

COPY

STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT BOARD



IN THE MATTER OF PROPOSED REPEAL AND REPLACEMENT  
OF 20.2.99 NMAC - CONFORMITY TO THE STATE  
IMPLEMENTATION PLAN OF TRANSPORTATION PLANS,  
PROGRAMS, AND PROJECTS.

EIB 14-03(R)

**NEW MEXICO ENVIRONMENT DEPARTMENT'S  
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY**

Pursuant to 20.1.1.302.A NMAC, the New Mexico Environment Department ("NMED" or "Department") hereby submits its Notice of Intent to present technical testimony in this proceeding.

**1. Person Represented By the Technical Witnesses.**

The New Mexico Environment Department, Environmental Protection Division, Air Quality Bureau.

**2. Name and Qualifications of Each Technical Witness.**

Ms. Cindy Hollenberg. Cindy Hollenberg is an Environmental Analyst in the Control Strategies Unit of the Air Quality Bureau. She has worked in the Air Quality Bureau since August 2013. Ms. Hollenberg holds a Bachelor of Science degree in Biology Teaching from Purdue University, a Master of Arts degree in International Peace Studies from the University of Notre Dame, and a Master of Public Administration degree in Environmental Science and Policy from Columbia University. Her resume is included as Exhibit NMED 1.

Ms. Gail Cooke. Gail Cooke is an Environmental Planner in the Control Strategies Unit of the Department's Air Quality Bureau. She has worked in the Air Quality Bureau since June

1999. Ms. Cooke holds a bachelor degree in Environmental Design from Texas A&M University and a master degree in Urban and Regional Planning from Virginia Tech. Her resume is included as Exhibit NMED 2.

Ms. Rita Bates. Rita Bates is the Section Chief of the Planning Section of the Air Quality Bureau. She has more than 20 years of experience in the environmental field, including fourteen years with the Department. In addition to her work for the Air Quality Bureau, Ms. Bates has worked in industry as an environmental coordinator and in environmental consulting as a project manager. Ms. Bates holds a B.S. in Biology from Humboldt State University. Her resume is attached as Exhibit NMED 3.

3. **A Copy of the Direct Testimony of Each Witness in Narrative Form.**

A copy of the written direct testimony of Ms. Hollenberg is attached as Exhibit NMED 4. Ms. Hollenberg will provide a brief summary of her testimony during the hearing. The Department does not intend to present direct testimony by Ms. Cooke or Ms. Bates, but may present them as rebuttal witnesses, and will make them available to assist in answering questions that may go beyond the scope of Ms. Hollenberg's duties.

4. **Text of Recommended Modifications to the Proposed Regulatory Change**

The Department recommends that the Board repeal existing Part 99 of 20.2 NMAC and adopt the proposed replacement Part 99 (20.2.99 NMAC) as contained in Exhibit NMED 6.

**5. List and Description of Exhibits**

The Department submits the following exhibits:

NMED 1	Resume of Cindy Hollenberg
NMED 2	Resume of Gail Cooke
NMED 3	Resume of Rita Bates
NMED 4	Written Testimony of Cindy Hollenberg
NMED 5	Current 20.2.99 NMAC, Proposed for Repeal
NMED 6	Proposed Replacement 20.2.99 NMAC
NMED 7a	73 Fed. Reg. 4420 (Jan. 24, 2008) (Streamlining Amendments to 40 C.F.R. Part 93)
NMED 7b	September 26, 2012 Letter, David Martin to Ron Curry, Regarding Streamlining of New Mexico's Transportation Conformity SIP
NMED 8	77 Fed. Reg. 14979 (Mar. 12, 2012) (NAAQS Definition Amendments to 40 C.F.R. Part 93)
NMED 9	Text of Sections of 40 C.F.R. Part 93 which Must be Addressed in SIPs
NMED 10	Side-by-side Table Showing Proposed Changes in Replacement Part 99 Compared to Existing Part 99.
NMED 11	Historical version of 20.2.99.2.E NMAC
NMED 12	Affidavits of Publication of Public Notice
NMED 13	Proposed Statement of Reasons and Order

**6. Reservation of Rights**

This Notice of Intent to Present Technical Testimony is based on the Department's petition. The Department reserves the right to call any person to testify and to present any exhibit in response to another notice of intent or public comment filed in this matter or to any testimony or exhibit offered at the public hearing. The Department also reserves the right to call any person as a rebuttal witness and to present any exhibit in support thereof.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT



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*Education*

**Columbia University**, New York, New York  
MPA, Environmental Science and Policy (2012)

**University of Notre Dame**, South Bend, Indiana  
MA, International Peace Studies (1995)

**Purdue University**, Fort Wayne, Indiana  
BS, Biology Teaching (1987)

*Experience*

**New Mexico Environment Department, Air Quality Bureau, Planning Section**  
2013 – present, Environmental Analyst, Control Strategies

Responsibilities for the Control Strategies group include policy analysis for proposed rule changes, including research and documentation of proposals' economic, environmental, social and implementation effects. Responsibilities also include preparation of reports to the US EPA, data visualization and mapping using GIS, assisting with affirmative defense reviews for excess emissions, and environmental impact reviews.

**EnviroLogic, Inc.**  
2012 – 2013, Research Associate

I collected data from various agencies and organizations for hydrologic modeling, as well as prepared data for inclusion in GIS applications. In addition, I contributed to reports for international clients regarding nuclear safety case issues (using WIPP as a case study) and completed modeling parameter analysis for testimony preparation.

**Mountainair Public Schools**  
2004 – 2011, Educator and Program Coordinator

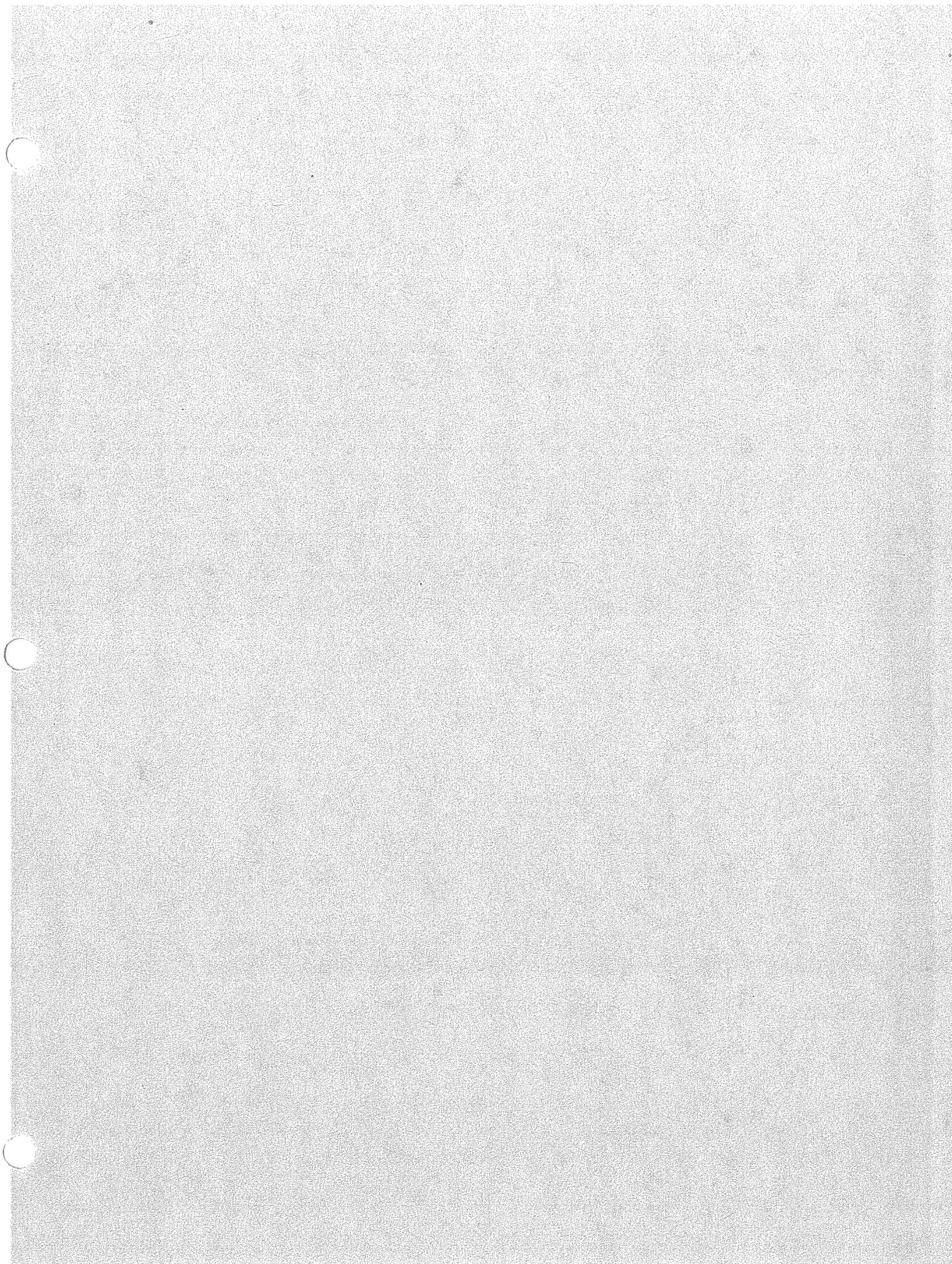
I developed and implemented curricula for 10 high school and middle school science laboratory classes, 3 levels of Spanish, and Communications and managed the high school Chemistry / Physics lab. Coordination responsibilities included the high school Student Assistance Team and the Anti-Bullying Program, which I helped develop for the school system.

**Fort Wayne Community Schools, South Side High School**  
2001 – 2004, Educator and Program Coordinator

I developed and implemented curricula for 4 levels of Chemistry, taught department-developed curricula for Biology and Earth Science, and managed the Chemistry lab. I also co-coordinated the International Baccalaureate Program for the school.

Previous experience included mainly pro bono work for a start-up company and myriad organizations.







## Gail F. Cooke

### EDUCATION

*Master of Urban and Regional Planning, Concentration: Environmental Planning, Virginia Tech, Blacksburg, Virginia, 1998*

*Major Project:* The Implementation of Virginia Erosion and Sediment Control Laws and Regulations.

*Bachelor of Environmental Design, Texas A&M University, College Station, Texas, 1995*

Other areas of study include Environmental Science, Soil Science, and Civil Engineering.

### WORK HISTORY

*State of New Mexico Environment Department, Air Quality Bureau* 1999-Present

Environmental Analyst/Planner – Public outreach, including preparing outreach material for the general public and organizing public meetings and open houses; preparation of emission inventory updates and maintenance plans for the State Implementation Plan submittals; development of local initiative plans to help reduce criteria air pollutants; reviewing of environmental assessments and environmental impact statements; grant writing; and regulatory development.

*Taschek Environmental Consulting* 1998-1999

Environmental Planner – General environmental planning; conducted environmental assessments, and initial site assessments; assisted in public outreach; assisted in transportation planning, and land use planning projects; and worked extensively with state regulations and federal rules, including the National Environmental Policy Act.

### RELEVANT PROJECT EXPERIENCE

*Natural Events Action Plan for Doña Ana County, New Mexico*

Assisted in the development of the Natural Events Action Plan (NEAP) for Doña Ana County, NM. The NEAP was created in 2000 to help control anthropogenic sources of wind blown dust in Doña Ana County, NM. The NEAP is a local initiative that includes local and county ordinances, stakeholder agreements, and a public outreach campaign by the State of New Mexico. I have prepared brochures, press releases, public service announcements, and informational mail outs. I have assisted in the planning of open houses to educate the public on dust and its potential health and environmental risks. I am currently the project manager for the Doña Ana County NEAP.

*2005 Revisions to 20.2.99 NMAC- Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects.*

Acted as the lead in the adoption of revisions to 20.2.99 NMAC. The revisions to 20.2.99 NMAC were in response to amendments made to the federal rule 40 CFR Part 93 –Determining

*Conformity of Federal Actions to State or Federal Implementation Plans.* The main revisions included minor amendments to the 18-month requirement for initial State Implementation Plan submissions, the addition of a grace period for newly designated nonattainment areas, and the inclusion of the new 8-hour ozone and Particulate Matter 2.5 microns in size National Ambient Air Quality Standards. The revised regulation was adopted by the Environmental Improvement Board in September of 2005.

***Grant County Nonattainment/Redesignation***

Acted as the lead in the redesignation of the Grant County Sulfur Dioxide Nonattainment area. At the request of the Environmental Protection Agency, an analysis was conducted to redesignate the Air Quality Control Region 012: Grant County, New Mexico SO<sub>2</sub> nonattainment area to attainment/maintenance status and a maintenance plan was prepared. In February of 2003, a redesignation request and maintenance plan for the Grant County nonattainment area were submitted to EPA for their review and approval. Both the redesignation request and maintenance plan for the Grant County nonattainment area were approved in September of 2003.

***The Atlas Pilot Project, Doña Ana County, NM***

Acted as project manager for the development of an improved emission inventory of particulate matter emissions in Doña Ana County, NM. The Atlas Pilot Project was conducted to assist the Environmental Protection Agency in the development of an "Atlas" of environmental issues along the border region of the United States and Mexico. The atlas would act as a resource guide that would include inventories, maps, and reference material on all sources of environmental pollution ranging from water to solid waste to air quality. The pilot project was the first attempt at developing a piece of that resource guide. The Atlas Pilot Project was funded through a grant from the EPA. I was responsible for all facets of the project including grant writing, budget development, and project management.





# RITA BATES

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## EDUCATION

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HUMBOLDT STATE UNIVERSITY, ARCATA, CALIFORNIA  
*B.S., Biology, 1990. Minor in Botany, emphasis in Ecology. Attendance dates 1986-1990.*

## EXPERIENCE

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STATE OF NEW MEXICO, ENVIRONMENT DEPARTMENT  
AIR QUALITY BUREAU, PLANNING & POLICY SECTION

*Section Chief, March 2005 – present*  
*Program Manager (Natural Sciences Manager-2), March 2000 – March 2005*  
*Environmental Specialist, December 1998 – March 2000*  
*Environmental Scientist, August 1998 – December 1998*

The Planning & Policy section of the Air Quality Bureau is responsible for the control strategy, dispersion modeling, emission inventory and small business assistance programs in the Air Quality Bureau. The control strategy section of the Air Quality Bureau is responsible for preparing state implementation plans, policies, and regulations for air quality. The modeling section ensures that all air dispersion modeling analyses submitted to our agency are accurate and complete. The Small Business Assistance Program assists small businesses in meeting air quality regulatory requirements.

EMPIRE GROUP, LLC  
Empire, Nevada

*Environmental Coordinator, June 1996 – July 1998*

Empire Group, LLC is the parent company for several entities which own and operate a geothermal power plant, an onion and garlic dehydration plant, several ranches, and a garlic seed operation. In my position as environmental coordinator, I was responsible for permitting at all facilities.

JBR ENVIRONMENTAL CONSULTANTS, INC.  
Reno, Nevada

*Environmental Analyst IV, Reno Office Coordinator/Manager, July 1994 – July 1996*  
*Environmental Analyst III, July 1993 – July 1994*  
*Environmental Analyst I, June 1990 – July 1993*

As the manager of the Reno office, I supervised seven technical staff and one administrative employee. During my employment with JBR, I worked on and managed numerous NEPA, environmental permitting and baseline projects.







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EXHIBIT NMED 4  
WRITTEN TESTIMONY OF CINDY HOLLENBERG

1 **Witness Qualifications:**

2 Cindy Hollenberg is an Environmental Analyst in the Control Strategies Section of the Air Quality  
3 Bureau. She has worked in the Air Quality Bureau since August 2013. Ms. Hollenberg holds a Bachelor  
4 of Science degree in Biology Teaching from Purdue University, a Master of Arts degree in International  
5 Peace Studies from the University of Notre Dame, and a Master of Public Administration degree in  
6 Environmental Science and Policy from Columbia University.

