Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

PROPOSED AMENDMENT

10 CSR 10-6.200 Hospital, Medical, Infectious Waste Incinerators. The commission proposes to amend subsections (1)(A), (1)(H), (1)(I), (4)(A)–(4)(C), and (4)(F) and sections (2), (3), and (5). If the commission adopts this rule action, it will be the department's intention to submit this rule amendment to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/index.html.

PURPOSE: This rule establishes emission limits for existing hospital, medical, and infectious waste incinerators. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the ***Federal Register*** *Notice dated October 6, 2009, regarding Hospital, Medical, Infectious Waste Incinerators.*

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Applicability.

(A) Except as provided in subsection (1)(B) through (H) of this rule, this rule applies to each individual hospital or medical/infectious waste incinerator (HMIWI) *[for which construction was commenced on or before June 20, 1996.]*—

1. For which construction was commenced after June 20, 1996, but no later than December 1, 2008; or

2. For which modification is commenced after March 16, 1998, but no later than April 6, 2010.

(H) Physical or operational changes made to an *[existing]* HMIWI unit solely for the purpose of complying with this rule are not considered a modification and do not result in an *[existing]* HMIWI unit becoming subject to the provisions of 40 CFR part 60 subpart Ec.

(I) *[Beginning September 15, 2000, designated facilities]* **Facilities** subject to this rule shall operate pursuant to a permit issued under the permitting authorities operating permit program.

(2) Definitions.

[(A) Batch HMIWI means an HMIWI that is designed such that neither waste charging nor ash removal can occur during combustion.

(B) Biologicals means preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining thereto.

(C) Bypass stack means a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

(D) Chemotherapeutic waste means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

(E) Co-fired combustor means a unit combusting hospital waste and/or medical/infectious waste with other fuels or wastes and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, ten percent (10%) or less of the weight of which is comprised, in aggregate, of hospital waste and medical/infectious waste as measured on a calendar-quarter basis. For purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other wastes" when calculating the percentage of hospital waste and medical/infectious waste combusted.

(F) Continuous HMIWI means an HMIWI that is designed to allow waste charging and ash removal during combustion.

(G) Department means the Department of Natural Resources.

(H) Dioxins/furans means the combined emission of tetra- through octa-chlorinated dibenzo-para-dioxins and dibenzofurans.

(I) Director means the director of the Department of Natural Resources.

(J) Dry scrubber means an add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gases in the HMIWI exhaust stream forming a dry powder material.

(K) Hospital means any facility which has an organized medical staff, maintains at least six (6) inpatient beds, and where the primary function of the institution is to provide diagnostic and therapeutic patient services and continuous nursing care primarily to human inpatients who are not related and who stay on average in excess of twenty-four (24) hours per admissions. This definition does not include facilities maintained for the sole purpose of providing nursing or convalescent care to human patients who generally are not acutely ill but who require continuing medical supervision.

(L) Hospital/medical/infectious waste incinerator or HMIWI or HMIWI unit means any device that combusts any amount of hospital waste and/or medical/infectious waste.

(M) Hospital waste means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.

(N) Intermittent HMIWI means an HMIWI that is designed to allow waste charging, but not ash removal, during combustion.

(O) Large HMIWI means an HMIWI whose maximum design waste burning capacity is more than five hundred (500) pounds per hour, or a continuous or intermittent HMIWI whose maximum charge rate is more than five hundred (500) pounds per hour, or a batch HMIWI whose maximum charge rate is more than four thousand (4,000) pounds per day.

(P) Low-level radioactive waste means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

(Q) Maximum charge rate means for continuous and intermittent HMIWI, one hundred ten percent (110%) of the lowest three (3)-hour average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits or for batch HMIWI, one

hundred ten percent (110%) of the lowest daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits.

(R) Maximum fabric filter inlet temperature means one hundred ten percent (110%) of the lowest three (3)-hour average temperature at the inlet to the fabric filter (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the dioxin/furan emission limit.

(S) Maximum flue gas temperature means one hundred ten percent (110%) of the lowest three (3)-hour average temperature at the outlet from the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the mercury (Hg) emission limit.

(T) Medical/infectious waste means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in paragraphs (2)(T)1. through (2)(T)7. below. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in 40 CFR part 261; household waste, as defined in 40 CFR part 261.4(b)(1); ash from incineration of medical/infectious waste, once the incineration process has been completed; human corpses, remains, and anatomical parts that are intended for interment or cremation; and domestic sewage materials identified in 40 CFR part 261.4(a)(1).

1. Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.

2. Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.

3. Human blood and blood products including:

A. Liquid waste human blood;

B. Products of blood;

C. Items saturated and/or dripping with human blood; and

D. Items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.

4. Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.

5. Animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals.

6. Isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.

7. Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

(U) Medium HMIWI means an HMIWI whose maximum design waste burning capacity is more than two hundred (200) pounds per hour but less than or equal to five hundred (500) pounds per hour, or a continuous or intermittent HMIWI whose maximum charge rate is more than two hundred (200) pounds per hour but less than or equal to five hundred (500) pounds per hour, or a batch HMIWI whose maximum charge rate is more than one thousand six hundred (1,600) pounds per day but less than or equal to four thousand (4,000) pounds per day.

(V) Minimum dioxin/furan sorbent flow rate means ninety percent (90%) of the highest three (3)-hour average dioxin/furan sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the dioxin/furan emission limit.

(W) Minimum Hg sorbent flow rate means ninety percent (90%) of the highest three (3)-hour average Hg sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the Hg emission limit.

(X) Minimum hydrogen chloride (HCl) sorbent flow rate means ninety percent (90%) of the highest three (3)-hour average HCl sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the HCl emission limit.

(Y) Minimum horsepower or amperage means ninety percent (90%) of the highest three (3)-hour average horsepower or amperage to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the applicable emission limit.

(Z) Minimum pressure drop across the wet scrubber means ninety percent (90%) of the highest three (3)-hour average pressure drop across the wet scrubber particulate matter (PM) control device (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM emission limit.

(AA) Minimum scrubber liquor flow rate means ninety percent (90%) of the highest three (3)-hour average liquor flow rate at the inlet to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with all applicable emission limits.

(BB) Minimum scrubber liquor pH means ninety percent (90%) of the highest three (3)-hour average liquor pH at the inlet to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with all HCl emission limits.

(CC) Minimum secondary chamber temperature means ninety percent (90%) of the highest three (3)-hour average secondary chamber temperature (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM, carbon monoxide (CO), or dioxin/furan emission limits.

(DD) Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

(EE) Pyrolysis means the endothermic gasification of hospital waste and/or medical/infectious waste using external energy.

(FF) Small HMIWI means an HMIWI whose maximum design waste burning capacity is less than or equal to two hundred (200) pounds per hour, or a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to two hundred (200) pounds per hour, or a batch HMIWI whose maximum charge rate is less than or equal to one thousand six hundred (1,600) pounds per day.

(GG) Standard Metropolitan Statistical Area or SMSA means any areas listed in Office of Management and Budget Bulletin No. 93-17 entitled "Revised Statistical Definitions for Metropolitan Areas" date June 30, 1993 (incorporated by reference).

(HH) Wet scrubber means an add-on air pollution control device that utilizes an alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.]

(A) Definitions of certain terms specified in this rule, other than those defined in this rule section, may be found in the Clean Air Act and in 40 CFR Part 60, subparts A, B, and Ec.

(B) Definitions of certain terms specified in this rule, other than those defined in this rule section, may be found in 10 CSR 10-6.020.

(3) General Provisions.

(A) Emission Limits.

1. *[On or after the date on which the initial performance test is completed or September 1, 2000, whichever date comes first, no]* **No** owner or operator of an *[existing]* HMIWI **subject to this rule** shall cause to be discharged into the atmosphere *[from that HMIWI]* any gases that contain stack emissions in excess of the limits presented in Table 1 of this subsection, except as provided for in paragraph (3)(A)2. of this rule.

[TABLE 1. EMISSION LIMITS FOR SMALL, MEDIUM, AND LARGE HMIWI

Pollutant	Units (7 percent oxygen, dry basis)	Emission limits HMIWI size		
		Small	Medium	Large
Particulate matter	milligrams per dry standard cubic meter (grains per dry standard cubic foot)	115 (0.05)	69 (0.03)	34 (0.015)
Carbon monoxide	parts per million by volume	40	40	40
Dioxins/furans	nanograms per dry standard cubic meter total dioxins/furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter TEQ (grains per billion dry standard cubic feet)	125 (55) 2.3 (1.0)	125 (55) 2.3 (1.0)	125 (55) 2.3 (1.0)
Hydrogen chloride	parts per million by volume or percent reduction	100 or 93 %	100 or 93 %	100 or 93 %
Sulfur dioxide	parts per million by volume	55	55	55
Nitrogen oxides	parts per million by volume	250	250	250
Lead	milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	1.2 (0.52) or 70 %	1.2 (0.52) or 70 %	1.2 (0.52) or 70 %
Cadmium	milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	0.16 (0.07) or 65 %	0.16 (0.07) or 65 %	0.16 (0.07) or 65 %
Mercury	milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	0.55 (0.24) or 85 %	0.55 (0.24) or 85 %	0.55 (0.24) or 85 %]

Table 1—Emissions Limits for Small, Medium, and Large HMIWI

Pollutant	Units (7 percent oxygen, dry basis)	Emissions limits HMIWI size			Averaging time[1]	Method for demonstrating compliance[2]
		Small	Medium	Large		
Particulate matter	Milligrams per dry standard cubic meter (mg/dscm) (grains per dry standard cubic foot (gr/dscf))	66 (0.029)	46 (0.020) or 34 (.015)[3]	25 (0.011)	3-run average (1-hour minimum sample time per run)	EPA Reference Method 5 of Appendix A–3 of part 60 or EPA Reference Method 26A or 29 of Appendix A–8 of part 60.
Carbon monoxide	Parts per million by volume (ppmv)	20	5.5	11	3-run average (1-hour minimum sample time per run)	EPA Reference Method 10 or 10B of Appendix A–4 of part 60.
Dioxins/furans	Nanograms per dry standard cubic meter total dioxins/furans (ng/dscm) (grains per billion dry standard cubic feet ($gr/10^9$dscf)) or ng/dscm TEQ ($gr/10^9$dscf)	16 (7.0) or 0.013 (0.0057)	0.85 (0.37) or 0.020 (0.0087)	9.3 (4.1) or 0.054 (0.024)	3-run average (4-hour minimum sample time per run)	EPA Reference Method 23 of Appendix A–7 of part 60.
Hydrogen chloride	ppmv	44 or 15 or 99%[3]	7.7	6.6	3-run average (1-hour minimum sample time per run)	EPA Reference Method 26 or 26A of Appendix A–8 of part 60.
Sulfur dioxide	ppmv	4.2	4.2	9.0	3-run average (1-hour minimum sample time per run)	EPA Reference Method 6 or 6C of Appendix A–4 of part 60.
Nitrogen oxides	ppmv	190	190	140	3-run average (1-hour minimum sample time per run)	EPA Reference Method 7 or 7E of Appendix A–4 of part 60.
Lead	mg/dscm (grains per thousand dry standard cubic feet ($gr/10^3$dscf))	0.31 (0.14)	0.018 (0.0079)	0.036 (0.016)	3-run average (1-hour minimum sample time per run)	EPA Reference Method 29 of Appendix A–8 of part 60.
Cadmium	mg/dscm ($gr/10^3$dscf)	0.017 (0.0074)	0.013 (0.0057)	0.0092 (0.0040)	3-run average (1-hour minimum sample time per run)	EPA Reference Method 29 of Appendix A–8 of part 60.
Mercury	mg/dscm ($gr/10^3$dscf)	0.014 (0.0061)	0.025 (0.011)	0.018 (0.0079)	3-run average (1-hour minimum sample time per run)	EPA Reference Method 29 of Appendix A–8 of part 60.

[1] Except as allowed under section 60.56c(c) for HMIWI equipped with Continuous Emission Monitoring System (CEMS).

[2] Does not include CEMS and approved alternative non-EPA test methods allowed under section 60.56c(b).

[3] HMIWI constructed after June 20, 1996, but no later than December 1, 2008, or for which modification is commenced after March 16, 1998, but no later than April 6, 2010.

2. *[Small rural]* **No owner or operator of a small** HMIWI **constructed on or before June 20, 1996, which is** located more than fifty (50) miles from the boundary of the nearest Standard Metropolitan Statistical Area and which burns less than two thousand (2,000) pounds per week of hospital waste and medical/infectious waste shall *[comply with the emission limits described in subparagraphs (3)(A)2.A. and B. of this rule]* **cause to be discharged into the atmosphere any gases that contain stack emissions in excess of the limits presented in Table 2 of this paragraph**. The two thousand (2,000) pounds per week limitation does not apply during performance tests.

