Environmental Quality, Dept. of

Air Quality

Chapter 8: Nonattainment Area Regulations

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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 establishes requirements for the submittal of emission inventories from facilities or sources located in an ozone nonattainment area(s) pursuant to the requirements of the Clean Air Act, Section 182. Section 6 establishes requirements for all PAD and single-well oil and gas production facilities or sources, and all compressor stations, located in the Upper Green River Basin (UGRB) ozone nonattainment area that were existing as of January 1, 2014. Sections 7 through 9 are reserved. Section 10 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.

Source Description	Allowable Emission Rate lb/hr
#1 Boiler	3.00

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#2 Boiler	3.00
#3 Boiler	N.A.
#4 Boiler	7.50

(i) Stauffer Chemical Company of Wyoming, Green River Soda Ash Plant (Continued).

#5 Boiler	8.62
#6 Boiler	7.50
ES-1	30.6
2ES-1	27.3
3ES-1	29.2

Source Description	Allowable Emission Rate lb/hr
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

Source Description		Allowable Emission Rate lb/hr
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

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Dissolver #2	GR-II-E-2	3.0
Dryer #4	GR-II-F	4.0
Dryer #5	GR-II-G	4.0

(ii) Allied Chemical Corporation, Green River Works (Continued)

Dryer #6	GR-II-H	4.0
Housekeeping	GR-II-J	10.0
Product Cooler	GR-II-K	3.0
Lime Storage	GR-II-O	0.1
Reclaim Ore System	RO-1	1.4

Source Description		Allowable Emission Rate lb/hr
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

Source Description		Allowable Emission Rate lb/hr
Crusher	PA-4; PA-5	2.5
Dissolver	PA-6	1.0
Dissolver	PA-7	1.0
Dissolver	PA-8	1.0

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Dissolver	PA-9	1.0
Sesqui Dryer	RA-1	10.0
Dust Collector	RA-2	2.0

(iii) FMC Corporation, Green River (Continued)

Calciner	RA-13	8.0
Calciner	RA-14	4.0
Calciner	RA-15	4.0
Calciner	RA-16	4.0
Calciner Scrubber	RA-22	35.0

Source Description		Allowable Emission Rate lb/hr
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

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Gas/Oil Boiler	Mono I	7.5
Coal Boiler	NS-1A	45.0
Coal Boiler	NS-1B	45.0

(iv) Church and Dwight Company

Source Description		Allowable Emission Rate lb/hr
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

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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.

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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.

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(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

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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.

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"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 or 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

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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 (NO_2), ozone, particulate matter (PM_{10} and $PM_{2.5}$), and sulfur dioxide (SO_2).

"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 PM_{10}, those pollutants described in the PM_{10} nonattainment area applicable SIP as significant contributors to the PM_{10} levels.

(iii) For $PM_{2.5}$:

(A) Sulfur dioxide (SO_2) in all $PM_{2.5}$ nonattainment and

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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 (NH_3) 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

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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):

	Tons/Year
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:

	Tons/Year
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

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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.

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(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.

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(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)

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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

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(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:

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(1.) A demonstration of reasonable further progress;

(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.

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(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.

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(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

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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.

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(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

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(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 PM_{10}:

(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

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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

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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 PM_{10} 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.

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(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.

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(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

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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.

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(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:

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(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.

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(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

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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).

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"Control strategy period" with respect to particulate matter less than 10 microns in diameter (PM_{10}), carbon monoxide (CO), nitrogen dioxide (NO_2), 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 PM_{10}, NO_2, 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;

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(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 PM_{10} 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,

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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 are 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:

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(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.

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"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.

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"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 (PM_{10}).

(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);

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(II) Nitrogen oxides in nitrogen dioxide areas; and

(III) Volatile organic compounds, nitrogen oxides, and PM_{10} in PM_{10} 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 PM_{10} 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.

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(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).

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(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 data 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.

