by placing a prominent advertisement in a daily newspaper of general circulation in the area affected by the action.

(C) If additional actions are necessary in response to an emergency or disaster under paragraph (iv)(B) of this subsection beyond the specified time period in paragraph (v)(B) of this subsection, a Federal agency can make a new written determination as described in (v)(B) of this subsection for as many 6-month periods as needed, but in no case shall this exemption extend beyond three 6-month periods except where an agency:

(I) Provides information to EPA and the State stating that the conditions that gave rise to the emergency exemption continue to exist and how such conditions effectively prevent the agency from conducting a conformity evaluation.

(vi) Notwithstanding other requirements of this section, actions specified by individual Federal agencies that have met the criteria set forth in either paragraphs (vii)(A), ~~or~~ (vii)(B), or (vii)(C) of this subsection and the procedures set forth in paragraph (viii) of this subsection are “presumed to conform”, except as provided in paragraph (x) of this subsection. Actions specified by individual Federal agencies as “presumed to conform” may not be used in combination with one another when the total direct and indirect emissions from the combination of actions would equal or exceed any of the rates specified in paragraphs (ii)(A) or (ii)(B) of this subsection.

(vii) The Federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraphs (vii)(A), ~~or~~ (vii)(B), or (vii)(C) of this subsection:

(A) The Federal agency must clearly demonstrate using methods consistent with this section that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(I) Cause or contribute to any new violation of any standard in any area;

(II) Interfere with provisions in the applicable SIP for maintenance of any standard;

(III) Increase the frequency or severity of any existing violation of any standard in any area; or

(IV) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

progress;

(1.) A demonstration of reasonable further

(2.) A demonstration of attainment;

(3.) A maintenance plan; or

(B) The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (ii) of this subsection, based, for example, on similar actions taken over recent years.

(C) The Federal agency must clearly demonstrate that the emissions from the type or category of actions and the amount of emissions from the action are included in the applicable SIP and the State, local, or tribal air quality agencies responsible for the SIP(s) provide written concurrence that the emissions from the actions along with all other expected emissions in the area will not exceed the emission budget in the SIP.

(viii) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (vii)(A), ~~or (vii)(B)~~, or (vii)(C) of this subsection, the following procedures must also be complied with to presume that activities will conform:

(A) The Federal agency must identify through publication in the Federal Register its list of proposed activities that are “presumed to conform” and the basis for the presumptions. The notice must clearly identify the type and size of the action that would be “presumed to conform” and provide criteria for determining if the type and size of action qualifies it for the presumption;

(B) The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under §174 of the CAA and the MPO and provide at least 30 days for the public to comment on the list of proposed activities “presumed to conform”. If the “presumed to conform” action has regional or national application (e.g., the action will cause emission increases in excess of the *de minimis* levels identified in paragraph (ii) of this subsection in more than one of EPA’s Regions), the Federal agency, as an alternative to sending it to EPA Regional Offices, can send the draft conformity determination to U.S. EPA, Office of Air Quality Planning and Standards;

(C) The Federal Agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(D) The Federal agency must publish the final list of such activities in the Federal Register.

(ix) Notwithstanding the other requirements of this section, when the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the rates specified in paragraph (ii) of this subsection, but represents 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of Subsection (a) and Subsections (e) through (j) shall apply for the Federal action. Emissions from the following actions are "presumed to conform":

(A) Actions at installations with facility-wide emission budgets meeting the requirements in Subsection (k) provided that the State has included the emission budget in the EPA-approved SIP and the emissions from the action along with all other emissions from the installation will not exceed the facility-wide emission budget.

(B) Prescribed fires conducted in accordance with a smoke management program (SMP) which meets the requirements of EPA's Interim Air Quality Policy on Wildland and Prescribed Fires or an equivalent replacement EPA policy.

(C) Emissions for actions that the State identifies in the EPA-approved SIP as "presumed to conform".

(x) ~~Where an action otherwise presumed to conform under paragraph (vi) of this subsection is a regionally significant action or does not in fact meet one of the criteria in paragraph (vii)(A) of this subsection, that action shall not be presumed to conform and the requirements of Subsection (a) and Subsections (e) through (j) shall apply for the Federal action. Even though an action would otherwise be "presumed to conform" under paragraphs (vi) or (ix) of this subsection, an action shall not be "presumed to conform" and the requirements of Subsection (a), 40 CFR 93.151, Subsections (d) through (j) and Subsections (l) through (n) shall apply to the action if EPA or a third party shows that the action would:~~

(A) Cause or contribute to any new violation of any standard in any area;

(B) Interfere with provisions in the applicable SIP for maintenance of any standard;

(C) Increase the frequency or severity of any existing violation of any standard in any area; or

(D) Delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

(I) A demonstration of reasonable further progress;

(II) A demonstration of attainment; or

(III) A maintenance plan.

(xi) The provisions of this section shall apply in all nonattainment and maintenance areas except conformity requirements for newly designated nonattainment areas are not applicable until 1 year after the effective date of the final nonattainment designation for each NAAQS and pollutant in accordance with section 176(c)(6) of the CAA.

(d) ~~Conformity Analysis~~ Federal Agency Conformity Responsibility. Any Federal department, agency, or instrumentality of the Federal government taking an action subject to this section must make its own conformity determination consistent with the requirements of this section. In making its conformity determination, a Federal agency must follow the requirements in Subsections (e) through (j) and Subsections (l) through (o) and must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

(e) Reporting Requirements.

(i) A Federal agency making a conformity determination under ~~Subsection (h)~~ Subsections (d) through (j) and Subsections (l) through (n) must provide to the appropriate EPA Regional Office(s), State and local air quality agencies, any federally-recognized Indian tribal government in the nonattainment or maintenance area, and, where applicable, affected Federal Land Managers, the agency designated under § section 174 of the CAA and the MPO, a 30-day notice which describes the proposed action and the Federal agency's draft conformity determination on the action. If the action has multi-regional or national impacts (e.g., the action will cause emission increases in excess of the *de minimis* levels identified in Subsection (c)(ii) in three or more of EPA's Regions), the Federal agency, as an alternative to sending it to EPA Regional Offices, can provide the notice to EPA's Office of Air Quality Planning and Standards.

(ii) A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies, any federally-recognized Indian tribal government in the nonattainment or maintenance area, and, where applicable, affected Federal Land Managers, the agency designated under § section 174 of the Clean Air Act and the MPO, within 30 days after making a final conformity determination under ~~Subsection (h)~~ this section.

(iii) The draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations, security manuals, or executive orders concerning the use, access, and

release of such materials. Subject to applicable procedures to protect restricted information from public disclosure, any information or materials excluded from the draft or final conformity determination or supporting materials may be made available in a restricted information annex to the determination for review by Federal and State representatives who have received appropriate clearances to review the information.

(f) Public Participation.

(i) Upon request by any person regarding a specific Federal action, a Federal agency must make available, subject to the limitation in paragraph (v) of this section, for review its draft conformity determination under ~~Subsection (h)~~ Subsection (d) with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

(ii) A Federal agency must make public its draft conformity determination under ~~Subsection (h)~~ Subsection (d) by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process. If the action has multi-regional or national impacts (e.g., the action will cause emission increases in excess of the *de minimis* levels identified in Subsection (c)(ii) in three or more of EPA's Regions), the Federal agency, as an alternative to publishing separate notices, can publish a notice in the Federal Register.

(iii) A Federal agency must document its response to all the comments received on its draft conformity determination under ~~Subsection (h)~~ Subsection (d) and make the comments and responses available, subject to the limitation in paragraph (v) of this subsection, upon request by any person regarding a specific Federal action, within 30 days of the final conformity determination.

(iv) A Federal agency must make public its final conformity determination under ~~Subsection (h)~~ Subsection (d) for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination. If the action would have multi-regional or national impacts, the Federal agency, as an alternative, can publish the notice in the Federal Register.

(v) The draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations or executive orders concerning the release of such materials.

(g) ~~Frequency of Conformity Determinations~~ Reevaluation of Conformity.

(i) Once a conformity determination is completed by a Federal agency, that determination is not required to be reevaluated if the agency has maintained a continuous program to implement the action; the determination has not lapsed as specified in paragraph (ii) of this subsection; or any modification to the action does not result in an increase in emissions above the levels specified in Subsection (c)(ii). If a conformity determination is not required for the action at the time the NEPA analysis is completed, the date of the finding of no significant impact (FONSI) for an Environmental Assessment, a record of decision (ROD) for an Environmental Impact Statement, or a categorical exclusion determination can be used as a substitute date for the conformity determination date.

(ii) The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under Subsection (e), unless the Federal action has been completed or a continuous program to implement the Federal action has commenced. ~~has been commenced to implement that Federal action within a reasonable time.~~

(iii) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under SubSection (e).

(iiiiv) If, after the conformity determination is made, the Federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in Subsection (c)(ii), a new conformity determination is required. If the Federal agency originally determined through the applicability analysis that a conformity determination was not necessary because the emissions for the action were below the limits in Subsection (c)(ii) and changes to the action would result in the total emissions from the action being above the limits in Subsection (c)(ii), then the Federal agency must make a conformity determination.

(h) Criteria for Determining Conformity of General Federal Actions.

(i) An action required under Subsection (c) to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in Subsection (c)(ii), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (iii) of this subsection, and meets any of the following requirements:

(A) For any criteria pollutant or precursor, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration or reasonable further progress milestone or in a facility-wide emission budget included in a SIP in accordance with Subsection (k);

(B) For precursors of ozone, ~~or~~ nitrogen dioxide, or PM, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violations in the past, in the area with the Federal action) through a revision to the applicable SIP or a similarly enforceable measure that effects emissions reductions so that there is no net increase in emissions of that pollutant;

(C) For any directly-emitted criteria pollutant, ~~except ozone and nitrogen dioxide~~, the total of direct and indirect emissions from the action meets the requirements:

(I) Specified in paragraph (ii) of this subsection, based on areawide air quality modeling analysis and local air quality modeling analysis; or

(II) Meet the requirements of paragraph (i)(E) of this subsection and, for local air quality modeling analysis, the requirement of paragraph (ii) of this subsection;

(D) For CO or directly emitted PM₁₀:

(I) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (ii) of this subsection, based on local air quality modeling analysis; or

(II) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (ii) of this subsection, based on areawide modeling, or meet the requirements of paragraph (i)(E) of this subsection; or

(E) For ozone or nitrogen dioxide, and for purposes of paragraphs (i)(C)(II) and (i)(D)(II) of this subsection, each portion of the action or the action as a whole meets any of the following requirements:

(I) Where EPA has approved a revision to ~~an area's attainment or maintenance demonstration after 1990~~ the applicable implementation plan after the area was designated as nonattainment and the State makes a determination as provided in paragraph (i)(E)(I)(1.) of this subsection or where the State makes a commitment as provided in paragraph (i)(E)(I)(2.) of this subsection:

(1.) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which,

together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP.

(2.) The total of direct and indirect emissions from the action (or portion thereof) is determined by the State agency responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP and the State Governor or the Governor's designee for SIP actions makes a written commitment to EPA which includes the following:

- a. A specific schedule for adoption and submittal of a revision to the SIP which would achieve the needed emission reductions prior to the time emissions from the Federal action would occur;
- b. Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;
- c. A demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the Federal action, and that local authority to implement additional requirements has been fully pursued;
- d. A determination that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and
- e. Written documentation including all air quality analyses supporting the conformity determination.

(3.) Where a Federal agency made a conformity determination based on a State's commitment under paragraph (i)(E)(I)(2.) of this subsection and the State has submitted a SIP to EPA covering the time period during which the emissions will occur or is scheduled to submit such a SIP within 18 months of the conformity determination, the ~~such a~~ State commitment is automatically deemed a call for a SIP revision by EPA under § section 110(k)(5) of the CAA, effective on the date of the Federal conformity determination and requiring response within 18 months or any shorter time within which the State commits to revise the applicable SIP;

(4.) Where a Federal agency made a conformity determination based on a State commitment under paragraph (i)(E)(I)(2.) of this subsection and the State has not submitted a SIP covering the time period when the emissions will occur or is not scheduled to submit such a SIP within 18 months of the conformity determination, the State must, within 18 months, submit to EPA a revision to the existing SIP committing to include the emissions in the future SIP revision.

(II) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under Chapter 8, Section 4, or 40 CFR part 93, Subpart A;

(III) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violations in the past, in the area with the Federal action) through a revision to the applicable SIP or an equally enforceable measure that effects emissions reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(IV) Where EPA has not approved a revision to the relevant SIP ~~attainment or maintenance demonstration since 1990~~ since the area was redesignated or reclassified, the total of direct and indirect emissions from the action for the future years (described in Subsection (i)(iv)) do not increase emissions with respect to the baseline emissions:

(1.) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed Federal action during:

a. ~~Calendar year 1990,~~ The most current calendar year with a complete emission inventory available before an area is designated unless EPA sets another year; or

b. ~~The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the most representative year), if a classification is promulgated in 40 CFR part 81, or~~ The emission budget in the applicable SIP;

c. The year of the baseline inventory in the PM₁₀ applicable SIP;

(2.) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in Subsection (i)(iv)) using the historic activity levels (described in paragraph (i)(E)(IV)(1.) of this subsection) and appropriate emission factors for the future years; or

(V) Where the action involves regional water and/or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.

(ii) The areawide and/or local air quality modeling analyses must:

(A) Meet the requirements in Subsection (i); and

(B) Show that the action does not:

(I) Cause or contribute to any new violation of any standard in any area; or

(II) Increase the frequency or severity of any existing violation of any standard in any area.

(iii) Notwithstanding any other requirements of this subsection, an action subject to this section may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements.

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

(i) Procedures for Conformity Determinations of General Federal Actions.

(i) The analyses required under this section must be based on the latest planning assumptions.

(A) All planning assumptions must be derived from the estimates of population, employment, travel, and congestion most recently approved by the MPO, or other agency authorized to make such estimates, where available.

(B) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.

(ii) The analyses required under this section must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate, the Federal agency may obtain ~~and~~ written approval ~~of~~ from the appropriate EPA Regional Administrator ~~is obtained for any modification or substitution, they may be modified or of~~ another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program.

(A) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of SIPs in that State must be used for the conformity analysis as specified in paragraphs (ii)(A)(I) and (II) of this subsection:

(I) The EPA must publish in the Federal Register a notice of availability of any new motor vehicle emissions model; and

(II) A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used unless EPA announces a longer grace period in the Federal Register. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years months before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

(B) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the “Compilation of Air Pollutant Emission Factors” (AP-42) must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

(iii) The air quality modeling analyses required under this section must be based on the applicable air quality models, databases, and other requirements specified in the most recent version of the “Guideline on Air Quality Models” (Appendix W to 40 CFR part 51), (Revised) (1986), including supplements (EPA publication no. 450/2-78-027R), unless:

(A) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and

(B) Written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(iv) The analyses required under this section, ~~except Subsection (h)(i)(A),~~ must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

(A) The attainment year specified in the SIP, or if the SIP does not specify an attainment year, the latest attainment year possible under the CAA; or

~~(B) The CAA mandated attainment year or, if applicable, the farthest last~~ year for which emissions are projected in the maintenance plan;

(~~BC~~) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

(~~CD~~) Any year for which the applicable SIP specifies an emissions budget.

(j) Mitigation of Air Quality Impacts.

(i) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(ii) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations.

(iii) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(iv) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

(v) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of Subsection (e) and the public participation requirements of Subsection (f).

(vi) ~~The implementation plan revision required in 40 CFR part 51, Subpart W shall provide that w~~Written commitments to mitigation measures must be obtained prior to a positive conformity determination and that such commitments must be fulfilled.

(vii) After a State revises its SIP ~~to adopt its general conformity rules~~ and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

(k) Conformity Evaluation for Federal Installations With Facility-Wide Emission Budgets.

(i) The State or local agency responsible for implementing and enforcing the SIP can in cooperation with Federal agencies or third parties authorized by the agency that operate installations subject to Federal oversight develop and adopt a facility-wide emission budget to be used for demonstrating conformity under Subsection (h)(i)(A). The facility-wide budget must meet the following criteria:

(A) Be for a set time period;

(B) Cover the pollutants or precursors of the pollutants for which the area is designated nonattainment or maintenance;

(C) Include specific quantities allowed to be emitted on an annual or seasonal basis;

(D) The emissions from the facility along with all other emissions in the area will not exceed the emission budget for the area;

(E) Include specific measures to ensure compliance with the budget, such as periodic reporting requirements or compliance demonstration, when the Federal agency is taking an action that would otherwise require a conformity determination;

(F) Be submitted to EPA as a SIP revision;

(G) The SIP revision must be approved by EPA.

(ii) The facility-wide budget developed and adopted in accordance with paragraph (i) of this subsection can be revised by following the requirements in paragraph (i) of this subsection.

(iii) Total direct and indirect emissions from Federal actions in conjunction with all other emissions subject to General Conformity from the facility that do not exceed the facility budget adopted pursuant to paragraph (i) of this subsection are “presumed to conform” to the SIP and do not require a conformity analysis.

(iv) If the total direct and indirect emissions from the Federal actions in conjunction with the other emissions subject to General Conformity from the facility exceed the budget adopted pursuant to paragraph (i) of this subsection, the action must be evaluated for conformity. A Federal agency can use the compliance with the facility-wide emissions budget as part of the demonstration of conformity, i.e., the agency would have to mitigate or offset the emissions that exceed the emission budget.

(v) If the SIP for the area includes a category for construction emissions, the negotiated budget can exempt construction emissions from further conformity analysis.

(l) Emissions Beyond the Time Period Covered by the SIP. If a Federal action would result in total direct and indirect emissions above the applicable thresholds which would be emitted beyond the time period covered by the SIP, the Federal agency can:

(i) Demonstrate conformity with the last emission budget in the SIP; or

(ii) Request the State to adopt an emissions budget for the action for inclusion in the SIP. The State must submit a SIP revision to EPA within 18 months either including the emissions in the existing SIP or establishing an enforceable commitment to include the emissions in future SIP revisions based on the latest planning assumptions at the time of the SIP revision. No such commitment by a State shall restrict a State's ability to require RACT, RACM or any other control measures within the State's authority to ensure timely attainment of the NAAQS.

(m) Timing of Offsets and Mitigation Measures.

(i) The emissions reductions from an offset or mitigation measure used to demonstrate conformity must occur during the same calendar year as the emission increases from the action except, as provided in paragraph (ii) of this subsection.

(ii) The State may approve emissions reductions in other years provided:

(A) The reductions are greater than the emission increases by the following ratios:

(I) Extreme nonattainment areas 1.5:1

(II) Severe nonattainment areas 1.3:1

(III) Serious nonattainment areas 1.2:1

(IV) Moderate nonattainment areas 1.15:1

(V) All other areas 1.1:1

(B) The time period for completing the emissions reductions must not exceed twice the period of the emissions.

(C) The offset or mitigation measure with emissions reductions in another year will not:

(I) Cause or contribute to a new violation of any air quality standard;

(II) Increase the frequency or severity of any existing violation of any air quality standard; or

(III) Delay the timely attainment of any standard or any interim emissions reductions or other milestones in any area.