[A. On or after the date on which the initial equipment inspection is completed or September 1, 2000, whichever date comes first, no owner or operator of an existing small rural HMIWI shall cause to be discharged into the atmosphere from that HMIWI any gases that contain stack emissions in excess of the limits presented in Table 2 of this subparagraphs.]

[TABLE 2. EMISSION LIMITS FOR SMALL RURAL HMIWI

Pollutant	*Units (7 percent oxygen, dry basis)*	*HMIWI Emission limits*
Particulate matter	*milligrams per dry standard cubic meter (grains per dry standard cubic foot)*	*197 (0.086)*
Carbon monoxide	*parts per million by volume*	*40*
Dioxins/furans	*nanograms per dry standard cubic meter total dioxins/furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter TEQ (grains per billion dry standard cubic feet)*	*800 (350) or 15 (6.6)*
Hydrogen chloride	*parts per million by volume*	*3100*
Sulfur dioxide	*parts per million by volume*	*55*
Nitrogen oxides	*parts per million by volume*	*250*
Lead	*milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet)*	*10 (4.4)*
Cadmium	*milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet)*	*4 (1.7)*
Mercury	*milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet)*	*7.5 (3.3)]*

Table 2—Emissions Limits for Small HMIWI Which Meet the Criteria Under Paragraph (3)(A)2. of this Rule

Pollutant	Units (7 percent oxygen, dry basis)	HMIWI Emissions limits	Averaging time[1]	Method for demonstrating compliance[2]
Particulate matter	mg/dscm (gr/dscf)	87 (0.038)	3-run average (1-hour minimum sample time per run)	EPA Reference Method 5 of Appendix A–3 of part 60 or EPA Reference Method 26A or 29 of Appendix A–8 of part 60.
Carbon monoxide	ppmv	20	3-run average (1-hour minimum sample time per run)	EPA Reference Method 10 or 10B of Appendix A–4 of part 60.
Dioxins/furans	ng/dscm total dioxins/furans (gr/10^9dscf) or ng/dscm TEQ (gr/10^9dscf)	240 (100) or 5.1 (2.2)	3-run average (4-hour minimum sample time per run)	EPA Reference Method 23 of Appendix A–7 of part 60.
Hydrogen chloride	ppmv	810	3-run average (1-hour minimum sample time per run)	EPA Reference Method 26 or 26A of Appendix A–8 of part 60.
Sulfur dioxide	ppmv	55	3-run average (1-hour minimum sample time per run)	EPA Reference Method 6 or 6C of Appendix A–4 of part 60.
Nitrogen oxides	ppmv	130	3-run average (1-hour minimum sample time per run)	EPA Reference Method 7 or 7E of Appendix A–4 of part 60.
Lead	mg/dscm (gr/10^3dscf)	0.50 (0.22)	3-run average (1-hour minimum sample time per run)	EPA Reference Method 29 of Appendix A–8 of part 60.
Cadmium	mg/dscm (gr/10^3dscf)	0.11 (0.048)	3-run average (1-hour minimum sample time per run)	EPA Reference Method 29 of Appendix A–8 of part 60.
Mercury	mg/dscm (gr/10^3dscf)	0.0051 (0.0022)	3-run average (1-hour minimum sample time per run)	EPA Reference Method 29 of Appendix A–8 of part 60.

[1] **Except as allowed under section 60.56c(c) for HMIWI equipped with CEMS.**
[2] **Does not include CEMS and approved alternative non-EPA test methods allowed under section 60.56c(b).**

[B. On or after the date on which the initial inspection is completed or September 1, 2000, whichever date comes first, no owner or operator of an existing small rural HMIWI shall cause to be discharged into the atmosphere from the stack of that HMIWI any gases that exhibit greater than ten percent (10%) opacity (six (6)-minute block average).]

3. *[On or after the date on which the initial performance test is completed or September 1, 2000, whichever date comes first, no]* **No** owner or operator of an *[existing]* HMIWI **subject to this rule** shall cause to be discharged into the atmosphere from the stack of that HMIWI any gases that exhibit greater than *[ten]* **six** percent (*[10]***6**%) opacity (six (6)-minute block average).

(B) Operator Training and Qualification Requirements.

1. No owner or operator of an *[existing]* HMIWI **subject to this rule** shall allow the HMIWI to operate at any time unless a fully trained and qualified HMIWI operator is accessible, either at the facility or available within one (1) hour. The trained and qualified HMIWI operator may operate the HMIWI directly or be the direct supervisor of one (1) or more HMIWI operators.

2. Operator training and qualification shall be obtained by completing the requirements included in paragraphs (3)(B)3. through 7. of this rule.

3. Training shall be obtained by completing an HMIWI operator training course that includes, at a minimum, the following provisions:

A. Twenty-four (24) hours of training on the following subjects:

(I) Environmental concerns, including pathogen destruction and types of emissions;

(II) Basic combustion principles, including products of combustion;

(III) Operation of the type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures;

(IV) Combustion controls and monitoring;

(V) Operation of air pollution control equipment and factors affecting performance (if applicable);

(VI) Methods to monitor pollutants and equipment calibration procedures (where applicable);

(VII) Inspection and maintenance of the HMIWI, air pollution control devices, and continuous emission monitoring systems;

(VIII) Actions to correct malfunctions or conditions that may lead to malfunction;

(IX) Bottom and fly ash characteristics and handling procedures;

(X) Applicable federal, state, and local regulations;

(XI) Work safety procedures;

(XII) Pre-startup inspections; and

(XIII) Record-keeping requirements;

B. An examination designed and administered by the instructor; and

C. Reference material distributed to the attendees covering the course topics.

4. Qualifications shall be obtained by—

A. Completion of a training course that satisfies the criteria under paragraph (3)(B)3. of this rule; and

B. Either six (6) months experience as an HMIWI operator, six (6) months experience as a direct supervisor of an HMIWI operator, or completion of at least two (2) burn cycles under the observation of two (2) qualified HMIWI operators.

5. Qualification is valid from the date on which the examination is passed or the completion of the required experience, whichever is later.

6. To maintain qualification, the trained and qualified HMIWI operator shall complete and pass an annual review or refresher course of at least four (4) hours covering, at a minimum, the following:

A. Update of regulations;

B. Incinerator operation, including startup and shutdown procedures;

C. Inspection and maintenance;

D. Responses to malfunctions or conditions that may lead to malfunction; and

E. Discussion of operating problems encountered by attendees.

7. A lapsed qualification shall be renewed by one (1) of the following methods:

A. For a lapse of less than three (3) years, the HMIWI operator shall complete and pass a standard annual refresher course described in paragraph (3)(B)6. of this rule; or

B. For a lapse of three (3) years or more, the HMIWI operator shall complete and pass a training course with the minimum criteria described in paragraph (3)(B)3. of this rule.

8. The owner or operator of an HMIWI shall maintain documentation at the facility that address the following:

A. Summary of the applicable standards under this subpart;

B. Description of basic combustion theory applicable to an HMIWI;

C. Procedures for receiving, handling, and charging waste;

D. HMIWI startup, shutdown, and malfunction procedures;

E. Procedures for maintaining proper combustion air supply levels;

F. Procedures for operating the HMIWI and associated air pollution control systems within the standards established under this subpart;

G. Procedures for responding to periodic malfunction or conditions that may lead to malfunction;

H. Procedures for monitoring HMIWI emissions;

I. Reporting and record-keeping procedures; and

J. Procedures for handling ash.

9. The owner or operator of an HMIWI shall establish a program for reviewing the information listed in paragraph (3)(B)8. of this rule annually with each HMIWI operator.

A. The initial review of the information listed in paragraph (3)(B)8. of this rule shall be conducted *[within six (6) months after the effective date of this rule or]* prior to assumption of responsibilities affecting HMIWI operation*[, whichever date is later]*.

B. Subsequent reviews of the information listed in paragraph (3)(B)8. of this rule shall be conducted annually.

10. The information listed in paragraph (3)(B)8. of this rule shall be kept in a readily-accessible location for all HMIWI operators. This information, along with records of training**,** shall be available for inspection by the department or its delegated enforcement agent upon request.

(C) Waste Management Plan. The owner or operator of an HMIWI shall prepare a waste management plan. The waste management plan shall identify both the feasibility and the approach to separate certain components of solid waste from the health care waste stream in order to reduce the amount of toxic emissions from incinerated waste. A waste management plan may include, but is not limited to, elements such as **segregation and recycling of** paper, cardboard, plastics, glass, *[battery, or metal recycling; or]* **batteries, food waste, and metals (e.g., aluminum cans, metals-containing devices); segregation of non-recyclable wastes (e.g., polychlorinated biphenyl-containing waste, pharmaceutical waste, and mercury-containing waste, such as dental waste); and** purchasing recycled or recyclable products. A waste management plan may include different goals or approaches for different areas or departments of the facility and need not include new waste management goals for every waste stream. It should identify, where possible, reasonably available additional waste management measures, taking into account the effectiveness of waste management measures already in place, the costs of additional measures, the emission reductions expected to be achieved, and any other environmental or energy impacts they might have. The *[American Hospital Association]* **development of the waste management plan shall consider the** publication entitled *An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities [(incorporated by reference) shall be considered in the development of the waste management plan.]* **(Catalog No. 057007), copyright year 1993, and hereby incorporated by reference in this rule, as published by the American Hospital Association Services, Inc., PO Box 92683, Chicago, IL 60675-2683. This rule does not incorporate any subsequent amendments or additions to this publication. The owner or operator of each commercial HMIWI company shall conduct training and education programs in waste segregation for each of the company's waste generator clients and ensure that each client prepares its own waste management plan that includes, but is not limited to, the provisions listed previously in this subsection.**

(D) Inspection Guidelines.

1. Each **HMIWI subject to the emission limits under paragraph (3)(A)1. of this rule and each** small *[rural]* HMIWI subject to the emission limits under paragraph (3)(A)2. of this rule shall undergo an initial equipment inspection *[by September 1, 2000.]* **that is at least as protective as the following:**

A. At a minimum, an inspection shall include the following:

(I) Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation**, and clean pilot flame sensor, as necessary**;

(II) Ensure proper adjustment of primary and secondary chamber combustion air**, and adjust as necessary**;

(III) Inspect hinges and door latches **and lube as necessary**;

(IV) Inspect dampers, fans**,** and blowers for proper operation;

(V) Inspect HMIWI door and door gaskets for proper sealing;

(VI) Inspect motors for proper operation;

(VII) Inspect primary chamber refractory lining **and clean and repair/replace as necessary**;

(VIII) Inspect incinerator shell for corrosion and/or hot spots;

(IX) Inspect secondary/tertiary chamber and stack**; clean as necessary**;

(X) Inspect mechanical loader, including limit switches, for proper operation, if applicable;

(XI) Visually inspect waste bed (grates) **and repair/seal, as necessary**;

(XII) For the burn cycle that follows the inspection, document that the incinerator is operating properly **and make any necessary adjustments**;

(XIII) Inspect air pollution control devices for proper operation, if applicable;

(XIV) Inspect waste heat boiler systems to ensure proper operation, if applicable;

(XV) Inspect bypass stack components;

(XVI) Ensure proper calibration of thermocouples, sorbent feed systems**,** and any other monitoring equipment; and

(XVII) Generally observe that the equipment is maintained in good operating condition*[.]***; and**

B. Within ten (10) operating days following an equipment inspection all necessary repairs shall be completed unless the owner or operator obtains written approval from the department or local air pollution control authority establishing a date whereby all necessary repairs of the designated facility shall be completed.

2. Each **HMIWI subject to the emissions limits under paragraph (3)(A)1. of this rule and each** small *[rural]* HMIWI subject to the emission limits under paragraph (3)(A)2. of this rule shall undergo an equipment inspection annually (no more than twelve (12) months following the previous annual equipment inspection), as outlined in *[sub]*paragraph*[s]* (3)(D)1.*[A. and B.]* of this rule.

3. Each HMIWI subject to the emissions limits under paragraph (3)(A)1. of this rule and each small HMIWI subject to the emissions limits under paragraph (3)(A)2. of this rule shall undergo an initial air pollution control device inspection, as applicable, that is at least as protective as the following:

A. At a minimum, an inspection shall include the following:

(I) Inspect air pollution control device(s) for proper operation, if applicable;

(II) Ensure proper calibration of thermocouples, sorbent feed systems, and any other monitoring equipment; and

(III) Generally observe that the equipment is maintained in good operating condition; and

B. Within ten (10) operating days following an air pollution control device inspection, all necessary repairs shall be completed unless the owner or operator obtains written approval from the Missouri Department of Natural Resources' Air Pollution Control Program establishing a date whereby all necessary repairs of the designated facility shall be completed.

4. Each HMIWI subject to the emissions limits under paragraph (3)(A)1. of this rule and each small HMIWI subject to the emissions limits under paragraph (3)(A)2. of this rule shall undergo an air pollution control device inspection, as applicable, annually (no more than twelve (12) months following the previous annual air pollution control device inspection), as outlined in paragraph (3)(D)3. of this rule.