7 **I. INTRODUCTION**

8 This testimony is intended to present the New Mexico Environment Department's (NMED) proposed  
9 repeal and replacement of 20.2.99 New Mexico Administrative Code (NMAC) - *Conformity to the State*  
10 *Implementation Plan of Transportation Plans, Programs, and Projects*. Exhibit NMED 5 reflects the  
11 current rule proposed for repeal. Exhibit NMED 6 reflects the proposed replacement rule in current  
12 NMAC format. All of the proposed changes are allowed and many are encouraged by the U.S.  
13 Environmental Protection Agency (EPA). The most significant changes involve streamlining the rule,  
14 deleting large sections of previously required language. Several tables are included in this text and others  
15 as exhibits to show why and how the changes are reflected in the proposed replacement rule. For the  
16 remainder of this testimony, I will refer to this rule as Part 99.

17 **A. What is Transportation Conformity?**

18 The concept of transportation conformity was introduced in the Clean Air Act (CAA) of 1977, which  
19 included a provision to ensure that transportation projects are consistent with ("conform to") the State  
20 Implementation Plan for meeting air quality standards. Conformity requirements were made substantially  
21 more rigorous in the CAA Amendments of 1990, and the federal transportation conformity rule, 40 CFR  
22 Part 93 - *Determining Conformity of Federal Actions to State or Federal Implementation Plans*, which I  
23 will refer to as "40 CFR Part 93" from now on. 40 CFR Part 93 was adopted by the EPA in November  
24 1993. After the adoption of the rule, states were required to develop regulations to implement  
25 transportation conformity. The purpose of the federal and state transportation conformity rules is  
26 to detail the process for transportation agencies to demonstrate and ensure emission reductions  
27 from transportation sources of air pollution.

1 Part 99 was adopted by New Mexico in November 1994. Part 99 was later revised to reflect updates and  
2 changes made by EPA and to correct typographical errors in 1998, 1999, 2005, 2007, 2009, 2010 and  
3 2012. Today's proposed repeal and replacement of Part 99 are responsive to two of EPA's promulgated  
4 amendments.

### 5 **B. When is Transportation Conformity Required?**

6 Transportation conformity only applies to areas that have violated (are in nonattainment with) the  
7 National Ambient Air Quality Standards (NAAQS) for the six criteria pollutants: carbon monoxide,  
8 sulfur dioxide, oxides of nitrogen, particulate matter, ozone and lead. 40 CFR §93.102(b). To ensure that  
9 transportation activities do not worsen air quality in nonattainment areas or interfere with State  
10 Implementation Plans (SIPs), which set the requirements for meeting EPA standards for air quality, the  
11 air quality impacts of transportation projects must be considered.

12 According to the CAA §176 (c)(1)(B), transportation plans, programs, and projects cannot:

- 13 • cause or contribute to new violations of the NAAQS;
- 14 • increase the frequency or severity of existing violations of the standards; or
- 15 • delay attainment of the standards.

### 16 **C. New Mexico's Transportation Conformity Rule (Part 99)**

17 States were required to submit their initial transportation conformity rules to EPA one year after the  
18 federal rule was promulgated in November 1993 (58 Fed. Reg. 62188). The State of New Mexico  
19 submitted Part 99 for incorporation into the State's SIP to EPA on November 17, 1994; however, this  
20 initial SIP was not approved by EPA because EPA considered many portions of the federal rule to be  
21 "interim" in nature and subsequently made extensive revisions (1997).

22 On August 15, 1997, EPA amended large portions of the federal rule to make it more flexible and  
23 streamlined (62 Fed. Reg. 43779). On November 20, 1998, the State of New Mexico submitted a SIP  
24 revision for Part 99 to EPA. The 1998 SIP revision incorporated the required federal changes  
25 promulgated in 1997 and also revised those portions of the rule that EPA considered "interim" in the 1994  
26 submittal. In addition, Part 99 was revised in 1999 to correct a typographical error. The State of New  
27 Mexico submitted this SIP revision to EPA on August 27, 1999.

28 EPA requires that state rules for Transportation Conformity be no more stringent than the federal rule  
29 (unless the state's rules apply equally to nonfederal as well as federal entities). EPA determined in their  
30 March 20, 2000 approval of New Mexico's 1998 and 1999 SIP submittals that Part 99 is no more  
31 stringent than the federal rule. 65 Fed. Reg. 14873, 14875 (March 20, 2000). Most of Part 99 mirrors the  
32 federal rule, except for sections on the consultation process, subsections referencing the consultation  
33 process, and the inclusion of specific sections that are required by the NMAC. The State has also  
34 included several definitions in Part 99 for clarification purposes which are not in the federal rule.

1 40 CFR Part 93 requires states to develop their own processes and procedures for consultation among the  
2 Federal, State, and local agencies and for resolution of conflicts by meeting the criteria in 40 CFR 93.105.  
3 These processes and procedures must be followed by the metropolitan planning organizations (MPOs),  
4 state Department of Transportation (DOT), and the U.S. Department of Transportation (USDOT) in  
5 consulting with the State and local air quality agencies and EPA before making conformity  
6 determinations. Also, state rules must have processes and procedures for the state and local air quality  
7 agencies and EPA to coordinate development of applicable SIPs with MPOs, state DOT, and USDOT.

8 In the March 20, 2000 approval notice from EPA for New Mexico's 1998 and 1999 SIP submittals for  
9 Part 99, EPA found that NMED developed its own consultation rule based on the elements in 40 CFR  
10 93.105 (65 Fed. Reg. at 14875). As a first step, NMED had established an ad hoc multiagency committee  
11 that included representatives from the NMED Air Quality Bureau, New Mexico DOT (NMDOT),  
12 USDOT, MPOs, EPA, local transportation agencies, and local transit operators. NMED served as the  
13 lead agency in coordinating the multi-agency efforts for developing the consultation rule. The committee  
14 met periodically and drafted consultation rules based on the elements in 40 CFR 93.105 and 23 CFR Part  
15 450,<sup>1</sup> and integrating local procedures and processes. The result was the consultation provisions, currently  
16 contained in 20.2.99.116 - 124 NMAC. EPA determined that the NMED had adequately included all  
17 elements of 40 CFR 93.105 in its rule and that the rule met EPA requirements. Part 99 also differs from  
18 the federal rule (40 CFR Part 93) in that it includes a Scope Section (20.2.99.2 NMAC); an Objective  
19 Section (20.2.99.6 NMAC); and a Savings Provision Section (currently 20.2.99.154 NMAC). Both the  
20 Scope and Objective sections are required under the New Mexico Administrative Code. Subsection A of  
21 Section 20.2.99.2 NMAC (Scope) includes language outlining which state and federal agencies are  
22 affected by Part 99. The rest of 20.2.99.2 NMAC replicates federal language that is part of the  
23 applicability section of 40 CFR Part 93. 20.2.99.6 NMAC (Objective) defines New Mexico's  
24 requirements under the federal rule for the implementation of transportation conformity. 20.2.99.154  
25 NMAC (Savings Provision) states that if any part of the rule as a whole is deemed not to be enforceable at  
26 any point in time, that the federal transportation conformity rule will take effect.

## 27 **II. PROPOSED CHANGES TO PART 99**

28 The changes effected by the proposed repeal and replacement of Part 99 are in response to 40 CFR Part  
29 93 amendments promulgated on January 24, 2008 (73 Fed. Reg. 4420) (Exhibit NMED 7a) and on March  
30 14, 2012 (77 Fed. Reg. 14979) (Exhibit NMED 8). The NMED welcomed the streamlining option  
31 authorized by the 2008 rulemaking, as evidenced by the letter sent to the U.S. EPA Region 6  
32 Administrator. (Exhibit NMED 7b)

33 Most of the changes proposed for Part 99 streamline the rule pursuant to the 2008 amendments, which  
34 allow state transportation conformity rules to consist solely of the sections of 40 CFR Part 93 related to:  
35 consultation procedures; conflict resolution procedures; obtaining and enforcing written commitments to  
36 control measures; and obtaining and enforcing written commitments to mitigation measures. See 73 Fed.  
37 Reg. at 4430 - 4331. Streamlining Part 99 in this way will result in reduced administrative burden - most  
38 specifically requiring fewer revisions when 40 CFR Part 93 is amended. Implementation will not be  
39 affected.

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<sup>1</sup> 23 CFR Part 450 refers to the Federal Highway Administration, Department of Transportation's Planning Assistance and Standards rule. It does not apply to NMED.

1 Another substantive change proposed for Part 99 is required by the 2012 amendments to update the Part  
 2 99 definition of “National Ambient Air Quality Standards” to include any new or revised NAAQS and to  
 3 remove the definitions for individual criteria pollutants’ NAAQS. See 77 Fed. Reg. at 14981.

4 The final substantive change involves reinserting a phrase inadvertently deleted from 20.2.99.2.E in a  
 5 previous revision of 20.2.99 NMAC.

6 Other, non-substantive changes proposed include: renumbering of sections; deletion of definitions no  
 7 longer needed; addition or relocation of definitions in the Definitions section (20.2.99.7 NMAC); re-  
 8 lettering of definitions; syntax changes required by deleted references; and corrections of typographical,  
 9 grammatical or spelling errors.

10 **A. Streamlining of Part 99**

11 The 2008 amendments finalized provisions allowing states to submit conformity SIPs addressing only  
 12 three sections of the federal rule. These three sections are:

- 13 • 40 CFR 93.105 - consultation procedures and conflict resolution procedures;
- 14 • 40 CFR 93.122(a)(4)(ii) - obtaining and enforcing written commitments to control measures; and
- 15 • 40 CFR 93.125(c) - obtaining and enforcing written commitments to mitigation measures.

16 The full text of these required sections are reproduced in Exhibit NMED 9, with the appropriate  
 17 subparagraphs or subsections highlighted for Sections 93.122 and 93.125. Table 1, below, shows the  
 18 correlation of provisions found in the required sections of 40 CFR Part 93 and the current Part 99. The  
 19 first column shows the required sections and subsections, followed by a descriptor of the provisions of  
 20 those sections and subsections. The third column shows where these provisions may be found in the  
 21 current Part 99. Note that Part 99 section numbers refer to the current rule, not the proposed replacement  
 22 rule.

23 **Table 1: Correlation of required sections and the corresponding current Part 99 sections.**

<b>40 CFR 93, Subpart A - Required Sections</b>	<b>Provisions of CFR section/subsection</b>	<b>Current 20.2.99 NMAC Section(s)</b>
93.105 (a), (b), (c)	General and specific interagency consultation requirements	116 - 122
93.105(d)	Resolving conflicts	123
93.105(e)	Public consultation procedures	124
93.122(a)(4)(ii)	Obtaining and enforcing commitments to control measures	150
93.125(c)	Obtaining and enforcing commitments to mitigation measures	150

1 Because most sections in the current rule are proposed for deletion, the State Records Center and  
 2 Archives recommended that we repeal the current rule and replace it with a new rule with the same  
 3 number and title. We propose to renumber sections in the proposed replacement rule. Table 2, below,  
 4 shows the correlation of sections in the current rule with the section numbers proposed in the replacement  
 5 rule. Note that no new sections are being added. The replacement rule deletes 34 sections (noted by  
 6 ~~strikeout of the title~~) and renumbers most of the retained sections. The current rule has 54 sections. The  
 7 replacement rule will have only 20 sections. Current section numbers (in Part 99 proposed for repeal) are  
 8 shown in the first column, followed by the title of the section in the middle column. The third column  
 9 shows the proposed replacement rule section number.

10 **Table 2:** Correlation of sections in current rule with sections in proposed Part 99 replacement.

<b>Current Section #</b>	<b>Title of Section</b>	<b>New Section #</b>
1	Issuing Agency	1
2	Scope	2
3	Statutory Authority	3
4	Duration	4
5	Effective Date	5
6	Objective	6
7	Definitions	7
8	Documents	8
9 - 108	[RESERVED]	9 - 100
109	Applicability	101
110	<del>Priority</del>	DELETED
111	<del>Frequency of Conformity Determinations</del>	DELETED
112	<del>Frequency of Conformity Determinations—Transportation Plans</del>	DELETED
113	<del>Frequency of Conformity Determinations—Transportation Improvement Programs</del>	DELETED
114	<del>Frequency of Conformity Determinations—Projects</del>	DELETED
115	<del>Frequency of Conformity Determinations—Triggers for Transportation Plan and TIP Conformity Determinations</del>	DELETED
116	Consultation	102
117	Agency Roles in Consultation	103
118	Agency Responsibilities in Consultation	104
119	General Consultation Procedures	105
120	Consultation Procedures for Specific Major Activities	106
121	Consultation Procedures for Specific Routine Activities	107
122	Notification Procedures for Routine Activities	108
123	Conflict Resolution and Appeals to the Governor	109
124	Public Consultation Procedures	110
125	<del>Content of Transportation Plans and Timeframes of Conformity Determinations</del>	DELETED

Current Section #	Title of Section	New Section #
126	Relationship of Transportation Plan and TIP Conformity to the NEPA	DELETED
127	Fiscal Constraints for Transportation Plans and TIPS	DELETED
128	Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects – General	DELETED
129	Criteria and Procedures – Latest Planning Assumptions	DELETED
130	Criteria and Procedures – Latest Emissions Model	DELETED
131	Criteria and Procedures – Consultation	DELETED
132	Criteria and Procedures – Timely Implementation of TCMs	DELETED
133	Criteria and Procedures – Currently Conforming Transportation Plan	DELETED
134	Criteria and Procedures – Projects from a Transportation Plan and TIP	DELETED
135	Criteria and Procedures – Localized CO, PM <sub>10</sub> and PM <sub>2.5</sub> Violations (Hot Spots)	DELETED
136	Criteria and Procedures – Compliance with PM <sub>10</sub> and PM <sub>2.5</sub> Control Measures	DELETED
137	Criteria and Procedures – Motor Vehicle Emissions Budget	DELETED
138	Criteria and Procedures – Interim Emissions in Areas Without Motor Vehicle Emissions Budgets	DELETED
139	Consequences of Control Strategy Implementation Plan Failures	DELETED
140	Requirements for Adoption or Approval of Projects by Other Recipients of Funds Designated under Title 23 U.S.C. or the Federal Transit Laws	DELETED
141	Procedures for Determining Regional Transportation-Related Pollutant Emissions – General Requirements	DELETED
142	Procedures for Determining Regional Transportation-Related Pollutant Emissions – Analysis in Serious, Severe, and Extreme Ozone Nonattainment Areas and Serious Carbon Monoxide Areas	DELETED
143	Procedures for Determining Regional Transportation-Related Pollution Emissions – Two-Year Grace Period for Regional Emissions Analysis Requirements in Certain Ozone and CO Areas	DELETED
144	Procedures for Determining Regional Transportation-Related Pollutant Emissions – Areas Which Are Not Serious, Severe or Extreme Ozone Nonattainment Areas or Serious Carbon Monoxide Areas	DELETED
145	Procedures for Determining Regional Transportation-Related Pollutant Emissions – PM <sub>10</sub> from Construction-Related Fugitive Dust	DELETED
146	Procedures for Determining Regional Transportation-Related Pollutant Emissions – PM <sub>2.5</sub> from Construction-Related Fugitive Dust	DELETED
147	Procedures for Determining Regional Transportation-Related Pollutant Emissions – Reliance on Previous Regional Emissions Analysis	DELETED

Current Section #	Title of Section	New Section #
148	<del>Procedures for Determining Localized CO, PM<sub>10</sub> and PM<sub>2.5</sub> Concentrations (Hot-Spot Analysis)</del>	DELETED
149	<del>Using the Motor Vehicle Emissions Budget in the SIP (or Implementation Plan Submission)</del>	DELETED
150	Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures	111
151	<del>Exemptions</del>	DELETED
152	<del>Traffic Signal Synchronization Projects</del>	DELETED
153	<del>Special Exemptions from Conformity Requirements for Pilot Program</del>	DELETED
154	Savings Provision	112

1 Deleting the sections noted by ~~strikeout~~ will not affect implementation, as these sections govern the  
2 procedures and other requirements federal and local agencies and organizations must follow in order to  
3 conform to the New Mexico SIP. These entities will still be required to comply with the substantively  
4 similar provisions contained in 40 CFR Part 93. The only responsibilities and requirements for NMED  
5 are contained in the retained sections.