(iii) The approval by the State of an offset or mitigation measure with emissions reductions in another year does not relieve the State of any obligation to meet any SIP or CAA milestone or deadline. The approval of an alternate schedule for mitigation measures is at the discretion of the State, and they are not required to approve an alternate schedule.

(n) Inter-precursor Mitigation Measures and Offsets. Federal agencies must reduce the same type of pollutant as being increased by the Federal action except the State may approve offsets or mitigation measures of different precursors of the same criteria pollutant, if such trades are allowed by a State in a SIP approved NSR regulation, is technically justified, and has a demonstrated environmental benefit.

(o) Early Emission Reduction Credit Programs at Federal Facilities and Installation Subject to Federal Oversight.

(i) Federal facilities and installations subject to Federal oversight can, with the approval of the State agency responsible for the SIP in that area, create an early emissions reductions credit program. The Federal agency can create the emission reduction credits in accordance with the requirements in paragraph (ii) of this subsection and can use them in accordance with paragraph (iii) of this subsection.

(ii) Creation of Emission Reduction Credits.

(A) Emissions reductions must be quantifiable through the use of standard emission factors or measurement techniques. If non-standard factors or techniques to quantify the emissions reductions are used, the Federal agency must receive approval from the State agency responsible for the implementation of the SIP and from EPA's Regional Office. The emission reduction credits do not have to be quantified before the reduction strategy is implemented, but must be quantified before the credits are used in the General Conformity evaluation.

(B) The emission reduction methods must be consistent with the applicable SIP attainment and reasonable further progress demonstrations.

(C) The emissions reductions cannot be required by or credited to other applicable SIP provisions.

(D) Both the State and Federal air quality agencies must be able to take legal action to ensure continued implementation of the emission reduction strategy. In addition, private citizens must also be able to initiate action to ensure compliance with the control requirement.

(E) The emissions reductions must be permanent or the timeframe for the reductions must be specified.

(F) The Federal agency must document the emissions reductions and provide a copy of the document to the State air quality agency and the EPA Regional Office for review. The documentation must include a detailed description of the emission reduction strategy and a discussion of how it meets the requirements of paragraphs (ii)(A) through (E) of this subsection.

(iii) Use of Emission Reduction Credits. The emission reduction credits created in accordance with paragraph (ii) of this subsection can be used, subject to the following limitations, to reduce the emissions increase from a Federal action at the facility for the conformity evaluation.

(A) If the technique used to create the emission reduction is implemented at the same facility as the Federal action and could have occurred in conjunction with the Federal action, then the credits can be used to reduce the total direct and indirect emissions used to determine the applicability of the regulation as required in Subsection (c) and as offsets or mitigation measures required by Subsection (h).

(B) If the technique used to create the emission reduction is not implemented at the same facility as the Federal action or could not have occurred in conjunction with the Federal action, then the credits cannot be used to reduce the total direct and indirect emissions used to determine the applicability of the regulation as required in Subsection (c), but can be used to offset or mitigate the emissions as required by Subsection (h).

(C) Emissions reductions credits must be used in the same year in which they are generated.

(D) Once the emission reduction credits are used, they cannot be used as credits for another conformity evaluation. However, unused credits from a strategy used for one conformity evaluation can be used for another conformity evaluation as long as the reduction credits are not double counted.

(E) Federal agencies must notify the State air quality agency responsible for the implementation of the SIP and EPA Regional Office when the emission reduction credits are being used.

Section 4. **Transportation conformity.**

(a) Definitions. Terms used but not defined in this subpart shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

“Applicable implementation plan” is defined in §302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under §110, or promulgated under §110(c), or promulgated or approved pursuant to regulations promulgated under §301(d) and which implements the relevant requirements of the CAA.

“CAA” means the Clean Air Act, as amended.

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

(A) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented, or

(B) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

“Control strategy implementation plan revision” is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA §§182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§192(a) and 192(b), for nitrogen dioxide).

“Control strategy period” with respect to particulate matter less than 10 microns in diameter (PM₁₀), carbon monoxide (CO), nitrogen dioxide (NO₂), and/or ozone precursors (volatile organic compounds and oxides of nitrogen), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM₁₀, NO₂, CO, and/or ozone, as appropriate. This period ends when a State submits and EPA approves a request under §107(d) of the CAA for redesignation to an attainment area.

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

“Design scope” means the design aspects which will affect the proposed facility’s impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project,

signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

“Division” means the Air Quality Division of the Department of Environmental Quality.

“DOT” means the United States Department of Transportation.

“EPA” means the Environmental Protection Agency.

“FHWA” means the Federal Highway Administration of DOT.

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

“FTA” means the Federal Transit Administration of DOT.

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

“Highway project” is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(A) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(B) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(C) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

“Horizon year” is a year for which the transportation plan describes the envisioned transportation system according to Chapter 8, Section 4(f).

“Hot-spot analysis” is an estimation of likely future localized CO and PM₁₀ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated

using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

“Incomplete data area” means any ozone nonattainment area which EPA has classified, in 40 CFR part 81, as an incomplete data area.

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

“ISTEA” means the Intermodal Surface Transportation Efficiency Act of 1991.

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

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

“Metropolitan planning organization (MPO)” is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making.

“Milestone” has the meaning given in §182(g)(1) and §189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

“Motor vehicle emissions budget” is that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or his or her designee, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions

budget for oxides of nitrogen (NO_x) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO_x budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO_x budget if NO_x reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

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

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

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

“Nonattainment area” means any geographic region of the United States which has been designated as nonattainment under §107 of the CAA for any pollutant for which a national ambient air quality standard exists.

“Not classified area” means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.

“Phase II of the interim period” with respect to a pollutant or pollutant precursor, means that period of time after the effective date of this rule, lasting until the earlier of the following:

(A) Submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor (or his or her designee) and have been subject to a public hearing, or

(B) The date that the Clean Air Act requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has made a finding of the State’s failure to submit any such plans and the State, MPO, and DOT have received notice of such finding of the State’s failure to submit any such plans. The precise end of Phase II of the interim period is defined in Chapter 8, Section 4(bb).

“Project” means a highway project or transit project.

“Recipient of funds designated under Title 23 U.S.C. or the Federal Transit Act” means any agency at any level of State, county, city, or regional government that routinely receives Title 23 U.S.C. or Federal Transit Act funds to construct FHWA/FTA

projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

“Regionally significant project” means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area’s transportation network, including at a minimum all principal arterial highways, all fixed guideway transit facilities that offer an alternative to regional highway travel and any project that the Division identifies as having the potential to affect air quality on a regional basis, after consultation in accordance with Chapter 8, Section 4(e).

“Rural transport ozone nonattainment area” means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area, or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under Clean Air Act §182(h) as a rural transport area.

“Standard” means a national ambient air quality standard.

“Submarginal area” means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR part 81.

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

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

“Transit project” is an undertaking to implement or modify a transit facility or transit-related program, purchase transit vehicles or equipment, or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

(A) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(B) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(C) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

“Transitional area” means any ozone nonattainment area which EPA has classified as transitional in 40 CFR part 81.

“Transitional period” with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the Governor (or his or her designee) and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in Chapter 8, Section 4(bb).

“Transportation control measure (TCM)” is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in §108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.

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

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

“Transportation project” is a highway project or a transit project.

“WYDOT” means the Wyoming Department of Transportation.

(b) Applicability.

(i) Action Applicability.

(A) Except as provided for in paragraph (iii) of this section or Chapter 8, Section 4(hh), conformity determinations are required for:

(I) The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(II) The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(III) The approval, funding, or implementation of FHWA/FTA projects.

(B) Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, Chapter 8, Section 4(cc) applies to such projects if they are regionally significant.

(ii) Geographic Applicability.

(A) The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(B) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀).

(C) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

(I) Volatile organic compounds and nitrogen oxides in ozone areas (unless the Administrator determines under §182(f) of the CAA that additional reductions of NO_x would not contribute to attainment);

(II) Nitrogen oxides in nitrogen dioxide areas; and

(III) Volatile organic compounds, nitrogen oxides, and PM₁₀ in PM₁₀ areas if:

(1.) During the interim period, the EPA Regional Administrator or the Director of the State air agency has made a finding (including a finding as part of an applicable implementation plan or a submitted implementation revision) that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT; or

(2.) During the transitional, control strategy, and maintenance periods, the applicable implementation plan (or implementation plan

submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(iii) Limitations.

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

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

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

(d) Frequency of Conformity Determinations.

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

(ii) Transportation Plans.

(A) Each new transportation plan must be found to conform before the transportation plan is approved by the MPO or accepted by DOT.

(B) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in Chapter 8, Section 4(hh) and has been made in accordance with the notification process provisions of Chapter 8, Section 4(e)(iii)(A)(VII). The conformity determination must be based on the transportation plan and the revision taken as a whole.

(C) The existing conformity determination will lapse unless conformity of the existing transportation plans is redetermined:

(I) By May 1, 1995 (unless previously redetermined in accordance with 40 CFR part 51 Subpart T); or

(II) Within 18 months of EPA approval of an implementation plan revision which:

(1.) Establishes or revises a transportation-related emissions budget (as required by CAA §§175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§192(a) and 192(b), for nitrogen dioxide; or

(2.) Adds, deletes, or changes TCMs; and

(III) Within 18 months of EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

(D) In any case, conformity determinations must be made no less frequently than every three years, or the existing conformity determination will lapse.

(iii) Transportation Improvement Programs.

(A) A new TIP must be found to conform before the TIP is approved by the MPO or accepted by DOT.

(B) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in Chapter 8, Section 4(hh) and has been made in accordance with the notification process provisions of Chapter 8, Section 4(e)(iii)(A)(VII).

(C) After an MPO adopts a new or revised transportation plan, conformity must be redetermined by the MPO and DOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in Chapter 8, Section 4(hh) and has been made in accordance with the notification process provisions of Chapter 8, Section 4(e)(iii)(A)(VII). Otherwise, the existing conformity determination for the TIP will lapse.

(D) In any case, conformity determinations must be made no less frequently than every three years or the existing conformity determination will lapse.

(iv) Projects. FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the most recent three-year period: NEPA process completion; start of final design; acquisition of a

significant portion of the right-of-way; or approval of the plans, specifications and estimates.

(e) Consultation.

(i) General. This rule provides procedures for interagency consultation (Federal, State, and local) and resolution of conflicts. Such consultation procedures shall be undertaken by the WYDOT, MPOs and the DOT with the Division and EPA before making conformity determinations, and by the Division and EPA with MPOs, the WYDOT and DOT in developing and revising applicable implementation plans.

(ii) Interagency Consultation Procedures: General Factors.

(A) Representatives of the MPOs, the Division and the WYDOT shall undertake an interagency consultation process in accordance with this section with each other, with representatives of appropriate cities, towns, and counties and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the list of TCMs in the applicable implementation plan, the unified planning work program under 23 CFR §450.314, the transportation plan, the TIP, any revisions to the preceding documents, and all conformity determinations required by this rule.

(B) The agency with the responsibility for a transportation plan, program, project, or applicable implementation plan shall also be responsible for preparing the final document of decision subject to the interagency consultation process and shall be the lead agency. It shall be the affirmative responsibility of the lead agency to initiate the process by notifying other participants, to convene consultation meetings early in the process of decision on the final document, to appoint the conveners of technical meetings, and to assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(C) Regular consultation on routine activities such as the selection of models or any determination of conformity on transportation projects shall include meetings at regular, scheduled quarterly intervals, if determined necessary by the lead agency and shall be on the agenda of at least one meeting attended by representatives at the policy level of each agency. In addition, technical meetings shall be convened as necessary.

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

(iii) Interagency Consultation Procedures: Specific Processes.

(A) An interagency consultation process in accordance with Chapter 8, Section 4(e)(ii) involving the MPO, the Division, the WYDOT, EPA, and DOT shall be undertaken for the following:

(I) Evaluating and choosing each model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses, including vehicle miles traveled (“VMT”) forecasting, to be initiated by the WYDOT and conducted in accordance with Chapter 8, Section 4(e)(ii).

(II) Determining which minor arterials and other transportation projects should be considered “regionally significant” for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extension that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan of TIP, to be initiated by the WYDOT and conducted in accordance with Chapter 8, Section 4(e)(ii).

(III) Evaluate whether projects otherwise exempted from meeting the requirements of this section should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason, to be initiated by the Division and conducted in accordance with Chapter 8, Section 4(e)(ii).

(IV) Make a determination, as required by Chapter 8, Section 4(m)(iii)(A), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs, to be initiated by the Division and conducted in accordance with Chapter 8, Section 4(e)(ii). This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures.

(V) Making a determination, as required by Chapter 8, Section 4(cc)(ii), whether the project is included in the regional emission analysis supporting the currently conforming TIP’s conformity determination, even if the project is not strictly “included” in the TIP for the purposes of MPO project selection or endorsement, and whether the project’s design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility, to be initiated by the WYDOT and conducted in accordance with Chapter 8, Section 4(e)(ii).

(VI) Identify, as required by Chapter 8, Section 4(ee)(iv), projects located at sites in PM₁₀ nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM₁₀

hot-spot analysis, to be initiated by the Division and conducted in accordance with Chapter 8, Section 4(e)(ii).

(VII) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in Chapter 8, Section 4(hh), to be initiated by the WYDOT and conducted in accordance with Chapter 8, Section 4(e)(ii).

(VIII) Determining what forecast of vehicle miles traveled (VMT) to use in establishing or tracking emissions budgets, developing transportation plans, TIPS, or applicable implementation plans, or making conformity determinations, to be initiated by the WYDOT and conducted in accordance with Chapter 8, Section 4(e)(ii).

(B) An interagency consultation process in accordance with Chapter 8, Section 4(e)(ii) involving the MPO, the Division and the WYDOT, shall be undertaken for the following:

(I) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in Chapter 8, Section 4(d), to be initiated by the Division and conducted in accordance with Chapter 8, Section 4(e)(ii); and

(II) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins, to be initiated by the Division and conducted in accordance with Chapter 8, Section 4(e)(ii).

(C) Where any metropolitan planning area does not include an entire nonattainment or maintenance area, an interagency consultation process in accordance with Chapter 8, Section 4(e)(ii) involving the MPO and the WYDOT shall be undertaken for cooperative planning and analysis purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area, to be initiated by the WYDOT and conducted in accordance with Chapter 8, Section 4(e)(ii).

(D) (I) An interagency consultation process in accordance with Chapter 8, Section 4(e)(ii) involving the MPO, the Division, the WYDOT, and recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act shall be undertaken to assure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed.

(II) The sponsor of any such regionally significant project, and any agency that becomes aware of any such project through applications for approval, permitting or funding or otherwise, shall disclose such project to the MPO in a timely manner. Such disclosure shall be made not later than the first occasion on which any of the following actions are sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of a regionally significant project.

(III) In the case of any such regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of Chapter 8, Section 4(cc).

(IV) For the purposes of this section and Chapter 8, Section 4(cc), the phrase "adopt or approve of a regionally significant project" means the first time any action necessary to authorizing a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

(E) An interagency cooperation process in accordance with Chapter 8, Section 4(e)(ii) involving the MPO and any other recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act shall be undertaken for assuming the location and design concept and scope of projects which are disclosed to the MPO under Chapter 8, Section 4(e)(iii)(E) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of Chapter 8, Section 4(dd), to be initiated by the MPO and conducted in accordance with Chapter 8, Section 4(e)(ii).

(F) An interagency consultation process in accordance with Chapter 8, Section 4(e)(ii) involving any MPO, the Division and the WYDOT shall be undertaken for the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys), to be initiated by the MPO and conducted in accordance with Chapter 8, Section 4(e)(ii).

(iv) Resolving Conflicts.

(A) Any conflict among State agencies or between State agencies and an MPO shall be escalated to the Governor if the conflict cannot be resolved by the heads of the involved agencies. In the first instance, such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

(B) The Division has 14 calendar days to appeal a proposed determination of conformity to the Governor after the WYDOT or MPO has notified the Division of the resolution of all comments on such proposed determination of conformity or policy decision. Such 14-day period shall commence when the MPO or the WYDOT has confirmed receipt by the Administrator of the Division of the resolution of the comments of the Division.

(C) The final conformity decision must have the concurrence of the Governor if the Division appeals a conformity decision. If there is no appeal by the Division, the MPO or the WYDOT may proceed with the final conformity determination.

(D) The Division must provide notice of any appeal under Chapter 8, Section 4(e)(iv)(B) to the WYDOT and MPO.

(E) The Governor may delegate his/her role in the appeal process to anyone except the head or staff of the Division, the WYDOT, the Wyoming Environmental Quality Council, the Wyoming Transportation Commission or an MPO.

(v) Public Participation.

(A) Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR 450, including §§450.316(b)(1), 450.322(c), and 450.324(c) as in effect on the date of adoption of this rule. In addition, any such agency must specifically address in writing in all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. Any such agency shall also provide opportunity for public involvement in conformity determination for projects to the extent otherwise required by law.

(B) The opportunity for public involvement provided under this subsection shall include access to information, emissions data, analyses, models and modeling assumptions used to perform a conformity determination, and the obligation of any such agency to consider and respond to significant comments.

(C) No transportation plan, TIP, or project may be found to conform unless the determination of conformity has been subject to a public involvement process in accordance with this subsection, without regard to whether the DOT has certified any process under 23 CFR part 450.

(f) Content of Transportation Plans.

(i) Transportation Plans Adopted After January 1, 1995 in Serious, Severe, or Extreme Ozone Nonattainment Areas and in Serious Carbon Monoxide Nonattainment Areas. The transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(A) The agency or organization developing the transportation plan, after consultation in accordance with Chapter 8, Section 4(e), may choose any years to be horizon years, subject to the following restrictions:

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

(II) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.

(III) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.

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

(B) For these horizon years:

(I) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and Chapter 8, Section 4(e).

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

sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

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

(ii) Moderate Areas Reclassified to Serious. Ozone or CO nonattainment areas which are reclassified from moderate to serious must meet the requirements of paragraph (i) of this section within two years from the date of reclassification.

(iii) Transportation Plans for Other Areas. Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of Chapter 8, Section 4(i)-(aa).

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

(g) Relationship of Transportation Plan and TIP Conformity With the NEPA Process. The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in Chapter 8, Section 4(i)-(aa) for projects not from a TIP before NEPA process completion.

(h) Fiscal Constraints for Transportation Plans and TIPS. Transportation plans and TIPS shall be fiscally constrained and meet the requirements of 23 CFR 450.332(b)(11) and 450.324(e) as in effect on the date of adoption of this section in order to be found in conformity. The determination that a transportation plan or TIP is fiscally constrained shall be subject to consultation in accordance with Chapter 8, Section 4(e).

(i) Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects: General.

(i) In order to be found to conform, each transportation plan, program, and FHWA/FTA project must satisfy the applicable criteria and procedures in Chapter 8, Section 4(j)-(aa) as listed in Table 1 in paragraph (ii) of this section, and must comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review

(transportation plans, TIPs, and FHWA/FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.

(ii) The following table indicates the criteria and procedures in Chapter 8, Section 4(j)-(aa) which apply for each action in each time period.