(E) Compliance and Performance Testing.

1. The emission limits under this rule apply at all times *[except during periods of startup, shutdown, or malfunction, provided that no hospital waste or medical/infectious waste is charged to the HMIWI during startup, shutdown, or malfunction]*.

2. Except as provided in paragraph (3)(E)*[11.]***12.** of this rule, the owner or operator of an HMIWI **subject to this rule** shall conduct an initial performance test to determine compliance with the emission limits using the procedures and test methods listed in subparagraphs (3)(E)2.A. through *[K.]***L.** of this rule. The use of the bypass stack during a performance test shall invalidate the performance test. **For small HMIWIs as defined in paragraph (3)(A)2. of this rule, the two-thousand (2,000)-pound-per-week limitation does not apply during performance tests.**

A. All performance tests shall consist of a minimum of three (3) test runs conducted under representative operating conditions.

B. The minimum sample time shall be one (1) hour per test run unless otherwise indicated.

C. **The sampling location and number of traverse points shall be determined using** EPA Reference Method 1 of 40 CFR part 60, *[a]***A**ppendix A *[(incorporated by reference) shall be used to select the sampling location and number of traverse points.]***, promulgated as of December 21, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions.**

D. **Gas composition shall be analyzed and include a measurement of oxygen concentration using** EPA Reference Method 3**, 3A** or *[3A]***3B** of 40 CFR part 60, *[a]***A**ppendix A**–2** *[(incorporated by reference)]***, promulgated as of December 21, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions and** shall be used for gas composition analysis, including measurement of oxygen concentration. EPA Reference Method 3**, 3A** or *[3A]***3B** shall be used simultaneously with each **of the other EPA** reference methods. **As an alternative to EPA Reference Method 3B, ASME PTC–19–10–1981–Part 10, American Society of Mechanical Engineers (ASME), PO Box 2900, 22 Law Drive, Fairfield, NJ, 07007–2900, may be used. This standard is incorporated by reference in this rule, as published by American Society for Testing and Materials (ASTM) International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959. This rule does not incorporate any subsequent amendments or additions.**

E. The pollutant concentrations shall be adjusted to seven percent (7%) oxygen using the following equation:

$$C_{adj} = C_{meas} (20.9 - 7) / (20.9 - \% O_2)$$

where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen
C_{meas} = pollutant concentration measured on a dry basis
(20.9 – 7) = 20.9 percent oxygen – 7 percent oxygen (defined oxygen correction basis)
20.9 = oxygen concentration in air, percent
% O_2 = oxygen concentration measured on a dry basis, percent

F. **Particulate Matter (PM) emissions shall be measured using** EPA Reference Method 5 *[or 29 of 40 CFR part 60, appendix A (incorporated by reference) shall be used to measure the PM emissions.]* **of 40 CFR part 60, Appendix A–3, promulgated as of December 21, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions. An acceptable alternate method for measuring PM emissions is Method 26A or Method 29 of 40 CFR part 60, Appendix A–8, promulgated as of December 21, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions. As an alternative, PM Continuous Emission Monitoring System (CEMS) may also be used as specified in subparagraph (3)(E)3.C. of this rule.**

G. **Stack opacity shall be measured using** EPA Reference Method 9 of 40 CFR part 60, *[appendix A (incorporated by reference) shall be used to measure stack opacity.]* **Appendix**

A–4 promulgated as of December 21, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions. As an alternative, demonstration of compliance with the PM standards using bag leak detection systems as specified in paragraph (3)(E)11. of this rule or PM CEMS as specified in subparagraph (3)(E)3.C. of this rule is considered demonstrative of compliance with the opacity requirements.

H. **Carbon monoxide (CO) emissions shall be measured using** EPA Reference Method 10 or 10B of 40 CFR part 60, *[appendix A (incorporated by reference) shall be used to measure the CO emissions.]* **Appendix A–4 promulgated as of December 21, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions. As an alternative, CO CEMS may be used as specified in subparagraph (3)(E)3.C. of this rule.**

I. **Total dioxin/furan emissions shall be measured using** EPA Reference Method 23 of 40 CFR part 60, *[appendix A (incorporated by reference) shall be used to measure total dioxin/furan emissions.]* **Appendix A–7 promulgated as of December 21, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions. As an alternative, an owner or operator may elect to sample dioxins/furans by installing, calibrating, maintaining, and operating a continuous automated sampling system for monitoring dioxin/furan emissions. Sampling shall be done using Method 23 of Appendix A–7, of 40 CFR part 60, promulgated as of December 21, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions.** The minimum sample time shall be four (4) hours per test run. If the affected facility has selected the toxic equivalency standards for dioxin/furans the following procedures shall be used to determine compliance:

(I) Measure the concentration of each dioxin/furan tetra- through octa-congener emitted using EPA Reference Method 23 **of 40 CFR part 60, promulgated as of December 21, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions**;

(II) For each dioxin/furan congener measured in accordance with part (3)(E)2.I.(I) of this rule, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 3 of this part; and

[TABLE 3. TOXIC EQUIVALENCY FACTORS]

Table 3—Toxic Equivalency Factors

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.001

(III) Sum the products calculated in accordance with part (3)(E)2.I.(II) of this rule to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

J. **Hydrogen chloride (HCl) shall be measured using** EPA Reference Method 26 **or 26A** of 40 CFR part 60, *[appendix A (incorporated by reference) shall be used to measure HCl emissions. If the affected facility has selected the percentage reduction standards for HCl under section (3) of this rule, the percentage reduction in HCl emissions ($\%R_{HCl}$) is computed using the following formula:*

$$(\%R_{HCl}) = \frac{(E_i - E_o)}{E_i} \times 100$$

where:

$\%R_{HCl}$ = percentage reduction of HCl emission achieved

E_i = HCl emission concentration measured at the control device inlet, corrected to 7 percent oxygen (dry basis)

E_o = HCl emission concentration measured at the control device outlet, corrected to 7 percent oxygen (dry basis)] **Appendix A-8 promulgated as of December 21, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions. As an alternative, HCl CEMS may be used as specified in subparagraph (3)(E)3.C. of this rule.**

K. **Lead (Pb), cadmium (Cd), and mercury (Hg) emissions shall be measured using** EPA Reference Method 29 *[shall be used to measure Lead (Pb), Cadmium (Cd), and Hg emissions. If the affected facility has selected the percentage reduction standards for metals under section (3) of this rule, the percentage reduction in emissions ($\%R_{metal}$) is computed using the following formula:*

$$(\%R_{metal}) \frac{(E_i - E_o)}{E_i} \times 100$$

where:

$\%R_{metal}$ = percentage reduction of metal emission (Pb, Cd, or Hg) achieved

E_i = metal emission concentration (Pb, Cd, or Hg) measured at the control device inlet, corrected to 7 percent oxygen (dry basis)

E_o = metal emission concentration (Pb, Cd, or Hg) measured at the control device outlet, corrected to 7 percent

oxygen (dry basis)] **of 40 CFR part 60, Appendix A-8, promulgated as of December 21, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions. As an alternative, Hg emissions may be measured using ASTM D6784–02. This standard is incorporated by reference in this rule, as published by ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959. This rule does not incorporate any subsequent amendments or additions. As an alternative for Pb, Cd, and Hg, multi-metals CEMS or Hg CEMS, may be used as specified in subparagraph (3)(E)3.C. of this rule. As an alternative, an owner or operator may elect to sample Hg by installing, calibrating, maintaining, and operating a continuous automated sampling system for monitoring Hg emissions.**

L. Compliance for fugitive ash emissions shall be determined using EPA Reference Method 22 of 40 CFR part 60, Appendix A-7, promulgated as of December 21, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions. The minimum observation time shall be a series of three (3) one (1)-hour observations.

3. Following the date on which the initial performance test is completed *[or September 1, 2000, whichever date comes first]*, the owner or operator of an affected facility shall—

A. Determine compliance with the opacity limit by conducting an annual performance test (no more than twelve (12) months following the previous performance test) using the applicable procedures and test methods listed in paragraph (3)(E)2. of this rule;

B. Determine compliance with the PM, CO, and HCl emission limits by conducting an annual performance test (no more than twelve (12) months following the previous performance test) using the applicable procedures and test methods listed in paragraph (3)(E)2. of this rule. If all three (3) performance tests over a three (3)-year period indicate compliance with the emission limit for a pollutant (PM, CO, or HCl), the owner or operator may forego a performance test for that pollutant for the subsequent two (2) years. At a minimum, a performance test for PM, CO, and HCl shall be conducted every third year (no more than thirty-six (36) months following the previous performance test). If a performance test conducted every third year indicates compliance with the emission limit for a pollutant (PM, CO, or HCl), the owner or operator may forego a performance test for that pollutant for an additional two (2) years. If any performance test indicates noncompliance with the respective emission limit, a performance test for that pollutant shall be conducted annually until all annual performance tests over a three (3)-year period indicate compliance with the emission limit. The use of the bypass stack during a performance test shall invalidate the performance test; and

C. Facilities using a Continuous Emission Monitoring System (CEMS) to demonstrate compliance with any of the emission limits under section (3) of this rule shall*[—]*

[(I) Determine] **determine** compliance with the appropriate emission limit(s) using a twelve (12)-hour rolling average, calculated each hour as the average of the previous twelve (12) operating hours**.** *[(not including startup, shutdown, or malfunction); and]*

[(II) Operate all CEMS in accordance with the applicable procedures under appendices B and F of 40 CFR part 60 (incorporated by reference).]

4. The owner or operator of an affected facility equipped with a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and wet scrubber shall—

A. Establish the appropriate maximum and minimum operating parameters, indicated in Table 4 of this subparagraph for each control system, as site-specific operating parameters during the initial performance test to determine compliance with the emission limits; and

[TABLE 4. OPERATING PARAMETERS TO BE MONITORED AND MINIMUM MEASUREMENT AND RECORDING FREQUENCIES]

Table 4—Operating Parameters to be Monitored and Minimum Measurement and Recording Frequencies

Operating parameters to be monitored	Minimum frequency		Control system		
	Data measurement	Data recording	Dry scrubber followed by fabric filter	Wet scrubber	Dry scrubber followed by fabric filter and wet scrubber
MAXIMUM OPERATING PARAMETERS					
Maximum charge rate	Continuous	1 per hour	✓	✓	✓
Maximum fabric filter inlet temperature	Continuous	1 per minute	✓		✓
Maximum flue gas temperature	Continuous	1 per minute		✓	✓
MIMIMUM OPERATING PARAMETERS					
Minimum secondary chamber temperature	continuous	1 per minute	✓	✓	✓
Minimum dioxin/furan sorbent flow rate	hourly	1 per hour	✓		✓
Minimum **hydrogen chloride** (HCl) sorbent flow rate	hourly	1 per hour	✓		✓
Minimum mercury (Hg) sorbent flow rate	hourly	1 per hour	✓		✓
Minimum pressure drop across the wet scrubber or minimum horsepower or amperage to wet scrubber	continuous	1 per minute		✓	✓
Minimum scrubber liquor flow rate	continuous	1 per minute		✓	✓
Minimum scrubber liquor pH	continuous	1 per minute		✓	✓

B. Following the date on which the initial performance test is completed *[or September 1, 2000, whichever date comes first]*, ensure that the affected facility does not operate above any of the applicable maximum operating parameters or below any of the applicable minimum operating parameters listed in Table 4 and measured as three (3)-hour rolling averages (calculated each hour as the average of the previous three (3) operating hours) at all times except during periods of startup, shutdown**,** and malfunction. Operating parameter limits do not apply during performance tests. Operation above the established maximum or below the established minimum operating parameter(s) shall constitute a violation of established operating parameter(s).

5. Except as provided in paragraph (3)(E)8. of this rule, for affected facilities equipped with a dry scrubber followed by a fabric filter—

A. Operation of the affected facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three (3)-hour rolling average) simultaneously shall constitute a violation of the CO emission limit;

B. Operation of the affected facility above the maximum fabric filter inlet temperature, above the maximum charge rate, and below the minimum dioxin/furan sorbent flow rate (each measured on a three (3)-hour rolling average) simultaneously shall constitute a violation of the dioxin/furan emission limit;

C. Operation of the affected facility above the maximum charge rate and below the minimum HCl sorbent flow rate (each measured on a three (3)-hour rolling average) simultaneously shall constitute a violation of the HCl emission limit;

D. Operation of the affected facility above the maximum charge rate and below the minimum Hg sorbent flow rate (each measured on a three (3)-hour rolling average) simultaneously shall constitute a violation of the Hg emission limit; or

E. Use of the bypass stack *[(except during startup, shutdown, or malfunction)]* shall constitute a violation of the PM, dioxin/furan, HCl, Pb, Cd**,** and Hg emission limits.