6 Because sections are proposed for deletion and renumbering, several references to particular sections in  
7 the text of retained sections would need to be corrected. In many cases, references to deleted sections  
8 would need to be deleted. Table 3, below, shows the section reference corrections and deletions proposed.  
9 The deletions shown in the table are references to sections not included in the proposed replacement rule.  
10 The corrections shown are due to renumbering of sections included in the proposed replacement rule. No  
11 references from sections not included in the replacement rule are included in this table. The first column  
12 shows the current section number where the reference is located. The second column shows the  
13 referenced section(s) in the text. The third column shows the new section number where the reference is  
14 proposed to be located. The final column shows the new section reference (if any). References to  
15 sections which are proposed to be deleted are indicated by ~~strikeout~~ in the second column and "N/A" in  
16 the third and fourth columns. Section reference corrections are also listed in Exhibit NMED 10, which  
17 shows a compilation of all changes proposed (except section deletions) in a side-by-side format.

18 **Table 3:** Proposed section reference corrections and deletions.

Current Location of Reference	Referenced Section(s)	Proposed New Location of Reference	New Reference Proposed
7.H	116-124	7.F	102-110
7.S	<del>125</del>	N/A	N/A
109.A(1)	109.C <del>149.A</del>	101.A(1) N/A	101.C N/A

Current Location of Reference	Referenced Section(s)	Proposed New Location of Reference	New Reference Proposed
109.A(2)	<del>140</del>	N/A	N/A
109.C	<del>133.A, 133.B</del>	N/A	N/A
116.A	116-124 116 117 120 121 119	102.A	102-110 102 103 106 107 105
116.B	117	102.B	103
117	118	103	104
117.C(6)	<del>128.N(2)(e)</del>	N/A	N/A
118.D(1)	116-124	104.D(1)	102-110
119.B(1)	116	105.B(1)	102
119.B(5)	119	105.B(5)	105
119.C	120	105.C	106
119.D	121	105.D	107
119.F	116	105.F	102
119.F(1)	116	105.F(1)	102
120	119 116	106	105 102
120.D	<del>132</del>	N/A	N/A
120.E	<del>140</del>	N/A	N/A
120.I	<del>111-115</del>	N/A	N/A
120.M	<del>128</del>	N/A	N/A
121	119 116	107	105 102
121.A	<del>146</del>	N/A	N/A
121.B	121 <del>141-147</del>	107.B N/A	107 N/A
121.D(3)	<del>140 (two references)</del>	N/A	N/A
121.D(4)	121 <del>140</del>	107.D(4) N/A	107 N/A
122	116 <del>149</del>	108 N/A	102 N/A
122.A	116	108.A	102
122.B	116	108.B	102
123.C	<del>127</del>	N/A	N/A
124.B	124	110.B	110
150.A	<del>137,138,135</del>	N/A	N/A
150.D	<del>135,137,138</del> 116-124	N/A 111.D	102-110

Current Location of Reference	Referenced Section(s)	Proposed New Location of Reference	New Reference Proposed
	<del>137,138,135</del> 124	N/A 111.D	110

1 Deleting many sections of the current rule also requires deletions of definitions of terms found only in  
2 those sections and not used in the proposed replacement rule. Since NMAC requires that definitions be  
3 alphabetized, this necessitates re-lettering of the definitions section. Further changes to definitions  
4 include adding or moving definitions from other sections to the definitions section. A summary of these  
5 changes is found in Table 4, below. (Deletion of subsections of the definition for National ambient air  
6 quality standards will be further discussed in another section of this testimony.) The current definition  
7 letter in 20.2.99.7 NMAC is shown in the first column, followed by the term in the second column. The  
8 third column shows the (new) letter in the proposed Section 7 of Part 99. The action proposed for the  
9 particular term and the reason for the action are shown in the fourth and fifth columns, respectively. This  
10 table shows all additions, deletions, re-lettering (for alphabetization) and other editing required by this  
11 proposal. Terms to be deleted are shown in strikeout format. Terms to be added (or moved from another  
12 section) are underlined. Deleted and added terms are also in bold. These changes also appear in Exhibit  
13 NMED 10 showing the text of proposed changes in a side-by-side format.

14 **Table 4:** Definitions correlations for proposed repeal and replacement of Part 99.

Current Rule Letter	Term	New Letter Proposed	Action	Reason for action
A	Applicable implementation plan	A	none	n/a
B	CAA	B	none	n/a
C	Cause or contribute to a new violation	C	none	n/a
D	CFR	D	none	n/a
E	<del>Clean data</del>	none	delete	Found only in deleted Section(s)
F	<del>Conformity analyses</del>	none	delete	Found only in deleted Section(s)
G	Conformity determination	E	re-letter	Keep alphabetical listing
H	Consultation	F	re-letter	Keep alphabetical listing
I	Control strategy implementation plan revision	G	re-letter	Keep alphabetical listing
none	<u>Criteria pollutants</u>	H	add	Required for clarity
J	Department	L	re-letter	Keep alphabetical listing
K	Design concept	J	re-letter	Keep alphabetical listing
L	Design scope	K	re-letter	Keep alphabetical listing
M	Donut areas	L	re-letter	Keep alphabetical listing
N	FHWA	M	re-letter	Keep alphabetical listing
O	FHWA/FTA project	N	re-letter	Keep alphabetical listing
P	<del>Forecast period</del>	none	delete	Found only in deleted Section(s)

Current Rule Letter	Term	New Letter Proposed	Action	Reason for action
Q	FTA	O	re-letter	Keep alphabetical listing
R	Highway project	P	re-letter	Keep alphabetical listing
S	<del>Horizon year</del>	none	delete	Found only in deleted Section(s)
T	Hot-spot analysis	Q	re-letter	Keep alphabetical listing
U	Increase the frequency or severity	R	re-letter	Keep alphabetical listing
V	Isolated rural nonattainment and maintenance areas	S	re-letter	Keep alphabetical listing
W	<del>Lapse</del>	none	delete	Found only in deleted Section(s)
X	Limited maintenance plan	T	re-letter	Keep alphabetical listing
Y	Maintenance area	U	re-letter	Keep alphabetical listing
Z	Maintenance plan	V	re-letter	Keep alphabetical listing
none	<u>Memorandum of Agreement (MOA)</u>	W	add	Required for clarity
AA	Metropolitan planning organization (MPO)	X	re-letter	Keep alphabetical listing
AB	<del>Milestone</del>	none	delete	General term; found only in other definitions - not needed
AC	Motor vehicle emissions budget	Y	re-letter	Keep alphabetical listing
AD	National ambient air quality standards (NAAQS)	Z	re-letter	Keep alphabetical listing
AD	<b>National ambient air quality standards (NAAQS)</b> <del>(1) 1-hour ozone NAAQS</del> <del>(2) 8-hour ozone NAAQS</del> <del>(3) 24-hour PM<sub>10</sub> NAAQS</del> <del>(4) 1997 PM<sub>2.5</sub> NAAQS</del> <del>(5) 2006 PM<sub>2.5</sub> NAAQS</del> <del>(6) Annual PM<sub>10</sub> NAAQS</del>	Z	delete sub-sections	Required to match federal language
AE	NEPA	AA	re-letter	Keep alphabetical listing
AF	NEPA process completion	AB	re-letter	Keep alphabetical listing
AG	NMDOT	AC	re-letter	Keep alphabetical listing
AH	Nonattainment area	AD	re-letter	Keep alphabetical listing
AI	Project	AE	re-letter	Keep alphabetical listing
AJ	<del>Protective finding</del>	none	delete	Found only in deleted Section(s)
AK	Recipient of funds designated under title 23 U.S.C. or the federal transit laws	AF	re-letter	Keep alphabetical listing
none	<u>Re-entrained road dust</u>	AG	add	Move from Section 2.D
AL	Regionally significant project	AH	re-letter	Keep alphabetical listing

Current Rule Letter	Term	New Letter Proposed	Action	Reason for action
AM	<del>Safety margin</del>	none	delete	Found only in deleted Section(s)
AN	Standard	AI	re-letter	Keep alphabetical listing
AO	State implementation plan (SIP)	AJ	re-letter	Keep alphabetical listing
AP	Title 23 U.S.C.	AK	re-letter	Keep alphabetical listing
AQ	Transit	AL	re-letter	Keep alphabetical listing
AR	Transit project	AM	re-letter	Keep alphabetical listing
AS	Transportation control measure (TCM)	AN	re-letter	Keep alphabetical listing
AT	Transportation improvement program (TIP)	AO	re-letter	Keep alphabetical listing
AU	Transportation plan	AP	re-letter	Keep alphabetical listing
AV	Transportation project	AQ	re-letter	Keep alphabetical listing
AW	US EPA	AR	re-letter	Keep alphabetical listing
AX	US DOT	AS	re-letter	Keep alphabetical listing
AY	Written commitment	AT	re-letter	Keep alphabetical listing

**B. Amending the definition of “National Ambient Air Quality Standards”**

The 2012 amendments to 40 CFR Part 93, among other changes, updated the definition for National Ambient Air Quality Standards (NAAQS) by removing the sub-definitions for individual criteria pollutants. See 77 Fed. Reg. at 14981. This allows the new definition to apply to any new or revised NAAQS. Previous to this amendment, separate definitions existed for:

- 1-hour ozone NAAQS;
- 8-hour ozone NAAQS;
- 24-hour PM<sub>10</sub> NAAQS;
- 1997 PM<sub>2.5</sub> NAAQS;
- 2006 PM<sub>2.5</sub> NAAQS; and
- Annual PM<sub>10</sub> NAAQS.

These definitions are no longer necessary because the 2012 rulemaking restructured 40 CFR 93.109 and 40 CFR 93.119 and changed certain definitions in 40 CFR 93.101 so that the federal rule will clearly apply to areas designated for any future new or revised NAAQS. Previous to this definition change, revising a NAAQS required revising the federal and state transportation conformity rules accordingly. By eliminating the sub-definitions for individual NAAQS, the requirements for revising transportation conformity rules will be reduced.

The proposed replacement rule contains the definition change described above, at 20.2.99.7.Z NMAC. Exhibit NMED 10 provides a side-by-side comparison of the current and proposed definition.

1           **C. Other proposed changes**

2     The only other substantive change is in Section 2.E. In a previous revision, a clause was left out  
3     inadvertently. Specifically, the omitted clause “unless the applicable implementation plan specifies that  
4     the provisions of this Part (20.2.99 NMAC) shall apply for more than 20 years” should appear after “The  
5     provisions of this part apply to maintenance areas through the last year of a maintenance area’s approved  
6     CAA section 175A(b) maintenance plan.” Reinsertion of this phrase is necessary to mirror federal  
7     language. Exhibit NMED 11 shows the historical 20.2.99.2.E as filed with the State Records Center on  
8     September 15, 2005, with the language we now propose for reinsertion.

9     The remaining changes are non-substantive in nature. They include corrections of typographical errors;  
10    corrections related to formatting; spelling corrections; syntax adjustments where deletions of references  
11    are necessary; and grammatical corrections. All of these changes are shown in Exhibit NMED 10 in a  
12    side-by-side comparison of the current rule and proposed replacement rule, using the redline/strikeout  
13    method. Other changes include updating effective dates in the appropriate section (20.2.99.5 NMAC -  
14    Effective Date) and updating the history of each section, showing the repeal and replacement with  
15    effective dates. While Exhibit NMED 10 contains most of these changes, it does not include the updating  
16    of the history of each section; these may be seen in the proposed replacement rule.

17           **III. EFFECT OF THE PROPOSED CHANGES IN NEW MEXICO**

18    Presently, there is only one nonattainment area in New Mexico. The nonattainment area is located in  
19    southern Doña Ana County in Anthony, New Mexico. Anthony was designated nonattainment by EPA  
20    for PM<sub>10</sub> in 1991. Today’s proposed revisions to Part 99 will not affect the nonattainment area in  
21    Anthony. This area was designated nonattainment for PM<sub>10</sub> due to high wind events, not emissions from  
22    mobile sources. Although no areas in New Mexico would be currently affected by today’s proposed  
23    revisions, Part 99 will affect any nonattainment areas that may be designated for transportation-related  
24    criteria pollutants in the future.

25    The Department has informed the New Mexico Department of Transportation of these proposed revisions  
26    and has solicited comments from them. The Department will continue to work with NMDOT to ensure  
27    that federally-funded transportation projects within designated nonattainment areas will conform to SIP  
28    requirements for air quality standards and not exacerbate air quality conditions. The Department has also  
29    informed the Region 6 U.S. EPA and has received an informal pre-approval of these changes stating that  
30    the proposed replacement rule contains all of the necessary requirements.

31           **IV. OUTREACH**

32    Outreach was conducted for the proposed Part 99 revisions in the form of public notices (Exhibits NMED  
33    12a-c) and an Open House hosted in Santa Fe on May 16, 2014. The state received no comments from  
34    the public notices and no attendance at the Open House.

35    The Department also shared a draft of the proposed revisions with staff at EPA Region 6, who confirmed  
36    that it contains all of the federally required provisions. New Mexico Department of Transportation staff  
37    similarly received a copy of the proposed revisions, but did not respond.

1 The Department does not foresee that the proposed revisions to Part 99 will have an adverse impact on the  
2 citizens or businesses of New Mexico. Even so, comments were also solicited from the Small Business  
3 Environmental Assistance Program. As stated above, no areas in New Mexico would currently be  
4 affected by the proposed revisions to Part 99.

5 **V. CONCLUSION**

6 This concludes my testimony to the Environmental Improvement Board on the NMED proposed repeal  
7 and replacement of Part 99. I respectfully request that the Board adopt this proposed SIP revision at the  
8 conclusion of this hearing.

9 The Department also advises the Board that the rule revisions may be further revised to correct any  
10 typographical errors and to reflect formatting changes required by the Administrative Law Division of the  
11 New Mexico Commission of Public Records for compilation into the New Mexico Administrative Code.