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(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

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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 PM_{10} 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 PM_{10} 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

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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

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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,

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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,

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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.

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(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

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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.

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(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 PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas.

(q) The FHWA/FTA project must comply with PM_{10} 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 PM_{10} and NO_2 nonattainment areas.

(z) The TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 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 PM_{10} and NO_2 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

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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

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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

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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

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(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 PM_{10} Violations (Hotspots).

(i) The FHWA/FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} 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 PM_{10} Control Measures. The FHWA/FTA project must comply with PM_{10} control measures in the applicable implementation plan. This criterion applies during all periods. It is satisfied if control

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measures (for the purpose of limiting PM_{10} 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) PM_{10} (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 PM_{10} nonattainment problem or establishes a budget for such emissions); or

(V) NO_x (in NO_2 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);

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(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

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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

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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:

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(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

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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

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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

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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

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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

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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 PM_{10} and NO_2 Areas (Transportation Plan).

(i) A transportation plan must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 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).

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(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 PM_{10} 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 of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:

(A) Determine the baseline regional emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) and NO_x (for NO_2 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 PM_{10} 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

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(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.

(C) Demonstrate that for each analysis year the emissions estimated in paragraph (iii)(B) of this section are no greater than baseline emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) or NO_x (for NO_2 nonattainment areas) from highway and transit sources.

(z) Criteria and Procedures: Interim Period Reductions for PM_{10} and NO_2 Areas (TIP).

(i) A TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 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 PM_{10} 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 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, 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 PM_{10} 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

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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 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 PM_{10} and NO_2 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 PM_{10} and NO_2 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

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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

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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.

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(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.

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(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;

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(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 PM_{10} and NO_2 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.

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(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;

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(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.

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(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).

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(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) PM_{10} From Construction-Related Fugitive Dust.

(A) For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(B) In PM_{10} nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider construction-related fugitive PM_{10} control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(ee) Procedures for Determining Localized CO and PM_{10} 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;

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(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) PM_{10} 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 PM_{10} hot-spot analysis shall be determined through the interagency consultation process required in Chapter 8, Section 4(e). In PM_{10} 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) PM_{10} 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 PM_{10} hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site

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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.

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(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 PM_{10} 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.

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(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 vehicles[1]
Purchase of office, shop, and operating equipment for existing facilities
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.)
Construction of 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)

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Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet[1]
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

[1]In PM_{10} 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 PM_{10} 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

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(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).

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Section 5. **Ozone nonattainment emission inventory rule.**

(a) Applicability.

(i) This rule applies to a facility or source operating in an ozone nonattainment area(s), as identified in 40 CFR part 81, if:

(A) The facility or source has been granted permit approval to construct and/or operate under Chapter 6 of the Wyoming Air Quality Standards and Regulations (WAQSR); or

(B) It is an individual oil or gas facility or source; or

(C) Actual emissions from the stationary facility or source are greater than or equal to twenty-five (25) tons per year of volatile organic compounds (VOCs) as defined in Chapter 3, Section 6(a) of the WAQSR, or oxides of nitrogen (NO_x).

(I) If NO_x or VOCs are emitted from a facility or source at or above the applicability threshold identified in subsection (a)(i)(C), both air contaminants must be included in the emission inventory even if one of the air contaminants is emitted at a level below the applicability threshold.

(ii) Compliance with emission inventory requirements established under WAQSR Chapter 6, Section 3(f)(v)(G), satisfies the requirements of this rule.

(b) Reporting and Recordkeeping Requirements.

(i) As specified in the forms required in subsection (b)(v), each emission inventory shall include:

(A) Actual emissions of NO_x, VOC, and any other air contaminants as determined by the Division Administrator, in tons per year for any calendar year emission inventory, or in tons for any partial year emission inventory;

(B) The physical location at which the actual emissions occurred;

(C) The name and address of the person or entity operating or owning the facility or source; and

(D) The nature of the facility or source.