6. Except as provided in paragraph (3)(E)8. of this rule, for affected facilities equipped with a wet scrubber—

A. Operation of the affected facility above the maximum charge rate and below the minimum pressure drop across the wet scrubber or below the minimum horsepower or amperage to the system (each measured on a three (3)-hour rolling average) simultaneously shall constitute a violation of the PM emission limit;

B. Operation of the affected facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three (3)-hour rolling average) simultaneously shall constitute a violation of the CO emission limit;

C. Operation of the affected facility above the maximum charge rate, below the minimum secondary temperature, and below the minimum scrubber liquor flow rate (each measured on a three (3)-hour rolling average) simultaneously shall constitute a violation of the dioxin/furan emission limit;

D. Operation of the affected facility above the maximum charge rate and below the minimum scrubber liquor pH (each measured on a three (3)-hour rolling average) simultaneously shall constitute a violation of the HCl emission limit;

E. Operation of the affected facility above the maximum flue gas temperature and above the maximum charge rate (each measured on a three (3)-hour rolling average) simultaneously shall constitute a violation of the Hg emission limit; or

F. Use of the bypass stack *[(except during startup, shutdown, or malfunction)]* shall constitute a violation of the PM, dioxin/furan, HCl, Pb, Cd**,** and Hg emission limits.

7. Except as provided in paragraph (3)(E)8. of this rule, for affected facilities equipped with a dry scrubber followed by a fabric filter and a wet scrubber—

A. Operation of the affected facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three (3)-hour rolling average) simultaneously shall constitute a violation of the CO emission limit;

B. Operation of the affected facility above the maximum fabric filter inlet temperature, above the maximum charge rate, and below the minimum dioxin/furan sorbent flow rate (each measured on a three (3)-hour rolling average) simultaneously shall constitute a violation of the dioxin/furan emission limit;

C. Operation of the affected facility above the maximum charge rate and below the minimum scrubber liquor pH (each measured on a three (3)-hour rolling average) simultaneously shall constitute a violation of the HCl emission limit;

D. Operation of the affected facility above the maximum charge rate and below the minimum Hg sorbent flow rate (each measured on a three (3)-hour rolling average) simultaneously shall constitute a violation of the Hg emission limit; or

E. Use of the bypass stack *[(except during startup, shutdown, or malfunction)]* shall constitute a violation of the PM, dioxin/furan, HCl, Pb, Cd**,** and Hg emission limits.

8. The owner or operator of an affected facility may conduct a repeat performance test within thirty (30) days of violation of applicable operating parameter(s) to demonstrate that the affected facility is not in violation of the applicable emission limit(s). Repeat performance tests conducted pursuant to this paragraph shall be conducted using the identical operating parameters that indicated a violation under paragraphs (3)(E)5., 6., or 7. of this rule.

9. The owner or operator of an affected facility using an air pollution control device other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber**, or selective noncatalytic reduction technology,** to comply with the emission limits under section (3) of this rule shall petition the administrator for other site-specific operating parameters to be established during the initial performance test and continuously monitored thereafter. The owner or operator shall not conduct the initial performance test until after the petition has been approved by the administrator.

10. The owner or operator of an affected facility may conduct a repeat performance test at any time to establish new values for the operating parameters. The department may request a repeat performance test at any time.

11. The owner or operator of an affected facility that uses an air pollution control device that includes a fabric filter and is not demonstrating compliance using PM CEMS, determines compliance with the PM emissions limit using a bag leak detection system, and meets the requirements in subparagraphs (3)(E)11.A. through L. of this rule for each bag leak detection system.

A. Each triboelectric bag leak detection system may be installed, calibrated, operated, and maintained according to the "Fabric Filter Bag Leak Detection Guidance" (EPA–454/R–98–015, September 1997). This document is available from the U.S. Environmental Protection Agency (U.S. EPA), Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Measurement Policy Group (D–243–02), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emissions Measurement Center Continuous Emissions Monitoring. Other types of bag leak detection systems shall be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

B. The bag leak detection system shall be certified by the manufacturer to be capable of detecting PM emissions at concentrations of ten (10) milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

C. The bag leak detection system sensor shall provide an output of relative PM loadings.

D. The bag leak detection system shall be equipped with a device to continuously record the output signal from the sensor.

E. The bag leak detection system shall be equipped with

an audible alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm shall be located where it is easily heard by plant operating personnel.

F. For positive pressure fabric filter systems, a bag leak detector shall be installed in each baghouse compartment or cell.

G. For negative pressure or induced air fabric filters, the bag leak detector shall be installed downstream of the fabric filter.

H. Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

I. The baseline output shall be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the "Fabric Filter Bag Leak Detection Guidance."

J. Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points, or alarm delay time may not be adjusted. In no case may the sensitivity be increased by more than one hundred percent (100%) or decreased more than fifty percent (50%) over a three-hundred-sixty-five (365)-day period unless such adjustment follows a complete fabric filter inspection that demonstrates that the fabric filter is in good operating condition. Each adjustment shall be recorded.

K. Record the results of each inspection, calibration, and validation check.

L. Initiate corrective action within one (1) hour of a bag leak detection system alarm; operate and maintain the fabric filter such that the alarm is not engaged for more than five percent (5%) of the total operating time in a six (6)-month block reporting period. If inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm is counted as a minimum of one (1) hour. If it takes longer than one (1) hour to initiate corrective action, the alarm time is counted as the actual amount of time taken to initiate corrective action.

*[11.]***12.** Small *[rural]* HMIWI subject to the emissions limits under paragraph (3)(A)2. of this rule **that is not equipped with an air pollution control device** shall meet the following compliance and performance testing requirements:

[A. Conduct the performance testing requirements in paragraph (3)(E)1., subparagraphs (3)(E)2.A. through I., (3)(E)2.K. (Hg only), and (3)(E)3.A. of this rule. The two thousand (2,000) pound per week limitation does not apply during performance tests;]

*[B.]***A.** Establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits;

*[C.]***B.** Following the date on which the initial performance test is completed *[or September 1, 2000, whichever date comes first]*, ensure that the designated facility does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as three (3)-hour rolling averages (calculated as the average of the previous three (3) operating hours) at all times *[except during periods of startup, shutdown and malfunction]*. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameter(s);

*[D.]***C.** Except as provided in subparagraph (3)(E)*[11.E.]***12.D.** of this rule, operation of the designated facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three (3)-hour rolling average) simultaneously shall constitute a violation of the PM, CO, and dioxin/furan emission limits; and

*[E.]***D.** The owner or operator of a designated facility may conduct a repeat performance test within thirty (30) days of the violation of applicable operating parameter(s) to demonstrate that the designated facility is not in violation of the applicable emission limit(s). Repeat performance tests conducted pursuant to this paragraph must be conducted using the identical operating parameters that indicated a violation under subparagraph (3)(E)*[11.D.]***12.C.** of this rule.

13. The owner or operator of a designated facility subject to this rule may use the results of previous emissions tests to demonstrate compliance with the emissions limits, provided that the following conditions are met:

A. The designated facility's previous emissions tests must have been conducted using the applicable procedures and test methods listed in subparagraphs (3)(E)2.A.–L. of this rule. Previous emissions test results obtained using EPA-accepted voluntary consensus standards are also acceptable;

B. The HMIWI at the designated facility shall currently be operated in a manner (e.g., with charge rate, secondary chamber temperature, etc.) that would be expected to result in the same or lower emissions than observed during the previous emissions test(s), and the HMIWI may not have been modified such that emissions would be expected to exceed (notwithstanding normal test-to-test variability) the results from previous emissions test(s); and

C. The previous emissions test(s) must have been conducted in 1996 or later.

(F) Monitoring Requirements.

1. Except as provided for under paragraph (3)(F)5. of this rule, the owner or operator of an HMIWI **subject to this rule** shall install, calibrate (to manufacturers' specification), maintain, and operate devices (or establish methods) for monitoring the applicable maximum and minimum operating parameters listed in Table 4 *[of subparagraph (3)(E)4.A.]* of this rule **(unless CEMS are used as a substitute for certain parameters as specified)** such that these devices (or methods) measure and record values for these operating parameters at the frequency indicated in Table 4 of *[subparagraph (3)(E)4.A.]* **this rule** at all times *[except during periods of start-up and shutdown]*.

2. The owner or operator of an HMIWI shall install, calibrate (to manufacturers' specifications), maintain**,** and operate a device or method for measuring the use of the bypass stack including date, time, and duration.

3. The owner or operator of an HMIWI using something other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber to comply with the emission limits under section (3) of this rule shall install, calibrate (to manufacturers' specifications), maintain, and operate the equipment necessary to monitor the site-specific operating parameters developed pursuant to paragraph (3)(E)9. of this rule.

4. The owner or operator of an HMIWI shall obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for seventy-five percent (75%) of the operating hours per day for ninety percent (90%) of the operating days per calendar quarter that the HMIWI is combusting hospital waste and/or medical/infectious waste.

5. Small *[rural]* HMIWI subject to the emission limits under paragraph (3)(A)2. of this rule **not equipped with an air pollution control device** shall meet the following monitoring requirements:

A. Install, calibrate (to manufacturers' specification), maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation;

B. Install, calibrate (to manufacturers' specification), maintain, and operate a device that automatically measures and records the date, time, and weight of each charge fed into the HMIWI; and

C. The owner or operator of a designated facility shall obtain monitoring data at all times during HMIWI operation except during

periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for seventy-five percent (75%) of the operating hours per day for ninety percent (90%) of the operating days per calendar quarter that the designated facility is combusting hospital waste and/or medical/infectious waste.

(4) Reporting and Record Keeping.

(A) *[Except as provided for under subsection (4)(F) of this rule, the]* **The** owner or operator of an HMIWI **subject to this rule** shall maintain the following information (as applicable) for a period of at least five (5) years:

1. Calendar date of each record;

2. Records of the following data:

A. Concentrations of any pollutant listed in section (3) of this rule or measurements of opacity as determined by the continuous emission monitoring system (if applicable);

B. Results of fugitive emissions (by EPA Reference Method 22) tests, if applicable;

*[B.]***C.** HMIWI charge dates, times, and weights and hourly charge rates;

*[C.]***D.** Fabric filter inlet temperatures during each minute of operation, as applicable;

*[D.]***E.** Amount and type of dioxin/furan sorbent used during each hour of operation, as applicable;

*[E]***F.** Amount and type of Hg sorbent used during each hour of operation, as applicable;

*[F.]***G.** Amount and type of HCl sorbent used during each hour of operation, as applicable;

H. Amount and type of Nitrogen Oxides (NO_x) reagent used during each hour of operation, as applicable;

*[G.]***I.** Secondary chamber temperatures recorded during each minute of operation;

*[H.]***J.** Liquor flow rate to the wet scrubber inlet during each minute of operation, as applicable;

*[I.]***K.** Horsepower or amperage to the wet scrubber during each minute of operation, as applicable;

*[J.]***L.** Pressure drop across the wet scrubber system during each minute of operation, as applicable;

*[K.]***M.** Temperature at the outlet from the wet scrubber during each minute of operation, as applicable;

*[L.]***N.** pH of the scrubber liquor at the inlet to the wet scrubber during each minute of operation, as applicable;

*[M.]***O.** Records indicating use of the bypass stack, including dates, times, and durations; *[and]*

*[N.]***P.** For HMIWI complying with paragraph (3)(E)9. and paragraph (3)(F)3. of this rule, the owner or operator shall maintain all operating parameter data collected; **and**

Q. For affected facilities as defined in this rule, records of the annual equipment inspections, annual air pollution control device inspections, any required maintenance, and any repairs not completed within ten (10) days of an inspection or the time frame established by the director;

3. Identification of calendar days for which data on emission rates or operating parameters specified under paragraph (4)(A)2. of this rule have not been obtained, with an identification of the emission rates or operating parameters not measured, reasons for not obtaining the data, and a description of corrective actions taken;

4. Identification of calendar days, times**,** and durations of malfunctions, a description of the malfunction**,** and the corrective action taken;

5. Identification of calendar days for which data on emission rates or operating parameters specified under paragraph (4)(A)2. of this rule exceeded the applicable limits, with a description of the exceedances, reasons for such exceedances, and a description of corrective actions taken;

6. The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating parameters, as applicable**, and a description, including sample calculations, of how the operating parameters were established or re-established, if applicable**;

7. Records showing the names of HMIWI operators who have completed review of the information in paragraph (3)(B)8. of this rule as required by paragraph (3)(B)9. of this rule, including the date of the initial review and all subsequent annual reviews;

8. Records showing the names of the HMIWI operators who have completed the operator training requirements, including documentation of training and the dates of the training;

9. Records showing the names of the HMIWI operators who have met the criteria for qualification under subsection (3)(B) of this rule and the dates of their qualification; and

10. Records of calibration of any monitoring devices as required under paragraphs (3)(F)1.*[, 2., and 3.]* **through 5.** of this rule.