**TITLE 20 — ENVIRONMENTAL PROTECTION**  
**CHAPTER 2 — AIR QUALITY (STATEWIDE)**  
**PART 99 — CONFORMITY TO THE STATE IMPLEMENTATION PLAN OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS**

1 ~~20.2.99.1 — ISSUING AGENCY: New Mexico Environmental Improvement Board.~~  
2 [~~12/14/94; 11/23/98; 20.2.99.1 NMAC — Rn, 20 NMAC 2.99.100-10/31/02~~]

3  
4 ~~20.2.99.2 — SCOPE. Agencies affected by this part are: federal transportation agencies (the federal highway~~  
5 ~~administration (FHWA) and the federal transit administration (FTA) of the United States department of~~  
6 ~~transportation (US DOT)), and state and local agencies responsible for transportation planning and air quality~~  
7 ~~management that are within the geographic jurisdiction of the environmental improvement board (see also 20.2.99.6~~  
8 ~~NMAC).~~

9 ~~— A. — The provisions of this part shall apply in all non-attainment and maintenance areas for~~  
10 ~~transportation-related criteria pollutants for which the area is designated non-attainment or has a maintenance plan.~~

11 ~~— B. — The provisions of this part apply with respect to emissions of the following criteria pollutants:~~  
12 ~~ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a~~  
13 ~~nominal 10 micrometers (PM10) and particles with an aerodynamic diameter less than or equal to a nominal 2.5~~  
14 ~~micrometers (PM2.5).~~

15 ~~— C. — The provisions of this part apply with respect to emissions of the following precursor pollutants in~~  
16 ~~nonattainment or maintenance areas:~~

17 ~~— (1) — volatile organic compounds and nitrogen oxides in ozone areas;~~

18 ~~— (2) — nitrogen oxides in nitrogen dioxide areas;~~

19 ~~— (3) — volatile organic compounds and/or, nitrogen oxides, in PM10 areas if:~~

20 ~~— (a) — the EPA region 6 administrator or the department has made a finding (including a finding~~  
21 ~~as part of a SIP or a submitted implementation plan revision) that transportation-related emissions of one or both of~~  
22 ~~these precursor emissions within the nonattainment area are a significant contributor to the PM10 nonattainment~~  
23 ~~problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT; or~~

24 ~~— (b) — the applicable SIP (or implementation plan submission) establishes an approved (or~~  
25 ~~adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy;~~

26 ~~— (4) — nitrogen oxides in PM2.5 areas, unless both the EPA regional administrator and the department~~  
27 ~~have made a finding that transportation-related emissions of nitrogen oxides within the nonattainment area are not a~~  
28 ~~significant contributor to the PM2.5 nonattainment problem and has so notified the MPO (or the NMDOT in the~~  
29 ~~absence of an MPO) and US DOT, or the applicable implementation plan (or implementation plan submission) does~~  
30 ~~not establish as approved (or adequate) budget for such emissions as part of the reasonable further progress,~~  
31 ~~attainment or maintenance strategy; and~~

32 ~~— (5) — VOC, sulfur dioxide (SO2) and/or ammonia (NH3) in PM2.5 areas either if the EPA regional~~  
33 ~~administrator or the department has made a finding that transportation-related emissions of any of these precursors~~  
34 ~~within the nonattainment area are a significant contributor to the PM2.5 nonattainment problem and has so notified~~  
35 ~~the MPO (or the NMDOT in the absence of an MPO) and US DOT, or if the applicable implementation plan (or~~  
36 ~~implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the~~  
37 ~~reasonable further progress, attainment or maintenance strategy.~~

38 ~~— D. — The provisions of this part apply to PM2.5 nonattainment and maintenance areas with respect to~~  
39 ~~PM2.5 from re-entrained road dust if the EPA regional administrator or the department has made finding that re-~~  
40 ~~entrained road dust emissions within the area are a significant contributor to the PM2.5 nonattainment problem and~~  
41 ~~has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT, or if the applicable SIP (or~~  
42 ~~implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the~~  
43 ~~reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by~~  
44 ~~travel and paved and unpaved roads (including emissions from anti-skid and deicing material(s)).~~

45 ~~— E. — The provisions of this part apply to maintenance areas through the last year of a maintenance~~  
46 ~~area's approved CAA section 175A(b) maintenance plan.~~

47 [~~12/14/94; 11/23/98; 20.2.99.2 NMAC — Rn, 20 NMAC 2.99.101-10/31/02; A, 10/15/05; A, 9/1/07; A, 06/01/09~~]

48  
49 ~~20.2.99.3 — STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, section 74-1-~~  
50 ~~8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1, et seq., including specifically, section~~

1 74-2-5(A), (B) and (C). Section 74-2-5(B) provides that the Environmental Improvement Board shall adopt  
2 regulations "to attain and maintain national ambient air quality standards and prevent or abate air pollution."  
3 [12/14/94; 11/23/98; 20.2.99.3 NMAC Rn, 20 NMAC 2.99.102 10/31/02]

4  
5 ~~20.2.99.4~~ ~~DURATION:~~ Permanent.  
6 [12/14/94; 11/23/98; 20.2.99.4 NMAC Rn, 20 NMAC 2.99.103 10/31/02]

7  
8 ~~20.2.99.5~~ ~~EFFECTIVE DATE:~~ November 23, 1998, except where a later date is cited at the end of a  
9 section or paragraph.  
10 [12/14/94; 11/23/98; 20.2.99.5 NMAC Rn, 20 NMAC 2.99.104 10/31/02]  
11 [The latest effective date of any section in this Part is 11/07/11.]

12  
13 ~~20.2.99.6~~ ~~OBJECTIVE:~~ The purpose of this Part is to implement Section 176(e) of the Clean Air Act  
14 (CAA), as amended (42 U.S.C. 7401 et seq.), the related requirements of 23 U.S.C. 109(j), and regulations under 40  
15 CFR part 51 subpart T and Part 93 subpart A, with respect to the conformity of transportation plans, programs, and  
16 projects which are developed, funded, or approved by the United States Department of Transportation (US DOT),  
17 the NMSHTD, metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the  
18 Federal Transit Laws (49 U.S.C. Chapter 53) to the New Mexico State Implementation Plan (SIP), as developed  
19 pursuant to Section 110 and Part D of the CAA. This Part sets forth policy, criteria, and procedures for  
20 demonstrating and assuring conformity of such activities to the SIP.  
21 [12/14/94; 11/23/98; 20.2.99.6 NMAC Rn, 20 NMAC 2.99.105 10/31/02]

22  
23 ~~20.2.99.7~~ ~~DEFINITIONS.~~ Terms used but not defined in this part shall have the meaning given them by  
24 the CAA titles 23 and 49 U.S.C., US EPA regulations, US DOT regulations, and 20.2.2 NMAC (Definitions), in that  
25 order of priority.

26 ~~A.~~ ~~"Applicable implementation plan"~~ is defined in Section 302(q) of the CAA and means the  
27 portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under  
28 Section 110 (of the CAA), promulgated under Section 110(e), or promulgated or approved pursuant to regulations  
29 promulgated under Section 301(d) and which implements the relevant requirements of the CAA.

30 ~~B.~~ ~~"CAA"~~ means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

31 ~~C.~~ ~~"Cause or contribute to a new violation"~~ for a project means:

32 ~~(1)~~ to cause or contribute to a new violation of a standard in the area substantially affected by the  
33 project or over a region which would otherwise not be in violation of the standard during the future period in  
34 question, if the project were not implemented, or

35 ~~(2)~~ to contribute to a new violation in a manner that would increase the frequency or severity of a  
36 new violation of a standard in such area.

37 ~~D.~~ ~~"CFR"~~ means the code of federal regulations.

38 ~~E.~~ ~~"Clean data"~~ means air quality monitoring data determined by US EPA to meet the requirements  
39 of 40 CFR Part 58 that indicate attainment of the national ambient air quality standard.

40 ~~F.~~ ~~"Conformity analyses"~~ means regional or localized "hot-spot" computer modeling assessment or  
41 any other analyses which serve as the basis for the conformity determination.

42 ~~G.~~ ~~"Conformity determination"~~ means the demonstration of consistency with motor vehicle  
43 emissions budgets for each pollutant and precursor identified in the applicable SIP. The conformity determination is  
44 the affirmative written documentation declaring conformity with the applicable SIP which is submitted to FHWA  
45 and FTA for approval with EPA consultation. An affirmative conformity determination means conformity to the  
46 plans purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving  
47 expeditious attainment of such standards; and that such activities will not:

48 ~~(1)~~ cause or contribute to any new violations of any standard in any area;

49 ~~(2)~~ increase the frequency or severity of any existing violation of any standard in any area; or

50 ~~(3)~~ delay timely attainment of any standard or any required interim emission reductions or other  
51 milestones in any area.

52 ~~H.~~ ~~"Consultation"~~ means that one party confers with another identified party, provides or makes  
53 available all relevant information to that party, and, prior to taking any action, considers the views of that party and  
54 (except with respect to those actions for which only notification is required) responds to written comments in a  
55 timely, substantive written manner prior to any final decision on such action. Such views and written response shall

1 be made part of the record of any decision or action. Specific procedures and processes are described in 20.2.99.116  
2 through 20.2.99.124 NMAC.

3 ~~\_\_\_\_\_ I. "Control strategy implementation plan revision" is the implementation plan which contains  
4 specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA  
5 requirements for demonstrations of reasonable further progress and attainment (including implementation plan  
6 revisions submitted to satisfy CAA Sections 172(e), 182(b)(1), 182(e)(2)(A), 182(e)(2)(B), 187(a)(7), 189(a)(1)(B),  
7 189(b)(1)(A) and 189(d); and Sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA  
8 provisions requiring a demonstration of reasonable further progress or attainment).~~

9 ~~\_\_\_\_\_ J. "Department" means the New Mexico environment department.~~

10 ~~\_\_\_\_\_ K. "Design concept" means the type of facility identified by the project, e.g., freeway, expressway,  
11 arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive  
12 busway, etc.~~

13 ~~\_\_\_\_\_ L. "Design scope" means the design aspects of a facility which will affect the proposed facility's  
14 impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number  
15 of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate  
16 number and location of interchanges, preferential treatment for high occupancy vehicles, etc.~~

17 ~~\_\_\_\_\_ M. "Donut areas" are geographic areas outside a metropolitan planning area boundary, but inside the  
18 boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are  
19 not isolated rural nonattainment and maintenance areas.~~

20 ~~\_\_\_\_\_ N. "FHWA" means the federal highway administration of US DOT.~~

21 ~~\_\_\_\_\_ O. "FHWA/FTA project", for the purpose of this part, is any highway or transit project which is  
22 proposed to receive funding assistance and approval through the federal aid highway program or the federal mass  
23 transit program, or requires federal highway administration (FHWA) or federal transit administration (FTA)  
24 approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable  
25 design standards on the interstate system.~~

26 ~~\_\_\_\_\_ P. "Forecast period" with respect to a transportation plan is the period covered by the transportation  
27 plan pursuant to 23 CFR part 450.~~

28 ~~\_\_\_\_\_ Q. "FTA" means the federal transit administration of US DOT.~~

29 ~~\_\_\_\_\_ R. "Highway project" is an undertaking to implement or modify a highway facility or highway-  
30 related program. Such an undertaking consists of all required phases necessary for implementation. For analytical  
31 purposes, it shall be defined sufficiently to:~~

32 ~~\_\_\_\_\_ (1) connect logical termini and be of sufficient length to address environmental matters on a broad  
33 scope;~~

34 ~~\_\_\_\_\_ (2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no  
35 additional transportation improvements in the area are made; and~~

36 ~~\_\_\_\_\_ (3) not restrict consideration of alternatives for other reasonably foreseeable transportation  
37 improvements.~~

38 ~~\_\_\_\_\_ S. "Horizon year" is a year for which the transportation plan describes the envisioned transportation  
39 system in accordance with 20.2.99.125 NMAC.~~

40 ~~\_\_\_\_\_ T. "Hot spot analysis" is an estimation of likely future localized CO, PM<sub>10</sub>, and/or PM<sub>2.5</sub> pollutant  
41 concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot spot  
42 analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for  
43 example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion  
44 model to determine the effects of emissions on air quality.~~

45 ~~\_\_\_\_\_ U. "Increase the frequency or severity" means to cause a location or region to exceed a standard  
46 more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist  
47 during the future period in question, if the project were not implemented.~~

48 ~~\_\_\_\_\_ V. "Isolated rural nonattainment and maintenance areas" are areas that do not contain or are not  
49 part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural  
50 areas do not have federally required metropolitan transportation plans or TIPs and do not have projects that are part  
51 of the emissions in such areas are instead included in statewide transportation improvement programs. These are not  
52 donut areas.~~

53 ~~\_\_\_\_\_ W. "Lapse" means that the conformity determination for a transportation plan or TIP has expired,  
54 and thus there is no currently conforming transportation plan and TIP.~~

55 ~~\_\_\_\_\_ X. "Limited maintenance plan" is a maintenance plan that EPA has determined meets EPA's  
56 limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance~~

1 plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be  
2 reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions  
3 growth.

4 ~~Y.~~ **"Maintenance area"** means any geographic region of the United States previously designated  
5 nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the  
6 requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

7 ~~Z.~~ **"Maintenance plan"** means an implementation plan under Section 175A of the CAA, as  
8 amended.

9 ~~AA.~~ **"Metropolitan planning organization (MPO)"** means the policy board of an organization  
10 created as a result of the designation process in 23 U.S.C.134(d).

11 ~~AB.~~ **"Milestone"** has the meaning given in CAA Sections 182(g)(1) and 189(c) for serious and above  
12 ozone nonattainment areas and PM<sub>10</sub> nonattainment areas, respectively. For all other nonattainment areas, a  
13 milestone consists of an emissions level and the date on which that level is to be achieved as required by the  
14 applicable CAA provision for reasonable further progress towards attainment.

15 ~~AC.~~ **"Motor vehicle emissions budget"** is that portion of the total allowable emissions defined in the  
16 submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the  
17 purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the  
18 NAAQS, for any criteria pollutant or its precursors, allocated by the SIP to highway and transit vehicle use and  
19 emissions.

20 ~~AD.~~ **"National ambient air quality standards (NAAQS)"** are those standards established pursuant to  
21 Section 109 of the CAA.

22 ~~(1)~~ **"1-hour ozone NAAQS"** means the 1-hour ozone national ambient air quality standard codified at  
23 40 CFR 50.9.

24 ~~(2)~~ **"8-hour ozone NAAQS"** means the 8-hour ozone national ambient air quality standard codified  
25 at 40 CFR 50.10.

26 ~~(3)~~ **"24-hour PM<sub>10</sub> NAAQS"** means the 24-hour PM<sub>10</sub> national ambient air quality standard codified  
27 at 40 CFR 50.6.

28 ~~(4)~~ **"1997 PM<sub>2.5</sub> NAAQS"** means the PM<sub>2.5</sub> national ambient air quality standards codified at 40 CFR  
29 50.7.

30 ~~(5)~~ **"2006 PM<sub>2.5</sub> NAAQS"** means the 24-hour PM<sub>2.5</sub> national ambient air quality standard codified at  
31 40 CFR 50.13.

32 ~~(6)~~ **"Annual PM<sub>10</sub> NAAQS"** means the annual PM<sub>10</sub> national ambient air quality standard that EPA  
33 revoked on December 18, 2006.

34 ~~AE.~~ **"NEPA"** means the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, et  
35 seq.

36 ~~AF.~~ **"NEPA process completion"**, for the purposes of this part, with respect to FHWA or FTA,  
37 means the point at which there is a specific action to make a determination that a project is categorically excluded, to  
38 make a finding of no significant impact, or to issue a record of decision on a final environmental impact statement  
39 under NEPA.

40 ~~AG.~~ **"NMDOT"** means the New Mexico department of transportation or its successor agency or  
41 authority, as represented by the department secretary or his or her designee.

42 ~~AH.~~ **"Nonattainment area"** means any geographic region of the United States which has been  
43 designated as nonattainment under Section 107 of the CAA for any pollutant for which a national ambient air quality  
44 standard exists.

45 ~~AI.~~ **"Project"** means a highway project or transit project.

46 ~~AJ.~~ **"Protective finding"** means a determination by US EPA that a submitted control strategy  
47 implementation plan revision contains adopted control measures or written commitments to adopt enforceable  
48 control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for  
49 which the implementation plan revision was submitted, such as reasonable further progress or attainment.

50 ~~AK.~~ **"Recipient of funds designated under title 23 U.S.C. or the federal transit laws"** means any  
51 agency at any level of state, county, city, or regional government that routinely receives title 23 U.S.C. or federal  
52 transit law funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase  
53 equipment, or undertake other services or operations via contracts or agreements. This definition does not include  
54 private landowners or developers, or contractors or entities that are only paid for services or products created by  
55 their own employees.