Table 1. Conformity Criteria

DURING ALL PERIODS	
Action	Criteria
Transportation Plan	j,k,l,m(ii).
TIP	j,k,l,m(iii).
Project (From a conforming plan and TIP)	j,k,l,n,o,p,q
Project (Not from a conforming plan and TIP)	j,k,l,m(iv),n,p,q

PHASE II OF THE INTERIM PERIOD	
Action	Criteria
Transportation Plan	v,y
TIP	w,z
Project (From a conforming plan and TIP)	u
Project (Not from a conforming plan and TIP)	u,x,aa

TRANSITIONAL PERIOD	
Action	Criteria
Transportation Plan	r,v,y
TIP	s,w,z
Project (From a conforming plan and TIP)	u
Project (Not from a conforming plan and TIP)	t,u,x,aa

Table 1. Conformity Criteria (continued)

CONTROL STRATEGY AND MAINTENANCE PERIODS

Action	Criteria
Transportation Plan	r
TIP	s
Project (From a conforming plan and TIP)	No additional criteria
Project (Not from a conforming plan and TIP)	t

- (j) The conformity determination must be based on the latest planning assumptions.
- (k) The conformity determination must be based on the latest emission estimation model available.
- (l) The MPO must make the conformity determination according to the consultation procedures of this rule and the implementation plan revision required by 40 CFR part 51, Subpart T.
- (m) The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.
- (n) There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.
- (o) The project must come from a conforming transportation plan and program.
- (p) The FHWA/FTA project must not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas.
- (q) The FHWA/FTA project must comply with PM₁₀ control measures in the applicable implementation plan.
- (r) The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- (s) The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- (t) The project which is not from a conforming transportation plan and conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- (u) The FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).
- (v) The transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas.
- (w) The TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

- (x) The project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.
- (y) The transportation plan must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas.
- (z) The TIP must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas.
- (aa) The project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas.

(j) Criteria and Procedures: Latest Planning Assumptions.

(i) During all periods the conformity determination, with respect to all other applicable criteria in Chapter 8, Sections 4(k)-(aa), must be based upon the most recent planning assumptions in force at the time of the conformity determination. This criterion applies during all periods. The conformity determination must satisfy the requirements of paragraphs (ii) through (vi) of this section.

(ii) Assumptions (including, but not limited to, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, and the geographic distribution of population growth) must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the area, after consultation with the Division.

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

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

(v) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.

(vi) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by Chapter 8, Section 4(e).

(k) Criteria and Procedures: Latest Emissions Model.

(i) During all periods the conformity determination shall be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.

(ii) EPA will consult with DOT to establish a grace period following the specification of any new model.

(A) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the Federal Register.

(B) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the Federal Register.

(iii) Conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the Federal Register notice of availability, provided no more than three years have passed since the draft environmental document was issued.

(l) Criteria and Procedures: Consultation. All conformity determinations shall be made according to the consultation procedures in Chapter 8, Section 4(e), and according to the public involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods. Until the implementation plan revision required by 40 CFR part 51, Subpart T is approved by EPA, the conformity determination must be made according to the procedures in 40 CFR 51.402(a)(2) and 40 CFR 51.402(e). Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

(m) Criteria and Procedures: Timely Implementation of TCMs.

(i) The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan. This criterion applies during all periods.

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

(A) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan, including, but not limited to, those which are eligible for funding under Title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.

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

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

(A) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs, including, but not limited to, those which are eligible for funding under Title 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area. Maximum priority to approval or funding of TCMs includes demonstrations with respect to funding acceleration, commitment of staff or other agency resources, diligent efforts to seek approvals, and similar actions.

(B) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program.

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

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

(n) Criteria and Procedures: Currently Conforming Transportation Plan and TIP. There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the criteria and procedures of

this subpart. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of Chapter 8, Section 4(d).

(o) Criteria and Procedures: Projects From a Plan and TIP.

(i) The project must come from a conforming plan and program. This criterion applies during all periods. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (ii) of this section and from a conforming program if it meets the requirements of paragraph (iii) of this section.

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

(A) For projects which are required to be identified in the transportation plan in order to satisfy §51.404, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(B) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

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

(A) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

(B) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, enforceable written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by Chapter 8, Section 4(gg)(i) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

(p) Criteria and Procedures: Localized CO and PM₁₀ Violations (Hotspots).

(i) The FHWA/FTA project must not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas. This criterion applies during all periods. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.

(ii) The demonstration must be performed according to the requirements of Chapter 8, Sections 4(e) and (ee).

(iii) For projects which are not of the type identified by Chapter 8, Section 4(ee)(i) or Chapter 8, Section 4(ee)(iv), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration must be performed according to the requirements of Chapter 8, Section 4(ee)(ii).

(q) Criteria and Procedures: Compliance With PM₁₀ Control Measures. The FHWA/FTA project must comply with PM₁₀ control measures in the applicable implementation plan. This criterion applies during all periods. It is satisfied if control measures (for the purpose of limiting PM₁₀ emissions from the construction activities and/or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

(r) Criteria and Procedures: Motor Vehicle Emissions Budget (Transportation Plan).

(i) The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in Chapter 8, Section 4(jj). This criterion may be satisfied if the requirements in paragraphs (ii) and (iii) of this section are met:

(ii) A regional emissions analysis shall be performed as follows:

(A) The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:

(I) VOC as an ozone precursor;

(II) NO_x as an ozone precursor, unless the Administrator determines that additional reductions of NO_x would not contribute to attainment;

(III) CO;

(IV) PM₁₀ (and its precursors VOC and/or NO_x if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM₁₀ nonattainment problem or establishes a budget for such emissions); or

(V) NO_x (in NO₂ nonattainment or maintenance areas);

(B) The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan;

(C) The emissions analysis methodology shall meet the requirements of Chapter 8, Section 4(dd);

(D) For areas with a transportation plan that meets the content requirements of Chapter 8, Section 4(f)(i), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and

(E) For areas with a transportation plan that does not meet the content requirements of Chapter 8, Section 4(f)(i), the emissions analysis shall be performed for any years in the time span of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the last year of the plan's forecast period. If the attainment year is in the time span of the transportation plan, the emissions analysis must also be performed for the attainment year. Emissions in milestone years which are between these analysis years may be determined by interpolation.

(iii) The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in paragraph (ii)(A) of this section the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:

(A) If the applicable implementation plan or implementation plans submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;

(B) For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;

(C) For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emission in each analysis year or horizon year must be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and

(D) For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

(s) Criteria and Procedures: Motor Vehicle Emissions Budget (TIP)

(i) The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in Chapter 8, Section 4(jj). This criterion may be satisfied if the requirements in paragraphs (ii) and (iii) of this section are met:

(ii) For areas with a conforming transportation plan that fully meets the content requirements of Chapter 8, Section 4(f)(i), this criterion may be satisfied without additional regional analysis if:

(A) Each program year of the TIP is consistent with the Federal funding which may be reasonably expected for that year, and required State/local matching funds and funds for State/local funding-only projects are consistent with the revenue sources expected over the same period; and

(B) The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:

(I) The TIP contains all projects which must be started in the TIP's time frame in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

(II) All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

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

(C) If the requirements in paragraphs (ii)(A) and (ii)(B) of this section are not met, then:

(I) The TIP may be modified to meet those requirements;
or

(II) The transportation plan must be revised so that the requirements in paragraphs (ii)(A) and (ii)(B) of this section are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of paragraphs (ii)(A) and (ii)(B) of this section.

(iii) For areas with a transportation plan that does not meet the content requirements of Chapter 8, Section 4(f)(i), a regional emissions analysis must meet all of the following requirements:

(A) The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan;

(B) The analysis methodology shall meet the requirements of Chapter 8, Section 4(dd)(iii); and

(C) The regional analysis shall satisfy the requirements of Chapter 8, Sections 4(r)(ii)(A), (r)(ii)(E), and (r)(iii).

(t) Criteria and Procedures: Motor Vehicle Emissions Budget (Project Not From a Plan and TIP).

(i) The project which is not from a conforming transportation plan and a conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in Chapter 8, Section 4(jj). It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).

(ii) For areas with a conforming transportation plan that meets the content requirements of Chapter 8, Section 4(f)(i):

(A) This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:

(I) Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

(II) The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

(III) The design concept and scope of the project is not significantly different from that described in the transportation plan.

(B) If the requirements in paragraph (ii)(A) of this section are not met, a regional emissions analysis must be performed as follows:

(I) The analysis methodology shall meet the requirements of Chapter 8, Section 4(ee);

(II) The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the time frame of the transportation plan. The analysis must include emissions from all previously approved projects which were not from a transportation plan and TIP; and

(III) The emissions analysis shall meet the requirements of Chapter 8, Sections 4(r)(ii)(A), (r)(ii)(D), and (r)(iii).

(iii) For areas with a transportation plan that does not meet the content requirements of Chapter 8, Section 4(f)(i), a regional emissions analysis must be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:

(A) The analysis methodology meets the requirements of Chapter 8, Section 4(dd)(iii);

(B) The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects

expected in the nonattainment or maintenance area in the time frame of the transportation plan; and

(C) The regional analysis satisfies the requirements of Chapter 8, Sections 4(r)(ii)(A), (r)(ii)(E), and (r)(iii).

(u) Criteria and Procedures: Localized CO Violations (Hot Spots) in the Interim Period.

(i) Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

(ii) The demonstration must be performed according to the requirements of Chapter 8, Sections 4(e) and (ee).

(iii) For projects which are not of the type identified by Chapter 8, Section 4(ee)(i), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration must be performed according to the requirements of Chapter 8, Section 4(ee)(ii).

(v) Criteria and Procedures: Interim Period Reductions in Ozone and CO Areas (Transportation Plan).

(i) A transportation plan must contribute to emissions reductions in ozone and CO Nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in Chapter 8, Section 4(jj). It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (ii) through (vi) of this section.

(ii) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(iii) Define the 'Baseline' scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the

following (except that projects listed in Chapter 8, Sections 4(hh) and (ii) need not be explicitly considered):

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

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

(C) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan and/or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the 'Baseline' scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the 'Action' scenario, as described in paragraph (iv) of this section.)

(iv) Define the 'Action' scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in Chapter 8, Sections 4(hh) and (ii) need not be explicitly considered):

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

(B) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

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

(D) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or

approval, which were adopted and/or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;

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

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

(v) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of Chapter 8, Section 4(dd). Emissions in milestone years which are between the analysis years may be determined by interpolation.

(vi) This criterion is met if the regional VOC and NO_x emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any non-zero amount.

(w) Criteria and Procedures: Interim Period Reductions in Ozone and CO Areas (TIP).

(i) A TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in Chapter 8, Section 4(jj). It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (ii) through (vi) of this section.

(ii) Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than ten years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(iii) Define the 'Baseline' scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in Chapter 8, Sections 4(hh) and (ii) need not be explicitly considered):

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

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

(C) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after (November 24, 1993), a project may not be included in the 'Baseline' scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the 'Action' scenario, as described in paragraph (d) of this section.)

(iv) Define the 'Action' scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the time frame of the transportation plan. It will include the following (except that projects listed in Chapter 8, Sections 4(hh) and (ii) need not be explicitly considered):

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

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

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

(D) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity

determination on the TIP, but which have been modified since then to be more stringent or effective;

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

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

(v) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios, and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of Chapter 8, Section 4(dd). Emissions in milestone years which are between analysis years may be determined by interpolation.

(vi) This criterion is met if the regional VOC and NO_x emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any non-zero amount.

(x) Criteria and Procedures: Interim Period Reductions for Ozone and CO Areas (Project Not From a Plan and TIP). A transportation project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in Chapter 8, Section 4(jj). This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of Chapter 8, Section 4(v) and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

(y) Criteria and Procedures: Interim Period Reductions for PM₁₀ and NO₂ Areas (Transportation Plan).

(i) A transportation plan must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all

projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either paragraph (ii) or (iii) of this section are met.

(ii) Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and of each transportation-related precursor of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the Director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

(A) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(B) Define for each of the analysis years the 'Baseline' scenario, as defined in Chapter 8, Section 4(v)(iii), and the 'Action' scenario, as defined in Chapter 8, Section 4(v)(iv).

(C) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios and determine the difference between the two scenarios in regional PM_{10} emissions in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the Director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and in NO_x emissions in an NO_2 nonattainment area. The analysis must be performed for each of the analysis years according to the requirements of Chapter 8, Section 4(dd). The analysis must address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(D) Demonstrate that the regional PM_{10} emissions and PM_{10} precursor emissions, where applicable, (for PM_{10} nonattainment areas) and NO_x emissions (for NO_2 nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.

(iii) Demonstrate that when the projects in the transportation plan and all other regionally significant projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA regional Administrator or the Director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO₂ nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:

(A) Determine the baseline regional emissions of PM₁₀ and PM₁₀ precursors, where applicable (for PM₁₀ nonattainment areas) and NO_x (for NO₂ nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the implementation plan revision required by 40 CFR part 51, Subpart T defines the baseline emissions for a PM₁₀ area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(B) Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of Chapter 8, Section 4(dd). Emissions shall be estimated for analysis years which are no more than ten years apart. The first analysis year shall be no later than 1996 (for NO₂ areas) or four years and six months following the date of designation (for PM₁₀ areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(C) Demonstrate that for each analysis year the emissions estimated in paragraph (iii)(B) of this section are no greater than baseline emissions of PM₁₀ and PM₁₀ precursors, where applicable (for PM₁₀ nonattainment areas) or NO_x (for NO₂ nonattainment areas) from highway and transit sources.

(z) Criteria and Procedures: Interim Period Reductions for PM₁₀ and NO₂ Areas (TIP).

(i) A TIP must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emission of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either paragraph (ii) or paragraph (iii) of this section are met.

(ii) Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area will contribute to

reductions in emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO₂ nonattainment area, by performing a regional emissions analysis as follows:

(A) Determine the analysis years for which emissions are to be estimated, according to the requirements of Chapter 8, Section 4(y)(ii)(A).

(B) Define for each of the analysis years the 'Baseline' scenario, as defined in Chapter 8, Section 4(w)(iii), and the 'Action' scenario, as defined in Chapter 8, Section 4(w)(iv).

(C) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios as required by Chapter 8, Section 4(y)(ii)(C), and make the demonstration required by Chapter 8, Section 4(y)(ii)(D).

(iii) Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO₂ nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by Chapter 8, Sections 4(y)(iii)(A)-(C).

(aa) **Criteria and Procedures: Interim Period Reductions for PM₁₀ and NO₂ Areas (Project Not From a Plan and TIP).** A transportation project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of Chapter 8, Section 4(y) and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and Chapter 8, Section 4(y)(ii) is used to demonstrate satisfaction of this criterion, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

(bb) **Transition From the Interim Period to the Control Strategy Period.**

(i) Areas Which Submit a Control Strategy Implementation Plan Revision After November 24, 1993.

(A) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by one year from the date the Clean Air Act requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.

(I) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (i)(A) of this section.

(II) Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(B) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and DOT, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(C) Notwithstanding paragraph (i)(B) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act §110(a)(2)(A), the provisions of paragraph (i)(A) of this section shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(ii) Areas Which Have Not Submitted a Control Strategy Implementation Plan Revision.

(A) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993 and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m):

(I) No new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline; and

(II) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(B) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan was before November 24, 1993 and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(I) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(II) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(III) Notwithstanding paragraphs (iii)(B)(I) and (II) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act §110(a)(2)(A), the provisions of paragraph (iv)(A) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(iv) Areas Which Submitted a Control Strategy Implementation Plan Before November 24, 1993.

(A) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made.

(I) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures until February 22, 1994, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (iv)(A) of this section.

(II) Beginning February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(B) If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(C) Notwithstanding paragraph (iv)(B) of this section, if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act §110(a)(2)(A), the provisions of paragraph (iv)(A) of this section shall apply for 12 months following November 24, 1993. The conformity status of the transportation plan and TIP shall lapse 12 months following November 24, 1993 unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(v) Projects. If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of paragraphs (v)(A) and (B) of this section must be met.

(A) Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the State air agency must be consulted on how the emissions which the existing transportation plan and TIPs conformity determination estimates for the 'Action' scenario (as required by Chapter 8, Sections 4(v)-(aa)) compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.

(B) In the event of unresolved disputes on such project-level conformity determinations, the State air agency may escalate the issue to the Governor consistent with the procedure in Chapter 8, Section 4(e), which applies for any State air agency comments on a conformity determination.

(vi) Redetermination of Conformity of the Existing Transportation Plan and TIP According to the Transitional Period Criteria and Procedures.

(A) The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by paragraphs (i)(A) and (iv)(A) of this section) does not require new emissions

analysis and does not have to satisfy the requirements of Chapter 8, Sections 4(j) and (k) if:

(I) The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and

(II) The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.

(B) A redetermination of conformity as described in paragraph (vi)(A) of this section is not considered a conformity determination for the purposes of Chapter 8, Sections 4(d)(ii)(D) or (d)(iii)(D) regarding the maximum intervals between conformity determinations. Conformity must be determined according to all the applicable criteria and procedures of Chapter 8, Section 4(i) within three years of the last determination which did not rely on paragraph (vi)(A) of this section.

(vii) Ozone Nonattainment Areas.

(A) The requirements of paragraph (ii)(A) of this section apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which Clean Air Act §§182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which Clean Air Act §182(b)(1) requires to be submitted to EPA November 15, 1993.

(B) The requirements of paragraph (ii)(A) of this section apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by Clean Air Act §182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of paragraph (ii)(A) of this section apply in this case even if the area has submitted the 15% emission reduction demonstration required by Clean Air Act §182(b)(1).

(C) The requirements of paragraph (i) of this section apply when the implementation plan revisions required by Clean Air Act §§182(c)(2)(A) and 182(c)(2)(B) are submitted.

(viii) Nonattainment Areas Which Are Not Required to Demonstrate Reasonable Further Progress and Attainment. If an area listed in Chapter 8, Section 4(jj) submits a control strategy implementation plan revision, the requirements of paragraphs (i) and (v) of this section apply. Because the areas listed in Chapter 8, Section 4(jj) are not required to demonstrate reasonable further progress and attainment and therefore

have no Clean Air Act deadline, the provisions of paragraph (ii) of this section do not apply to these areas at any time.

(ix) Maintenance Plans. If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by Clean Air Act §175 is submitted to EPA, the requirements of paragraphs (i) or (iv) of this section apply, with the maintenance plan submission treated as a “control strategy implementation plan revision” for the purposes of those requirements.

(cc) Requirements for Adoption or Approval of Projects By Recipients of Funds Designated Under Title 23 U.S.C. or the Federal Transit Act. No recipient of Federal funds designated under Title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of Chapter 8, Section 4(n) and the requirements of one of the following paragraphs (i) through (v) are met:

(i) The project comes from a conforming plan and program consistent with the requirements of Chapter 8, Section 4(o);

(ii) The project is included in the regional emissions analysis supporting the currently conforming TIPs conformity determination, even if the project is not strictly “included” in the TIP for the purposes of MPO project selection or endorsement, and the project’s design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

(iii) During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of Chapter 8, Section 4(t);

(iv) During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of Chapter 8, Section 4(x) (in ozone and CO nonattainment areas) or Chapter 8, Section 4(aa) (in PM₁₀ and NO₂ nonattainment areas); or

(v) During the transitional period, the project satisfies the requirements of both paragraphs (iii) and (iv) of this section.

(dd) Procedures for Determining Regional Transportation-Related Emissions.