(B) The owner or operator of an HMIWI shall submit to the department the information specified in paragraphs (4)(B)1. through 3. of this rule no later than sixty (60) days following the initial performance test. All reports shall be signed by the facilities manager.

1. The initial performance test data as recorded under subparagraphs (3)(E)2.A. through *[K.]***L.** of this rule, as applicable.

2. The values for the site-specific operating parameters established pursuant to paragraph*[s]* (3)(E)4. or 9. of this rule, as applicable**, and a description, including sample calculations, of how the operating parameters were established during the initial performance test**.

3. The waste management plan as specified in subsection (3)(C) of this rule.

(C) An annual report shall be submitted to the department one (1) year following the submission of the information in subsection (4)(B) of this rule and subsequent reports shall be submitted no more than twelve (12) months following the previous report (once the unit is subject to permitting requirements under Title V of the Clean Air Act, the owner or operator of an affected facility must submit these reports semiannually). The annual report shall include the information specified in paragraphs (4)(C)1. through 8. of this rule. All reports shall be signed by the facilities manager.

1. The values for the site-specific operating parameters established pursuant to paragraph (3)(E)4.**, 8.,** or 9. of this rule, as applicable.

2. The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded for the calendar year being reported, pursuant to paragraph (3)(E)4.**, 8.,** or 9. of this rule, as applicable.

3. The highest maximum operating parameter and the lowest minimum operating parameter, as applicable for each operating parameter recorded pursuant to paragraph (3)(E)4.**, 8.,** or 9. of this rule for the calendar year preceding the year being reported, in order to provide the department with a summary of the performance of the affected facility over a two (2)-year period.

4. Any information recorded under paragraphs (4)(A)3. through 5. of this rule for the calendar year being reported.

5. Any information recorded under paragraphs (4)(A)3. through 5. of this rule for the calendar year preceding the year being reported, in order to provide the department with a summary of the performance of the affected facility over a two (2)-year period.

6. If a performance test was conducted during the reporting period, the results of that test.

7. If no exceedances or malfunctions were reported under paragraphs (4)(A)3. through 5. of this rule for the calendar year being reported, a statement that no exceedances occurred during the reporting period.

8. Any use of the bypass stack, the duration, reason for malfunction, and corrective action taken.

(F) The owner or operator of a**n** *[small rural]* HMIWI *[subject to the emission limits under paragraph (3)(A)2. of this rule shall—*

1. Maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within ten (10) days of an inspection or the time frame established by the inspector; and

2. Submit] **shall submit** an annual report to the department containing information recorded under **subparagraph** *[(4)(F)1.]***(4)(A)2.Q.** of this rule no later than sixty (60) days following the year in which data were collected. Subsequent reports shall be sent no later than twelve (12) calendar months following the previous report (once the unit is subject to permitting requirements under Title V of the Clean Air Act, the owner or operator must submit these reports semiannually). The report shall be signed by the facilities manager.

(5) Test Methods. Test methods can be found in subparagraphs (3)(E)2.A. through *[(3)(E)2.K.]***L.** of this rule.

*AUTHORITY: section 643.050, RSMo [Supp. 1999] **2000**. Original rule filed Dec. 1, 1998, effective July 30, 1999. Amended: Filed Oct. 13, 2000, effective July 30, 2001. Amended: Filed Nov. 26, 2010.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., March 31, 2011. The public hearing will be held at Elm Street Conference Center, 1730 East Elm Street, Lower Level, Bennett Springs Conference Room, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., April 7, 2011. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

PROPOSED AMENDMENT

10 CSR 10-6.300 Conformity of General Federal Actions to State Implementation Plans. This proposed amendment will amend the rule purpose, amend sections (1) through (5), and delete sections (6) through (11). If the commission adopts this rule action, it will be the department's intention to submit this rule amendment to the U.S. Environmental Protection Agency to replace the current rule that is in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/index.html.

PURPOSE: This rule implements section 176(c) of the Clean Air Act, as amended (42 U.S.C. 7401–7671q.), and regulations under 40 CFR 93, Subpart B, with respect to the conformity of general federal actions to the applicable implementation plan. Under those authorities, 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. This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such actions to the applicable implementation plan. This rule applies to all areas in the state of Missouri which are designated as nonattainment or maintenance for any criteria pollutant or standard for which there is a national ambient air quality standard (NAAQS). This amendment will improve the process federal entities use to demonstrate that their actions will not contribute to a NAAQS violation, provide tools to encourage better communication and air quality planning between the state and federal agencies, and encourage both federal agencies and the state to take early action to ensure projects will conform to the state's implementation plans. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is Federal Register Notice 75 FR 17254–17279, promulgated April 5, 2010.

*PURPOSE: This rule implements section 176(c) of the Clean Air Act, as amended (42 U.S.C. 7401–7671q.)**,** and regulations under **[***40 CFR part 51 subpart W]* ***40 CFR 93, Subpart B****, with respect to the conformity of general federal actions to the applicable implementation plan. Under those authorities, 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. This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such actions to the applicable implementation plan. This rule applies to all areas in the state of Missouri which are designated as nonattainment or maintenance for any criteria pollutant or standard for which there is a national ambient air quality standard.*

[(1) General.

(A) 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.

(B) Under Clean Air Act (CAA) section 176(c) and 40 CFR part 51 subpart W, a federal agency must make a determination that a federal action conforms to the applicable implementation plan in accordance with the requirements of this rule before the action is taken.

(C) Subsection (1)(B) of this rule does not include federal actions where either—

1. A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or

2. All of the following conditions are met:

A. Prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis;

B. Sufficient environmental analysis is completed by March 15, 1994, so that the federal agency may determine that the federal action is in conformity with the specific requirements and the purposes of the applicable implementation plan pursuant to the agency's affirmative obligation under section 176(c) of the CAA; and

C. A written determination of conformity under section 176(c) of the CAA has been made by the federal agency responsible for the federal action by March 15, 1994.

(D) Notwithstanding any provision of this rule, a determination that an action is in conformity with the applicable implementation plan does not exempt the action from any

other requirements of the applicable implementation plan, the NEPA, or the CAA.

(2) Definitions.

(A) Terms used but not defined in this rule shall have the meaning given them by the CAA and Environmental Protection Agency's (EPA's) regulations, in that order of priority. Definitions for some terms used in this rule may be found in 10 CSR 10-6.020.

(B) Additional definitions specific to this rule are as follows:

1. Affected federal land manager—the federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under the CAA (42 U.S.C. 7472) that is located within one hundred kilometers (100 km) of the proposed federal action;

2. Applicable implementation plan—the portion of the implementation plan, or most recent revision thereof, which has been approved under section 110 of the CAA, or promulgated under section 110(c) of the CAA (federal implementation plan), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the CAA and which implements the relevant requirements of the CAA;

3. Area wide air quality modeling analysis—an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality;

4. CAA—the Clean Air Act, as amended;

5. Cause or contribute to a new violation—a federal action that—

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

B. 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;

6. Caused by, as used in the terms "direct emissions" and "indirect emissions"—
emissions that would not otherwise occur in the absence of the federal action;

7. Criteria pollutant or standard—any pollutant for which there is established a NAAQS at 40 CFR part 50;

8. Direct emissions—those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and occur at the same time and place as the action;

9. Emergency—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 rule, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations;

10. Emissions budgets—those portions of the total allowable emissions defined in an EPA approved revision to the applicable implementation plan 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, specifically allocated by the applicable implementation plan to mobile sources, to any stationary source or class of stationary sources, to any federal action or class of action, to any class of area sources, or to any subcategory of the emissions inventory. The allocation system must be specific enough to assure meeting the criteria of section 176(c)(1)(B) of the CAA. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable implementation plan;

11. Emission offsets, for purposes of section (8) of this rule—emissions reductions which are quantifiable, consistent with the applicable implementation plan attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable implementation plan provisions, enforceable under both state and federal law, and permanent within the time frame specified by the program. Emissions reductions intended to be achieved as emissions offsets under this rule must be monitored and enforced in a manner equivalent to that under EPA's new source review requirements;

12. Emissions that a federal agency has a continuing program responsibility for—emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility;

13. EPA—the United States Environmental Protection Agency;

14. Federal action—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 nonfederal undertaking, the relevant activity is the part, portion, or phase of the nonfederal undertaking that requires the federal permit, license, or approval;

15. Federal agency—for purposes of this rule, a federal department, agency, or instrumentality of the federal government;

16. Increase the frequency or severity of any existing violation of any standard in any area—to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented;

17. Indirect emissions—those emissions of a criteria pollutant or its precursors that—

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

B. The federal agency can practicably control and will maintain control due to a continuing program responsibility of the federal agency, including, but not limited to—

(I) Traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of such facility;

(II) Emissions related to the activities of employees of contractors or federal employees;

(III) Emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality; or

(IV) Emissions related to the use of federal facilities under lease or temporary permit;

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

19. Maintenance area—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 section 175A of the CAA;

20. Maintenance plan—a revision to the applicable implementation plan, meeting the requirements of section 175A of the CAA;

21. Metropolitan planning organization (MPO)—that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607;

22. Milestone—has the meaning given in sections 182(g)(1) and 189(c)(1) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved;

23. National ambient air quality standards (NAAQS)—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 sulfur dioxide (SO_2);

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

25. Nonattainment area (NAA)—any geographic area of the United States which has been designated as nonattainment under section 107 of the CAA and described in 40 CFR part 81;

26. Precursors of a criteria pollutant are—

A. 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 (VOCs);

B. For PM_{10}, those pollutants described in the PM_{10} nonattainment area applicable implementation plan as significant contributors to the PM_{10} levels; and

C. For particulate matter with an aerodynamic diameter equal or less than 2.5 microns ($PM_{2.5}$)—

(I) Sulfur dioxide (SO_2) in all $PM_{2.5}$ nonattainment and maintenance areas;

(II) Nitrogen oxides to all $PM_{2.5}$ nonattainment and maintenance areas unless both the state and EPA determine that it is not a significant precursor; and

(III) 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;

27. Reasonably foreseeable emissions—projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known to the extent adequate to determine the impact of such emissions; 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;

28. Regionally significant action—a federal action for which the direct and indirect emissions of any pollutant represent ten percent (10%) or more of a nonattainment or maintenance area's emissions inventory for that pollutant;

29. Regional water 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; and

30. Total of direct and indirect emissions—the sum of direct and indirect emissions increases and decreases caused by the federal action; that is, the net emissions considering all direct and indirect emissions. Any emissions decreases used to reduce such total shall have already occurred or shall be enforceable under state and federal law. The portion of emissions which are exempt or presumed to conform under subsections (3)(C), (D), (E), or (F) of this rule are not included in the "total of direct and indirect emissions," except as provided in subsection (3)(J). The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. The segmentation of projects for conformity analyses when emissions are reasonably foreseeable is not permitted by this rule.

(3) Applicability.

(A) Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) must meet the procedures and criteria of 10 CSR 10-2.390 and 10 CSR 10-5.480, in lieu of the procedures set forth in this rule.

(B) For federal actions not covered by subsection (3)(A) of this rule, a conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions of the criteria pollutant or precursor in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in paragraph (3)(B)1. or 2. of this rule.

1. For purposes of subsection (3)(B) of this rule, the following rates apply in nonattainment areas (NAAs):

	Tons/Year
Ozone (VOC or NO_x)	
Serious NAAs	50
Severe NAAs	25
Extreme NAAs	10
Other ozone NAAs outside an ozone transport region	100
Marginal and moderate NAAs inside an ozone transport region	
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 precursor)	100
VOC or ammonia (if determined to be significant precursors)	100
Pb	
All NAAs	25

2. For purposes of subsection (3)(B) of this rule, the following rates apply in maintenance areas:

	Tons/Year
Ozone (NO_x), SO_2 or NO_2	
All maintenance areas	*100*
Ozone (VOC)	
Maintenance areas inside an ozone transport region	*50*
Maintenance areas outside an ozone transport region	*100*
Carbon monoxide	
All maintenance areas	*100*
PM_{10}	
All maintenance areas	*100*
$PM_{2.5}$	
Direct emissions	*100*
SO_2	*100*
NO_x (unless determined not to be significant precursor)	*100*
VOC or ammonia (if determined to be significant precursors)	*100*
Pb	
All maintenance areas	*25*

(C) The requirements of this rule shall not apply to—

1. Actions where the total of direct and indirect emissions are below the emissions levels specified in subsection (3)(B) of this rule;

2. The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

A. Judicial and legislative proceedings;

B. Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted;

C. Rulemaking and policy development and issuance;

D. Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities;

E. Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel;

F. Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees;

G. The routine, recurring transportation of material and personnel;

H. 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 or for repair or overhaul;

I. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site;

J. 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, actions such as 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;

K. 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;

L. Planning, studies, and provision of technical assistance;

M. Routine operation of facilities, mobile assets and equipment;

N. Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer;

O. The designation of empowerment zones, enterprise communities, or viticultural areas;

P. 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;

Q. Actions by the Board of Governors of the Federal Reserve System or any federal reserve bank to effect monetary or exchange rate policy;

R. Actions that implement a foreign affairs function of the United States;

S. 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;

T. 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; and

U. Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States;

3. Actions where the emissions are not reasonably foreseeable, such as the following:

A. 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; and

B. Electric power marketing activities that involve the acquisition, sale and transmission of electric energy; and

4. Individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable implementation plan, such as prescribed burning actions which are consistent with a land management plan that has been found to conform to the applicable implementation plan.