1 ~~AL. "Regionally significant project" means a transportation project (other than an exempt project)~~  
2 ~~that is on a facility which serves regional transportation needs (such as access to and from the area outside of the~~  
3 ~~region, major activity centers in the region, major planned developments such as new retail malls, sports complexes,~~  
4 ~~etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the~~  
5 ~~modeling of a metropolitan area's transportation network, including at a minimum:~~

6 ~~(1) all principal arterial highways; and~~

7 ~~(2) all fixed guideway transit facilities that offer an alternative to regional highway travel.~~

8 ~~AM. "Safety margin" means the amount by which the total projected emissions from all sources of a~~  
9 ~~given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further~~  
10 ~~progress, attainment, or maintenance.~~

11 ~~AN. "Standard" means a national ambient air quality standard.~~

12 ~~AO. "State implementation plan (SIP)" means an applicable implementation plan and the applicable~~  
13 ~~portion (or portions) of the New Mexico state implementation plan, or most recent revision thereof, which has been~~  
14 ~~approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to~~  
15 ~~regulations promulgated under Section 301(d) of the CAA and which implements the relevant requirements of the~~  
16 ~~CAA (see the definition for "applicable implementation plan").~~

17 ~~AP. "Title 23 U.S.C." means title 23 of the United States Code.~~

18 ~~AQ. "Transit" is mass transportation by bus, rail, or other conveyance which provides general or~~  
19 ~~special service to the public on a regular and continuing basis. It does not include school buses or charter or~~  
20 ~~sightseeing services.~~

21 ~~AR. "Transit project" is an undertaking to implement or modify a transit facility or transit-related~~  
22 ~~program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not~~  
23 ~~include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules,~~  
24 ~~or fares. It may consist of several phases. For analytical purposes, it shall be defined inclusively enough to:~~

25 ~~(1) connect logical termini and be of sufficient length to address environmental matters on a broad~~  
26 ~~scope;~~

27 ~~(2) have independent utility or independent significance, i.e., be a reasonable expenditure even if no~~  
28 ~~additional transportation improvements in the area are made; and~~

29 ~~(3) not restrict consideration of alternatives for other reasonably foreseeable transportation~~  
30 ~~improvements.~~

31 ~~AS. "Transportation control measure (TCM)" is any measure that is specifically identified and~~  
32 ~~committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated~~  
33 ~~into the applicable SIP through the process established in CAA section 176(c)(8), that is either one of the types~~  
34 ~~listed in Section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of~~  
35 ~~air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.~~  
36 ~~Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control~~  
37 ~~the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this part.~~

38 ~~AT. "Transportation improvement program (TIP)" means a transportation improvement program~~  
39 ~~developed by a metropolitan planning organization under 23 U.S.C. 134(j).~~

40 ~~AU. "Transportation plan" means the official intermodal metropolitan transportation plan that is~~  
41 ~~developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23~~  
42 ~~CFR part 450.~~

43 ~~AV. "Transportation project" is a highway project or a transit project.~~

44 ~~AW. "US EPA" means the United States environmental protection agency~~

45 ~~AX. "US DOT" means the United States department of transportation.~~

46 ~~AY. "Written commitment" for the purposes of this part means a written commitment that includes a~~  
47 ~~description of the action to be taken; a schedule for the completion of the action; a demonstration that funding~~  
48 ~~necessary to implement the action has been authorized by the appropriating or authorizing body; and an~~  
49 ~~acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.~~

50 ~~[12/14/94; 11/23/98; 20.2.99.7 NMAC Rn, 20 NMAC 2.99.107, 10/31/02; A, 10/15/05; A, 9/1/07; A, 06/01/09; A,~~  
51 ~~11/07/11]~~

52  
53 **20.2.99.8** ~~DOCUMENTS:~~ Documents incorporated and cited in this Part may be viewed at the New  
54 Mexico Environment Department, Air Quality Bureau, Harold Runnels Building, 1190 St. Francis Dr., or 2048  
55 Galisteo St., Santa Fe, NM 87502.

56 ~~[12/14/94; 11/23/98; 20.2.99.8 NMAC Rn, 20 NMAC 2.99.108 10/31/02]~~

1 [Current location is 1301 Siler Rd, Building B., Santa Fe, NM 87507.]

2  
3 ~~20.2.99.9 to 20.2.99.108~~ [RESERVED]

4  
5 ~~20.2.99.109~~ **APPLICABILITY**

6 ~~A.~~ Action applicability.

7 ~~(1)~~ Except as provided for in Subsection C of 20.2.99.109 NMAC or Subsection A of 20.2.99.149  
8 NMAC conformity determinations are required for:

9 ~~(a)~~ the adoption, acceptance, approval or support of transportation plans and transportation  
10 plan amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO (or NMDOT in the  
11 absence of an MPO) or US DOT;

12 ~~(b)~~ the adoption, acceptance, approval or support of TIPs and TIP amendments developed  
13 pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO (or NMDOT in the absence of an MPO) or US DOT;  
14 and

15 ~~(c)~~ the approval, funding, or implementation of FHWA/FTA projects.

16 ~~(2)~~ Conformity determinations are not required under this part for individual projects which are not  
17 FHWA/FTA projects. However, 20.2.99.140 NMAC applies to such projects if they are regionally significant.

18 ~~B.~~ Geographic and pollutant applicability are set out in 20.2.99.2 NMAC (Scope).

19 ~~C.~~ Limitations. In order to receive any FHWA/FTA approval or funding actions, including NEPA  
20 approvals, for a project phase subject to this subpart, a currently conforming transportation plan and TIP must be in  
21 place at the time of project approval as described in Subsection A of 20.2.99.133 NMAC, except as provided by  
22 Subsection B of 20.2.99.133 NMAC.

23 ~~D.~~ Grace period for new nonattainment areas. For areas or portions of areas which have been  
24 continuously designated attainment or not designated for any standard for ozone, CO, PM10, PM2.5 or NO2 since  
25 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any standard for any of  
26 these pollutants, the provisions of this subpart shall not apply with respect to that standard for 10 months following  
27 the effective date of final designation to nonattainment for each standard for such pollutant.

28 [12/14/94; 11/23/98; 20.2.99.109 NMAC - Rn, 20 NMAC 2.99.109 10/31/02; A, 10/15/05]

29  
30 ~~20.2.99.110~~ **PRIORITY:** When assisting or approving any action with air quality related consequences,  
31 FHWA and FTA shall give priority to the implementation of those transportation portions of a SIP prepared to attain  
32 and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds  
33 among States or other jurisdictions.

34 [12/14/94; 11/23/98; 20.2.99.110 NMAC - Rn, 20 NMAC 2.99.110 10/31/02]

35  
36 ~~20.2.99.111~~ **FREQUENCY OF CONFORMITY DETERMINATIONS:**

37 ~~A.~~ Conformity determinations and conformity redeterminations for transportation plan, TIPs, and  
38 FHWA/FTA projects shall be made according to the requirements of 20.2.99.111 NMAC through 20.2.99.115  
39 NMAC and the SIP.

40 ~~B.~~ During the twelve (12) month grace period referenced in 20.2.99.112 NMAC, 20.2.99.113  
41 NMAC, and 20.2.99.115 NMAC, a project may be found to conform according to the requirements of this  
42 subsection (Subsection B of 20.2.99.111 NMAC) if:

43 ~~(1)~~ the project is included in the currently conforming transportation plan and TIP (or regional  
44 emissions analysis); or

45 ~~(2)~~ the project is included in the most recent conforming transportation plan and TIP (or regional  
46 emissions analysis).

47 [12/14/94; 11/23/98; 20.2.99.111 NMAC - Rn, 20 NMAC 2.99.111, 10/31/02; A, 06/01/09]

48  
49 ~~20.2.99.112~~ **FREQUENCY OF CONFORMITY DETERMINATIONS - TRANSPORTATION PLANS.**

50 ~~A.~~ Each new transportation plan shall be found to conform before the transportation plan is approved  
51 by the MPO (or NMDOT in the absence of an MPO) and accepted by the US DOT.

52 ~~B.~~ All transportation plan amendments shall be found to conform before the transportation plan  
53 amendments are approved by the MPO (or NMDOT in the absence of an MPO) or accepted by the US DOT, unless  
54 the amendment merely adds or deletes exempt projects listed in 20.2.99.151 NMAC. The conformity determination  
55 shall be based on the transportation plan and the amendment taken as a whole.

1 ~~\_\_\_\_\_ C. \_\_\_\_\_ The MPO and US DOT shall determine the conformity of the transportation plan (including a new~~  
2 ~~regional emission analysis) no less frequently than every four (4) years. If more than four (4) years elapse after US~~  
3 ~~DOT's conformity determination without the MPO and US DOT determining conformity of the transportation plan,~~  
4 ~~a twelve (12) month grace period will be implemented as described in Subsection B of 20.2.99.111 NMAC. At the~~  
5 ~~end of this twelve (12) month grace period, the existing conformity determination will lapse.~~  
6 ~~[12/14/94; 11/23/98; 20.2.99.112 NMAC Rn, 20 NMAC 2.99.112, 10/31/02; A, 10/15/05; A, 06/01/09]~~  
7

8 ~~**20.2.99.113 — FREQUENCY OF CONFORMITY DETERMINATIONS — TRANSPORTATION**~~  
9 ~~**IMPROVEMENT PROGRAMS.**~~

10 ~~\_\_\_\_\_ A. \_\_\_\_\_ A new TIP must be found to conform before the TIP is approved by the MPO (or NMDOT in the~~  
11 ~~absence of an MPO) or accepted by the US DOT.~~

12 ~~\_\_\_\_\_ B. \_\_\_\_\_ A TIP amendment requires a new conformity determination for the entire TIP before the~~  
13 ~~amendment is approved by the MPO (or NMDOT in the absence of an MPO) or accepted by the US DOT, unless~~  
14 ~~the amendment merely adds or deletes exempt projects listed in 20.2.99.149 NMAC and has been made in~~  
15 ~~accordance with the notification provisions of 20.2.99.122 NMAC.~~

16 ~~\_\_\_\_\_ C. \_\_\_\_\_ The MPO and US DOT shall determine the conformity of the TIP (including a new regional~~  
17 ~~emissions analysis) no less frequently than every four (4) years. If more than four (4) years elapse after US DOT's~~  
18 ~~conformity determination without the MPO and US DOT determining conformity on the TIP, a twelve (12) month~~  
19 ~~grace period will be implemented as described in Subsection B of 20.2.99.111 NMAC. At the end of this twelve~~  
20 ~~(12) month grace period, the existing conformity determination will lapse.~~  
21 ~~[12/14/94; 11/23/98; 20.2.99.113 NMAC Rn, 20 NMAC 2.99.113, 10/31/02; A, 10/15/05; A, 06/01/09]~~  
22

23 ~~**20.2.99.114 — FREQUENCY OF CONFORMITY DETERMINATIONS — PROJECTS. FHWA/FTA**~~  
24 ~~projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be~~  
25 ~~redetermined for any FHWA/FTA project if one of the following occurs:~~

26 ~~\_\_\_\_\_ (A) \_\_\_\_\_ a significant change in the project's design concept and scope;~~

27 ~~\_\_\_\_\_ (B) \_\_\_\_\_ three (3) years elapse since the most recent major step to advance the project including;~~

28 ~~\_\_\_\_\_ (1) \_\_\_\_\_ NEPA process completion;~~

29 ~~\_\_\_\_\_ (2) \_\_\_\_\_ start of final design;~~

30 ~~\_\_\_\_\_ (3) \_\_\_\_\_ acquisition of a significant portion of the right-of-way; and~~

31 ~~\_\_\_\_\_ (4) \_\_\_\_\_ construction (including federal approval of plans, specifications and estimates); or~~

32 ~~\_\_\_\_\_ (C) \_\_\_\_\_ initiation of a supplemental environmental document for air quality purposes.~~

33 ~~[12/14/94; 11/23/98; 20.2.99.114 NMAC Rn, 20 NMAC 2.99.114; A, 10/15/05]~~  
34

35 ~~**20.2.99.115 — FREQUENCY OF CONFORMITY DETERMINATIONS — TRIGGERS FOR**~~  
36 ~~**TRANSPORTATION PLAN AND TIP CONFORMITY DETERMINATIONS.** Conformity of existing~~  
37 ~~transportation plans and TIPs shall be redetermined within two (2) years of the following, or after a twelve (12)~~  
38 ~~month grace period (as described in 20.2.99.116 NMAC) the existing conformity determination will lapse, and no~~  
39 ~~new project level conformity determinations may be made until conformity of the transportation plan and TIP has~~  
40 ~~been determined by the MPO and US DOT:~~

41 ~~\_\_\_\_\_ A. \_\_\_\_\_ the date of the department's initial submission to US EPA of each control strategy implementation~~  
42 ~~plan or maintenance plan establishing a motor vehicle emissions budget;~~

43 ~~\_\_\_\_\_ B. \_\_\_\_\_ the effective date of US EPA approval of a control strategy implementation plan revision or~~  
44 ~~maintenance plan which establishes or revises a motor vehicle emissions budget if that budget has not yet been used~~  
45 ~~in a conformity determination prior to approval; and~~

46 ~~\_\_\_\_\_ C. \_\_\_\_\_ the effective date of US EPA promulgation of an implementation plan which establishes or revises~~  
47 ~~a motor vehicle emissions budget.~~

48 ~~[12/14/94; 11/23/98; 20.2.99.115 NMAC Rn, 20 NMAC 2.99.115, 10/31/02; A, 10/15/05; A, 06/01/09]~~  
49

50 ~~**20.2.99.116 — CONSULTATION.**~~

51 ~~\_\_\_\_\_ A. \_\_\_\_\_ 20.2.99.116 NMAC through 20.2.99.124 NMAC provide procedures for the interagency (federal,~~  
52 ~~state, and local) consultation process, resolution of conflicts, and public consultation. Public consultation~~  
53 ~~procedures will be developed in accordance with the requirements for public involvement in 23 CFR part 450. The~~  
54 ~~affected agencies listed in Subsection C of 20.2.99.116 NMAC shall undertake a consultation process with each~~  
55 ~~other prior to the development of: 1) conformity determinations, 2) major activities listed in 20.2.9.117 NMAC~~  
56 ~~below; 3) specific major activities listed in 20.2.99.120 NMAC below; and 4) specific routine activities listed in~~

1 20.2.99.121 NMAC below. This consultation process shall follow the consultation procedures described in  
2 20.2.99.119 NMAC below.

3 ~~————— B. ——— Prior to EPA's approval of this part, any MPO (or NMDOT in the absence of an MPO) and  
4 NMDOT, before making any conformity determinations, shall provide reasonable opportunity for consultation with  
5 the department, the local transportation agency in the county where the nonattainment or maintenance area is  
6 located, the local air quality agency in the county in which the nonattainment or maintenance area is located, New  
7 Mexico FHWA division offices, FTA region 6 offices, and EPA region 6, including consultation on the issues  
8 described in 20.2.99.117 NMAC. This opportunity for consultation shall be provided prior to the determination of  
9 conformity.~~

10 ~~————— C. ——— Affected agencies:~~

11 ~~————— (1) Agencies which are affected by this part and which are required to participate in the consultation  
12 process are:~~

13 ~~————— (a) the designated MPO for the nonattainment or maintenance area;~~

14 ~~————— (b) the department;~~

15 ~~————— (c) NMDOT;~~

16 ~~————— (d) the local transportation agency for the county or city in which the nonattainment or  
17 maintenance area is located;~~

18 ~~————— (e) the local transit agency for the city or county in which the nonattainment or maintenance  
19 area is located;~~

20 ~~————— (f) EPA Region 6;~~

21 ~~————— (g) New Mexico FHWA division offices;~~

22 ~~————— (h) FTA region 6;~~

23 ~~————— (i) local air quality agencies; and~~

24 ~~————— (j) any other organization or resource agency within the state responsible under state law for  
25 developing, submitting or implementing transportation related provisions of an implementation plan.~~

26 ~~————— (2) Agencies which may be affected by this part and which are entitled to participate in the  
27 interagency consultation process include:~~

28 ~~————— (a) NMDOT district office for the county in which the nonattainment or maintenance area is  
29 located; and~~

30 ~~————— (b) the city or county government in the city or county where the nonattainment or  
31 maintenance area is located.~~

32 ~~————— D. ——— Policy level points of contact and policy level meetings.~~

33 ~~————— (1) The policy level points of contact for participating organizations are as follows:~~

34 ~~————— (a) MPO: executive director or designee;~~

35 ~~————— (b) department: secretary or designee;~~

36 ~~————— (c) NMDOT: secretary or designee;~~

37 ~~————— (d) NMDOT district office: district engineer;~~

38 ~~————— (e) local government: chief administrative officer or designee;~~

39 ~~————— (f) EPA region 6: regional administrator or designee;~~

40 ~~————— (g) FHWA NM division office: division administrator or designee;~~

41 ~~————— (h) FTA region 6: regional administrator or designee;~~

42 ~~————— (i) other organizations: as directed in writing.~~

43 ~~————— (2) Policy level meetings shall be those meetings to which the following individuals have been given  
44 ample notice thereof:~~

45 ~~————— (a) policy level points of contact for all agencies which are required to participate in the  
46 conformity process; and~~

47 ~~————— (b) the policy level points of contact for all agencies and organizations which are entitled to  
48 participate and have submitted a written request to participate in the conformity process.~~

49 [~~12/14/94; 11/23/98 ; 20.2.99.116 NMAC – Rn, 20 NMAC 2.99.116 10/31/02; A, 10/15/05~~]

50  
51 **20.2.99.117 — AGENCY ROLES IN CONSULTATION.** Specific roles of the agencies participating in the  
52 interagency consultation process are listed below. Specific responsibilities of the agencies participating in the  
53 interagency consultation process are listed in 20.2.99.118 NMAC. For the purposes of this part, the lead agency for  
54 all conformity processes and procedures is that agency which is responsible for initiating the consultation process,  
55 preparing the initial and final drafts of the document or decision, and for assuring the adequacy of the interagency  
56 consultation process.