(ii) The emission inventory submittal dates are as follows:

(A) By April 30th of each year for all emissions that occurred during the previous calendar year; and

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(B) No later than ninety (90) days after the end of a partial year inventory for emissions that occurred during the partial year as determined by the Division Administrator.

(iii) After the owner or operator submits an emission inventory for all facility or source emissions that occurred during calendar year 2014, the owner or operator shall submit an emission inventory for such facility or source every year thereafter.

(iv) Each owner or operator of a facility or source shall maintain a copy of the emission inventory submitted to the Division, and records indicating how the information submitted was determined, including any calculations, data, and measurements used.

(A) Records shall be kept for a period of at least five (5) years from the required submittal date listed in subsection (b)(ii) for each emission inventory.

(B) The owner or operator of the facility or source shall make the records required in subsection (b)(iv) available for inspection by any representative of the Division upon request.

(v) The owner or operator shall submit emission inventories using Division-prescribed hard copy or electronic formats.

(vi) All emission inventory submissions shall be certified as being true, accurate, and complete by a responsible official to the best of their knowledge. A responsible official is an individual who is responsible for the data provided in the emission inventory, and who accepts responsibility for the emission accuracy.

(c) Compliance. Compliance with WAQSR Chapter 8, Section 5, does not relieve any owner or operator of a facility or source from the responsibility to comply with any other applicable reporting requirements set forth in any federal or State law, rule or regulation, or in any permit.

Section 6. **Upper Green River Basin permit by rule for existing sources**

(a) Applicability.

(i) These regulations apply to all PAD and single-well oil and gas production facilities or sources, and all compressor stations, located in the Upper Green River Basin (UGRB) ozone nonattainment area that exist as of January 1, 2014. The UGRB ozone nonattainment area is that area which was adopted by reference from 40 CFR part 81.351, revised and published as of July 1, 2013, not including any later amendments. Copies of the Code of Federal Regulations (CFR) are available for public inspection and can be purchased from the Department of Environmental Quality, Air

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Quality Division, Cheyenne Office. Contact information for the Cheyenne Office is available at: http://deq.wyoming.gov/. Copies of the CFR can also be purchased from Government Institutes, 15200 NBN Way, Building B, Blue Ridge Summit, PA 17214, or online at: http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.

(ii) PAD and single-well oil and gas production facilities or sources, shall comply with all applicable requirements of these regulations unless a Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 6, Section 2 permit has been issued that meets or exceeds the control requirements of these regulations; and

(iii) A compressor station, as defined in Subsection (b), shall comply with the requirements of Subsection (g) of these regulations unless a WAQSR Chapter 6, Section 2 permit has been issued that meets or exceeds the Subsection (g) requirements; and

(iv) In spite of the requirements of Chapter 6, Section 2(a)(i) and (iii) of the WAQSR, a preconstruction permit under Chapter 6, Section 2 is not required for any control device (flare/enclosed combustion unit) or equipment identified in these regulations unless a facility or source is required to obtain a permit under Chapter 6, Section 4 or Section 13.

(v) A WAQSR Chapter 6, Section 2 permit will be required for the use of any alternative emission control device and/or equipment to be used in lieu of, or in combination with, a combustion device required by these regulations.

(b) Definitions.

"Composite extended hydrocarbon analysis" are averaged extended hydrocarbon compositions based on samples from at least five wells producing from the same formation and under similar conditions (± 25 psig).

"Compressor station" means any permanent combination of one or more compressors that move natural gas at increased pressure from fields, in transmission pipelines, or into storage.

"Dehydration unit" means a system that uses glycol to absorb water from produced gas before it is introduced into gas sales or collection lines.