(D) Notwithstanding the other requirements of this rule, a conformity determination is not required for the following federal actions (or portion thereof):

1. The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (section 173 of the CAA) or the prevention of significant deterioration (PSD) program (Title I, part C of the CAA);

2. Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of subsection (3)(E) of this rule;

3. Research, investigations, studies, demonstrations, or training other than those exempted under paragraph (3)(C)2, of this rule, where no environmental detriment is incurred or the particular action furthers air quality research, as determined by the department;

4. Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (for example, hush houses for aircraft engines and scrubbers for air emissions); and

5. Direct emissions from remedial and removal actions carried out under the 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.

(E) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (3)(D)2. of this rule and which are to be taken more than six (6) months after the commencement of the response to the emergency or disaster under paragraph (3)(D)2. of this rule are exempt from the requirements of this rule only if—

1. The federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six (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

2. For actions which are to be taken after those actions covered by paragraph (3)(E)1. of this rule, the federal agency makes a new determination as provided in paragraph (3)(E)1. of this rule.

(F) Notwithstanding other requirements of this rule, individual actions or classes of actions specified by individual federal agencies that have met the criteria set forth in either paragraph (3)(G)1. or 2. and the procedures set forth in subsection (3)(H) of this rule are presumed to conform, except as provided in subsection (3)(J) of this rule.

(G) The federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (3)(G)1. or 2. of this rule.

1. The federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not—

A. Cause or contribute to any new violation of any standard in any area;

B. Interfere with provisions in the applicable implementation plan for maintenance of any standard;

C. Increase the frequency or severity of any existing violation of any standard in any area; or

D. Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable implementation plan for purposes of—

(I) A demonstration of reasonable further progress;

(II) A demonstration of attainment; or

(III) A maintenance plan; or

2. The federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in subsection (3)(B) of this rule, based, for example, on similar actions taken over recent years.

(H) In addition to meeting the criteria for establishing exemptions set forth in paragraph (3)(G)1. or 2. of this rule, the following procedures must also be complied with to presume that activities will conform:

1. The federal agency must identify through publication in the Federal Register its list of proposed activities that are presumed to conform and the analysis, assumptions, emissions factors, and criteria used as the basis for the presumptions;

2. The federal agency must notify the appropriate EPA regional office(s), state and local air quality agencies and, where applicable, the agency designated under section 174 of the CAA and the MPO and provide at least thirty (30) days for the public to comment on the list of proposed activities presumed to conform;

3. The federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

4. The federal agency must publish the final list of such activities in the Federal Register.

(I) Notwithstanding the other requirements of this rule, when the total of direct and indirect emissions of any pollutant from a federal action does not equal or exceed the rates specified in subsection (3)(B) of this rule, but represents ten percent (10%) or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of sections (1) and (5)–(10) of this rule shall apply for the federal action.

(J) Where an action presumed to be de minimis under paragraph (3)(C)1. or 2. of this rule or otherwise presumed to conform under subsection (3)(F) of this rule is a regionally significant action or where an action otherwise presumed to conform under subsection (3)(F) of this rule does not in fact meet one (1) of the criteria in paragraph (3)(G)1. of this rule, that action shall not be considered de minimis or presumed to conform and the requirements of sections (1) and (5)–(10) of this rule shall apply for the federal action.

(K) The provisions of this rule shall apply in all nonattainment and maintenance areas.

(L) Any measures used to affect or determine applicability of this rule, as determined under this section, must result in projects that are in fact de minimis, must result in such de minimis levels prior to the time the applicability determination is made, and must be state or federally enforceable. Any measures that are intended to reduce air quality impacts for this purpose must be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation. Prior to a determination of applicability, the federal agency making the determination must obtain written commitments from the appropriate persons or agencies to implement any measures which are identified as conditions for making such determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with the previous sentence. After this rule is approved by EPA as a revision to the applicable implementation plan, enforceability through the applicable implementation plan of any measures necessary for a determination of applicability will apply to all persons who agree to reduce direct and indirect emissions associated with a federal action for a conformity applicability determination.

(4) Conformity Analysis. Any federal department, agency, or instrumentality of the federal government taking an action subject to 40 CFR part 51 subpart W and this rule must make its own conformity determination consistent with the requirements of this rule. In making its conformity determination, a federal agency must consider comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency (to the extent the proposed action and impacts analyzed are the same as the project for which a conformity determination is required) or develop its own analysis in order to make its conformity determination.

(5) Reporting Requirements.

(A) A federal agency making a conformity determination under section (8) must provide to the appropriate EPA regional office(s), state and local air quality agencies and, where applicable, affected federal land managers, the agency designated under section 174 of the CAA and the MPO a thirty (30)-day notice which describes the proposed action and the federal agency's draft conformity determination on the action.

(B) A federal agency must notify the appropriate EPA regional office(s), state and local air quality agencies and, where applicable, affected federal land managers, the agency designated under section 174 of the CAA and the MPO within thirty (30) days after making a final conformity determination under section (8).

(6) Public Participation and Consultation.

(A) Upon request by any person regarding a specific federal action, a federal agency must make available for review its draft conformity determination under section (8) with supporting materials which describe the analytical methods, assumptions, and conclusions relied upon in making the applicability analysis and draft conformity determination.

(B) A federal agency must make public its draft conformity determination under section (8) by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action and by providing thirty (30) days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(C) A federal agency must document its response to all the comments received on its draft conformity determination under section (8) and make the comments and responses available, upon request by any person regarding a specific federal action, within thirty (30) days of the final conformity determination.

(D) A federal agency must make public its final conformity determination under section (8) for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action within thirty (30) days of the final conformity determination.

(7) Frequency of Conformity Determinations.

(A) The conformity status of a federal action automatically lapses five (5) years from the date a final conformity determination is reported under section (5), unless the federal action has been completed or a continuous program has been commenced to implement that federal action within a reasonable time.

(B) Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as the emissions associated with such activities are within the scope of the final conformity determination reported under section (5).

(C) If, after the conformity determination is made, the federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in subsection (3)(B), a new conformity determination is required.

(8) Criteria for Determining Conformity of General Federal Actions.

(A) An action required under section (3) to have a conformity determination for a specific pollutant, will be determined to conform to the applicable implementation plan if, for each pollutant that exceeds the rates in subsection (3)(B), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of subsection (8)(C) of this rule, and meets any of the following requirements:

1. For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable implementation plan's attainment or maintenance demonstration;

2. For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable implementation plan or a measure similarly enforceable under state and federal law that effects emission reductions so that there is no net increase in emissions of that pollutant;

3. For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements—

A. Specified in subsection (8)(B) of this rule, based on areawide air quality modeling analysis and local air quality modeling analysis; or

B. Specified in paragraph (8)(A)5. of this rule and, for local air quality modeling analysis, the requirement of subsection (8)(B) of this rule;

4. For CO or PM_{10}—

A. Where the department determines (in accordance with sections (5) and (6) and consistent with the applicable implementa-tion plan) 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 subsection (8)(B) of this rule, based on local air quality modeling analysis; or

B. Where the department determines (in accordance with sections (5) and (6) and consistent with the applicable implementation plan) 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 subsection (8)(B) of this rule, based on areawide modeling, or meet the requirements of paragraph (8)(A)5. of this rule; or

5. For ozone or nitrogen dioxide, and for purposes of subparagraphs (8)(A)3.B. and (8)(A)4.B. of this rule, each portion of the action or the action as a whole meets any of the following requirements:

A. Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the state makes a determination as provided in part (I) or where the state makes a commitment as provided in part (II). Any such determination or commitment shall be made in compliance with sections (5) and (6).

(I) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the department 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 implementation plan.

(II) The total of direct and indirect emissions from the action (or portion thereof) is determined by the department 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 implementation plan and the department makes a written commitment to EPA which includes the following:

(a) A specific schedule for adoption and submittal of a revision to the applicable implementation plan 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 applicable implementation plan which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable implementation plan;

(c) A demonstration that all existing applicable implementation plan 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.

(III) Where a federal agency made a conformity determination based on a state commitment under part (8)(A)5.A.(II) of this rule, such a state commitment is automatically deemed a call for an implementation plan revision by EPA under section 110(k)(5) of the CAA, effective on the date of the federal conformity determination and requiring response within eighteen (18) months or any shorter time within which the state commits to revise the applicable implementation plan;

B. The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable implementation plan under 10 CSR 10-2.390 or 10 CSR 10-5.480;

C. The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable implementation plan or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

D. Where EPA has not approved a revision to the relevant implementation plan attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years (described in subsection (9)(D) of this rule) do not increase emissions with respect to the baseline emissions, and—

(I) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during—

(a) Calendar year 1990;

(b) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity), if a classification is promulgated in 40 CFR part 81; or

(c) The year of the baseline inventory in the PM_{10} applicable implementation plan; and

(II) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in subsection (9)(D) of this rule) using the historic activity levels (described in part (8)(A)5.D.(I) of this rule) and appropriate emission factors for the future years; or

E Where the action involves regional water or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable implementation plan, based on assumptions regarding per capita use that are developed or approved in accordance with subsection (9)(A).

(B) The areawide and local air quality modeling analyses must—

1. Meet the requirements in section (9); and

2. Show that the action does not—

A. Cause or contribute to any new violation of any standard in any area; or

B. Increase the frequency or severity of any existing violation of any standard in any area.

(C) Notwithstanding any other requirements of this section, an action subject to this rule may not be determined to conform to the applicable implementation plan 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 implementation plan, 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, and such action is otherwise in compliance with all relevant requirements of the applicable implementation plan.

(D) Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified in compliance with section (10), before the determination of conformity is made.

(9) Procedures for Conformity Determinations of General Federal Actions.

(A) The analyses required under this rule must be based on the latest planning assumptions.

1. All planning assumptions (including, but not limited to, per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood stoves per household, 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. The conformity determination must also be based on the latest assumptions about current and future background concentrations and other federal actions.

2. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the area.

(B) The analyses required under this rule must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA regional administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.

1. For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in

the state or area must be used for the conformity analysis as specified below:

A. The EPA must publish in the Federal Register a notice of availability of any new motor vehicle emissions model; and

B. A grace period of three (3) months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than three (3) years before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

2. For nonmotor 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.

(C) The air quality modeling analyses required under this rule 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 (Revised)" (1986), including supplements (EPA publication no. 450/2-78-027R), unless—

1. The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program; and

2. Written approval of the EPA regional administrator is obtained for any modification or substitution.

(D) The analyses required under this rule must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

1. The CAA mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

2. The year during which the total of direct and indirect emissions from the action for each pollutant analyzed is expected to be the greatest on an annual basis; and

3. Any year for which the applicable implementation plan specifies an emissions budget.

(10) Mitigation of Air Quality Impacts.

(A) Any measures that are intended to mitigate air quality impacts must be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(B) Prior to determining that a federal action is in conformity, the federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with subsection (10)(A) of this rule.

(C) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(D) In instances where the federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination, as provided in subsection (10)(A) of this rule.

(E) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination in accordance with sections (8) and (9) and this section. Any proposed change in the mitigation measures is subject to the reporting requirements of section (5) and the public participation requirements of section (6).

(F) Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled.

(G) After this rule is approved by EPA as an implementation plan revision, any agreements, including mitigation measures, necessary for a conformity determination will be both state and federally enforceable. Enforceability through the applicable implementation plan will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

(11) Savings Provision. The federal conformity rules under 40 CFR part 51 subpart W, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as this rule is approved by EPA as an implementation plan revision. Following EPA approval of this rule as a revision to the applicable implementation plan (or a portion thereof), the approved (or approved portion of the) state criteria and procedures will govern conformity determinations and the federal conformity regulations contained in 40 CFR part 93 will apply only for the portion, if any, of the state's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until the state revises its applicable implementation plan to specifically remove them and that revision is approved by EPA.]

(1) Applicability.

(A) Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) must meet the procedures and criteria of 10 CSR 10-2.390 and 10 CSR 10-5.480 in lieu of the procedures set forth in this rule.

(B) For federal actions not covered by subsection (1)(A) of this rule, a conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions of the criteria pollutant or precursor in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in paragraph (1)(B)1. or paragraph (1)(B)2. of this rule.