(i) General Requirements.

(A) The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA

projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by Chapter 8, Section 4(e). Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(B) The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(C) Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a Federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(D) Notwithstanding paragraph (i)(C) of this section, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in Chapter 8, Sections 4(r)-(t), but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of Chapter 8, Sections 4(r)-(t) are satisfied.

(E) A regional emissions analysis for the purpose of satisfying the requirements of Chapter 8, Sections 4(v)-(x) may account for the programs in paragraph (i)(D) of this section, but the same assumptions about these programs shall be used for both the 'Baseline' and 'Action' scenarios.

(ii) Serious, Severe, and Extreme Ozone Nonattainment Areas and Serious Carbon Monoxide Areas After January 1, 1995. Estimates of regional transportation-related emissions used to support conformity determinations must be made according to procedures which meet the requirements in paragraphs (ii)(A) through (E) of this section.

(A) A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies must be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:

(I) The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;

(II) The network-based model(s) must be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs must be based on the best available information and appropriate to the validation base year;

(III) For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology must be used;

(IV) Zone-to-zone travel times used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;

(V) Free-flow speeds on network links shall be based on empirical observations;

(VI) Peak and off-peak travel demand and travel times must be provided;

(VII) Trip distribution and mode choice must be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;

(VIII) The model(s) must utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;

(IX) A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;

(X) A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly

encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and

(XI) Consideration of emissions increases from construction-related congestion is not specifically required.

(B) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.

(C) Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

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

(E) Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to Chapter 8, Section 4(e) if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(iii) Areas Which Are Not Serious, Severe, or Extreme Ozone Nonattainment Areas or Serious Carbon Monoxide Areas, or Before January 1, 1995.

(A) Procedures which satisfy some or all of the requirements of paragraph (i) of this section shall be used in all areas not subject to paragraph (i) of this section in which those procedures have been the previous practice of the MPO.

(B) Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles

traveled per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

(iv) Projects Not From a Conforming Plan and TIP in Isolated Rural Nonattainment and Maintenance Areas. This paragraph applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).

(A) Conformity demonstrations for projects in these areas may satisfy the requirements of Chapter 8, Section 4(t)(x)(aa) with one regional emissions analysis which includes all the regionally significant projects in the nonattainment or maintenance area (or portion thereof).

(B) The requirements of Chapter 8, Section 4(t) shall be satisfied according to the procedures in Chapter 8, Section 4(t)(iii), with references to the "transportation plan" taken to mean the statewide transportation plan.

(C) The requirements of Chapter 8, Sections 4(x) and (aa) which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area (or portion thereof).

(D) The requirement of Chapter 8, Section 4(cc)(ii) shall be satisfied if:

(I) The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area (or portion thereof) and supports the most recent conformity determination made according to the requirements of Chapter 8, Sections 4(t)(x) or (aa) (as modified by paragraphs (iv)(B) and (iv)(C) of this section), as appropriate for the time period and pollutant; and

(II) The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.

(v) PM₁₀ From Construction-Related Fugitive Dust.

(A) For areas in which the implementation plan does not identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the

fugitive PM₁₀ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(B) In PM₁₀ nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the regional PM₁₀ emissions analysis shall consider construction-related fugitive PM₁₀ control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(ee) Procedures for Determining Localized CO and PM₁₀ Concentrations (Hot-Spot Analysis).

(i) In the following cases, CO hot-spot analyses must be based on the applicable air quality models, databases, and other requirements specified in 40 CFR part 51, Appendix W (“Guideline on Air Quality Models” (Revised 1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2-78-027R), unless, after the interagency consultation process described in Chapter 8, Section 4(e) and with the approval of the EPA Regional Administrator, these models, databases, and other requirements are determined to be inappropriate:

(A) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;

(B) For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;

(C) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;

(D) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and

(E) Where use of the “Guideline” models is practicable and reasonable given the potential for violations.

(ii) In cases other than those described in paragraph (i) of this section, other quantitative methods may be used if they represent reasonable and common professional practice.

(iii) CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration can be estimated

using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.

(iv) PM₁₀ hot-spot analysis must be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM₁₀ hot-spot analysis shall be determined through the interagency consultation process required in Chapter 8, Section 4(e). In PM₁₀ nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this paragraph for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.

(v) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(vi) PM₁₀ or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to the implementation of such measures, as required by Chapter 8, Section 4(gg)(i).

(vii) CO and PM₁₀ hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

(ff) Using the Motor Vehicle Emissions Budget in the Applicable Implementation Plan (or Implementation Plan Submission).

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

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

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

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

(ii) If an applicable implementation plan submitted before November 24, 1993 demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that “safety margin,” the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

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

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

(v) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

(gg) Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures.

(i) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under Title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service and project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM₁₀ or CO impacts. Before making conformity determinations written commitments must also be

obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by Chapter 8, Sections 4(r)-(t) and Chapter 8, Sections (v)-(x) or used in the project-level hot-spot analysis required by Chapter 8, Sections 4(p) and (u).

(ii) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(iii) The implementation plan revision required in 40 CFR part 51, Subpart T shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

(iv) During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of Chapter 8, Sections 4(p), (r), and (s) are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under Chapter 8, Section 4(e). The MPO and DOT must confirm that the transportation plan and TIP still satisfy the requirements of Chapter 8, Sections 4(r) and (s) and that the project still satisfies the requirements of Chapter 8, Section 4(p), and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

(hh) Exempt Projects. Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see Chapter 8, Section 4(e)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation.

Table 2. – Exempt Projects

SAFETY

Railroad/highway crossing
Hazard elimination program
Safer non-Federal-aid system roads
Shoulder improvements
Increasing sight distance
Safety improvement program

Traffic control devices and operating assistance other than signalization projects
Railroad/highway crossing warning devices
Guardrails, median barriers, crash cushions
Pavement resurfacing and/or rehabilitation
Pavement marking demonstration
Emergency relief (23 U.S.C. 125)
Fencing
Skid treatments
Safety roadside rest areas
Adding medians
Truck climbing lanes outside the urbanized area
Lighting improvements
Widening narrow pavements or reconstructing bridges (no additional travel lanes)
Emergency truck pullovers

MASS TRANSIT

Operating assistance to transit agencies
Purchase of support vehicles
Rehabilitation of transit vehicles¹
Purchase of office, shop, and operating equipment for existing facilities
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.)
Construction or renovation of power, signal, and communications systems
Construction of small passenger shelters and information kiosks
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet¹
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR 771

AIR QUALITY

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

OTHER

Specific activities which do not involve or lead directly to construction, such as:
 Planning and technical studies
 Grants for training and research programs
 Planning activities conducted pursuant to Titles 23 and 49 U.S.C.
 Federal-aid systems revisions

Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action
Noise attenuation
Advance land acquisitions (23 CFR 712 or 23 CFR 771)
Acquisition of scenic easements
Plantings, landscaping, etc.
Sign removal
Directional and informational signs
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities)
Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes

¹In PM₁₀ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

(ii) Projects Exempt From Regional Emissions Analyses. Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM₁₀ concentrations must be considered to determine hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see Chapter 8, Section 4(e)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

Table 3. – Projects Exempt From Regional Emissions Analyses

Intersection channelization projects
Intersection signalization projects at individual intersections
Interchange reconfiguration projects
Changes in vertical and horizontal alignment
Truck size and weight inspection stations
Bus terminals and transfer points

(jj) Special Provisions for Nonattainment Areas Which Are Not Required to Demonstrate Reasonable Further Progress and Attainment.

(i) Application. This section applies in the following areas:

(A) Rural transport ozone nonattainment areas;

- (B) Marginal ozone areas;
- (C) Submarginal ozone areas;
- (D) Transitional ozone areas;
- (E) Incomplete data ozone areas;
- (F) Moderate CO areas with a design value of 12.7 ppm or less;

and

- (G) Not classified CO areas.

(ii) Default Conformity Procedures. The criteria and procedures in Chapter 8, Sections 4(v)-(x) will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in Chapter 8, Sections 4(r)-(t), except as otherwise provided in paragraph (iii) of this section.

(iii) Optional Conformity Procedures. The State or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the State must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in Chapter 8, Sections 4(r)-(t) apply in lieu of the procedures in Chapter 8, Sections 4(v)-(x).

Section 5. Incorporation by reference.

(a) Code of Federal Regulations (CFR). All Code of Federal Regulations (CFRs) cited in this chapter, including their Appendices, revised and published as of July 1, 2011, not including any later amendments, are incorporated by reference. Copies of the Code of Federal Regulations are available for public inspection and copies can be obtained at cost from the Department of Environmental Quality, Division of Air Quality, 122 W. 25th Street, Cheyenne, Wyoming 82002. Copies of the CFRs can also be obtained at cost from Government Institutes, 15200 NBN Way, Building B, Blue Ridge Summit, PA 17214.

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

Nonattainment Area Regulations

CHAPTER 8

TABLE OF CONTENTS

Section 1.	Introduction to nonattainment area regulations	8-1
Section 2.	Sweetwater County particulate matter regulations	8-1
Section 3.	Conformity of general federal actions to state implementation plans	8-7
Section 4.	Transportation conformity	8-33
Section 5.	Incorporation by reference	8-84

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
STANDARDS AND REGULATIONS**

Nonattainment Area Regulations

CHAPTER 8

Section 1. Introduction to nonattainment area regulations.

(a) Chapter 8 establishes regulations specific to areas not attaining the National Ambient Air Quality Standards. Section 2 applies exclusively to Sweetwater County, Wyoming particulate matter regulations. Section 3 applies to general federal actions, excluding those covered under Section 4, within any federally designated nonattainment area of the state. Section 4 applies to specific transportation projects within any federally designated nonattainment area of the state. Section 5 incorporates by reference all Code of Federal Regulations (CFRs) cited in this chapter, including their Appendices.

Section 2. Sweetwater County particulate matter regulations.

(a) Notwithstanding other provisions in these regulations concerning the emission of particulate matter or required fugitive dust control measures, the requirements and emission limitations set forth in Chapter 8, Section 2(b) and (c) for the specific sources and activities enumerated are applicable. Sources and/or activities which cause particulate matter to be emitted into the air and which are not addressed in this section are subject to the requirements of other sections.

(b) Point Source Particulate Matter Emission Rate Allowables:

The following tables specify the maximum allowable particulate matter emission rate for each of the listed sources. The emission of particulate matter is measured as specified in Chapter 3, Section 2(h)(iv) of these regulations.

(i) Stauffer Chemical Company of Wyoming, Green River Soda Ash Plant.

<u>Source Description</u>	<u>Allowable Emission Rate</u> <u>lb/hr</u>
#1 Boiler	3.00
#2 Boiler	3.00
#3 Boiler	N.A.
#4 Boiler	7.50
#5 Boiler	8.62
#6 Boiler	7.50
ES-1	30.6

(i) Stauffer Chemical Company of Wyoming, Green River Soda Ash Plant (Continued).

2ES-1	27.3
3ES-1	29.2
	Allowable Emission Rate
<u>Source Description</u>	<u>lb/hr</u>
3ES-2	34.5
4SC-2	51.6
4SC-3	5.2
4SC-4	52.6
4ES-201	23.1
Phase II Dryer-Cooler	12.0

(ii) Allied Chemical Corporation, Green River Works

		Allowable Emission Rate
<u>Source Description</u>		<u>lb/hr</u>
Crusher Building	GR-I-A	3.0
Prod. Loading	GR-I-B(1)	3.0
Prod. Loading	GR-I-B(2)	3.0
Calciner #1	GR-I-C	20.0
Calciner #2	GR-I-D	25.0
Calciner #3	GR-I-E	20.0
Dryer #1	GR-I-F	4.0
Dryer #2	GR-I-G	4.0
Dryer #3	GR-I-H	4.0
Housekeeping (North)	GR-I-J(1)	2.0
Housekeeping (South)	GR-I-J(2)	2.0
Product Cooler	GR-I-K	2.0
Coal Handling Tunnel	CH-1	1.7
Coal Handling Gallery	CH-2	1.0
Ore Bin Gallery	GR-II-A	3.0
Product Storage	GR-II-B	4.0
Calciner #4	GR-II-C	20.0
Calciner #5	GR-II-D	20.0
Dissolver #1	GR-II-E-1	3.0
Dissolver #2	GR-II-E-2	3.0
Dryer #4	GR-II-F	4.0
Dryer #5	GR-II-G	4.0
Dryer #6	GR-II-H	4.0
Housekeeping	GR-II-J	10.0

(ii) Allied Chemical Corporation, Green River Works (Continued)

Product Cooler	GR-II-K	3.0
Lime Storage	GR-II-O	0.1
Reclaim Ore System	RO-1	1.4

<u>Source Description</u>		<u>Allowable Emission Rate</u> <u>lb/hr</u>
Crusher	GR-III-A	3.0
Ore Conveyor	GR-III-B	1.0
Ore Gallery	GR-III-C	1.0
Calciner #1	GR-III-D	37.9
Calciner #2	GR-III-E	37.9
Dissolver #1 (East)	GR-III-F	2.0
Dissolver #2 (West)	GR-III-G	2.0
Filter Aid	GR-III-H	NIL
Dryer #1	GR-III-K	1.5
Dryer #2	GR-III-L	1.5
Dryer #3	GR-III-M	1.5
Dryer #4	GR-III-N	1.5
Dryer #5	GR-III-P	1.5
Dryer Vent	GR-III-R	2.0
Prod. Cooler #1	GR-III-S	1.0
Prod. Cooler #2	GR-III-T	1.0
Housekeeping #1	GR-III-U	3.0
Housekeeping #2	GR-III-V	3.0
Crusher	A-305	2.0
Crusher	A-309	2.0
“C” Boiler	GR-II-L	50.0
“D” Boiler	GR-III-W	80.0

(iii) FMC Corporation, Green River

<u>Source Description</u>		<u>Allowable Emission Rate</u> <u>lb/hr</u>
Crusher	PA-4; PA-5	2.5
Dissolver	PA-6	1.0
Dissolver	PA-7	1.0
Dissolver	PA-8	1.0
Dissolver	PA-9	1.0
Sesqui Dryer	RA-1	10.0
Dust Collector	RA-2	2.0
Calciner	RA-13	8.0

(iii) FMC Corporation, Green River (Continued)

Calciner	RA-14	4.0
Calciner	RA-15	4.0
Calciner	RA-16	4.0
Calciner Scrubber	RA-22	35.0

<u>Source Description</u>		<u>Allowable Emission Rate</u> <u>lb/hr</u>
Calciner Scrubber	RA-23	35.0
Calciner Scrubber	RA-24	45.0
Fluid Bed Calciner	RA-25	26.5
Dust Collector	RA-27	3.0
Dust Collector	RA-33	3.0
Phosphorus Furnace	PP-12	15.0
Spray Dryer	PP-21	28.0
Dust Collector	PP-24	4.0
Calciner	PP-25	15.0
Dust Collector	PP-26	2.0
Dust Collector	PP-27	2.0
Trona Calciner	NA-2	3.0
Dust Collection	NA-3	10.0
Cooler	NA-5	6.0
Dust Collection	Mono 2	2.6
Dust Collection	Mono 3	1.3
Dust Collection	Mono 4	2.0
Calciner	Mono 5	53.0
Dryer	Mono 6	20.0
Dust Collection	Mono 7	2.0
Dust Collection	Mono 8	1.9
Dust Collection	NS-2	0.5
Calciner	NS-3	41.0
Crusher	NS-4	1.0
Dissolver	NS-5	2.7
Dryer	NS-6	20.0
Coal Dust Collection	NS-7	0.5
Coal Dust Collection	NS-8	0.5
Coal Dust Collection	NS-9	0.5
Gas/Oil Boiler	PH-1	8.4
Gas/Oil Boiler	PH-2	4.2
Gas/Oil Boiler	PH-3	8.4
Gas/Oil Boiler	Mono I	7.5
Coal Boiler	NS-1A	45.0
Coal Boiler	NS-1B	45.0

(iv) Church and Dwight Company

<u>Source Description</u>		<u>Allowable Emission Rate</u> <u>lb/hr</u>
Soda Ash Unloading	SA	3.0
Throwing Box Scrubber	TB	2.0
Jeffrey Dryer Scrubber	JD	3.0
#1 Process Dryer	1PD	2.0
#2 Process Dryer	2PD	5.0
#3 Process Dryer	3PD	2.0
#1 House Dust System	1HDS	2.0
#2 House Dust System	2HDS	2.0
#3 House Dust System	3HDS	2.0

(c) Fugitive Dust Controls. The following subparagraphs specify fugitive dust control measures required for the delineated activities and sources and the schedules for completion of such measures. If, at any time, the Administrator is satisfied that the applicable suspended particulate matter standards have been attained and will be maintained, uncompleted programs may be completed at the option of the owner of the facility if failure to complete same will not in the opinion of the Administrator adversely affect such attainment status.

(i) Allied Chemical, Green River

Unpaved Roads – Pave all roads in facility area that encounter frequent traffic and maintain such roads in a clean condition through the use of a vacuum sweeper as required. Complete: November 30, 1980.

Distressed Area – Reclaim the distressed area outside the east fence or apply suitable soil binders. Complete: December 1, 1981.

Coal Stockpile – The active coal stockpile is to be enclosed or a dust suppression system installed and used during periods of activity. Complete: December 31, 1982.

Equipment Movement – Equipment movement around the periphery of the trona stockpile should be further reduced. Complete: June 1, 1979.

(ii) FMC Corporation

Stockpile – Installation and effective operation of the following abatement program elements is required to control excessive fugitive emissions from the coal handling facilities.

(A) Dust collectors with pick-ups at the transfer points.

(B) A dust suppression spray system to apply wetting agents to coal being unloaded, transferred, reclaimed, crushed and handled.

(C) Rapid unloading railroad cars.

(D) Use of counter weighted hood-type doors on the coal stacker.

Ore Stockpile – Install variable height booms so that the free fall distance of the ore is held to a minimum and install shroud (wind shield) to contain the ore as much as possible after it drops from the end of the boom. Complete: Sesqui Areas – January 1, 1981; Mono Areas – April 1, 1981.

Loadout Facilities – The mono loadout facilities are to be equipped with hoods around product chutes of adequate size to cap hatches of slot top or hatch top rail cars. The resultant dust generated due to displacement shall be aspirated to adequate dust collectors. The above requirements also apply to any truck bulk product loadout facilities. Complete: July 1, 1982.

Unpaved Roads – All unpaved roads that encounter frequent traffic in the facility area shall be paved and maintained in a clean condition through the use of a vacuum sweeper as required. Infrequently traveled roads are to be treated with oil or other suitable dust suppressants. Complete: October 1, 1980.

Overflow Chutes – Overflow or spillover chutes which discharge in the open, are to be eliminated or emptied into closed containers. Chutes for housekeeping purposes are to be eliminated and replaced with a vacuum dust system that utilizes a dust collector. Complete: October 1, 1980.

(iii) Stauffer Chemical, Green River

Ore Stockpile – Install and utilize a variable height boom so that the free fall distance of the ore is held to a minimum. A shroud (wind shield) to contain the ore as much as possible after it drops from the end of the boom is to be installed and utilized. Complete: July 1981.