"Extended hydrocarbon analysis" means a gas chromatograph analysis performed on pressurized hydrocarbon liquid (oil/condensate) and gas samples, and shall include speciated hydrocarbons from methane (C1) through decane (C10), and the following Hazardous Air Pollutants (HAP): benzene, toluene, ethyl-benzene, xylenes (BTEX), n-hexane, and 2-2-4-trimethylpentane.

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"Facility components" consist of flanges, connectors (other than flanges), open-ended lines, pumps, valves and "other" components listed in Table 2-4 from EPA-453/R-95-017 at the site grouped by stream (gas, light oil, heavy oil, water/oil). Table 2-4 from EPA-453/R-95-017 is available online at: http://deq.wyoming.gov/aqd/ or http://www.epa.gov/ttnchie1/efdocs/equiplks.pdf.

"Flashing emissions" means VOC emissions, including HAP components, that occur when gases are released from produced liquids (oil, condensate, produced water, or a mixture thereof) that are exposed to temperature increases or pressure drops as they are transferred from pressurized vessels to lower pressure separation vessels or to atmospheric storage tanks.

"Optical gas imaging instrument" means an instrument that makes visible, emissions that may otherwise be invisible to the naked eye.

"PAD facility" means a location where more than one well and/or associated production equipment are located, where some or all production equipment is shared by more than one well or where well streams from more than one well are routed through individual production trains at the same location.

"Separation vessels" means all gun barrels, production and test separators, production and test treaters, water knockouts, gas boots, flash separators, and drip pots.

"Single-well facility" means a facility where production equipment is associated with only one well.

"Storage tanks" means any tanks that contain oil, condensate, produced water, or some mixture thereof.

(c) Flashing Emissions at Existing PAD and Single-Well Facilities or Sources as of January 1, 2014.

(i) VOC emissions from all existing storage tanks and all existing separation vessels are subject to these regulations.

(A) For total uncontrolled VOC emissions from flashing that are greater than or equal to 4 tons per year (tpy), flashing emissions from all produced oil, condensate, water tanks, and separation vessels shall be controlled to at least 98% manufacturer-designed VOC destruction efficiency by January 1, 2017.

(B) Storage tanks that are on site for use during emergency or upset conditions are not subject to the control requirements in this Subsection.

(C) Emergency, open-top, and/or blowdown tanks shall not be used as active storage tanks but may be used for temporary storage.

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(I) Emergency tanks shall only be utilized for unavoidable equipment malfunctions as defined in Chapter 1, Section 5 of the WAQSR.

(II) If emergency, open-top, and/or blowdown tanks are utilized, they must be emptied within seven (7) calendar days after the liquid volume reaches 100 barrels, or in no event less frequently than once every ninety (90) calendar days.

(III) All tanks subject to this Subsection must have a liquid level gauge, or equivalent device, in place by January 1, 2017.

(D) Control Removal. The removal of flashing emissions control devices will be allowed pursuant to the requirements in Subparagraph (h)(iii)(E), after one (1) year from the date of installation if uncontrolled VOC flashing emissions have declined to less than, and will remain below 4 tpy.

(ii) Calculation for Flashing Emissions.

(A) Determine the average daily condensate/oil production for the previous twelve (12) calendar months in barrels per day (bpd).

(B) Use any generally accepted model in accordance with 40 CFR 60, Subpart OOOO or direct measurement of tank emissions to determine uncontrolled VOC emissions.

(C) Model input shall consist of:

(I) A site-specific analysis of liquids, or composite extended hydrocarbon analysis of liquids, taken from the pressurized, upstream separation equipment under normal operating conditions;

(II) Average daily condensate/oil production rate as determined in Subparagraph (c)(ii)(A) of these regulations;

(III) Site-specific or composite extended hydrocarbon analyses will be no older than three (3) years from date of flashing emissions calculation including;

(1.) The average, actual equipment operational parameters, including separator temperature and pressure; and

(2.) American Petroleum Institute (API) gravity and Reid vapor pressure (RVP) of sales oil.