1. For purposes of subsection (1)(B) of this rule, the following rates apply in nonattainment areas (NAAs):

	Tons/Year
Ozone (VOC 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 precursor)	100
VOC or ammonia (if determined to be significant precursors)	100
Pb: All NAAs	25

2. For purposes of subsection (1)(B) of this rule, 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
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 precursor)	100
VOC or ammonia (if determined to be significant precursors)	100
Pb: All Maintenance Areas	25

(C) The requirements of this rule shall not apply to the following federal actions—

1. Actions where the total of direct and indirect emissions are below the emissions levels specified in subsection (1)(B) of this rule;

2. The following actions which would result in no emissions increase or an increase in emissions that is clearly *de minimis*:

A. Judicial and legislative proceedings;

B. Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted;

C. Rulemaking and policy development and issuance;

D. Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities;

E. Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel;

F. Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties, and fees;

G. Routine, recurring transportation of material and personnel;

H. 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 or for repair or overhaul;

I. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site;

J. Actions 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; actions such as 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;

K. 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;

L. Planning, studies, and provision of technical assistance;

M. Routine operation of facilities, mobile assets, and equipment;

N. Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer;

O. Designation of empowerment zones, enterprise communities, or viticultural areas;

P. 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;

Q. Actions by the Board of Governors of the Federal Reserve System or any federal reserve bank to effect monetary or exchange rate policy;

R. Actions that implement a foreign-affairs function of the United States;

S. 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;

T. 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;

U. Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States; and

V. Air traffic control activities and adopting approach, departure, and enroute procedures for aircraft operations above the mixing height specified in the applicable State Implementation Plan (SIP) or Tribal Implementation Plan (TIP). Where the applicable SIP or TIP does not specify a mixing height, the federal agency can use the three thousand feet

(3,000') 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*;

3. Actions where the emissions are not reasonably foreseeable, such as the following:

A. 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; and

B. Electric power marketing activities that involve the acquisition, sale, and transmission of electric energy; and

4. Actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable implementation plan, such as prescribed burning actions which are consistent with a land management plan that has been found to conform to the applicable implementation plan.

(D) Notwithstanding the other requirements of this rule, a conformity determination is not required for the following federal actions (or portion thereof):

1. The portion of an action that includes major or minor new or modified stationary sources that require a permit under the new source review (NSR) program (section 110 (a)(2)(c) and section 173 of the Clean Air Act (CAA)) or the prevention of significant deterioration (PSD) program (Title I, part C of the CAA);

2. Actions in response to emergencies which are typically commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of subsection (1)(E) of this rule;

3. Research, investigations, studies, demonstrations, or training other than those exempted under paragraph (1)(C)2. of this rule, where no environmental detriment is incurred or the particular action furthers air quality research, as determined by the department;

4. Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (for example, hush houses for aircraft engines and scrubbers for air emissions); and

5. Direct emissions from remedial and removal actions carried out under CERCLA and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(E) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (1)(D)2. of this rule and which are to be taken more than six (6) months after the commencement of the response to the emergency or disaster under paragraph (1)(D)2. of this rule are exempt from the requirements of this rule only if—

1. The federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six (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

2. For actions which are to be taken after those actions covered by paragraph (1)(E)1. of this rule, the federal agency makes a new determination as provided in paragraph (1)(E)1. of this rule and—

A. Provides a draft copy of the written determinations required to affected U.S. Environmental Protection Agency (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 fifteen (15) days from the beginning of the extension period to comment on the draft determination; and

B. Within thirty (30) days after making the determination, publishes a notice of the determination by placing a prominent advertisement in a daily newspaper of general circulation in the area affected by the action; and

3. If additional actions are necessary in response to an emergency or disaster under paragraph (1)(D)2. of this rule beyond the specified time period in paragraph (1)(E)2. of this rule, a federal agency can make a new written determination as described in paragraph (1)(E)2. of this rule for as many six (6)-month periods as needed, but in no case shall this exemption extend beyond three (3) six (6)-month periods except where an agency provides information to EPA and the state or tribe 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.

(F) Notwithstanding other requirements of this rule, actions specified by individual federal agencies that have met the criteria set forth in paragraphs (1)(G)1. through (1)(G)3. of this rule and the procedures set forth in subsection (1)(H) of this rule are presumed to conform, except as provided in subsection (1)(J) of this rule. 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 paragraph (1)(B)1. or (1)(B)2. of this rule.

(G) The federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in paragraphs (1)(G)1. through (1)(G)3. of this rule.

1. The federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not—

A. Cause or contribute to any new violation of any standard in any area;

B. Interfere with provisions in the applicable implementation plan for maintenance of any standard;

C. Increase the frequency or severity of any existing violation of any standard in any area; or

D. Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable implementation plan for purposes of—

(I) A demonstration of reasonable further progress;

(II) A demonstration of attainment; or

(III) A maintenance plan.

2. The federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in subsection (1)(B) of this rule, based, for example, on similar actions taken over recent years.

3. 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) or TIP(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.

(H) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (1)(G)1. through (1)(G)3. of this rule, the following procedures must also be complied with to presume that activities will conform:

1. The federal agency must identify through publication in the *Federal Register* its list of proposed activities that are presumed to conform and the basis for the presumptions. 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;

2. The federal agency must notify the appropriate EPA regional office(s), state, local, and tribal air quality agencies and, where applicable, the agency designated under section 174 of the CAA and the Metropolitan Planning Organization (MPO) and provide at least thirty (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 subsection (1)(B) of this rule in more than one (1) 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;

3. The federal agency must document its responses to all the comments received and make the comments, responses, and final list of activities available to the public upon request; and

4. The federal agency must publish the final list of such activities in the *Federal Register*.

(I) Emissions from the following actions are presumed to conform:

1. Actions at installations with facility-wide emission budgets meeting the requirements in subsection (3)(H) of this rule provided that the state or tribe 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;

2. Prescribed fires conducted in accordance with a smoke management program which meets the requirements of EPA's Interim Air Quality Policy on Wildland and Prescribed Fires or an equivalent replacement EPA policy; and

3. Actions that the state or tribe identifies in the EPA-approved SIP or TIP as presumed to conform.

(J) Even though an action would otherwise be presumed to conform under subsection (1)(F) or (1)(I) of this rule, an action shall not be presumed to conform and the requirements of section (4), subsection (1)(L), subsections (3)(A) through (3)(G), and subsections (3)(I) through (3)(K) of this rule shall apply to the action if EPA or a third party shows that the action would—

1. Cause or contribute to any new violation of any standard in any area;

2. Interfere with provisions in the applicable SIP or TIP for maintenance of any standard;

3. Increase the frequency or severity of any existing violation of any standard in any area; or

4. 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 or TIP for purposes of—

A. A demonstration of reasonable further progress;

B. A demonstration of attainment; or

C. A maintenance plan.

(K) The provisions of this rule shall apply in all nonattainment and maintenance areas except conformity requirements for newly-designated nonattainment areas are not applicable until one (1) year after the effective date of the final nonattainment designation for each National Ambient Air Quality Standards (NAAQS) and pollutant in accordance with section 176(c)(6) of the Act.

(L) State Implementation Plan Revision. The federal conformity rules under 40 CFR 51, Subpart W and 40 CFR 93, Subpart B, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as this rule is approved by EPA as an implementation plan revision. Following EPA approval of this rule as a revision to the applicable implementation plan (or a portion thereof), the approved (or approved portion of the) state criteria and procedures will govern conformity determinations and the federal conformity regulations contained in 40 CFR 93 will apply only for the portion, if any, of the state's conformity provisions that is not approved by EPA. In addition, any previously-applicable implementation plan requirements relating to conformity remain enforceable until the state revises its applicable implementation plan to specifically remove them and that revision is approved by EPA.

(2) Definitions. Terms used in this rule shall have the meaning given to them by the CAA, EPA regulations, and 10 CSR 10-6.020, in that order of priority.

(3) General Provisions.

(A) Prohibition.

1. 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.

2. A federal agency must make a determination that a federal action conforms to the applicable implementation plan in accordance with the requirements of this rule before the action is taken.

3. Notwithstanding any provision of this rule, a determination that an action is in conformity 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.

4. If an action would result in emissions originating in more than one (1) nonattainment or maintenance area, the conformity must be evaluated for each area separately.

(B) Federal Agency Conformity Responsibility. Any department, agency, or instrumentality of the federal government taking an action subject to this rule must make its own conformity determination consistent with the requirements of this rule. In making its conformity determination, a federal agency must follow the requirements in section (4), subsections (3)(C) through (3)(G), and subsections (3)(I) through (3)(L) of this rule 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.

(C) Public Participation.

1. Upon request by any person regarding a specific federal action, a federal agency must make available, subject to the limitation in paragraph (3)(C)5. of this rule, for review its draft conformity determination under subsection (3)(B) of this rule with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

2. A federal agency must make public its draft conformity determination under subsection (3)(B) of this rule by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action and by providing thirty (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 (1)(B) of this rule in three (3) or more of EPA's regions), the federal agency, as an alternative to publishing separate notices, can publish a notice in the *Federal Register*.

3. A federal agency must document its response to all the comments received on its draft conformity determination under subsection (3)(B) of this rule and make the comments and responses available, subject to the limitation in paragraph (3)(C)5. of this rule, upon request by any person regarding a specific federal

action, within thirty (30) days of the final conformity determination.

4. A federal agency must make public its final conformity determination under subsection (3)(B) of this rule for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action within thirty (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*.

5. 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.

(D) Re-evaluation of Conformity.

1. Once a conformity determination is completed by a federal agency, that determination is not required to be re-evaluated if the agency has maintained a continuous program to implement the action; the determination has not lapsed as specified in paragraph (3)(D)2. of this rule; or any modification to the action does not result in an increase in emissions above the levels as specified in subsection (1)(B) of this rule. If a conformity determination is not required for the action at the time 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.

2. The conformity status of a federal action automatically lapses five (5) years from the date a final conformity determination is reported under section (4) of this rule, unless the federal action has been completed or a continuous program to implement the federal action has commenced.

3. 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 (4) of this rule.

4. 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 (1)(B) of this rule and changes to the action would result in the total emissions from the action being above the limits in subsection (1)(B) of this rule, then the federal agency must make a conformity determination.

(E) Criteria for Determining Conformity of General Federal Actions.

1. An action required under section (1) of this rule, to have a conformity determination for a specific pollutant, will be determined to conform to the applicable implementation plan if, for each pollutant that exceeds the rates in subsection (1)(B) of this rule, 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 (3)(E)3. of this rule, 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 attainment or maintenance demonstration or reasonable further progress milestone or in a facility-wide emission budget included in a SIP in accordance with subsection (3)(H) of this rule;

B. For precursors of ozone, nitrogen dioxide, or particulate matter (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 emission 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 meet the requirements—

(I) Specified in paragraph (3)(E)2. of this rule, based on area-wide air quality modeling analysis and local air quality modeling analysis; or

(II) Specified in subparagraph (3)(E)1.E. of this rule and, for local air quality modeling analysis, the requirement of paragraph (3)(E)2. of this rule;

D. For carbon monoxide or directly emitted PM—

(I) Where the department determines that an area-wide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (3)(E)2. of this rule, based on local air quality modeling analysis; or

(II) Where the department determines that an area-wide 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 (3)(E)2. of this rule, based on area-wide modeling, or meet the requirements of subparagraph (3)(E)1.E. of this rule; or

E. For ozone or nitrogen dioxide, and for purposes of parts (3)(E)1.C.(II) and (3)(E)1.D.(II) of this rule, 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 or tribe makes a determination as provided in subpart (3)(E)1.E.(I)(a) of this rule or where the state or tribe makes a commitment as provided in subpart (3)(E)1.E.(I)(b) of this rule.

(a) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the department 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.

(b) The total of direct and indirect emissions from the action (or portion thereof) is determined by the department 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 implementation plan and the department makes a written commitment to EPA which includes the following:

I. A specific schedule for adoption and submittal of a revision to the applicable implementation plan which would achieve the needed emission reductions prior to the time emissions from the federal action would occur;

II. Identification of specific measures for incorporation into the applicable implementation plan which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable implementation plan;

III. A demonstration that all existing applicable implementation plan 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;

IV. A determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action; and

V. Written documentation including all air quality analyses supporting the conformity determination.

(c) Where a federal agency made a conformity determination based on a state's or tribe's commitment under subpart (3)(E)1.E.(I)(b) of this rule and the state has submitted a SIP or TIP to EPA covering the time period during which the emissions will occur or is scheduled to submit such a SIP or TIP within eighteen (18) months of the conformity determination, the state commitment is automatically deemed a call for a SIP or TIP revision by EPA under section 110(k)(5) of the CAA, effective on the date of the federal conformity determination and requiring response within eighteen (18) months or any shorter time within which the state or tribe commits to revise the applicable SIP;

(d) Where a federal agency made a conformity determination based on a state or tribal commitment under subpart (3)(E)1.E.(I)(b) of this rule and the state or tribe has not submitted a SIP covering the time period when the emissions will occur or is not scheduled to submit such a SIP within eighteen (18) months of the conformity determination, the state or tribe must, within eighteen (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 implementation plan under 10 CSR 10-2.390 or 10 CSR 10-5.480;

(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 emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(IV) Where EPA has not approved a revision to the relevant SIP since the area was designated or reclassified, the total of direct and indirect emissions from the action for the future years (described in paragraph (3)(F)4. of this rule) do not increase emissions with respect to the baseline emissions, and—

(a) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during—

I. The most current calendar year with a complete emission inventory available before an area is designated unless EPA sets another year;

II. The emission budget in the applicable SIP; or

III. The year of the baseline inventory in the PM_{10} applicable SIP; and

(b) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in paragraph (3)(F)4. of this rule) using the historic activity levels (described in subpart (3)(E)1.E.(IV)(a) of this rule) and appropriate emission factors for the future years; or

(V) Where the action involves regional water or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.