Product Loadout – Rail loadout facilities are to be equipped with hoods around product chutes of adequate size to cap hatches of slot and portal top rail cars. The resultant dust generated due to displacement should be aspirated to adequate dust collectors. The above requirements will also apply to any truck bulk product loadout facilities. Maintenance or redesigning of existing baghouse collectors will also be necessary at these facilities. Complete: September 1982.

Product Handling and Storage – Product silo vents are to be equipped with dust collectors. Proper maintenance and/or redesign of existing dust collectors is also required in this area. Complete: September 1982.

Crusher Area – The removing of accumulated dust from crusher building by sweeping or dumping the material outside the building is to be eliminated. Housekeeping chores in this area as well as other areas are to be accomplished by the use of a vacuum system and dust collector. Existing baghouse collectors are to be properly maintained and if necessary other control measures installed and utilized at all transfer points in and around the crusher area. Complete: September 1982.

Overflow Chutes – Overflow or spillover chutes which discharge in the open are to be eliminated or emptied into closed containers. Complete: March 1979.

Unpaved Roads – All roads within the facility area that encounter frequent traffic are to be paved and maintained in a clean condition through the use of a vacuum sweeper as required. All other less frequently used roads are to be treated with oil or other suitable dust suppressants. Complete: September 1982.

Distressed Areas – Distressed areas to the south of the facility which contain distressed product piles and tailing pond dredgings are to be reclaimed and treated with dust suppressants. Complete: September 1979.

Section 3. Conformity of general federal actions to state implementation plans.

(a) Prohibition.

(i) No department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.

(ii) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this section before the action is taken.

(iii) [Reserved]

(iv) Notwithstanding any provision of this section, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the National Environmental Policy Act (NEPA), or the CAA.

(v) If an action would result in emissions originating in more than one nonattainment or maintenance area, the conformity must be evaluated for each area separately.

(b) Definitions. Terms used but not defined in this section shall have the meaning given them by the CAA and EPA's regulations (40 CFR Chapter I), in that order of priority.

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

“Applicability analysis” is the process of determining if your Federal action must be supported by a conformity determination.

“Applicable implementation plan or applicable SIP” means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under section 110(k) of the CAA, or promulgated under section 110(c) of the CAA (Federal implementation plan), or a plan promulgated or approved pursuant to section 301(d) of the CAA (Tribal implementation plan or TIP) and which implements the relevant requirements of the CAA.

“Areawide air quality modeling analysis” means an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model or photochemical grid model to determine the effects of emissions on air quality, for example, an assessment using EPA’s community multi-scale air quality (CMAQ) modeling system.

“CAA” means the Clean Air Act, as amended.

“Cause or contribute to a new violation” means a Federal action that:

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

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

“Caused by”, as used in the terms “direct emissions” and “indirect emissions,” means emissions that would not otherwise occur in the absence of the Federal action.

“Confidential business information (CBI)” means information that has been determined by a Federal agency, in accordance with its applicable regulations, to be a trade secret, or commercial or financial information obtained from a person and privileged or confidential and is exempt from required disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

“Conformity determination” is the evaluation (made after an applicability analysis is completed) that a Federal action conforms to the applicable implementation plan and meets the requirements of this section.

“Conformity evaluation” is the entire process from the applicability analysis through the conformity determination that is used to demonstrate that the Federal action conforms to the requirements of this section.

“Continuing program responsibility” means a Federal agency has responsibility for emissions caused by:

(i) Actions it takes itself; or

(ii) Actions of non-Federal entities that the Federal agency, in exercising its normal programs and authorities, approves, funds, licenses or permits, provided the agency can impose conditions on any portion of the action that could affect the emissions.

“Continuous program to implement” means that the Federal agency has started the action identified in the plan and does not stop the actions for more than an 18-month period, unless it can demonstrate that such a stoppage was included in the original plan.

“Criteria pollutant or standard” means any pollutant for which there is established a NAAQS at 40 CFR part 50.

“Direct emissions” means those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and originate in a nonattainment or maintenance area and occur at the same time and place as the action and are reasonably foreseeable.

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

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

“Emission inventory” means a listing of information on the location, type of source, type and quantity of pollutant emitted as well as other parameters of the emissions.

“Emissions offsets”, for purposes of Subsection (h), are emissions reductions which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the timeframe specified by the program.

“EPA” means the U.S. Environmental Protection Agency.

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

“Federal agency” means, for purposes of this section, a Federal department, agency, or instrumentality of the Federal government.

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

“Indirect emissions” means those emissions of a criteria pollutant or its precursors:

- (i) That are caused or initiated by the Federal action and originate in the same nonattainment or maintenance area but occur at a different time or place as the action;
- (ii) That are reasonably foreseeable;
- (iii) That the Federal agency can practically control; and
- (iv) For which the Federal agency has continuing program responsibility.

For the purposes of this definition, even if a Federal licensing, rulemaking or other approving action is a required initial step for a subsequent activity that causes emissions, such initial steps do not mean that a Federal agency can practically control any resulting emissions.

“Local air quality modeling analysis” means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for

example, congested roadways on a Federal facility, which uses an air quality dispersion model (e.g., Industrial Source Complex Model or Emission and Dispersion Model System) to determine the effects of emissions on air quality.

“Maintenance area” means an area that was designated as nonattainment and has been re-designated in 40 CFR part 81 to attainment, meeting the provisions of section 107(d)(3)(E) of the CAA and has a maintenance plan approved under section 175A of the CAA.

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

“Metropolitan Planning Organization (MPO)” means the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).

“Milestone” has the meaning given in sections 182(g)(1) and 189(c)(1) of the CAA.

“Mitigation measure” means any method of reducing emissions of the pollutant or its precursor taken at the location of the Federal action and used to reduce the impact of the emissions of that pollutant caused by the action.

“National ambient air quality standards (NAAQS)” are those standards established pursuant to section 109 of the CAA and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone, particulate matter (PM₁₀ and PM_{2.5}), and sulfur dioxide (SO₂).

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

“Nonattainment area (NAA)” means an area designated as nonattainment under section 107 of the CAA and described in 40 CFR part 81.

“Precursors of a criteria pollutant” are:

(i) For ozone, nitrogen oxides (NO_x), unless an area is exempted from NO_x requirements under section 182(f) of the CAA, and volatile organic compounds (VOC).

(ii) For PM₁₀, those pollutants described in the PM₁₀ nonattainment area applicable SIP as significant contributors to the PM₁₀ levels.

(iii) For PM_{2.5}:

(A) Sulfur dioxide (SO₂) in all PM_{2.5} nonattainment and maintenance areas,

(B) Nitrogen oxides in all PM_{2.5} nonattainment and maintenance areas unless both the State and EPA determine that it is not a significant precursor, and

(C) Volatile organic compounds (VOC) and ammonia (NH₃) only in PM_{2.5} nonattainment or maintenance areas where either the State or EPA determines that they are significant precursors.

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

“Regional water and/or wastewater projects” include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

“Restricted information” is information that is privileged or that is otherwise protected from disclosure pursuant to applicable statutes, Executive Orders, or regulations. Such information includes, but is not limited to: Classified national security information, protected critical infrastructure information, sensitive security information, and proprietary business information.

“Take or start the Federal action” means the date that the Federal agency signs or approves the permit, license, grant or contract or otherwise physically begins the Federal action that requires a conformity evaluation under this section.

“Total of direct and indirect emissions” means the sum of direct and indirect emissions increases and decreases caused by the Federal action; i.e., the “net” emissions considering all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under Subsections (c)(iii), (iv), (v), or (vi) are not included in the “total of direct and indirect emissions.” The “total of direct and indirect emissions” includes emissions of criteria pollutants and emissions of precursors of criteria pollutants.

(c) Applicability.

(i) Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*) must meet the procedures and criteria of Chapter 8, Section 4, in lieu of the procedures set forth in this section.

(ii) For Federal actions not covered by paragraph (i) of this subsection, a conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions of the criteria pollutant or precursor in a

nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (ii)(A) or (B) of this subsection.

(A) For purposes of paragraph (ii) of this subsection, the following rates apply in nonattainment areas (NAAs):

	<u>Tons/Year</u>
Ozone (VOCs or NO _x):	
Serious NAAs	50
Severe NAAs	25
Extreme NAAs	10
Other ozone NAAs outside an ozone transport region	100
Other ozone NAAs inside an ozone transport region:	
VOC	50
NO _x	100
Carbon monoxide:	
All NAAs	100
SO ₂ or NO ₂ :	
All NAAs	100
PM ₁₀ :	
Moderate NAAs	100
Serious NAAs	70
PM _{2.5} :	
Direct emissions	100
SO ₂	100
NO _x (unless determined not to be significant precursors)	100
VOC or ammonia (if determined to be significant precursors)	100
Pb:	
All NAAs	25

(B) For purposes of paragraph (ii) of this subsection, the following rates apply in maintenance areas:

	<u>Tons/Year</u>
Ozone (NO _x , SO ₂ or NO ₂):	
All Maintenance Areas	100
Ozone (VOCs):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide:	

	All maintenance areas	100
PM ₁₀ :	All maintenance areas	100
PM _{2.5} :	Direct emissions	100
	SO ₂	100
	NO _x (unless determined not to be significant precursors)	100
	VOC or ammonia (if determined to be significant precursors)	100
Pb:	All maintenance areas	25

(iii) The requirements of this section shall not apply to the following Federal actions:

(A) Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (ii) of this subsection.

(B) Actions which would result in no emissions increase or an increase in emissions that is clearly de minimus:

(I) Judicial and legislative proceedings.

(II) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.

(III) Rulemaking and policy development and issuance.

(IV) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.

(V) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.

(VI) Administrative actions such as personnel actions, organization changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.

(VII) The routine, recurring transportation of material and personnel.

(VIII) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and/or for repair or overhaul.

(IX) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(X) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

(XI) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.

(XII) Planning, studies, and provision of technical assistance.

(XIII) Routine operation of facilities, mobile assets and equipment.

(XIV) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.

(XV) The designation of empowerment zones, enterprise communities, or viticultural areas.

(XVI) Actions by any of the Federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.

(XVII) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank necessary to effect monetary or exchange rate policy.

(XVIII) Actions that implement a foreign affairs function of the United States.

(XIX) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

(XX) Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.

(XXI) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

(XXII) Air traffic control activities and adopting approach, departure, and enroute procedures for aircraft operations above the mixing height specified in the applicable SIP. Where the applicable SIP does not specify a mixing height, the Federal agency can use the 3,000 feet above ground level as a default mixing height, unless the agency demonstrates that use of a different mixing height is appropriate because the change in emissions at and above that height caused by the Federal action is *de minimis*.

(C) Actions where the emissions are not reasonably foreseeable, such as the following:

(I) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.

(II) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.

(D) Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a conforming land management plan.

(iv) Notwithstanding the other requirements of this section, a conformity determination is not required for the following Federal actions (or portion thereof):

(A) The portion of an action that includes major or minor new or modified stationary sources that require a permit under the new source review (NSR)

program (Section 110(a)(2)(c) and section 173 of the CAA) or the prevention of significant deterioration (PSD) program (Title I, part C of the CAA);

(B) Actions in response to emergencies which are typically commenced on the order of hours or days after the emergency and, if applicable, which meet the requirements of paragraph (v) of this subsection;

(C) Research, investigations, studies, demonstrations, or training (other than those exempted under paragraph (iii)(B) of this subsection), where no environmental detriment is incurred and/or, the particular action furthers air quality research, as determined by the State agency primarily responsible for the applicable SIP;

(D) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions);

(E) Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(v) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (iv)(B) of this subsection and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under paragraph (iv)(B) of this subsection are exempt from the requirements of this section only if:

(A) The Federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or

(B) For actions which are to be taken after those actions covered by paragraph (v)(A) of this subsection, the Federal agency makes a new determination as provided in paragraph (v)(A) of this subsection and:

(I) Provides a draft copy of the written determinations required to affected EPA Regional office(s), the affected State(s) and/or air pollution control agencies, and any Federal recognized Indian tribal government in the nonattainment or maintenance area. Those organizations must be allowed 15 days from the beginning of the extension period to comment on the draft determination; and

(II) Within 30 days after making the determination, publish a notice of the determination by placing a prominent advertisement in a daily newspaper of general circulation in the area affected by the action.

(C) If additional actions are necessary in response to an emergency or disaster under paragraph (iv)(B) of this subsection beyond the specified time period in paragraph (v)(B) of this subsection, a Federal agency can make a new written determination as described in (v)(B) of this subsection for as many 6-month periods as needed, but in no case shall this exemption extend beyond three 6-month periods except where an agency:

(I) Provides information to EPA and the State stating that the conditions that gave rise to the emergency exemption continue to exist and how such conditions effectively prevent the agency from conducting a conformity evaluation.

(vi) Notwithstanding other requirements of this section, actions specified by individual Federal agencies that have met the criteria set forth in either paragraphs (vii)(A), (vii)(B), or (vii)(C) of this subsection and the procedures set forth in paragraph (viii) of this subsection are “presumed to conform”, except as provided in paragraph (x) of this subsection. Actions specified by individual Federal agencies as “presumed to conform” may not be used in combination with one another when the total direct and indirect emissions from the combination of actions would equal or exceed any of the rates specified in paragraphs (ii)(A) or (ii)(B) of this subsection.

(vii) The Federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraphs (vii)(A), (vii)(B), or (vii)(C) of this subsection:

(A) The Federal agency must clearly demonstrate using methods consistent with this section that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(I) Cause or contribute to any new violation of any standard in any area;

(II) Interfere with provisions in the applicable SIP for maintenance of any standard;

(III) Increase the frequency or severity of any existing violation of any standard in any area; or

(IV) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

progress;

(1.) A demonstration of reasonable further

(2.) A demonstration of attainment;

(3.) A maintenance plan; or

(B) The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (ii) of this subsection, based, for example, on similar actions taken over recent years.

(C) The Federal agency must clearly demonstrate that the emissions from the type or category of actions and the amount of emissions from the action are included in the applicable SIP and the State, local, or tribal air quality agencies responsible for the SIP(s) provide written concurrence that the emissions from the actions along with all other expected emissions in the area will not exceed the emission budget in the SIP.

(viii) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (vii)(A), (vii)(B), or (vii)(C) of this subsection, the following procedures must also be complied with to presume that activities will conform:

(A) The Federal agency must identify through publication in the Federal Register its list of proposed activities that are “presumed to conform” and the basis for the presumptions. The notice must clearly identify the type and size of the action that would be “presumed to conform” and provide criteria for determining if the type and size of action qualifies it for the presumption;

(B) The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under §174 of the CAA and the MPO and provide at least 30 days for the public to comment on the list of proposed activities “presumed to conform”. If the “presumed to conform” action has regional or national application (e.g., the action will cause emission increases in excess of the *de minimis* levels identified in paragraph (ii) of this subsection in more than one of EPA’s Regions), the Federal agency, as an alternative to sending it to EPA Regional Offices, can send the draft conformity determination to U.S. EPA, Office of Air Quality Planning and Standards;

(C) The Federal Agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(D) The Federal agency must publish the final list of such activities in the Federal Register.

(ix) Emissions from the following actions are “presumed to conform”:

(A) Actions at installations with facility-wide emission budgets meeting the requirements in Subsection (k) provided that the State has included the emission budget in the EPA-approved SIP and the emissions from the action along with all other emissions from the installation will not exceed the facility-wide emission budget.

(B) Prescribed fires conducted in accordance with a smoke management program (SMP) which meets the requirements of EPA’s Interim Air Quality Policy on Wildland and Prescribed Fires or an equivalent replacement EPA policy.

(C) Emissions for actions that the State identifies in the EPA-approved SIP as “presumed to conform”.

(x) Even though an action would otherwise be “presumed to conform” under paragraphs (vi) or (ix) of this subsection, an action shall not be “presumed to conform” and the requirements of Subsection (a), 40 CFR 93.151, Subsections (d) through (j) and Subsections (l) through (n) shall apply to the action if EPA or a third party shows that the action would:

(A) Cause or contribute to any new violation of any standard in any area;

(B) Interfere with provisions in the applicable SIP for maintenance of any standard;

(C) Increase the frequency or severity of any existing violation of any standard in any area; or

(D) Delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

(I) A demonstration of reasonable further progress;

(II) A demonstration of attainment; or

(III) A maintenance plan.

(xi) The provisions of this section shall apply in all nonattainment and maintenance areas except conformity requirements for newly designated nonattainment areas are not applicable until 1 year after the effective date of the final nonattainment designation for each NAAQS and pollutant in accordance with section 176(c)(6) of the CAA.

(d) Federal Agency Conformity Responsibility. Any department, agency, or instrumentality of the Federal government taking an action subject to this section must make its own conformity determination consistent with the requirements of this section. In making its conformity determination, a Federal agency must follow the requirements in Subsections (e) through (j) and Subsections (l) through (o) and must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

(e) Reporting Requirements.

(i) A Federal agency making a conformity determination under Subsections (d) through (j) and Subsections (l) through (n) must provide to the appropriate EPA Regional Office(s), State and local air quality agencies, any federally-recognized Indian tribal government in the nonattainment or maintenance area, and, where applicable, affected Federal Land Managers, the agency designated under section 174 of the CAA and the MPO, a 30-day notice which describes the proposed action and the Federal agency's draft conformity determination on the action. If the action has multi-regional or national impacts (e.g., the action will cause emission increases in excess of the *de minimis* levels identified in Subsection (c)(ii) in three or more of EPA's Regions), the Federal agency, as an alternative to sending it to EPA Regional Offices, can provide the notice to EPA's Office of Air Quality Planning and Standards.

(ii) A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies, any federally-recognized Indian tribal government in the nonattainment or maintenance area, and, where applicable, affected Federal Land Managers, the agency designated under section 174 of the Clean Air Act and the MPO, within 30 days after making a final conformity determination under this section.

(iii) The draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations, security manuals, or executive orders concerning the use, access, and release of such materials. Subject to applicable procedures to protect restricted information from public disclosure, any information or materials excluded from the draft or final conformity determination or supporting materials may be made available in a restricted information annex to the determination for review by Federal and State representatives who have received appropriate clearances to review the information.

(f) Public Participation.

(i) Upon request by any person regarding a specific Federal action, a Federal agency must make available, subject to the limitation in paragraph (v) of this section, for review its draft conformity determination under Subsection (d) with

supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

(ii) A Federal agency must make public its draft conformity determination under Subsection (d) by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process. If the action has multi-regional or national impacts (e.g., the action will cause emission increases in excess of the *de minimis* levels identified in Subsection (c)(ii) in three or more of EPA's Regions), the Federal agency, as an alternative to publishing separate notices, can publish a notice in the Federal Register.

(iii) A Federal agency must document its response to all the comments received on its draft conformity determination under Subsection (d) and make the comments and responses available, subject to the limitation in paragraph (v) of this subsection, upon request by any person regarding a specific Federal action, within 30 days of the final conformity determination.

(iv) A Federal agency must make public its final conformity determination under Subsection (d) for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination. If the action would have multi-regional or national impacts, the Federal agency, as an alternative, can publish the notice in the Federal Register.

(v) The draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations or executive orders concerning the release of such materials.

(g) Reevaluation of Conformity.