1 ~~\_\_\_\_\_ A. \_\_\_\_\_ The department shall be the lead agency for the development of:~~  
2 ~~\_\_\_\_\_ (1) applicable control strategy implementation plan revisions for the nonattainment or maintenance~~  
3 ~~area;~~  
4 ~~\_\_\_\_\_ (2) the list of TCMs to be submitted as part of the SIP; and~~  
5 ~~\_\_\_\_\_ (3) any amendments or revisions thereto.~~  
6 ~~\_\_\_\_\_ B. \_\_\_\_\_ In the case of areas in which an MPO has been established, the designated MPO for the~~  
7 ~~nonattainment or maintenance area shall be the lead agency for:~~  
8 ~~\_\_\_\_\_ (1) the development of the unified planning work program under 23 CFR 450.314;~~  
9 ~~\_\_\_\_\_ (2) development of the transportation plan for the nonattainment or maintenance area;~~  
10 ~~\_\_\_\_\_ (3) development of the TIP for the nonattainment or maintenance area;~~  
11 ~~\_\_\_\_\_ (4) any amendments or revisions thereto;~~  
12 ~~\_\_\_\_\_ (5) any determinations of conformity under this part for which that MPO is responsible;~~  
13 ~~\_\_\_\_\_ (6) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance~~  
14 ~~areas as required by Subparagraph (c) of Paragraph (2) of Subsection N of 20.2.99.128 NMAC; and~~  
15 ~~\_\_\_\_\_ (7) development of TCMs, in cooperation with the department.~~  
16 ~~\_\_\_\_\_ C. \_\_\_\_\_ In the case of areas in which an MPO has not been established, NMDOT shall be the lead agency~~  
17 ~~for:~~  
18 ~~\_\_\_\_\_ (1) the development of the transportation plan for the nonattainment or maintenance area;~~  
19 ~~\_\_\_\_\_ (2) development of the TIP (transportation improvement program) for the nonattainment or~~  
20 ~~maintenance area;~~  
21 ~~\_\_\_\_\_ (3) any amendments or revisions thereto;~~  
22 ~~\_\_\_\_\_ (4) any determinations of conformity under this part for which an MPO would be otherwise~~  
23 ~~responsible;~~  
24 ~~\_\_\_\_\_ (5) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance~~  
25 ~~areas as required by Subparagraph (c) of Paragraph (2) of Subsection N of 20.2.99.128 NMAC; and~~  
26 ~~\_\_\_\_\_ (6) development of TCMs, in cooperation with the department.~~  
27 ~~[12/14/94; 11/23/98; 20.2.99.117 NMAC – Rn, 20 NMAC 2.99.117 10/31/02; A, 10/15/05; A, 11/07/11]~~  
28

29 **20.2.99.118 AGENCY RESPONSIBILITIES IN CONSULTATION.**

30 ~~\_\_\_\_\_ A. \_\_\_\_\_ The department shall be responsible for developing or providing:~~  
31 ~~\_\_\_\_\_ (1) emissions inventories;~~  
32 ~~\_\_\_\_\_ (2) emissions budgets;~~  
33 ~~\_\_\_\_\_ (3) air quality modeling;~~  
34 ~~\_\_\_\_\_ (4) attainment demonstrations;~~  
35 ~~\_\_\_\_\_ (5) control strategy implementation plan revisions;~~  
36 ~~\_\_\_\_\_ (6) regulatory TCMs; and~~  
37 ~~\_\_\_\_\_ (7) updated motor vehicle emissions factors.~~  
38 ~~\_\_\_\_\_ B. \_\_\_\_\_ The designated MPO (or, in nonattainment or maintenance areas where an MPO has not been~~  
39 ~~established, NMDOT) shall be responsible for:~~  
40 ~~\_\_\_\_\_ (1) developing transportation plans and TIPs;~~  
41 ~~\_\_\_\_\_ (2) developing and evaluating TCM transportation impacts;~~  
42 ~~\_\_\_\_\_ (3) developing transportation and socioeconomic data and planning assumptions and providing such~~  
43 ~~data and planning assumptions for use in air quality analysis to determine conformity of transportation plans, TIPs,~~  
44 ~~and projects;~~  
45 ~~\_\_\_\_\_ (4) monitoring regionally significant projects;~~  
46 ~~\_\_\_\_\_ (5) developing system- or facility-based or other programmatic (non-regulatory) TCMs;~~  
47 ~~\_\_\_\_\_ (6) providing technical input on emissions budgets; and~~  
48 ~~\_\_\_\_\_ (7) performing transportation modeling, regional emissions analyses and documentation of timely~~  
49 ~~implementation of TCMs needed for conformity assessments.~~  
50 ~~\_\_\_\_\_ C. \_\_\_\_\_ NMDOT shall be responsible for:~~  
51 ~~\_\_\_\_\_ (1) providing technical input on proposed revisions to motor vehicle emissions factors;~~  
52 ~~\_\_\_\_\_ (2) distributing draft and final highway or transit project environmental documents to other agencies;~~  
53 ~~and~~  
54 ~~\_\_\_\_\_ (3) convening air quality technical review meetings on specific highway or transit plans, programs~~  
55 ~~and projects when requested by other agencies or as needed.~~  
56 ~~\_\_\_\_\_ D. \_\_\_\_\_ FHWA New Mexico offices and FTA region 6 shall be responsible for:~~

1 ~~\_\_\_\_\_ (1) assuring timely action on final findings of conformity, after consultation with other agencies as~~  
2 ~~provided in 20.2.99.116 through 20.2.99.124 NMAC; and~~

3 ~~\_\_\_\_\_ (2) providing guidance on conformity and the transportation planning process to agencies~~  
4 ~~participating in the interagency consultation process.~~

5 ~~\_\_\_\_\_ E. \_\_\_\_\_ EPA region 6 shall be responsible for providing guidance on conformity criteria and procedures to~~  
6 ~~agencies participating in the interagency consultation process.~~

7 ~~[12/14/94; 11/23/98; 20.2.99.118 NMAC—Rn, 20 NMAC 2.99.118 10/31/02; A, 10/15/05]~~

8  
9 ~~**20.2.99.119 — GENERAL CONSULTATION PROCEDURES:** The following are the responsibilities of lead~~  
10 ~~and participating agencies at each stage of the consultation process:~~

11 ~~\_\_\_\_\_ A. \_\_\_\_\_ It shall be the affirmative responsibility of the lead agency to initiate the consultation process by:~~

12 ~~\_\_\_\_\_ (1) Notifying other participants of the plan, program, or project which must undergo the interagency~~  
13 ~~consultation process;~~

14 ~~\_\_\_\_\_ (2) Preparing an initial draft of the document being developed, together with necessary supporting~~  
15 ~~information;~~

16 ~~\_\_\_\_\_ (3) Convening consultation meetings and agendas when the initial draft of the document being~~  
17 ~~developed is complete; and~~

18 ~~\_\_\_\_\_ (4) Appointing the conveners of technical meetings.~~

19 ~~\_\_\_\_\_ B. \_\_\_\_\_ It shall be the responsibility of the lead agency to facilitate the interagency consultation process~~  
20 ~~by:~~

21 ~~\_\_\_\_\_ (1) Conferring with all other agencies identified under subsection C of 20.2.99.116 NMAC who are~~  
22 ~~participating in the particular consultation process;~~

23 ~~\_\_\_\_\_ (2) Providing all appropriate information needed for meaningful input to the participating agencies,~~  
24 ~~including timely notification of all policy level and relevant technical meetings;~~

25 ~~\_\_\_\_\_ (3) Soliciting early and continuing input from participating agencies;~~

26 ~~\_\_\_\_\_ (4) Scheduling consultation meetings as specified in this Part;~~

27 ~~\_\_\_\_\_ (5) Conducting the consultation process as described in this section (20.2.99.119 NMAC);~~

28 ~~\_\_\_\_\_ (6) Assuring that all relevant documents and information, including drafts of the document being~~  
29 ~~developed and necessary background documents, are supplied to all participants in the consultation process in a~~  
30 ~~timely manner;~~

31 ~~\_\_\_\_\_ (7) Where required, assuring policy level contact with those agencies;~~

32 ~~\_\_\_\_\_ (8) Considering the views of each participating agency and (except with respect to those actions for~~  
33 ~~which only notification is required) responding to written comments in a timely, substantive written manner prior to~~  
34 ~~making any final decision on the document that is the subject of the consultation process; and~~

35 ~~\_\_\_\_\_ (9) Assuring that such views and written response are made part of the record of any decision or~~  
36 ~~action.~~

37 ~~\_\_\_\_\_ C. \_\_\_\_\_ Regular consultation on major activities, as defined in 20.2.99.120 NMAC, shall include policy~~  
38 ~~level meetings beginning no later than nine (9) months prior to the date a final document is required (or the date on~~  
39 ~~which such agency begins its own work on such document, if later) and continuing at regular, scheduled intervals no~~  
40 ~~less frequently than quarterly. In addition, technical meetings shall be convened as necessary. Not later than thirty~~  
41 ~~(30) days prior to the adoption or approval of the final document or decision, the lead agency shall supply the final~~  
42 ~~draft document, including all relevant information and documents, as appropriate, to the participating agencies.~~

43 ~~\_\_\_\_\_ D. \_\_\_\_\_ Regular consultation on routine activities, as defined in 20.2.99.121 NMAC, shall include~~  
44 ~~meetings at regular, scheduled intervals no less frequently than semiannually, and shall be on the agenda of at least~~  
45 ~~one policy level meeting. In addition, technical meetings shall be convened as necessary.~~

46 ~~\_\_\_\_\_ E. \_\_\_\_\_ The lead agency shall provide each final document for which a consultation process was required~~  
47 ~~to be undertaken (including, but not limited to, the relevant portions of SIPs or implementation plan revisions,~~  
48 ~~transportation plans, and TIPs, and determinations of conformity), together with all supporting information, as~~  
49 ~~appropriate, to each participating agency within fourteen (14) calendar days after adopting or approving such~~  
50 ~~document or making such determination. The lead agency may supply a checklist of available supporting~~  
51 ~~information, which the participating agencies may use to request all or part of such supporting information, in lieu of~~  
52 ~~generally distributing all supporting information.~~

53 ~~\_\_\_\_\_ F. \_\_\_\_\_ It shall be the responsibility of each participating agency (those listed in paragraph (1) of~~  
54 ~~subsection C of 20.2.99.116 NMAC) during the consultation process to:~~

55 ~~\_\_\_\_\_ (1) Confer with the lead and other participating agencies (those listed in paragraph (1) of subsection~~  
56 ~~C of 20.2.99.116 NMAC) in the consultation process;~~

- 1 ~~\_\_\_\_\_ (2) Review and comment as appropriate (including comments in writing) on all proposed and final~~  
2 ~~draft documents and decisions within thirty (30) days of receipt;~~  
3 ~~\_\_\_\_\_ (3) Attend consultation and decision meetings;~~  
4 ~~\_\_\_\_\_ (4) Assure policy level contact with other participants;~~  
5 ~~\_\_\_\_\_ (5) Provide input on any area of substantive expertise or responsibility (including, but not limited to,~~  
6 ~~planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or~~  
7 ~~other requirements); and~~  
8 ~~\_\_\_\_\_ (6) Provide technical assistance to the lead agency or consultation process in accordance with this~~  
9 ~~section when requested.~~

10 ~~\_\_\_\_\_ G. \_\_\_\_\_ A meeting that is scheduled or required for another purpose may be used for the purposes of~~  
11 ~~consultation if the conformity consultation purpose is specifically identified in the announcement for the meeting~~  
12 ~~and all participating agencies are notified of such meeting.~~

13 ~~[12/14/94; 11/23/98; 20.2.99.119 NMAC - Rn, 20 NMAC 2.99.119 10/31/02]~~

14  
15 ~~**20.2.99.120 — CONSULTATION PROCEDURES FOR SPECIFIC MAJOR ACTIVITIES.** An interagency~~  
16 ~~consultation process among the members of the lead and participating agencies shall be undertaken for the following~~  
17 ~~specific major activities in accordance with all the procedures specified in 20.2.119 NMAC above. The lead agency~~  
18 ~~for each activity shall be as specified, and the participating agencies shall be the agencies specified in Subsection C~~  
19 ~~of 20.2.99.116 NMAC above.~~

20 ~~\_\_\_\_\_ A. \_\_\_\_\_ Evaluation and choice of each model (or models) and associated methods and assumptions to be~~  
21 ~~used in hot-spot analyses and regional emissions analyses, including vehicle miles traveled (VMT) forecasting. The~~  
22 ~~lead agency shall be the MPO (or NMDOT in the absence of an MPO).~~

23 ~~\_\_\_\_\_ B. \_\_\_\_\_ Determination of which minor arterials and other transportation projects should be considered~~  
24 ~~"regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as~~  
25 ~~principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway~~  
26 ~~travel), and which projects should be considered to have a significant change in design concept and scope from the~~  
27 ~~transportation plan or TIP. The lead agency shall be the MPO (or NMDOT in the absence of an MPO).~~

28 ~~\_\_\_\_\_ C. \_\_\_\_\_ Evaluation of whether projects otherwise exempted from meeting the requirements of this part~~  
29 ~~(see 20.2.99.149 NMAC) should be treated as non-exempt in cases where potential adverse emissions impacts may~~  
30 ~~exist for any reason. The lead agency shall be the MPO (or NMDOT in the absence of an MPO).~~

31 ~~\_\_\_\_\_ D. \_\_\_\_\_ Determination, as required by Paragraph (1) of Subsection C of 20.2.99.132 NMAC of whether~~  
32 ~~past obstacles to implementation of TCMs which are behind the schedule established in the SIP have been identified~~  
33 ~~and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs~~  
34 ~~are giving maximum priority to approval or funding for TCMs. Consultation shall also include consideration of~~  
35 ~~whether delays in TCM implementation necessitate revisions to the SIP to remove TCMs or substitute TCMs or~~  
36 ~~other emission reduction measures. The lead agency shall be the MPO (or NMDOT in the absence of an MPO).~~

37 ~~\_\_\_\_\_ E. \_\_\_\_\_ Determination, as required by 20.2.99.140 NMAC, of whether:~~

38 ~~\_\_\_\_\_ (1) the project is included in the regional emissions analysis supporting the currently conforming~~  
39 ~~TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO~~  
40 ~~project selection or endorsement, and~~

41 ~~\_\_\_\_\_ (2) the project's design concept and scope have changed significantly from those which were included~~  
42 ~~in the regional emissions analysis, or in a manner which would significantly impact use of the facility; the lead~~  
43 ~~agency shall be the MPO (or NMDOT in the absence of an MPO).~~

44 ~~\_\_\_\_\_ F. \_\_\_\_\_ Determination of what forecast of vehicle miles traveled (VMT) to use in establishing or tracking~~  
45 ~~emissions budgets, developing transportation plans, TIPS, or making conformity determinations. The lead agency~~  
46 ~~shall be the MPO (or NMDOT in the absence of an MPO).~~

47 ~~\_\_\_\_\_ G. \_\_\_\_\_ Verification of what forecast of vehicle miles traveled (VMT) to use in developing SIPs. The lead~~  
48 ~~agency shall be the air quality bureau of the department.~~

49 ~~\_\_\_\_\_ H. \_\_\_\_\_ Consultation, within the context of a memorandum of agreement, on emissions analysis for~~  
50 ~~transportation activities which cross the borders of MPOs or nonattainment areas or air basins. The lead agency~~  
51 ~~shall be NMDOT.~~

52 ~~\_\_\_\_\_ I. \_\_\_\_\_ An interagency consultation process shall be undertaken for evaluating events which will trigger~~  
53 ~~new conformity determinations in addition to those triggering events established in 20.2.99.111 NMAC through~~  
54 ~~20.2.99.115 NMAC. The lead agency shall be the MPO (or NMDOT in the absence of an MPO).~~

55 ~~\_\_\_\_\_ J. \_\_\_\_\_ In the event that the metropolitan planning area does not include the entire nonattainment or~~  
56 ~~maintenance area, an interagency consultation process involving the designated MPO for the nonattainment or~~

1 maintenance area, NMDOT, local transportation agencies, and the department, shall be undertaken, in the context of  
2 an MOA, for cooperative planning and analysis for purposes of determining conformity of all projects outside the  
3 metropolitan area and within the nonattainment or maintenance area. The lead agency shall be NMDOT.