2. The area-wide and local air quality modeling analyses must—

A. Meet the requirements in subsection (3)(F) of this rule; 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.

3. Notwithstanding any other requirements of this section, an action subject to this rule may not be determined to conform to the applicable implementation plan 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 implementation plan, 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, and such action is otherwise in compliance with all relevant requirements of the applicable implementation plan.

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

(F) Procedures for Conformity Determinations of General Federal Actions.

1. The analyses required under this rule must be based on the latest planning assumptions.

A. All planning assumptions 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, 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 area.

2. The analyses required under this rule must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate, the federal agency may obtain written approval from the appropriate EPA regional administrator for a 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 made available for use in the preparation or revision of SIPs in the state must be used for the conformity analysis as specified below—

(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 (3) 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 three (3) years before the *Federal Register* notice of availability of the latest emission model may continue to use the previous version of the model specified by 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, http://www.epa.gov/ttn/chiefs/efpac) 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.

3. The air quality modeling analyses required under this rule 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" (40 CFR 51, Appendix W), 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.

4. The analyses required under this rule 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 Act;

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.

(G) Mitigation of Air Quality Impacts.

1. Any measures that are intended to mitigate air quality impacts must be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

2. 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.

3. Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

4. In instances where the federal agency is licensing, permitting, or otherwise approving the action of another governmental or private entity, approval by the federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

5. When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of section (4) of this rule and the public participation requirements of subsection (3)(C) of this rule.

6. Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled.

7. After a state or tribe revises its SIP or TIP and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both state or tribal and federally enforceable. Enforceability through the applicable SIP or TIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

(H) Conformity Evaluation for Federal Installations with Facility-Wide Emission Budgets.

1. The state, local, or tribal agency responsible for implementing and enforcing the SIP or TIP 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 subparagraph (3)(E)1.A. of this rule. 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; and

G. The SIP revision must be approved by EPA.

2. The facility-wide budget developed and adopted in accordance with paragraph (3)(H)1. of this rule can be revised by following the requirements in paragraph (3)(H)1. of this rule.

3. 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 (3)(H)1. of this rule are "presumed to conform" to the SIP and do not require a conformity analysis.

4. 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 (3)(H)1. of this rule, 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.

5. If the SIP for the area includes a category for construction emissions, the negotiated budget can exempt construction emissions from further conformity analysis.

(I) 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—

1. Demonstrate conformity with the last emission budget in the SIP; or

2. Request the state or tribe to adopt an emissions budget for the action for inclusion in the SIP. The state or tribe must submit a SIP or TIP revision to EPA within eighteen (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 or tribe shall restrict a state's or tribe's ability to require Reasonably Available Control Technology (RACT), Reasonably Available Control Measures (RACM), or any other control measures within the state's or tribe's authority to ensure timely attainment of the NAAQS.

(J) Timing of Offsets and Mitigation Measures.

1. 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 (3)(J)2. of this rule.

2. The state or tribe may approve emissions reductions in other years provided—

A. The reductions are greater than the emission increases by the following ratios:

(I) Extreme nonattainment areas	**1.5:1**
(II) Severe nonattainment areas	**1.3:1**
(III) Serious nonattainment areas	**1.2:1**
(IV) Moderate nonattainment areas	**1.15:1**
(V) All other areas	**1.1:1**

B. The time period for completing the emissions reductions must not exceed twice the period of the emissions; and

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.

3. The approval by the state or tribe of an offset or mitigation measure with emissions reductions in another year does not relieve the state or tribe 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 or tribe, and they are not required to approve an alternate schedule.

(K) 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 or tribe may approve offsets or mitigation measures of different precursors of the same criteria pollutant, if such trades are allowed by a state or tribe in a SIP- or TIP-approved NSR regulation, is technically justified, and has a demonstrated environmental benefit.

(L) Early Emission Reduction Credit Programs at Federal Facilities and Installations Subject to Federal Oversight.

1. Federal facilities and installations subject to federal oversight can, with the approval of the state or tribal agency responsible for the SIP or TIP 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 (3)(L)2. of this rule and can use them in accordance with paragraph (3)(L)3. of this rule.

2. 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 or tribal agency responsible for the implementation of the SIP or TIP 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 or TIP attainment and reasonable further progress demonstrations.

C. The emissions reductions cannot be required by or credited to other applicable SIP or TIP provisions.

D. Both the state or tribe 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 or tribal 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 subparagraphs (3)(L)2.A. through (3)(L)2.E. of this rule.

3. Use of emission reduction credits. The emission reduction credits created in accordance with paragraph (3)(L)2. of this rule 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 section (1) of this rule and as offsets or mitigation measures required by subsection (3)(E) of this rule.

B. If the technique used to create the emission reduction is not implemented at the same facility as the federal action or could not have occurred in conjunction with the federal action, then the credits cannot be used to reduce the total direct and indirect emissions used to determine the applicability of the regulation as required in section (1) of this rule, but can be used to offset or mitigate the emissions as required by subsection (3)(E) of this rule.

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 (1) 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 or tribal air quality agency responsible for the implementation of the SIP or TIP and EPA Regional Office when the emission reduction credits are being used.

(4) Reporting and Record Keeping.

(A) A federal agency making a conformity determination under section (4), subsections (3)(B) through (3)(G), and subsections (3)(I) through (3)(K) of this rule 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 thirty (30)-day notice which describes the proposed action and the federal agency's draft conformity determination on the action. If the action has multiregional or national impacts (e.g., the action will cause emission increases in excess of the *de minimis* levels identified in subsection (1)(B) of this rule in three (3) 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.

(B) 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 CAA and the MPO, within thirty (30) days after making a final conformity determination under this rule.

(C) 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.

(5) Test Methods. ***(Not Applicable)***

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Oct. 4, 1994, effective May 28, 1995. Amended: Filed Jan. 30, 1996, effective Sept. 30, 1996. Amended: File Feb. 9, 2007, effective Sept. 30, 2007. Amended: Filed Jan. 5, 2011.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., March 31, 2011. The public hearing will be held at Elm Street Conference Center, 1730 East Elm Street, Lower Level, Bennett Springs Conference Room, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., April 7, 2011. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2200—State Board of Nursing
Chapter 4—General Rules

PROPOSED AMENDMENT

20 CSR 2200-4.010 Fees. The board is proposing to amend subsection (1)(J).

PURPOSE: The State Board of Nursing is statutorily obligated to enforce and administer the provisions of sections 335.011 to 335.355, RSMo. Pursuant to section 335.036, RSMo, the board shall by rule and regulation set the amount of fees authorized by sections 335.011 to 335.355, RSMo, so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 335.011 to 335.355, RSMo. Based on the board's five (5)-year projections, the board finds it necessary to reduce fees for the upcoming renewal periods for 2011 and 2012.

(1) The following fees are established by the State Board of Nursing:

(J) Biennial Renewal Fee—

1. RN—

A. Effective January 1, 2009	$ 60
B. Effective January 1, 2011, to December 31, 2012	**$ 40**
C. Effective January 1, 2013	**$ 60**

2. LPN—

A. Effective January 1, 2009	$ 52
B. Effective January 1, 2011, to December 31, 2012	**$ 32**
C. Effective January 1, 2013	**$ 52**

3. License renewal for a professional nurse shall be biennial; occurring on odd-numbered years and the license shall expire on April 30 of each odd-numbered year. License renewal for a practical nurse shall be biennial; occurring on even-numbered years and the license shall expire on May 31 of each even-numbered year. Renewal shall be for a twenty-four (24)-month period except in instances when renewal for a greater or lesser number of months is caused by acts or policies of the Missouri State Board of Nursing. Renewal applications (see 20 CSR 2200-4.020) shall be mailed every even-numbered year by the Missouri State Board of Nursing to all LPNs currently licensed and every odd-numbered year to all RNs currently licensed;

4. Renewal fees for each biennial renewal period shall be accepted by the Missouri State Board of Nursing only if accompanied by an appropriately completed renewal application*[.]*; **and**

5. All fees established for licensure or licensure renewal of nurses incorporate an educational surcharge in the amount of one dollar ($1) per year for practical nurses and five dollars ($5) per year for professional nurses. These funds are deposited in the professional and practical nursing student loan and nurse repayment fund;

*AUTHORITY: sections **324.001.10 and** 335.036, RSMo Supp. [2008] **2010** and section 335.046, RSMo 2000. This rule originally filed as 4 CSR 200-4.010. Emergency rule filed Aug. 13, 1981, effective Aug. 23, 1981, expired Dec. 11, 1981. Original rule filed Aug. 13, 1981, effective Nov. 12, 1981. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Jan. 4, 2011, effective Jan. 14, 2011, expires July 12, 2011. Amended: Filed Jan. 4, 2011.*

PUBLIC COST: This proposed amendment will result in a decrease of revenue for the State Board of Nursing for approximately $3,226,500 beginning January 1, 2011, and continuing through December 31, 2012. Beginning January 1, 2013, the board's revenue will increase by approximately $3,226,500 biennially for the life of the rule.

PRIVATE COST: This proposed amendment will save private entities approximately $3,226,500 beginning January 1, 2011, and continuing through December 31, 2012. Beginning January 1, 2013, this amendment will cost private entities approximately $3,226,500 biennially for the life of the rule.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Nursing, Lori Scheidt, Executive Director, PO Box 656, Jefferson City, MO 65102, by fax at (573) 751-0075, or via email at nursing@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 -Department of Insurance, Financial Institutions and Professional Registration
Division 2200 - State Board of Nursing
Chapter 4 - General Rules
Proposed Amendment to 20 CSR 2200-4.010 - Fees
Prepared September 20, 2010 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimated Fiscal Impact Between January 1, 2011 and December 31, 2012

Affected Agency or Political Subdivision	Estimated Loss of Revenue
State Board of Nursing	$3,226,500
Total Loss of Revenue Between January 1, 2011 and December 31, 2012	**$3,226,500**

Estimated Fiscal Impact Effective January 1, 2013

Affected Agency or Political Subdivision	Estimated Increase of Revenue
State Board of Nursing	$3,226,500
Total Increase of Revenue Effective January 1, 2013 and Biennally Thereafter for the Life of the Rule	**$3,226,500**

III. WORKSHEET

See Private Entity Fiscal Note

IV. ASSUMPTION

1. The total loss of revenue is based on the cost savings reflected in the Private Entity Fiscal Note filed with this rule.
2. The board utilizes a rolling five year financial analysis process to evaluate its fund balance, establish fee structure and assess budgetary needs. The five year analysis is based on the projected revenue, expenses and number of licensees. Based on the board's recent five year analysis, the board voted on a $25 reduction in renewal and reinstatement fees beginning on January 1, 2011 and continuing through December 31, 2012.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 -Department of Insurance, Financial Institutions and Professional Registration
Division 2200 - State Board of Nursing
Chapter 4 - General Rules
Proposed Amendment to 20 CSR 2200-4.010 - Fees
Prepared September 20, 2010 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimated Fiscal Impact Between January 1, 2011 and December 31, 2012

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
106,000	RNs and LPNs Eligible for Renewal (Renewal Fee Decrease @ $30)	$3,180,000
1,550	RNs and LPNs Reactivating a License (Renewal Fee Decrease @ $30)	$46,500
	Estimated Cost Savings Between January 1, 2011 and December 31, 2012	**$3,226,500**

Estimated Fiscal Impact Effective January 1, 2013

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
106,000	RNs and LPNs Eligible for Renewal (Renewal Fee Increase @ $30)	($3,180,000)
1,550	RNs and LPNs Reactivating a License (Renewal Fee Increase @ $30)	($46,500)
	Estimated Cost of Compliance Effective January 1, 2013 and Biennially for the Life of the Rule	($3,226,500)

III. WORKSHEET

See Table Above

IV. ASSUMPTION

1. The above figures are based on FY09-FY10 actuals.
2. It is anticipated that the total fiscal savings will occur during 2010 and 2011, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.