(i) Once a conformity determination is completed by a Federal agency, that determination is not required to be reevaluated if the agency has maintained a continuous program to implement the action; the determination has not lapsed as specified in paragraph (ii) of this subsection; or any modification to the action does not result in an increase in emissions above the levels specified in Subsection (c)(ii). If a conformity determination is not required for the action at the time the NEPA analysis is completed, the date of the finding of no significant impact (FONSI) for an Environmental Assessment, a record of decision (ROD) for an Environmental Impact Statement, or a categorical exclusion determination can be used as a substitute date for the conformity determination date.

(ii) The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under Subsection (e), unless the Federal action has been completed or a continuous program to implement the Federal action has commenced.

(iii) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under Section (e).

(iv) If the Federal agency originally determined through the applicability analysis that a conformity determination was not necessary because the emissions for the action were below the limits in Subsection (c)(ii) and changes to the action would result in the total emissions from the action being above the limits in Subsection (c)(ii), then the Federal agency must make a conformity determination.

(h) Criteria for Determining Conformity of General Federal Actions.

(i) An action required under Subsection (c) to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in Subsection (c)(ii), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (iii) of this subsection, and meets any of the following requirements:

(A) For any criteria pollutant or precursor, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration or reasonable further progress milestone or in a facility-wide emission budget included in a SIP in accordance with Subsection (k);

(B) For precursors of ozone, nitrogen dioxide, or PM, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violations in the past, in the area with the Federal action) through a revision to the applicable SIP or a similarly enforceable measure that effects emissions reductions so that there is no net increase in emissions of that pollutant;

(C) For any directly-emitted criteria pollutant, the total of direct and indirect emissions from the action meets the requirements:

(I) Specified in paragraph (ii) of this subsection, based on areawide air quality modeling analysis and local air quality modeling analysis; or

(II) Meet the requirements of paragraph (i)(E) of this subsection and, for local air quality modeling analysis, the requirement of paragraph (ii) of this subsection;

(D) For CO or directly emitted PM₁₀:

(I) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (ii) of this subsection, based on local air quality modeling analysis; or

(II) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (ii) of this subsection, based on areawide modeling, or meet the requirements of paragraph (i)(E) of this subsection; or

(E) For ozone or nitrogen dioxide, and for purposes of paragraphs (i)(C)(II) and (i)(D)(II) of this subsection, each portion of the action or the action as a whole meets any of the following requirements:

(I) Where EPA has approved a revision to the applicable implementation plan after the area was designated as nonattainment and the State makes a determination as provided in paragraph (i)(E)(I)(1.) of this subsection or where the State makes a commitment as provided in paragraph (i)(E)(I)(2.) of this subsection:

(1.) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP.

(2.) The total of direct and indirect emissions from the action (or portion thereof) is determined by the State agency responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP and the State Governor or the Governor's designee for SIP actions makes a written commitment to EPA which includes the following:

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

b. Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with

all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

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

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

e. Written documentation including all air quality analyses supporting the conformity determination.

(3.) Where a Federal agency made a conformity determination based on a State's commitment under paragraph (i)(E)(I)(2.) of this subsection and the State has submitted a SIP to EPA covering the time period during which the emissions will occur or is scheduled to submit such a SIP within 18 months of the conformity determination, the State commitment is automatically deemed a call for a SIP revision by EPA under section 110(k)(5) of the CAA, effective on the date of the Federal conformity determination and requiring response within 18 months or any shorter time within which the State commits to revise the applicable SIP;

(4.) Where a Federal agency made a conformity determination based on a State commitment under paragraph (i)(E)(I)(2.) of this subsection and the State has not submitted a SIP covering the time period when the emissions will occur or is not scheduled to submit such a SIP within 18 months of the conformity determination, the State must, within 18 months, submit to EPA a revision to the existing SIP committing to include the emissions in the future SIP revision.

(II) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under Chapter 8, Section 4, or 40 CFR part 93, Subpart A;

(III) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violations in the past, in the area with the Federal action) through a revision to the applicable SIP or an equally enforceable measure that effects emissions reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(IV) Where EPA has not approved a revision to the relevant SIP since the area was redesignated or reclassified, the total of direct and indirect

emissions from the action for the future years (described in Subsection (i)(iv)) do not increase emissions with respect to the baseline emissions:

(1.) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed Federal action during:

a. The most current calendar year with a complete emission inventory available before an area is designated unless EPA sets another year; or

b. The emission budget in the applicable SIP;

c. The year of the baseline inventory in the PM₁₀ applicable SIP;

(2.) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in Subsection (i)(iv)) using the historic activity levels (described in paragraph (i)(E)(IV)(1.) of this subsection) and appropriate emission factors for the future years; or

(V) Where the action involves regional water and/or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.

(ii) The areawide and/or local air quality modeling analyses must:

(A) Meet the requirements in Subsection (i); and

(B) Show that the action does not:

(I) Cause or contribute to any new violation of any standard in any area; or

(II) Increase the frequency or severity of any existing violation of any standard in any area.

(iii) Notwithstanding any other requirements of this subsection, an action subject to this section may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements.

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

(i) Procedures for Conformity Determinations of General Federal Actions.

(i) The analyses required under this section must be based on the latest planning assumptions.

(A) All planning assumptions must be derived from the estimates of population, employment, travel, and congestion most recently approved by the MPO, or other agency authorized to make such estimates, where available.

(B) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.

(ii) The analyses required under this section must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate, the Federal agency may obtain written approval from the appropriate EPA Regional Administrator for modification or substitution, of another technique on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program.

(A) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of SIPs in that State must be used for the conformity analysis as specified in paragraphs (ii)(A)(I) and (II) of this subsection:

(I) The EPA must publish in the Federal Register a notice of availability of any new motor vehicle emissions model; and

(II) A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used unless EPA announces a longer grace period in the Federal Register. Conformity analyses for which the analysis was begun during the grace period or no more than 3 months before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

(B) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the “Compilation of Air Pollutant Emission Factors” (AP-42) must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

(iii) The air quality modeling analyses required under this section must be based on the applicable air quality models, databases, and other requirements specified in the most recent version of the “Guideline on Air Quality Models” (Appendix W to 40 CFR part 51), unless:

(A) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and

(B) Written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(iv) The analyses required under this section must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

(A) The attainment year specified in the SIP, or if the SIP does not specify an attainment year, the latest attainment year possible under the CAA; or

(B) The last year for which emissions are projected in the maintenance plan;

(C) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

(D) Any year for which the applicable SIP specifies an emissions budget.

(j) Mitigation of Air Quality Impacts.

(i) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(ii) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations.

(iii) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(iv) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the

Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

(v) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of Subsection (e) and the public participation requirements of Subsection (f).

(vi) Written commitments to mitigation measures must be obtained prior to a positive conformity determination and that such commitments must be fulfilled.

(vii) After a State revises its SIP and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

(k) Conformity Evaluation for Federal Installations With Facility-Wide Emission Budgets.

(i) The State or local agency responsible for implementing and enforcing the SIP can in cooperation with Federal agencies or third parties authorized by the agency that operate installations subject to Federal oversight develop and adopt a facility-wide emission budget to be used for demonstrating conformity under Subsection (h)(i)(A). The facility-wide budget must meet the following criteria:

(A) Be for a set time period;

(B) Cover the pollutants or precursors of the pollutants for which the area is designated nonattainment or maintenance;

(C) Include specific quantities allowed to be emitted on an annual or seasonal basis;

(D) The emissions from the facility along with all other emissions in the area will not exceed the emission budget for the area;

(E) Include specific measures to ensure compliance with the budget, such as periodic reporting requirements or compliance demonstration, when the Federal agency is taking an action that would otherwise require a conformity determination;

(F) Be submitted to EPA as a SIP revision;

(G) The SIP revision must be approved by EPA.

(ii) The facility-wide budget developed and adopted in accordance with paragraph (i) of this subsection can be revised by following the requirements in paragraph (i) of this subsection.

(iii) Total direct and indirect emissions from Federal actions in conjunction with all other emissions subject to General Conformity from the facility that do not exceed the facility budget adopted pursuant to paragraph (i) of this subsection are “presumed to conform” to the SIP and do not require a conformity analysis.

(iv) If the total direct and indirect emissions from the Federal actions in conjunction with the other emissions subject to General Conformity from the facility exceed the budget adopted pursuant to paragraph (i) of this subsection, the action must be evaluated for conformity. A Federal agency can use the compliance with the facility-wide emissions budget as part of the demonstration of conformity, i.e., the agency would have to mitigate or offset the emissions that exceed the emission budget.

(v) If the SIP for the area includes a category for construction emissions, the negotiated budget can exempt construction emissions from further conformity analysis.

(l) Emissions Beyond the Time Period Covered by the SIP. If a Federal action would result in total direct and indirect emissions above the applicable thresholds which would be emitted beyond the time period covered by the SIP, the Federal agency can:

(i) Demonstrate conformity with the last emission budget in the SIP; or

(ii) Request the State to adopt an emissions budget for the action for inclusion in the SIP. The State must submit a SIP revision to EPA within 18 months either including the emissions in the existing SIP or establishing an enforceable commitment to include the emissions in future SIP revisions based on the latest planning assumptions at the time of the SIP revision. No such commitment by a State shall restrict a State’s ability to require RACT, RACM or any other control measures within the State’s authority to ensure timely attainment of the NAAQS.

(m) Timing of Offsets and Mitigation Measures.

(i) The emissions reductions from an offset or mitigation measure used to demonstrate conformity must occur during the same calendar year as the emission increases from the action except, as provided in paragraph (ii) of this subsection.

(ii) The State may approve emissions reductions in other years provided:

(A) The reductions are greater than the emission increases by the following ratios:

- (I) Extreme nonattainment areas 1.5:1
- (II) Severe nonattainment areas 1.3:1
- (III) Serious nonattainment areas 1.2:1
- (IV) Moderate nonattainment areas 1.15:1
- (V) All other areas 1.1:1

(B) The time period for completing the emissions reductions must not exceed twice the period of the emissions.

(C) The offset or mitigation measure with emissions reductions in another year will not:

(I) Cause or contribute to a new violation of any air quality standard;

(II) Increase the frequency or severity of any existing violation of any air quality standard; or

(III) Delay the timely attainment of any standard or any interim emissions reductions or other milestones in any area.

(iii) The approval by the State of an offset or mitigation measure with emissions reductions in another year does not relieve the State of any obligation to meet any SIP or CAA milestone or deadline. The approval of an alternate schedule for mitigation measures is at the discretion of the State, and they are not required to approve an alternate schedule.

(n) Inter-precursor Mitigation Measures and Offsets. Federal agencies must reduce the same type of pollutant as being increased by the Federal action except the State may approve offsets or mitigation measures of different precursors of the same criteria pollutant, if such trades are allowed by a State in a SIP approved NSR regulation, is technically justified, and has a demonstrated environmental benefit.

(o) Early Emission Reduction Credit Programs at Federal Facilities and Installation Subject to Federal Oversight.

(i) Federal facilities and installations subject to Federal oversight can, with the approval of the State agency responsible for the SIP in that area, create an early emissions reductions credit program. The Federal agency can create the emission reduction credits in accordance with the requirements in paragraph (ii) of this subsection and can use them in accordance with paragraph (iii) of this subsection.

(ii) Creation of Emission Reduction Credits.

(A) Emissions reductions must be quantifiable through the use of standard emission factors or measurement techniques. If non-standard factors or techniques to quantify the emissions reductions are used, the Federal agency must receive approval from the State agency responsible for the implementation of the SIP and from EPA's Regional Office. The emission reduction credits do not have to be quantified before the reduction strategy is implemented, but must be quantified before the credits are used in the General Conformity evaluation.

(B) The emission reduction methods must be consistent with the applicable SIP attainment and reasonable further progress demonstrations.

(C) The emissions reductions cannot be required by or credited to other applicable SIP provisions.

(D) Both the State and Federal air quality agencies must be able to take legal action to ensure continued implementation of the emission reduction strategy. In addition, private citizens must also be able to initiate action to ensure compliance with the control requirement.

(E) The emissions reductions must be permanent or the timeframe for the reductions must be specified.

(F) The Federal agency must document the emissions reductions and provide a copy of the document to the State air quality agency and the EPA Regional Office for review. The documentation must include a detailed description of the emission reduction strategy and a discussion of how it meets the requirements of paragraphs (ii)(A) through (E) of this subsection.

(iii) Use of Emission Reduction Credits. The emission reduction credits created in accordance with paragraph (ii) of this subsection can be used, subject to the following limitations, to reduce the emissions increase from a Federal action at the facility for the conformity evaluation.

(A) If the technique used to create the emission reduction is implemented at the same facility as the Federal action and could have occurred in conjunction with the Federal action, then the credits can be used to reduce the total direct and indirect emissions used to determine the applicability of the regulation as required in Subsection (c) and as offsets or mitigation measures required by Subsection (h).

(B) If the technique used to create the emission reduction is not implemented at the same facility as the Federal action or could not have occurred in conjunction with the Federal action, then the credits cannot be used to reduce the total direct and indirect emissions used to determine the applicability of the regulation as

required in Subsection (c), but can be used to offset or mitigate the emissions as required by Subsection (h).

(C) Emissions reductions credits must be used in the same year in which they are generated.

(D) Once the emission reduction credits are used, they cannot be used as credits for another conformity evaluation. However, unused credits from a strategy used for one conformity evaluation can be used for another conformity evaluation as long as the reduction credits are not double counted.

(E) Federal agencies must notify the State air quality agency responsible for the implementation of the SIP and EPA Regional Office when the emission reduction credits are being used.

Section 4. **Transportation conformity.**

(a) Definitions. Terms used but not defined in this subpart shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

“Applicable implementation plan” is defined in §302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under §110, or promulgated under §110(c), or promulgated or approved pursuant to regulations promulgated under §301(d) and which implements the relevant requirements of the CAA.

“CAA” means the Clean Air Act, as amended.

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

(A) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented, or

(B) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

“Control strategy implementation plan revision” is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA §§182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§192(a) and 192(b), for nitrogen dioxide).

“Control strategy period” with respect to particulate matter less than 10 microns in diameter (PM₁₀), carbon monoxide (CO), nitrogen dioxide (NO₂), and/or ozone precursors (volatile organic compounds and oxides of nitrogen), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM₁₀, NO₂, CO, and/or ozone, as appropriate. This period ends when a State submits and EPA approves a request under §107(d) of the CAA for redesignation to an attainment area.

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

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

“Division” means the Air Quality Division of the Department of Environmental Quality.

“DOT” means the United States Department of Transportation.

“EPA” means the Environmental Protection Agency.

“FHWA” means the Federal Highway Administration of DOT.

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

“FTA” means the Federal Transit Administration of DOT.

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

“Highway project” is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(A) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(B) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(C) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

“Horizon year” is a year for which the transportation plan describes the envisioned transportation system according to Chapter 8, Section 4(f).

“Hot-spot analysis” is an estimation of likely future localized CO and PM₁₀ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

“Incomplete data area” means any ozone nonattainment area which EPA has classified, in 40 CFR part 81, as an incomplete data area.

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

“ISTEA” means the Intermodal Surface Transportation Efficiency Act of 1991.

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

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

“Metropolitan planning organization (MPO)” is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative,

and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making.

“Milestone” has the meaning given in §182(g)(1) and §189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

“Motor vehicle emissions budget” is that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or his or her designee, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO_x) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO_x budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO_x budget if NO_x reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

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

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

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

“Nonattainment area” means any geographic region of the United States which has been designated as nonattainment under §107 of the CAA for any pollutant for which a national ambient air quality standard exists.

“Not classified area” means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.

“Phase II of the interim period” with respect to a pollutant or pollutant precursor, means that period of time after the effective date of this rule, lasting until the earlier of the following:

(A) Submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor (or his or her designee) and have been subject to a public hearing, or

(B) The date that the Clean Air Act requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has made a finding of the State's failure to submit any such plans and the State, MPO, and DOT have received notice of such finding of the State's failure to submit any such plans. The precise end of Phase II of the interim period is defined in Chapter 8, Section 4(bb).

“Project” means a highway project or transit project.

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

“Regionally significant project” means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways, all fixed guideway transit facilities that offer an alternative to regional highway travel and any project that the Division identifies as having the potential to affect air quality on a regional basis, after consultation in accordance with Chapter 8, Section 4(e).

“Rural transport ozone nonattainment area” means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area, or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under Clean Air Act §182(h) as a rural transport area.

“Standard” means a national ambient air quality standard.

“Submarginal area” means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR part 81.

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

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

“Transit project” is an undertaking to implement or modify a transit facility or transit-related program, purchase transit vehicles or equipment, or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

(A) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(B) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(C) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

“Transitional area” means any ozone nonattainment area which EPA has classified as transitional in 40 CFR part 81.

“Transitional period” with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the Governor (or his or her designee) and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in Chapter 8, Section 4(bb).

“Transportation control measure (TCM)” is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in §108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.

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

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

“Transportation project” is a highway project or a transit project.

“WYDOT” means the Wyoming Department of Transportation.

(b) Applicability.

(i) Action Applicability.

(A) Except as provided for in paragraph (iii) of this section or Chapter 8, Section 4(hh), conformity determinations are required for:

(I) The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(II) The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(III) The approval, funding, or implementation of FHWA/FTA projects.

(B) Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, Chapter 8, Section 4(cc) applies to such projects if they are regionally significant.

(ii) Geographic Applicability.

(A) The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(B) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀).

(C) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

(I) Volatile organic compounds and nitrogen oxides in ozone areas (unless the Administrator determines under §182(f) of the CAA that additional reductions of NO_x would not contribute to attainment);

(II) Nitrogen oxides in nitrogen dioxide areas; and

(III) Volatile organic compounds, nitrogen oxides, and PM₁₀ in PM₁₀ areas if:

(1.) During the interim period, the EPA Regional Administrator or the Director of the State air agency has made a finding (including a finding as part of an applicable implementation plan or a submitted implementation revision) that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT; or

(2.) During the transitional, control strategy, and maintenance periods, the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(iii) Limitations.

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

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

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

(d) Frequency of Conformity Determinations.

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

(ii) Transportation Plans.

(A) Each new transportation plan must be found to conform before the transportation plan is approved by the MPO or accepted by DOT.

(B) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in Chapter 8, Section 4(hh) and has been made in accordance with the notification process provisions of Chapter 8, Section 4(e)(iii)(A)(VII). The conformity determination must be based on the transportation plan and the revision taken as a whole.

(C) The existing conformity determination will lapse unless conformity of the existing transportation plans is redetermined:

(I) By May 1, 1995 (unless previously redetermined in accordance with 40 CFR part 51 Subpart T); or

(II) Within 18 months of EPA approval of an implementation plan revision which:

(1.) Establishes or revises a transportation-related emissions budget (as required by CAA §§175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§192(a) and 192(b), for nitrogen dioxide; or

(2.) Adds, deletes, or changes TCMs; and

(III) Within 18 months of EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

(D) In any case, conformity determinations must be made no less frequently than every three years, or the existing conformity determination will lapse.

(iii) Transportation Improvement Programs.

(A) A new TIP must be found to conform before the TIP is approved by the MPO or accepted by DOT.

(B) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in Chapter 8, Section 4(hh) and has been made in accordance with the notification process provisions of Chapter 8, Section 4(e)(iii)(A)(VII).