4 ~~————— K. ——— In nonattainment or maintenance areas where more than one MPO is involved, such MPOs must  
5 develop a memorandum of agreement or memorandum of understanding reflecting their consultation.~~

6 ~~————— L. ——— In nonattainment or maintenance areas where the MPO's jurisdiction does not cover the entire  
7 nonattainment or maintenance area, the MPO and NMDOT must develop a memorandum of agreement or a  
8 memorandum of understanding reflecting their consultation.~~

9 ~~————— M. ——— Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance  
10 areas, as required by Subparagraph (c) of Paragraph (2) of Subsection L of 20.2.99.128 NMAC. The lead agency  
11 shall be the MPO (or NMDOT in the absence of an MPO).~~

12 [~~12/14/94; 11/23/98; 20.2.99.120 NMAC — Rn, 20 NMAC 2.99.120 10/31/02; A, 10/15/05~~]

13  
14 **20.2.99.121 — CONSULTATION PROCEDURES FOR SPECIFIC ROUTINE ACTIVITIES.** An  
15 interagency consultation process among the lead and participating agencies shall be undertaken for the following  
16 routine activities in accordance with all the procedures specified in 20.2.99.119 NMAC. The lead agency for each  
17 activity shall be as specified, and the participating agencies shall be the agencies specified in Subsection C of  
18 20.2.99.116 NMAC above or as specified for the specific activity. Not later than thirty (30) days prior to the  
19 preparation of the final document or decision, the lead agency shall supply all relevant information and documents,  
20 as appropriate, to the participating agencies.

21 ~~————— A. ——— Identification, as required by Subsection B of 20.2.99.146 NMAC, of projects located at sites in  
22 PM10 nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are  
23 essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative  
24 PM10 hot-spot analysis. The lead agency shall be either the MPO or NMDOT, in cooperation with the department.~~

25 ~~————— B. ——— Assumption of the location and design concept and scope of projects which are disclosed to the  
26 MPO, as required by Subsection D of 20.2.99.121 NMAC, but whose sponsors have not yet decided these features  
27 in sufficient detail to perform the regional emissions analysis according to the requirements of 20.2.99.141 NMAC  
28 through 20.2.99.147 NMAC. The lead agency shall be either the MPO or NMDOT. Participating agencies shall  
29 include recipients of funds designated under title 23 U.S.C. or the federal transit laws.~~

30 ~~————— C. ——— The design, schedule, and funding of research and data collection efforts; and regional  
31 transportation model development by the MPO (e.g., household/travel transportation surveys). The lead agency  
32 shall be either the NMDOT or the MPO, as applicable. Participating agencies shall be the MPO, the department,  
33 and the NMDOT.~~

34 ~~————— D. ——— Regionally Significant Non-FHWA/FTA Projects.~~

35 ~~————— (1) ——— Assurance that plans for construction of regionally significant projects which are not FHWA/FTA  
36 projects (including projects for which alternative locations, design concept and scope, or the no-build option are still  
37 being considered), including all those sponsored by recipients of funds designated under title 23 U.S.C. or the  
38 federal transit laws, are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are  
39 immediately disclosed. The lead agency for this process shall be the agency which is implementing the project.  
40 Participating agencies shall be the MPO, the department, NMDOT, local transportation and transit agencies for the  
41 city or county in which the nonattainment or maintenance area is located, and recipients of funds designated under  
42 title 23 U.S.C. or the federal transit laws.~~

43 ~~————— (2) ——— The sponsor of any such regionally significant project, and any agency that becomes aware of any  
44 such project through applications for approval, permitting or funding or otherwise, shall disclose such project to the  
45 designated MPO for the nonattainment or maintenance area and NMDOT in a timely manner. Such disclosure shall  
46 be made not later than the first occasion on which any of the following actions is sought:~~

47 ~~————— (a) ——— any policy board action necessary for the project to proceed;~~

48 ~~————— (b) ——— the issuance of administrative permits for the facility or for construction of the facility;~~

49 ~~————— (c) ——— the execution of a contract to design or construct the facility;~~

50 ~~————— (d) ——— the execution of any indebtedness for the facility;~~

51 ~~————— (e) ——— any final action of a board, commission or administrator authorizing or directing employees  
52 to proceed with design, permitting or construction of the project; or~~

53 ~~————— (f) ——— the execution of any contract to design or construct; or any approval needed for any facility  
54 that is dependent on the completion of regionally significant project.~~

55 ~~————— (3) ——— In the case of any such regionally significant project that has not been disclosed in a timely  
56 manner to the designated MPO for the nonattainment or maintenance area, NMDOT, and other interested agencies~~

1 participating in the consultation process, such regionally significant project and all other regionally significant  
2 projects of that sponsor shall be deemed to be not included in the regional emissions analysis supporting the  
3 currently conforming TIP's conformity determination and to be not consistent with the motor vehicle emissions  
4 budget in the SIP, for the purposes of 20.2.99.140 NMAC. In the case of repeated failures to disclose regionally  
5 significant projects by an agency that becomes aware of any such project through applications for approval,  
6 permitting or funding, all other regionally significant projects within the jurisdiction of such agency shall be deemed  
7 to be not included in the regional emissions analysis supporting the currently conforming TIP's conformity  
8 determination and to be not consistent with the motor vehicle emissions budget in the SIP, for the purposes of  
9 20.2.99.140 NMAC.

10 ~~\_\_\_\_\_ (4) For the purposes of this section (20.2.99.121 NMAC) and 20.2.99.140 NMAC, the phrase "adopt~~  
11 ~~or approve of a regionally significant project" means the first time any action necessary to authorizing a project~~  
12 ~~occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits~~  
13 ~~for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action~~  
14 ~~of a board, commission or administrator authorizing or directing employees to proceed with construction of the~~  
15 ~~project, or any written decision or authorization from the MPO that the project may be adopted or approved.~~  
16 ~~[12/14/94; 11/23/98; 20.2.99.121 NMAC - Rn, 20 NMAC 2.99.121 10/31/02; A, 10/15/05]~~

17  
18 **20.2.99.122 — NOTIFICATION PROCEDURES FOR ROUTINE ACTIVITIES.** Notification of affected  
19 agencies (including those listed in Paragraph (1) of Subsection C of 20.2.99.116 NMAC) of transportation plan or  
20 TIP amendments which merely add or delete exempt projects listed in 20.2.99.149 NMAC, shall be the affirmative  
21 responsibility of NMDOT and/or the MPO. Such notification shall be provided not later than thirty (30) days prior  
22 to the preparation of the final draft of the document or decision. This process shall include:

23 ~~\_\_\_\_\_ A. notification of the affected agencies (including those listed in Paragraph (1) of Subsection C of~~  
24 ~~20.2.99.116 NMAC) early in the process of decision on the final document; and~~

25 ~~\_\_\_\_\_ B. supplying all relevant documents and information to the affected agencies (including those listed~~  
26 ~~in Paragraph (1) of Subsection C of 20.2.99.116 NMAC).~~

27 ~~[12/14/94; 11/23/98; 20.2.99.122 NMAC - Rn, 20 NMAC 2.99.122 10/31/02; A, 10/15/05; A, 06/01/09]~~

28  
29 **20.2.99.123 — CONFLICT RESOLUTION AND APPEALS TO THE GOVERNOR.**

30 ~~\_\_\_\_\_ A. Any conflict among state agencies or between state agencies and an MPO shall be escalated to the~~  
31 ~~governor if the conflict cannot be resolved by the heads of the involved agencies. Prior to such escalation, such~~  
32 ~~agencies shall make every effort to resolve any differences, including personal meetings between the heads of such~~  
33 ~~agencies or their policy level representatives, to the extent possible.~~

34 ~~\_\_\_\_\_ B. The department has fourteen (14) calendar days to appeal a determination of conformity (or other~~  
35 ~~policy decision under this part) to the governor after NMDOT or MPO has notified the department of the resolution~~  
36 ~~of all comments on such determination of conformity or policy decision. Such fourteen-day period shall commence~~  
37 ~~when the MPO or NMDOT has confirmed receipt by the secretary of the department of the resolution of the~~  
38 ~~comments of the department. If the department appeals to the governor, the final conformity determination must~~  
39 ~~have the concurrence of the governor. The department must provide notice of any appeal under this Subsection to~~  
40 ~~the MPO and NMDOT. If the department does not appeal to the governor within fourteen (14) days, the MPO or~~  
41 ~~NMDOT may proceed with the final conformity determination.~~

42 ~~\_\_\_\_\_ C. In the case of any comments with regard to findings of fiscal constraint under 20.2.99.127 NMAC~~  
43 ~~or the air quality effects of any determination of conformity, NMDOT has fourteen (14) calendar days to appeal a~~  
44 ~~determination of conformity (or other policy decision under this part) to the governor after the MPO has notified the~~  
45 ~~department or NMDOT of the resolution of all comments on such determination of conformity or policy decision.~~  
46 ~~Such fourteen-day period shall commence when the MPO has confirmed receipt by the secretary of the department~~  
47 ~~or NMDOT of the resolution of the comments of NMDOT. If NMDOT appeals to the governor, the final~~  
48 ~~conformity determination must have the concurrence of the governor. NMDOT must provide notice of any appeal~~  
49 ~~under this subsection to the MPO and the department. If NMDOT does not appeal to the governor within fourteen~~  
50 ~~days, the MPO may proceed with the final conformity determination.~~

51 ~~\_\_\_\_\_ D. The governor may delegate the role of hearing any such appeal under this Subsection and of~~  
52 ~~deciding whether to concur in the conformity determination to another official or agency within the state, but not to~~  
53 ~~the head or staff of the department or any local air quality agency, NMDOT, a state transportation commission or~~  
54 ~~board, any agency that has responsibility for one of these functions, or an MPO.~~

55 ~~[12/14/94; 11/23/98; 20.2.99.123 NMAC - Rn, 20 NMAC 2.99.123 10/31/02; A, 10/15/05]~~

1 **20.2.99.124 — PUBLIC CONSULTATION PROCEDURES:**

2 ~~\_\_\_\_\_ A. — Affected agencies making conformity determinations on transportation plans, programs, and~~  
3 ~~projects shall establish a proactive public involvement process which provides opportunity for public review and~~  
4 ~~comment by, at a minimum providing reasonable public access to technical and policy information considered by~~  
5 ~~the agency at the beginning of the public comment period, and prior to taking formal action on a conformity~~  
6 ~~determination for all transportation plans and TIPs, and projects, consistent with the requirements of 23 CFR part~~  
7 ~~450, including sections 450.316 (a), 450.322(c), and 450.324(e) as in effect on the date of adoption of this Part. Any~~  
8 ~~charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR~~  
9 ~~7.43. In addition, any such agency must specifically address in writing all public comments which allege that~~  
10 ~~known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not~~  
11 ~~been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan~~  
12 ~~or TIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for~~  
13 ~~projects to the extent otherwise required by law (e.g. NEPA).~~

14 ~~\_\_\_\_\_ B. — The opportunity for public involvement provided under this section (20.2.99.124 NMAC) shall~~  
15 ~~include access to information, emissions data, analyses, models and modeling assumptions used to perform a~~  
16 ~~conformity determination, and the obligation of any such agency to consider and respond in writing to significant~~  
17 ~~comments.~~

18 ~~\_\_\_\_\_ C. — No transportation plan, TIP, or project may be found to conform unless the determination of~~  
19 ~~conformity has been subject to a public involvement process in accordance with this section, without regard to~~  
20 ~~whether the US DOT has certified any process under 23 CFR part 450.~~

21 ~~[12/14/94; 11/23/98; 09/08/99; 20.2.99.124 NMAC Rn, 20 NMAC 2.99.124 10/31/02; A, 9/1/07; A, 06/01/09]~~

22  
23 **20.2.99.125 — CONTENT OF TRANSPORTATION PLANS AND TIMEFRAMES OF CONFORMITY**  
24 **DETERMINATIONS.**

25 ~~\_\_\_\_\_ A. — Transportation plans adopted after January 1, 1997, in serious, severe, or extreme ozone~~  
26 ~~nonattainment areas and in serious carbon monoxide nonattainment areas. If the metropolitan planning area contains~~  
27 ~~an urbanized area population greater than two hundred thousand (200,000), the transportation plan must specifically~~  
28 ~~describe the transportation system envisioned for certain future years which shall be called horizon years.~~

29 ~~\_\_\_\_\_ (1) — The agency or organization developing the transportation plan, after consultation in accordance~~  
30 ~~with 20.2.99.116 NMAC through 20.2.99.124 NMAC, may choose any years to be horizon years, subject to the~~  
31 ~~following restrictions:~~

32 ~~\_\_\_\_\_ (a) — horizon years may be no more than ten (10) years apart.~~

33 ~~\_\_\_\_\_ (b) — the first horizon year may be no more than ten (10) years from the base year used to~~  
34 ~~validate the transportation demand planning model.~~

35 ~~\_\_\_\_\_ (c) — the attainment year is must be a horizon year if it is in the timeframe of the transportation~~  
36 ~~plan and conformity determination.~~

37 ~~\_\_\_\_\_ (d) — the last year of the transportation plan's forecast period shall be a horizon year, and~~

38 ~~\_\_\_\_\_ (e) — if the timeframe of the conformity determination has been shortened under Subsection D of~~  
39 ~~this section (20.2.99.125 NMAC), the last year of the timeframe of the conformity determination must be a horizon~~  
40 ~~year.~~

41 ~~\_\_\_\_\_ (2) — For these horizon years:~~

42 ~~\_\_\_\_\_ (a) — the transportation plan shall quantify and document the demographic and employment~~  
43 ~~factors influencing expected transportation demand, including land use forecasts, in accordance with implementation~~  
44 ~~plan provisions and 20.2.99.116 NMAC through 20.2.99.124 NMAC;~~

45 ~~\_\_\_\_\_ (b) — the highway and transit system shall be described in terms of the regionally significant~~  
46 ~~additions or modifications to the existing transportation network which the transportation plan envisions to be~~  
47 ~~operational in the horizon years; additions and modifications to the highway network shall be sufficiently identified~~  
48 ~~to indicate intersections with existing regionally significant facilities, and to determine their effect on route options~~  
49 ~~between transportation analysis zones; each added or modified highway segment shall also be sufficiently identified~~  
50 ~~in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes,~~  
51 ~~consistent with the modeling methods for area-wide transportation analysis in use by the MPO; transit facilities,~~  
52 ~~equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and~~  
53 ~~operating policies sufficiently to allow modeling of their transit ridership; the description of additions and~~  
54 ~~modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable~~  
55 ~~relationship between expected land use and the envisioned transportation system; and~~