(d) Dehydration Units at Existing PAD and Single-Well Facilities or Sources as of January 1, 2014.

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(i) VOC emissions released from all existing dehydration units are subject to these regulations.

(A) For total uncontrolled VOC emissions from all dehydration units that are greater than or equal to 4 tpy, VOC emissions from all dehydration units shall be controlled to at least 98% manufacturer-designed VOC destruction efficiency and equipped with reboiler still vent condensers by January 1, 2017.

(B) Control Removal. The removal of combustion units used to achieve the 98% manufacturer-designed VOC destruction efficiency will be allowed pursuant to the requirements in Subparagraph (h)(iii)(E), after one (1) year from the date of installation if total uncontrolled VOC emissions from all dehydration units are less than, and will remain below 4 tpy, and all dehydration units are equipped with reboiler still vent condensers.

(ii) Calculation for Dehydration Units.

(A) Determine the average daily gas production rate for the previous twelve (12) calendar months in million cubic feet per day (MMCFD).

(B) Use the model GRI-GLYCalc, Version 4.0 or higher, and the annualized average daily production rate to determine annualized uncontrolled VOC emissions from the dehydration unit process vents. Process vents include reboiler still vents and glycol flash separators.

(C) Model input shall consist of:

(I) A site-specific wet gas analysis or composite extended hydrocarbon analysis of wet gas taken upstream of the contact tower under normal operating conditions;

(II) Average daily gas production rate as determined in Subparagraph (d)(ii)(A) of these regulations; and

(III) Site-specific or composite extended hydrocarbon analyses shall be no older than three (3) years from date of the dehydration unit calculation including;

(1.) The average, actual equipment operational parameters, including wet gas temperature and pressure, dry gas water content, glycol flash separator temperature and pressure, stripping gas source and rate; and

(2.) The maximum lean glycol circulation rate in gallons per minute (gpm) for the glycol circulation pump in use.

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(e) Existing Pneumatic Pumps at PAD and Single-Well Facilities or Sources as of January 1, 2014. VOC emissions associated with the discharge streams of all natural gas-operated pneumatic pumps shall be controlled to at least 98% manufacturer-designed VOC destruction efficiency, or the pump discharge streams shall be routed into a sales line, collection line, fuel supply line, other closed loop system, or replaced with solar, electric, or air driven pumps by January 1, 2017.

(f) Existing Pneumatic Controllers at PAD and Single-Well Facilities or Sources as of January 1, 2014. Natural gas-operated pneumatic controllers shall be low (less than 6 standard cubic feet per hour (scfh)) or zero bleed controllers or the controller discharge streams shall be routed into a sales line, collection line, fuel supply line, or other closed loop system by January 1, 2017.

(g) Fugitive Emissions.

(i) For PAD and single-well facilities or sources, and compressor stations, in existence prior to January 1, 2014, with fugitive emissions greater than or equal to 4 tpy of VOCs, including HAP components, operators shall develop and implement a Leak Detection and Repair (LDAR) Protocol by January 1, 2017.

(A) The LDAR Protocol inspection monitoring schedule shall be no less frequent than quarterly; and

(B) Shall include a leak repair schedule; and

(C) Each quarterly inspection shall consist of some combination of 40 CFR part 60, Appendix A, Method 21, an optical gas imaging instrument, other instrument-based technologies, or audio-visual-olfactory (AVO) inspections.

(D) An LDAR Protocol consisting of only AVO inspections will not satisfy the requirements of this Subsection.

(ii) Calculation for Fugitive Emissions.

(A) Fugitive emissions shall be estimated using Table 2-4 from EPA-453/R-95-017, Protocol for Equipment Leak Emission Estimates, and the owner(s) or operator(s) facility component count.

(I) PAD and single-well facility or source component counts shall be determined by actual field count, or a representative component count from the same geographical area, taken from no less than one hundred (100) wells located at a PAD or single-well facility.