(C) After an MPO adopts a new or revised transportation plan, conformity must be redetermined by the MPO and DOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in Chapter 8, Section 4(hh) and has been made in accordance with the notification process provisions of Chapter 8, Section 4(e)(iii)(A)(VII). Otherwise, the existing conformity determination for the TIP will lapse.

(D) In any case, conformity determinations must be made no less frequently than every three years or the existing conformity determination will lapse.

(iv) Projects. FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the most recent three-year period: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates.

(e) Consultation.

(i) General. This rule provides procedures for interagency consultation (Federal, State, and local) and resolution of conflicts. Such consultation procedures shall be undertaken by the WYDOT, MPOs and the DOT with the Division and EPA before making conformity determinations, and by the Division and EPA with MPOs, the WYDOT and DOT in developing and revising applicable implementation plans.

(ii) Interagency Consultation Procedures: General Factors.

(A) Representatives of the MPOs, the Division and the WYDOT shall undertake an interagency consultation process in accordance with this section with each other, with representatives of appropriate cities, towns, and counties and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the list of TCMs in the applicable implementation plan, the unified planning work program under 23 CFR §450.314, the transportation plan, the TIP, any revisions to the preceding documents, and all conformity determinations required by this rule.

(B) The agency with the responsibility for a transportation plan, program, project, or applicable implementation plan shall also be responsible for preparing the final document of decision subject to the interagency consultation process and shall be the lead agency. It shall be the affirmative responsibility of the lead agency to initiate the process by notifying other participants, to convene consultation meetings early in the process of decision on the final document, to appoint the conveners of technical meetings, and to assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(C) Regular consultation on routine activities such as the selection of models or any determination of conformity on transportation projects shall include meetings at regular, scheduled quarterly intervals, if determined necessary by the lead agency and shall be on the agenda of at least one meeting attended by representatives at the policy level of each agency. In addition, technical meetings shall be convened as necessary.

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

(iii) Interagency Consultation Procedures: Specific Processes.

(A) An interagency consultation process in accordance with Chapter 8, Section 4(e)(ii) involving the MPO, the Division, the WYDOT, EPA, and DOT shall be undertaken for the following:

(I) Evaluating and choosing each model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses, including vehicle miles traveled (“VMT”) forecasting, to be initiated by the WYDOT and conducted in accordance with Chapter 8, Section 4(e)(ii).

(II) Determining which minor arterials and other transportation projects should be considered “regionally significant” for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extension that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan of TIP, to be initiated by the WYDOT and conducted in accordance with Chapter 8, Section 4(e)(ii).

(III) Evaluate whether projects otherwise exempted from meeting the requirements of this section should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason, to be initiated by the Division and conducted in accordance with Chapter 8, Section 4(e)(ii).

(IV) Make a determination, as required by Chapter 8, Section 4(m)(iii)(A), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs, to be initiated by the Division and conducted in accordance with Chapter 8, Section 4(e)(ii). This consultation process shall also consider whether delays in TCM

implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures.

(V) Making a determination, as required by Chapter 8, Section 4(cc)(ii), whether the project is included in the regional emission analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility, to be initiated by the WYDOT and conducted in accordance with Chapter 8, Section 4(e)(ii).

(VI) Identify, as required by Chapter 8, Section 4(ee)(iv), projects located at sites in PM₁₀ nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM₁₀ hot-spot analysis, to be initiated by the Division and conducted in accordance with Chapter 8, Section 4(e)(ii).

(VII) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in Chapter 8, Section 4(hh), to be initiated by the WYDOT and conducted in accordance with Chapter 8, Section 4(e)(ii).

(VIII) Determining what forecast of vehicle miles traveled (VMT) to use in establishing or tracking emissions budgets, developing transportation plans, TIPS, or applicable implementation plans, or making conformity determinations, to be initiated by the WYDOT and conducted in accordance with Chapter 8, Section 4(e)(ii).

(B) An interagency consultation process in accordance with Chapter 8, Section 4(e)(ii) involving the MPO, the Division and the WYDOT, shall be undertaken for the following:

(I) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in Chapter 8, Section 4(d), to be initiated by the Division and conducted in accordance with Chapter 8, Section 4(e)(ii); and

(II) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins, to be initiated by the Division and conducted in accordance with Chapter 8, Section 4(e)(ii).

(C) Where any metropolitan planning area does not include an entire nonattainment or maintenance area, an interagency consultation process in accordance with Chapter 8, Section 4(e)(ii) involving the MPO and the WYDOT shall be

undertaken for cooperative planning and analysis purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area, to be initiated by the WYDOT and conducted in accordance with Chapter 8, Section 4(e)(ii).

(D) (I) An interagency consultation process in accordance with Chapter 8, Section 4(e)(ii) involving the MPO, the Division, the WYDOT, and recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act shall be undertaken to assure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed.

(II) The sponsor of any such regionally significant project, and any agency that becomes aware of any such project through applications for approval, permitting or funding or otherwise, shall disclose such project to the MPO in a timely manner. Such disclosure shall be made not later than the first occasion on which any of the following actions are sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of a regionally significant project.

(III) In the case of any such regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of Chapter 8, Section 4(cc).

(IV) For the purposes of this section and Chapter 8, Section 4(cc), the phrase "adopt or approve of a regionally significant project" means the first time any action necessary to authorizing a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

(E) An interagency cooperation process in accordance with Chapter 8, Section 4(e)(ii) involving the MPO and any other recipients of funds

designated under Title 23 U.S.C. or the Federal Transit Act shall be undertaken for assuming the location and design concept and scope of projects which are disclosed to the MPO under Chapter 8, Section 4(e)(iii)(E) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of Chapter 8, Section 4(dd), to be initiated by the MPO and conducted in accordance with Chapter 8, Section 4(e)(ii).

(F) An interagency consultation process in accordance with Chapter 8, Section 4(e)(ii) involving any MPO, the Division and the WYDOT shall be undertaken for the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys), to be initiated by the MPO and conducted in accordance with Chapter 8, Section 4(e)(ii).

(iv) Resolving Conflicts.

(A) Any conflict among State agencies or between State agencies and an MPO shall be escalated to the Governor if the conflict cannot be resolved by the heads of the involved agencies. In the first instance, such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

(B) The Division has 14 calendar days to appeal a proposed determination of conformity to the Governor after the WYDOT or MPO has notified the Division of the resolution of all comments on such proposed determination of conformity or policy decision. Such 14-day period shall commence when the MPO or the WYDOT has confirmed receipt by the Administrator of the Division of the resolution of the comments of the Division.

(C) The final conformity decision must have the concurrence of the Governor if the Division appeals a conformity decision. If there is no appeal by the Division, the MPO or the WYDOT may proceed with the final conformity determination.

(D) The Division must provide notice of any appeal under Chapter 8, Section 4(e)(iv)(B) to the WYDOT and MPO.

(E) The Governor may delegate his/her role in the appeal process to anyone except the head or staff of the Division, the WYDOT, the Wyoming Environmental Quality Council, the Wyoming Transportation Commission or an MPO.

(v) Public Participation.

(A) Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs,

consistent with the requirements of 23 CFR 450, including §§450.316(b)(1), 450.322(c), and 450.324(c) as in effect on the date of adoption of this rule. In addition, any such agency must specifically address in writing in all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. Any such agency shall also provide opportunity for public involvement in conformity determination for projects to the extent otherwise required by law.

(B) The opportunity for public involvement provided under this subsection shall include access to information, emissions data, analyses, models and modeling assumptions used to perform a conformity determination, and the obligation of any such agency to consider and respond to significant comments.

(C) No transportation plan, TIP, or project may be found to conform unless the determination of conformity has been subject to a public involvement process in accordance with this subsection, without regard to whether the DOT has certified any process under 23 CFR part 450.

(f) Content of Transportation Plans.

(i) Transportation Plans Adopted After January 1, 1995 in Serious, Severe, or Extreme Ozone Nonattainment Areas and in Serious Carbon Monoxide Nonattainment Areas. The transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(A) The agency or organization developing the transportation plan, after consultation in accordance with Chapter 8, Section 4(e), may choose any years to be horizon years, subject to the following restrictions:

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

(II) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.

(III) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.

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

(B) For these horizon years:

(I) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand,

including land use forecasts, in accordance with implementation plan provisions and Chapter 8, Section 4(e).

(II) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

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

(ii) Moderate Areas Reclassified to Serious. Ozone or CO nonattainment areas which are reclassified from moderate to serious must meet the requirements of paragraph (i) of this section within two years from the date of reclassification.

(iii) Transportation Plans for Other Areas. Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of Chapter 8, Section 4(i)-(aa).

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

(g) Relationship of Transportation Plan and TIP Conformity With the NEPA Process. The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in Chapter 8, Section 4(i)-(aa) for projects not from a TIP before NEPA process completion.

(h) Fiscal Constraints for Transportation Plans and TIPS. Transportation plans and TIPS shall be fiscally constrained and meet the requirements of 23 CFR 450.332(b)(11) and 450.324(e) as in effect on the date of adoption of this section in order to be found in conformity. The determination that a transportation plan or TIP is fiscally constrained shall be subject to consultation in accordance with Chapter 8, Section 4(e).

(i) Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects: General.

(i) In order to be found to conform, each transportation plan, program, and FHWA/FTA project must satisfy the applicable criteria and procedures in Chapter 8, Section 4(j)-(aa) as listed in Table 1 in paragraph (ii) of this section, and must comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPS, and FHWA/FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.

(ii) The following table indicates the criteria and procedures in Chapter 8, Section 4(j)-(aa) which apply for each action in each time period.

Table 1. Conformity Criteria

DURING ALL PERIODS	
Action	Criteria
Transportation Plan	j,k,l,m(ii).
TIP	j,k,l,m(iii).
Project (From a conforming plan and TIP)	j,k,l,n,o,p,q
Project (Not from a conforming plan and TIP)	j,k,l,m(iv),n,p,q

Table 1. Conformity Criteria (continued)

PHASE II OF THE INTERIM PERIOD

Action	Criteria
Transportation Plan	v,y
TIP	w,z
Project (From a conforming plan and TIP)	u
Project (Not from a conforming plan and TIP)	u,x,aa

TRANSITIONAL PERIOD

Action	Criteria
Transportation Plan	r,v,y
TIP	s,w,z
Project (From a conforming plan and TIP)	u
Project (Not from a conforming plan and TIP)	t,u,x,aa

CONTROL STRATEGY AND MAINTENANCE PERIODS

Action	Criteria
Transportation Plan	r
TIP	s
Project (From a conforming plan and TIP)	No additional criteria
Project (Not from a conforming plan and TIP)	t

- (j) The conformity determination must be based on the latest planning assumptions.
- (k) The conformity determination must be based on the latest emission estimation model available.
- (l) The MPO must make the conformity determination according to the consultation procedures of this rule and the implementation plan revision required by 40 CFR part 51, Subpart T.
- (m) The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.
- (n) There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

- (o) The project must come from a conforming transportation plan and program.
- (p) The FHWA/FTA project must not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas.
- (q) The FHWA/FTA project must comply with PM₁₀ control measures in the applicable implementation plan.
- (r) The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- (s) The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- (t) The project which is not from a conforming transportation plan and conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- (u) The FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).
- (v) The transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas.
- (w) The TIP must contribute to emissions reductions in ozone and CO nonattainment areas.
- (x) The project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.
- (y) The transportation plan must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas.
- (z) The TIP must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas.
- (aa) The project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas.

(j) Criteria and Procedures: Latest Planning Assumptions.

(i) During all periods the conformity determination, with respect to all other applicable criteria in Chapter 8, Sections 4(k)-(aa), must be based upon the most recent planning assumptions in force at the time of the conformity determination. This criterion applies during all periods. The conformity determination must satisfy the requirements of paragraphs (ii) through (vi) of this section.

(ii) Assumptions (including, but not limited to, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, and the geographic distribution of population growth) must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity

determination must also be based on the latest assumptions about current and future background concentrations. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the area, after consultation with the Division.

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

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

(v) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.

(vi) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by Chapter 8, Section 4(e).

(k) Criteria and Procedures: Latest Emissions Model.

(i) During all periods the conformity determination shall be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.

(ii) EPA will consult with DOT to establish a grace period following the specification of any new model.

(A) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the Federal Register.

(B) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the Federal Register.

(iii) Conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was

begun during the grace period or before the Federal Register notice of availability, provided no more than three years have passed since the draft environmental document was issued.

(l) **Criteria and Procedures: Consultation.** All conformity determinations shall be made according to the consultation procedures in Chapter 8, Section 4(e), and according to the public involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods. Until the implementation plan revision required by 40 CFR part 51, Subpart T is approved by EPA, the conformity determination must be made according to the procedures in 40 CFR 51.402(a)(2) and 40 CFR 51.402(e). Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

(m) **Criteria and Procedures: Timely Implementation of TCMs.**

(i) The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan. This criterion applies during all periods.

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

(A) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan, including, but not limited to, those which are eligible for funding under Title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.

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

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

(A) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs, including, but not limited to, those which are eligible for funding under Title 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area. Maximum priority to approval or funding of TCMs includes demonstrations with respect to funding

acceleration, commitment of staff or other agency resources, diligent efforts to seek approvals, and similar actions.

(B) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program.

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

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

(n) Criteria and Procedures: Currently Conforming Transportation Plan and TIP. There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the criteria and procedures of this subpart. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of Chapter 8, Section 4(d).

(o) Criteria and Procedures: Projects From a Plan and TIP.

(i) The project must come from a conforming plan and program. This criterion applies during all periods. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (ii) of this section and from a conforming program if it meets the requirements of paragraph (iii) of this section.

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

(A) For projects which are required to be identified in the transportation plan in order to satisfy §51.404, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(B) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

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

(A) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

(B) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, enforceable written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by Chapter 8, Section 4(gg)(i) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

(p) Criteria and Procedures: Localized CO and PM₁₀ Violations (Hotspots).

(i) The FHWA/FTA project must not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas. This criterion applies during all periods. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.

(ii) The demonstration must be performed according to the requirements of Chapter 8, Sections 4(e) and (ee).

(iii) For projects which are not of the type identified by Chapter 8, Section 4(ee)(i) or Chapter 8, Section 4(ee)(iv), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration must be performed according to the requirements of Chapter 8, Section 4(ee)(ii).

(q) Criteria and Procedures: Compliance With PM₁₀ Control Measures. The FHWA/FTA project must comply with PM₁₀ control measures in the applicable implementation plan. This criterion applies during all periods. It is satisfied if control

measures (for the purpose of limiting PM₁₀ emissions from the construction activities and/or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

(r) Criteria and Procedures: Motor Vehicle Emissions Budget (Transportation Plan).

(i) The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in Chapter 8, Section 4(jj). This criterion may be satisfied if the requirements in paragraphs (ii) and (iii) of this section are met:

(ii) A regional emissions analysis shall be performed as follows:

(A) The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:

(I) VOC as an ozone precursor;

(II) NO_x as an ozone precursor, unless the Administrator determines that additional reductions of NO_x would not contribute to attainment;

(III) CO;

(IV) PM₁₀ (and its precursors VOC and/or NO_x if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM₁₀ nonattainment problem or establishes a budget for such emissions); or

(V) NO_x (in NO₂ nonattainment or maintenance areas);

(B) The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan;

(C) The emissions analysis methodology shall meet the requirements of Chapter 8, Section 4(dd);

(D) For areas with a transportation plan that meets the content requirements of Chapter 8, Section 4(f)(i), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and

(E) For areas with a transportation plan that does not meet the content requirements of Chapter 8, Section 4(f)(i), the emissions analysis shall be performed for any years in the time span of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the last year of the plan's forecast period. If the attainment year is in the time span of the transportation plan, the emissions analysis must also be performed for the attainment year. Emissions in milestone years which are between these analysis years may be determined by interpolation.

(iii) The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in paragraph (ii)(A) of this section the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:

(A) If the applicable implementation plan or implementation plans submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;

(B) For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;

(C) For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emission in each analysis year or horizon year must be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and

(D) For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

(s) Criteria and Procedures: Motor Vehicle Emissions Budget (TIP)

(i) The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance

periods, except as provided in Chapter 8, Section 4(jj). This criterion may be satisfied if the requirements in paragraphs (ii) and (iii) of this section are met:

(ii) For areas with a conforming transportation plan that fully meets the content requirements of Chapter 8, Section 4(f)(i), this criterion may be satisfied without additional regional analysis if:

(A) Each program year of the TIP is consistent with the Federal funding which may be reasonably expected for that year, and required State/local matching funds and funds for State/local funding-only projects are consistent with the revenue sources expected over the same period; and

(B) The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:

(I) The TIP contains all projects which must be started in the TIP's time frame in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

(II) All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

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

(C) If the requirements in paragraphs (ii)(A) and (ii)(B) of this section are not met, then:

(I) The TIP may be modified to meet those requirements;

or

(II) The transportation plan must be revised so that the requirements in paragraphs (ii)(A) and (ii)(B) of this section are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of paragraphs (ii)(A) and (ii)(B) of this section.

(iii) For areas with a transportation plan that does not meet the content requirements of Chapter 8, Section 4(f)(i), a regional emissions analysis must meet all of the following requirements:

(A) The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the

transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan;

(B) The analysis methodology shall meet the requirements of Chapter 8, Section 4(dd)(iii); and

(C) The regional analysis shall satisfy the requirements of Chapter 8, Sections 4(r)(ii)(A), (r)(ii)(E), and (r)(iii).

(t) Criteria and Procedures: Motor Vehicle Emissions Budget (Project Not From a Plan and TIP).

(i) The project which is not from a conforming transportation plan and a conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in Chapter 8, Section 4(jj). It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).

(ii) For areas with a conforming transportation plan that meets the content requirements of Chapter 8, Section 4(f)(i):

(A) This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:

(I) Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

(II) The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

(III) The design concept and scope of the project is not significantly different from that described in the transportation plan.

(B) If the requirements in paragraph (ii)(A) of this section are not met, a regional emissions analysis must be performed as follows:

(I) The analysis methodology shall meet the requirements of Chapter 8, Section 4(ee);

(II) The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the time frame of the transportation plan. The analysis must include emissions from all previously approved projects which were not from a transportation plan and TIP; and

(III) The emissions analysis shall meet the requirements of Chapter 8, Sections 4(r)(ii)(A), (r)(ii)(D), and (r)(iii).

(iii) For areas with a transportation plan that does not meet the content requirements of Chapter 8, Section 4(f)(i), a regional emissions analysis must be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:

(A) The analysis methodology meets the requirements of Chapter 8, Section 4(dd)(iii);

(B) The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the time frame of the transportation plan; and

(C) The regional analysis satisfies the requirements of Chapter 8, Sections 4(r)(ii)(A), (r)(ii)(E), and (r)(iii).

(u) Criteria and Procedures: Localized CO Violations (Hot Spots) in the Interim Period.

(i) Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

(ii) The demonstration must be performed according to the requirements of Chapter 8, Sections 4(e) and (ee).

(iii) For projects which are not of the type identified by Chapter 8, Section 4(ee)(i), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and

number. Otherwise, a quantitative demonstration must be performed according to the requirements of Chapter 8, Section 4(ee)(ii).

(v) Criteria and Procedures: Interim Period Reductions in Ozone and CO Areas (Transportation Plan).

(i) A transportation plan must contribute to emissions reductions in ozone and CO Nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in Chapter 8, Section 4(jj). It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (ii) through (vi) of this section.

(ii) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(iii) Define the 'Baseline' scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the following (except that projects listed in Chapter 8, Sections 4(hh) and (ii) need not be explicitly considered):

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

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

(C) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan and/or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the 'Baseline' scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the 'Action' scenario, as described in paragraph (iv) of this section.)

(iv) Define the 'Action' scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the

proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in Chapter 8, Sections 4(hh) and (ii) need not be explicitly considered):

(A) All facilities, services, and activities in the ‘Baseline’ scenario;

(B) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

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

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

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

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

(v) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the ‘Baseline’ and ‘Action’ scenarios and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of Chapter 8, Section 4(dd). Emissions in milestone years which are between the analysis years may be determined by interpolation.

(vi) This criterion is met if the regional VOC and NO_x emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the ‘Action’ scenario are less than the emissions predicted from the ‘Baseline’ scenario in

each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any non-zero amount.

(w) Criteria and Procedures: Interim Period Reductions in Ozone and CO Areas (TIP).

(i) A TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in Chapter 8, Section 4(jj). It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (ii) through (vi) of this section.

(ii) Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than ten years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(iii) Define the 'Baseline' scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in Chapter 8, Sections 4(hh) and (ii) need not be explicitly considered):

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

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

(C) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after November 24, 1993), a project may not be included in the 'Baseline' scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the 'Action' scenario, as described in paragraph (d) of this section.)

(iv) Define the 'Action' scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally

significant projects in the nonattainment area in the time frame of the transportation plan. It will include the following (except that projects listed in Chapter 8, Sections 4(hh) and (ii) need not be explicitly considered):

(A) All facilities, services, and activities in the ‘Baseline’ scenario;

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

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

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

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

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

(v) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the ‘Baseline’ and ‘Action’ scenarios, and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of Chapter 8, Section 4(dd). Emissions in milestone years which are between analysis years may be determined by interpolation.

(vi) This criterion is met if the regional VOC and NO_x emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the ‘Action’ scenario are less than the emissions predicted from the ‘Baseline’ scenario in

each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any non-zero amount.

(x) Criteria and Procedures: Interim Period Reductions for Ozone and CO Areas (Project Not From a Plan and TIP). A transportation project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in Chapter 8, Section 4(jj). This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of Chapter 8, Section 4(v) and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

(y) Criteria and Procedures: Interim Period Reductions for PM₁₀ and NO₂ Areas (Transportation Plan).

(i) A transportation plan must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either paragraph (ii) or (iii) of this section are met.

(ii) Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM₁₀ in a PM₁₀ nonattainment area (and of each transportation-related precursor of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO₂ nonattainment area, by performing a regional emissions analysis as follows:

(A) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than 1996 (for NO₂ areas) or four years and six months following the date of designation (for PM₁₀ areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(B) Define for each of the analysis years the 'Baseline' scenario, as defined in Chapter 8, Section 4(v)(iii), and the 'Action' scenario, as defined in Chapter 8, Section 4(v)(iv).

(C) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios and determine the difference between the two scenarios in regional PM₁₀ emissions in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT) and in NO_x emissions in an NO₂ nonattainment area. The analysis must be performed for each of the analysis years according to the requirements of Chapter 8, Section 4(dd). The analysis must address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(D) Demonstrate that the regional PM₁₀ emissions and PM₁₀ precursor emissions, where applicable, (for PM₁₀ nonattainment areas) and NO_x emissions (for NO₂ nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.

(iii) Demonstrate that when the projects in the transportation plan and all other regionally significant projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA regional Administrator or the Director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO₂ nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:

(A) Determine the baseline regional emissions of PM₁₀ and PM₁₀ precursors, where applicable (for PM₁₀ nonattainment areas) and NO_x (for NO₂ nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the implementation plan revision required by 40 CFR part 51, Subpart T defines the baseline emissions for a PM₁₀ area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(B) Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of Chapter 8, Section 4(dd). Emissions shall be estimated for analysis years which are no more than ten years apart. The first analysis year shall be no later than 1996

(for NO₂ areas) or four years and six months following the date of designation (for PM₁₀ areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(C) Demonstrate that for each analysis year the emissions estimated in paragraph (iii)(B) of this section are no greater than baseline emissions of PM₁₀ and PM₁₀ precursors, where applicable (for PM₁₀ nonattainment areas) or NO_x (for NO₂ nonattainment areas) from highway and transit sources.

(z) Criteria and Procedures: Interim Period Reductions for PM₁₀ and NO₂ Areas (TIP).

(i) A TIP must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emission of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either paragraph (ii) or paragraph (iii) of this section are met.

(ii) Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO₂ nonattainment area, by performing a regional emissions analysis as follows:

(A) Determine the analysis years for which emissions are to be estimated, according to the requirements of Chapter 8, Section 4(y)(ii)(A).

(B) Define for each of the analysis years the 'Baseline' scenario, as defined in Chapter 8, Section 4(w)(iii), and the 'Action' scenario, as defined in Chapter 8, Section 4(w)(iv).

(C) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios as required by Chapter 8, Section 4(y)(ii)(C), and make the demonstration required by Chapter 8, Section 4(y)(ii)(D).

(iii) Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of the State air agency has made

a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO₂ nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by Chapter 8, Sections 4(y)(iii)(A)-(C).

(aa) Criteria and Procedures: Interim Period Reductions for PM₁₀ and NO₂ Areas (Project Not From a Plan and TIP). A transportation project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of Chapter 8, Section 4(y) and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and Chapter 8, Section 4(y)(ii) is used to demonstrate satisfaction of this criterion, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

(bb) Transition From the Interim Period to the Control Strategy Period.

(i) Areas Which Submit a Control Strategy Implementation Plan Revision After November 24, 1993.

(A) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by one year from the date the Clean Air Act requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.

(I) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (i)(A) of this section.

(II) Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(B) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and DOT, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project⁶ may be found to conform until another control strategy implementation plan

revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(C) Notwithstanding paragraph (i)(B) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act §110(a)(2)(A), the provisions of paragraph (i)(A) of this section shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(ii) Areas Which Have Not Submitted a Control Strategy Implementation Plan Revision.

(A) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993 and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m):

(I) No new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline; and

(II) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(B) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan was before November 24, 1993 and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(I) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(II) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(III) Notwithstanding paragraphs (iii)(B)(I) and (II) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all

committed measures had been submitted in enforceable form as required by Clean Air Act §110(a)(2)(A), the provisions of paragraph (iv)(A) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(iv) Areas Which Submitted a Control Strategy Implementation Plan Before November 24, 1993.

(A) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made.

(I) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures until February 22, 1994, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (iv)(A) of this section.

(II) Beginning February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(B) If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(C) Notwithstanding paragraph (iv)(B) of this section, if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act §110(a)(2)(A), the provisions of paragraph (iv)(A) of this section shall apply for 12 months following November 24, 1993. The conformity status of the transportation plan and TIP shall lapse 12 months following November 24, 1993 unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(v) Projects. If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of paragraphs (v)(A) and (B) of this section must be met.

(A) Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the State air agency must be consulted on how the emissions which the existing transportation plan and TIPs conformity determination estimates for the 'Action' scenario (as required by Chapter 8, Sections 4(v)-(aa)) compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.

(B) In the event of unresolved disputes on such project-level conformity determinations, the State air agency may escalate the issue to the Governor consistent with the procedure in Chapter 8, Section 4(e), which applies for any State air agency comments on a conformity determination.

(vi) Redetermination of Conformity of the Existing Transportation Plan and TIP According to the Transitional Period Criteria and Procedures.

(A) The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by paragraphs (i)(A) and (iv)(A) of this section) does not require new emissions analysis and does not have to satisfy the requirements of Chapter 8, Sections 4(j) and (k) if:

(I) The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and

(II) The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.

(B) A redetermination of conformity as described in paragraph (vi)(A) of this section is not considered a conformity determination for the purposes of Chapter 8, Sections 4(d)(ii)(D) or (d)(iii)(D) regarding the maximum intervals between conformity determinations. Conformity must be determined according to all the applicable criteria and procedures of Chapter 8, Section 4(i) within three years of the last determination which did not rely on paragraph (vi)(A) of this section.

(vii) Ozone Nonattainment Areas.

(A) The requirements of paragraph (ii)(A) of this section apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which Clean Air Act §§182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which Clean Air Act §182(b)(1) requires to be submitted to EPA November 15, 1993.

(B) The requirements of paragraph (ii)(A) of this section apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the “specific annual reductions as necessary to attain” required by Clean Air Act §182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of paragraph (ii)(A) of this section apply in this case even if the area has submitted the 15% emission reduction demonstration required by Clean Air Act §182(b)(1).

(C) The requirements of paragraph (i) of this section apply when the implementation plan revisions required by Clean Air Act §§182(c)(2)(A) and 182(c)(2)(B) are submitted.

(viii) Nonattainment Areas Which Are Not Required to Demonstrate Reasonable Further Progress and Attainment. If an area listed in Chapter 8, Section 4(jj) submits a control strategy implementation plan revision, the requirements of paragraphs (i) and (v) of this section apply. Because the areas listed in Chapter 8, Section 4(jj) are not required to demonstrate reasonable further progress and attainment and therefore have no Clean Air Act deadline, the provisions of paragraph (ii) of this section do not apply to these areas at any time.

(ix) Maintenance Plans. If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by Clean Air Act §175 is submitted to EPA, the requirements of paragraphs (i) or (iv) of this section apply, with the maintenance plan submission treated as a “control strategy implementation plan revision” for the purposes of those requirements.

(cc) Requirements for Adoption or Approval of Projects By Recipients of Funds Designated Under Title 23 U.S.C. or the Federal Transit Act. No recipient of Federal funds designated under Title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of Chapter 8, Section 4(n) and the requirements of one of the following paragraphs (i) through (v) are met:

(i) The project comes from a conforming plan and program consistent with the requirements of Chapter 8, Section 4(o);

(ii) The project is included in the regional emissions analysis supporting the currently conforming TIPs conformity determination, even if the project is not strictly “included” in the TIP for the purposes of MPO project selection or endorsement, and the project’s design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

(iii) During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of Chapter 8, Section 4(t);

(iv) During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of Chapter 8, Section 4(x) (in ozone and CO nonattainment areas) or Chapter 8, Section 4(aa) (in PM₁₀ and NO₂ nonattainment areas); or

(v) During the transitional period, the project satisfies the requirements of both paragraphs (iii) and (iv) of this section.

(dd) Procedures for Determining Regional Transportation-Related Emissions.

(i) General Requirements.

(A) The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by Chapter 8, Section 4(e). Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(B) The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(C) Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a Federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(D) Notwithstanding paragraph (i)(C) of this section, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in Chapter 8, Sections 4(r)-(t), but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of Chapter 8, Sections 4(r)-(t) are satisfied.

(E) A regional emissions analysis for the purpose of satisfying the requirements of Chapter 8, Sections 4(v)-(x) may account for the programs in paragraph (i)(D) of this section, but the same assumptions about these programs shall be used for both the 'Baseline' and 'Action' scenarios.

(ii) Serious, Severe, and Extreme Ozone Nonattainment Areas and Serious Carbon Monoxide Areas After January 1, 1995. Estimates of regional transportation-related emissions used to support conformity determinations must be made according to procedures which meet the requirements in paragraphs (ii)(A) through (E) of this section.

(A) A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies must be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:

(I) The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;

(II) The network-based model(s) must be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs must be based on the best available information and appropriate to the validation base year;

(III) For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology must be used;

(IV) Zone-to-zone travel times used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;

(V) Free-flow speeds on network links shall be based on empirical observations;

(VI) Peak and off-peak travel demand and travel times must be provided;

(VII) Trip distribution and mode choice must be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;

(VIII) The model(s) must utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;

(IX) A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;

(X) A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and

(XI) Consideration of emissions increases from construction-related congestion is not specifically required.

(B) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.

(C) Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

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

(E) Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to Chapter 8, Section 4(e) if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(iii) Areas Which Are Not Serious, Severe, or Extreme Ozone Nonattainment Areas or Serious Carbon Monoxide Areas, or Before January 1, 1995.

(A) Procedures which satisfy some or all of the requirements of paragraph (i) of this section shall be used in all areas not subject to paragraph (i) of this section in which those procedures have been the previous practice of the MPO.

(B) Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles traveled per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

(iv) Projects Not From a Conforming Plan and TIP in Isolated Rural Nonattainment and Maintenance Areas. This paragraph applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).

(A) Conformity demonstrations for projects in these areas may satisfy the requirements of Chapter 8, Section 4(t)(x)(aa) with one regional emissions analysis which includes all the regionally significant projects in the nonattainment or maintenance area (or portion thereof).

(B) The requirements of Chapter 8, Section 4(t) shall be satisfied according to the procedures in Chapter 8, Section 4(t)(iii), with references to the "transportation plan" taken to mean the statewide transportation plan.

(C) The requirements of Chapter 8, Sections 4(x) and (aa) which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area (or portion thereof).

(D) The requirement of Chapter 8, Section 4(cc)(ii) shall be satisfied if:

(I) The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area (or portion thereof) and supports the most recent conformity determination made according to the requirements of Chapter 8, Sections 4(t)(x) or (aa) (as modified by paragraphs (iv)(B) and (iv)(C) of this section), as appropriate for the time period and pollutant; and

(II) The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.

(v) PM₁₀ From Construction-Related Fugitive Dust.

(A) For areas in which the implementation plan does not identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the fugitive PM₁₀ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(B) In PM₁₀ nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the regional PM₁₀ emissions analysis shall consider construction-related fugitive PM₁₀ control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(ee) Procedures for Determining Localized CO and PM₁₀ Concentrations (Hot-Spot Analysis).

(i) In the following cases, CO hot-spot analyses must be based on the applicable air quality models, databases, and other requirements specified in 40 CFR part 51, Appendix W ("Guideline on Air Quality Models" (Revised 1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2-78-027R), unless, after the interagency consultation process described in Chapter 8, Section 4(e) and with the approval of the EPA Regional Administrator, these models, databases, and other requirements are determined to be inappropriate:

(A) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;

(B) For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;

(C) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;

(D) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and

(E) Where use of the “Guideline” models is practicable and reasonable given the potential for violations.

(ii) In cases other than those described in paragraph (i) of this section, other quantitative methods may be used if they represent reasonable and common professional practice.

(iii) CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.

(iv) PM₁₀ hot-spot analysis must be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM₁₀ hot-spot analysis shall be determined through the interagency consultation process required in Chapter 8, Section 4(e). In PM₁₀ nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this paragraph for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.

(v) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(vi) PM₁₀ or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to the implementation of such measures, as required by Chapter 8, Section 4(gg)(i).

(vii) CO and PM₁₀ hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site

which is affected by construction-related activities shall be considered separately, using established “Guideline” methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

(ff) Using the Motor Vehicle Emissions Budget in the Applicable Implementation Plan (or Implementation Plan Submission).

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

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

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

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

(ii) If an applicable implementation plan submitted before November 24, 1993 demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that “safety margin,” the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

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

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

(v) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

(gg) Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures.

(i) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under Title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service and project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM₁₀ or CO impacts. Before making conformity determinations written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by Chapter 8, Sections 4(r)-(t) and Chapter 8, Sections (v)-(x) or used in the project-level hot-spot analysis required by Chapter 8, Sections 4(p) and (u).

(ii) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(iii) The implementation plan revision required in 40 CFR part 51, Subpart T shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

(iv) During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of Chapter 8, Sections 4(p), (r), and (s) are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under Chapter 8, Section 4(e). The MPO and DOT must confirm that the transportation plan and TIP still satisfy the requirements of Chapter 8, Sections 4(r) and (s) and that the project still satisfies the requirements of Chapter 8, Section 4(p), and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

(hh) Exempt Projects. Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see Chapter 8, Section 4(e)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation.

Table 2. – Exempt Projects

SAFETY

Railroad/highway crossing
Hazard elimination program
Safer non-Federal-aid system roads
Shoulder improvements
Increasing sight distance
Safety improvement program
Traffic control devices and operating assistance other than signalization projects
Railroad/highway crossing warning devices
Guardrails, median barriers, crash cushions
Pavement resurfacing and/or rehabilitation
Pavement marking demonstration
Emergency relief (23 U.S.C. 125)
Fencing
Skid treatments
Safety roadside rest areas
Adding medians
Truck climbing lanes outside the urbanized area
Lighting improvements
Widening narrow pavements or reconstructing bridges (no additional travel lanes)
Emergency truck pullovers

MASS TRANSIT

Operating assistance to transit agencies
Purchase of support vehicles
Rehabilitation of transit vehicles¹
Purchase of office, shop, and operating equipment for existing facilities
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.)
Construction or renovation of power, signal, and communications systems
Construction of small passenger shelters and information kiosks
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)

Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet¹
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR 771

AIR QUALITY

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

OTHER

Specific activities which do not involve or lead directly to construction, such as:

- Planning and technical studies
- Grants for training and research programs
- Planning activities conducted pursuant to Titles 23 and 49 U.S.C.
- Federal-aid systems revisions

Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action
Noise attenuation
Advance land acquisitions (23 CFR 712 or 23 CFR 771)
Acquisition of scenic easements
Plantings, landscaping, etc.
Sign removal
Directional and informational signs
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities)
Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes

¹In PM₁₀ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

(ii) Projects Exempt From Regional Emissions Analyses. Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM₁₀ concentrations must be considered to determine hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see Chapter 8, Section 4(e)), the EPA, and the FHWA

(in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

Table 3. – Projects Exempt From Regional Emissions Analyses

Intersection channelization projects
Intersection signalization projects at individual intersections
Interchange reconfiguration projects
Changes in vertical and horizontal alignment
Truck size and weight inspection stations
Bus terminals and transfer points

(jj) Special Provisions for Nonattainment Areas Which Are Not Required to Demonstrate Reasonable Further Progress and Attainment.

(i) Application. This section applies in the following areas:

- (A) Rural transport ozone nonattainment areas;
- (B) Marginal ozone areas;
- (C) Submarginal ozone areas;
- (D) Transitional ozone areas;
- (E) Incomplete data ozone areas;
- (F) Moderate CO areas with a design value of 12.7 ppm or less;

and

- (G) Not classified CO areas.

(ii) Default Conformity Procedures. The criteria and procedures in Chapter 8, Sections 4(v)-(x) will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in Chapter 8, Sections 4(r)-(t), except as otherwise provided in paragraph (iii) of this section.

(iii) Optional Conformity Procedures. The State or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the State must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in Chapter 8, Sections 4(r)-(t) apply in lieu of the procedures in Chapter 8, Sections 4(v)-(x).

Section 5. Incorporation by reference.

(a) Code of Federal Regulations (CFR). All Code of Federal Regulations (CFRs) cited in this chapter, including their Appendices, revised and published as of July 1, 2011, not including any later amendments, are incorporated by reference. Copies of the Code of Federal Regulations are available for public inspection and copies can be obtained at cost from the Department of Environmental Quality, Division of Air Quality, 122 W. 25th Street, Cheyenne, Wyoming 82002. Copies of the CFRs can also be obtained at cost from Government Institutes, 15200 NBN Way, Building B, Blue Ridge Summit, PA 17214.