(II) Compressor station component counts shall be determined by actual field count.

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(III) Emission factors in the Protocol for Equipment Leak Emission Estimates are not intended to be used to represent emissions from components that are improperly designed or equipment not maintained properly.

(B) Site-specific speciated hydrocarbon emission rates can be estimated by multiplying the total hydrocarbon emission rate, estimated in Subparagraph (g)(ii)(A) above, by measured VOC and HAP weight fractions.

(h) Monitoring, Recordkeeping, and Reporting.

(i) Monitoring. The owner(s) or operator(s) of each PAD and single-well facility or source, or compressor station, shall comply with all applicable monitoring requirements as specified by this Paragraph.

(A) Operation of a combustion device used to control emissions shall be continually monitored using any device(s) that sense and record a parameter(s) that indicates whether the combustion device is functioning to achieve the 98% manufacturer-designed VOC destruction efficiency requirements as specified by these regulations.

(I) The combustion device shall be designed, constructed, operated, and maintained to be smokeless, to satisfy the requirements of Chapter 3, Section 6(b)(i) of the WAQSR.

(II) Visible emissions shall not exceed a total of five (5) minutes during any two (2) consecutive hours as determined by 40 CFR part 60, Appendix A, Method 22.

(B) All emission control devices and equipment used to reduce VOC emissions at any PAD and single-well facility or source shall be operated and maintained pursuant to manufacturer specifications or equivalent, and consistent with good engineering and maintenance practices.

(C) Owner(s) or operator(s) shall conduct a quarterly site evaluation of control equipment, systems, and devices that include, but are not limited to, combustion units, reboiler overheads condensers, storage tanks, drip tanks, vent lines, connectors, fittings, valves, relief valves, hatches, and any other appurtenance employed to, or involved with, eliminating, reducing, containing or collecting vapors and routing them to an emission control system or device.

(I) At least one (1) of the quarterly evaluations per calendar year shall consist of 40 CFR part 60, Appendix A, Method 21, an optical gas imaging instrument, or other instrument-based technologies.

(II) Owner(s) or operator(s) required to implement an LDAR Protocol have satisfied the requirements of Subparagraph (C) above.

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(ii) Recordkeeping. The owner(s) or operator(s) of each PAD and single-well facility or source, or compressor station, shall comply with all applicable recordkeeping requirements as specified by this Paragraph. Records shall be maintained for a period of five (5) years and made available to the Division upon request.

(A) All emission control devices and equipment are adequately designed and sized to achieve the control efficiency required by these regulations and to accommodate fluctuations in emissions.

(B) Owner(s) or operator(s) shall maintain the following records for each combustion device:

(I) Manufacturer-designed VOC destruction efficiency.

(II) Records of the parameter monitoring during active site operation under Subparagraph (h)(i)(A) including;

(1.) A description of the reason(s) for the absence of the monitored parameter;

(2.) The steps taken to return the combustion device back to the 98% manufacturer-designed VOC destruction efficiency; and

(3.) Date and duration of periods when the combustion device and/or the associated containment and collection equipment is not functioning to achieve the 98% manufacturer-designed VOC destruction efficiency.

(III) Date and duration of visible emissions from the combustion device.

(C) Owner(s) or operator(s) shall record and maintain records for fugitive emissions pursuant to Subsection (g) of these regulations. These records shall include the dates and results of all LDAR inspections performed pursuant to the LDAR protocol for a PAD and single-well facility or source, or compressor station, including the date(s) and type of corrective action taken as a result of the required inspections.

(D) Records of the date, duration, and reason for emergency and/or blowdown tank usage, shall be maintained pursuant to Subparagraph (c)(i)(C) of these regulations.

(E) Owners or operators that utilize emergency, open-top, and/or blowdown tanks pursuant to Subsection (c) shall record and maintain monthly records for volume stored in tanks, volume removed from tanks, and the date when the removal of liquid occurred.

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(iii) Reporting. The owner(s) or operator(s) of each PAD and single-well facility or source, or compressor station, shall comply with all applicable reporting requirements as specified by this Subsection.

(A) The owner(s) or operator(s) shall provide the name and location of the PAD and single-well facility or source, or compressor station, anticipated to require the installation of a combustion device, replacement of equipment, or implementation of an LDAR Protocol, if applicable, by January 1, 2016.

(B) Installation Notification of Control Device(s) and Associated Equipment (including pneumatic pumps). Owner(s) or operator(s) of each PAD and single-well facility or source subject to the requirements of these regulations shall submit a report to the Division thirty (30) days after the end of each calendar quarter, beginning January 1, 2016, containing the following, if applicable:

(I) The number of pollution control devices or equipment installed;

(II) Pollution control installation date, type of control, and equipment controlled;

(III) Name and location of the PAD and/or single-well facility or source where controls are installed.

(C) Installation Notification of Pneumatic Controller(s). Owner(s) or operator(s) of each PAD and single-well facility or source subject to the requirements of these regulations shall submit a report to the Division thirty (30) days after the end of each calendar quarter, beginning January 1, 2016, containing the following, if applicable:

(I) The number and type of pneumatic controllers installed and date of installation; and

(II) Name and location of the PAD and/or single-well facility or source where pneumatic controllers are installed.

(D) The final, quarterly notification of installation required under Subsections (B) and (C) above, shall be submitted no later than January 31, 2017, if applicable.

(E) Removal Notification of Control Device(s). The owner(s) or operator(s) of each PAD and single-well facility or source subject to the requirements of these regulations shall submit a demonstration to the Division for approval prior to removal of any pollution control device. This demonstration shall contain at a minimum:

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(I) The average daily condensate/oil or gas production rate for the previous twelve (12) calendar months;

(II) Emissions as determined by utilizing paragraph (I) above, and the calculation for flashing emissions in Paragraph (c)(ii), and/or the calculation for dehydration units in Paragraph (d)(ii) of these regulations;

(III) Any additional supporting data used to calculate emissions, including but not limited to, a site specific or composite extended hydrocarbon analysis no older than three (3) years from the proposed removal date; and

(IV) Name and location of the PAD and/or single-well facility or source where controls are proposed for removal.

(F) Any PAD and single-well facility or source, or compressor station, subject to requirements of Subsection (g) of these regulations shall submit, for Division review and approval, the LDAR Protocol prior to implementation of the protocol.

(G) All report and notification submissions shall be certified as being true, accurate, and complete by a responsible official to the best of their knowledge. A responsible official is an individual who is responsible for the information provided in the reports and notifications, and who accepts responsibility for the reports and notifications.

(H) The owner(s) or operator(s) shall submit notifications or reports as required in this Subsection to the Division electronically through https://airimpact.wyo.gov or by hard copy to the Cheyenne Office and Lander Field Office. Contact information for the Cheyenne and Lander offices is located at: http://deq.wyoming.gov/.

(i) Compliance. Compliance with Chapter 8, Section 6 of the WAQSR, does not relieve any owner(s) or operator(s) of a PAD and single-well facility or source, or compressor station, from the responsibility to comply with any other applicable requirements set forth in any federal or State law, rule or regulation, or in any permit.

Section 7. **[Reserved.]**

Section 8. **[Reserved.]**

Section 9. **[Reserved.]**

Section 10. **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

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1, 2016, not including any later amendments, are incorporated by reference. Copies of the Code of Federal Regulations are available for public inspection and can be obtained at cost from the Department of Environmental Quality, Division of Air Quality, Cheyenne Office. Contact information for the Cheyenne Office can be obtained at: http://deq.wyoming.gov/. Copies of the CFRs can also be obtained at cost from Government Institutes, 15200 NBN Way, Building B, Blue Ridge Summit, PA 17214, or online at: http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.

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