1 ~~\_\_\_\_\_ (c) other future transportation policies, requirements, services, and activities, including~~  
2 ~~intermodal activities, shall be described.~~

3 ~~\_\_\_\_\_ B. Two-year grace period for transportation plan requirements in certain ozone and CO areas. The~~  
4 ~~requirements of Subsection A of 20.2.99.125 NMAC applies to such areas or portions of such areas that have~~  
5 ~~previously not been required to meet these requirements for any existing NAAQS two years from the following:~~

6 ~~\_\_\_\_\_ (1) the effective date of EPA's reclassification of an ozone or CO nonattainment area that has greater~~  
7 ~~than 200,000 to serious or above;~~

8 ~~\_\_\_\_\_ (2) the official notice by the census bureau that determines the urbanized area population of a serious~~  
9 ~~or above ozone or CO nonattainment area to be greater than 200,000; or~~

10 ~~\_\_\_\_\_ (3) the effective date of EPA's action that classifies a newly designated ozone or CO nonattainment~~  
11 ~~area that has an urbanized area population greater than 200,000 as serious or above.~~

12 ~~\_\_\_\_\_ C. Transportation plans for other areas. Transportation plans for other areas must meet the~~  
13 ~~requirements of Subsection A of 20.2.99.125 NMAC at least to the extent it has been the previous practice of the~~  
14 ~~MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the~~  
15 ~~transportation system envisioned for the future specifically enough to allow determination of conformity according~~  
16 ~~to the criteria and procedures of 20.2.99.128 NMAC through 20.2.99.138 NMAC.~~

17 ~~\_\_\_\_\_ D. Timeframe of conformity determination.~~

18 ~~\_\_\_\_\_ (1) Unless an election is made under this subsection (Subsection D of 20.2.99.125 NMAC), the~~  
19 ~~timeframe of the conformity determination shall be through the last year of the transportation plan's forecast period.~~

20 ~~\_\_\_\_\_ (2) For areas that do not have an adequate or approved CAA section 175A(b) maintenance plans, the~~  
21 ~~MPO may elect to shorten the timeframe of the transportation plan and TIP conformity determination, after~~  
22 ~~consultation with state and local air quality agencies, solicitation of public comments, and consideration of such~~  
23 ~~comments.~~

24 ~~\_\_\_\_\_ (a) The shortened timeframe of the conformity determination shall extend at least to the latest~~  
25 ~~of the following years:~~

26 ~~\_\_\_\_\_ (i) the tenth year of the transportation plan;~~

27 ~~\_\_\_\_\_ (ii) the latest year for which an adequate or approved motor vehicle emissions budget(s)~~  
28 ~~is established in the submitted or applicable implementation plan; or~~

29 ~~\_\_\_\_\_ (iii) the year after the completion date of a regionally significant project if the project is~~  
30 ~~included in the TIP or project requires approval before the subsequent conformity determination.~~

31 ~~\_\_\_\_\_ (b) The conformity determination must be accompanied by a regional emissions analysis (for~~  
32 ~~informational purposes only) for the last year of the transportation plan and for any year shown to exceed motor~~  
33 ~~vehicle emissions budgets in a prior regional emissions analysis, if such a year extends beyond the timeframe of the~~  
34 ~~conformity determination.~~

35 ~~\_\_\_\_\_ (3) For areas that have an adequate or approved CAA section 175A(b) maintenance plan, the MPO~~  
36 ~~may elect to shorten the timeframe of the conformity determination to extend through the last year of such~~  
37 ~~maintenance plan after consultation with state and local air quality agencies, solicitation of comments, and~~  
38 ~~consideration of such comments.~~

39 ~~\_\_\_\_\_ (4) Any election made by an MPO under Paragraphs (2) and (3) of Subsection D of 20.2.99.125~~  
40 ~~NMAC shall continue in effect until the MPO elects otherwise, after consultation with state and local air quality~~  
41 ~~agencies, solicitation of public comments, and consideration of such comments.~~

42 ~~\_\_\_\_\_ E. Savings. The requirements of this section (20.2.99.125 NMAC) supplement other requirements of~~  
43 ~~applicable law or regulation governing the format or content of transportation plans.~~

44 ~~[12/14/94; 11/23/98; 20.2.99.125 NMAC - Rn, 20 NMAC 2.99.125 10/31/02; A, 10/15/05; A, 06/01/09]~~

46 ~~**20.2.99.126 — RELATIONSHIP OF TRANSPORTATION PLAN AND TIP CONFORMITY TO THE**~~  
47 ~~**NEPA PROCESS:** The degree of specificity required in the transportation plan and the specific travel network~~

48 ~~assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other~~  
49 ~~project development studies. Should the NEPA process result in a project with design concept and scope~~  
50 ~~significantly different from that in the transportation plan or TIP, the project must meet the criteria in 20.2.99.128~~  
51 ~~NMAC through 20.2.99.138 NMAC for projects not from a TIP before NEPA process completion.~~

52 ~~[12/14/94; 11/23/98; 20.2.99.126 NMAC - Rn, 20 NMAC 2.99.126 10/31/02]~~

54 ~~**20.2.99.127 — FISCAL CONSTRAINTS FOR TRANSPORTATION PLANS AND TIPS:** Transportation~~  
55 ~~plans and TIPs must be fiscally constrained consistent with US DOT's metropolitan planning regulations at 23 CFR~~

1 ~~Part 450 in order to be found in conformity. The determination that a transportation plan or TIP is fiscally~~  
2 ~~constrained shall be subject to consultation in accordance with 20.2.99.116 NMAC through 20.2.99.124 NMAC.~~  
3 ~~[12/14/94; 11/23/98; 20.2.99.127 NMAC—Rn, 20 NMAC 2.99.127-10/31/02]~~  
4

5 **20.2.99.128 — CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY OF**  
6 **TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS — GENERAL.**

7 ~~———— A. ——— In order for each transportation plan, program, and FHWA/FTA project to be found to conform~~  
8 ~~the MPO and US DOT must demonstrate that the applicable criteria and procedures in this part are satisfied and the~~  
9 ~~MPO and US DOT must comply with all applicable conformity requirements of implementation plans and of court~~  
10 ~~orders for the area which pertain specifically to conformity. The criteria for making conformity determinations~~  
11 ~~differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects or state projects), the~~  
12 ~~relevant pollutant(s), and the status of the implementation plan.~~

13 ~~———— B. ——— The following table (table 1) indicates the criteria and procedures in 20.2.99.129 NMAC through~~  
14 ~~20.2.99.138 NMAC which apply for transportation plans, TIPs, and FHWA/FTA projects. Subsections C through K~~  
15 ~~of this section (20.2.99.128 NMAC) explain when the budget, interim emissions, and hot spot tests are required for~~  
16 ~~each pollutant and NAAQS. Subsection L of this section (20.2.99.128 NMAC) addresses conformity requirements~~  
17 ~~for areas with approved or adequate limited maintenance plans. Subsection M of this section (20.2.99.128 NMAC)~~  
18 ~~addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle~~  
19 ~~emissions. Subsection N of this section (20.2.99.128 NMAC) addresses isolated rural nonattainment and~~  
20 ~~maintenance areas. Table 1 follows. Table 1. Conformity Criteria.~~

- 21 ~~———— (1) All actions at all times~~  
22 ~~———— (a) 20.2.99.129 NMAC. Latest planning assumptions~~  
23 ~~———— (b) 20.2.99.130 NMAC. Latest emissions model~~  
24 ~~———— (c) 20.2.99.131 NMAC. Consultation~~  
25 ~~———— (2) Transportation Plan~~  
26 ~~———— (a) Subsection B of 20.2.99.132 NMAC. TCMs~~  
27 ~~———— (b) 20.2.99.137 NMAC and/or 20.2.99.138 NMAC. Emissions budget and/or interim~~  
28 ~~emissions~~  
29 ~~———— (3) TIP~~  
30 ~~———— (a) Subsection C of 20.2.99.132 NMAC. TCMs~~  
31 ~~———— (b) 20.2.99.137 NMAC and/or 20.2.99.138 NMAC. Emissions budget and /or interim~~  
32 ~~emissions~~  
33 ~~———— (4) Project (From a conforming plan and TIP)~~  
34 ~~———— (a) 20.2.99.133 NMAC. Currently conforming plan and TIP~~  
35 ~~———— (b) 20.2.99.134 NMAC. Project from a conforming plan and TIP~~  
36 ~~———— (c) 20.2.99.135 NMAC. CO, PM<sub>10</sub>, and PM<sub>2.5</sub> hot spots~~  
37 ~~———— (d) 20.2.99.136 NMAC. PM<sub>10</sub> and PM<sub>2.5</sub> control measures~~  
38 ~~———— (5) Project (Not from a conforming plan and TIP)~~  
39 ~~———— (a) Subsection D of 20.2.99.132 NMAC. TCMs~~  
40 ~~———— (b) 20.2.99.133 NMAC. Currently conforming plan and TIP~~  
41 ~~———— (c) 20.2.99.135 NMAC. CO, PM<sub>10</sub>, and PM<sub>2.5</sub> hot spots~~  
42 ~~———— (d) 20.2.99.136 NMAC. PM<sub>10</sub> and PM<sub>2.5</sub> control measures~~  
43 ~~———— (e) 20.2.99.137 NMAC and/or 20.2.99.138 NMAC. Emissions budget and/or interim~~  
44 ~~emissions.~~

45 ~~———— C. ——— 1-hour ozone nonattainment and maintenance areas. This subsection (Subsection C of section~~  
46 ~~20.2.99.128 NMAC) applies when an area is nonattainment or maintenance for the 1-hour ozone NAAQS (i.e., until~~  
47 ~~the effective date of any revocation of the 1-hour ozone NAAQS for an area). In addition to the criteria listed in~~  
48 ~~table 1 in Subsection B of this section (20.2.99.128 NMAC) that are required to be satisfied at all times, in such~~  
49 ~~ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget~~  
50 ~~and/or interim emission tests are satisfied as described in the following.~~

- 51 ~~———— (1) In all 1-hour ozone nonattainment and maintenance areas the budget test must be satisfied as~~  
52 ~~required by 20.2.99.137 NMAC for conformity determinations made on or after:~~  
53 ~~———— (a) the effective date EPA's finding that a motor vehicle emissions budget in a submitted~~  
54 ~~control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS is adequate for~~  
55 ~~transportation conformity purposes;~~  
56 ~~———— (b) the publication date of EPA's approval of such a budget in the federal register; or~~

1 ~~\_\_\_\_\_ (e) the effective state of EPA's approval of such a budget in the federal register, if such~~  
2 ~~approval is completed through direct final rulemaking.~~

3 ~~\_\_\_\_\_ (2) In ozone nonattainment areas that are required to submit a control strategy implementation plan~~  
4 ~~revision for the 1-hour ozone NAAQS (usually moderate and above areas), the interim emissions tests must be~~  
5 ~~satisfied as required by 20.2.99.138 NMAC for conformity determinations made when there is no approved motor~~  
6 ~~vehicle emissions budget form an applicable implementation plan for the 1-hour ozone NAAQS and no adequate~~  
7 ~~motor vehicle emissions budget form a submitted control strategy implementation plan revision or maintenance plan~~  
8 ~~for the 1-hour ozone NAAQS.~~

9 ~~\_\_\_\_\_ (3) An ozone nonattainment area must satisfy the interim emissions test for NOx, as required by~~  
10 ~~20.2.99.138 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity~~  
11 ~~determinations is a fifteen percent (15%) plan or phase I attainment demonstration that does not include a motor~~  
12 ~~vehicle emissions budget for NOx. The implementation plan for the 1-hour ozone NAAQS will be considered to~~  
13 ~~establish a motor vehicle emissions budget for NOx if the implementation plan or plan submission contains an~~  
14 ~~explicit NOx motor vehicle emissions budget that is intended to act as a ceiling on future NOx emissions, and the~~  
15 ~~NOx motor vehicle emissions budget is a net reduction from NOx emissions levels in 1990.~~

16 ~~\_\_\_\_\_ (4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required~~  
17 ~~to submit a control strategy implementation plan revision for the 1-hour NAAQS (usually marginal and below areas)~~  
18 ~~must satisfy one of the following requirements:~~

19 ~~\_\_\_\_\_ (a) the interim emissions tests required by 20.2.99.138 NMAC; or~~

20 ~~\_\_\_\_\_ (b) the department shall submit to US EPA an implementation plan revision for the 1-hour~~  
21 ~~ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or an attainment~~  
22 ~~demonstration, and the budget test required by 20.2.99.137 NMAC must be satisfied using the adequate or approved~~  
23 ~~motor vehicle emissions budget(s) (as described in Paragraph (1) of Subsection C of 20.2.99.128 NMAC).~~

24 ~~\_\_\_\_\_ (5) Notwithstanding Paragraphs (1) and (2) of Subsection C of 20.2.99.128 NMAC, moderate and~~  
25 ~~above ozone nonattainment areas with three years of clean data for the 1-hour ozone NAAQS that have not~~  
26 ~~submitted a maintenance plan and that US EPA has determined are not subject to the Clean Air Act reasonable~~  
27 ~~further progress and attainment demonstration requirements for the 1-hour NAAQS must satisfy one of the~~  
28 ~~following requirements:~~

29 ~~\_\_\_\_\_ (a) the interim emissions tests as required by 20.2.99.138 NMAC;~~

30 ~~\_\_\_\_\_ (b) the budget test as required by 20.2.99.137 NMAC, using the adequate or approved motor~~  
31 ~~vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 1-hour ozone~~  
32 ~~NAAQS (subject to the timing requirements of Paragraph (1) of Subsection C of 20.2.99.128 NMAC); or~~

33 ~~\_\_\_\_\_ (c) the budget test as required by 20.2.99.137 NMAC, using the motor vehicle emissions of~~  
34 ~~ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are~~  
35 ~~established by the US EPA rulemaking that determines that the area has clean data.~~

36 ~~**D.** 8-hour ozone NAAQS nonattainment and maintenance areas without motor vehicle emissions~~  
37 ~~budgets for the 1-hour ozone NAAQS for any portion of the 8-hour nonattainment area. This subsection~~  
38 ~~(Subsection D of section 20.2.99.128 NMAC) applies to areas that were never designated nonattainment for the 1-~~  
39 ~~hour ozone NAAQS but that never submitted a control strategy SIP or maintenance plan with approved or adequate~~  
40 ~~motor vehicle emissions budgets. This subsection (Subsection D of section 20.2.99.128 NMAC) applies one (1)~~  
41 ~~year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according~~  
42 ~~to Subsection D of 20.2.99.109 NMAC. In the addition to the criteria listed in table 1 in Subsection B of~~  
43 ~~20.2.99.128 NMAC that are required to be satisfied at all times, in such 8-hour ozone nonattainment and~~  
44 ~~maintenance areas conformity determinations must include a demonstration that the budget and/or interim~~  
45 ~~emissions tests are satisfied as described in the following.~~

46 ~~\_\_\_\_\_ (1) In such 8-hour ozone nonattainment and maintenance areas the budget test must be satisfied as~~  
47 ~~required by section 20.2.99.137 NMAC for conformity determinations made on or after;~~

48 ~~\_\_\_\_\_ (a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted~~  
49 ~~control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS is adequate for~~  
50 ~~transportation conformity purposes;~~

51 ~~\_\_\_\_\_ (b) the publication date of EPA's approval of such a budget in the federal register; or~~

52 ~~\_\_\_\_\_ (c) the effective date of EPA's approval of such a budget in the federal register, if such~~  
53 ~~approval is completed through direct final rulemaking.~~

54 ~~\_\_\_\_\_ (2) In ozone nonattainment areas that are required to submit a control strategy implementation plan~~  
55 ~~revision for the 8-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, part D subpart 1~~  
56 ~~areas), the interim emissions tests must be satisfied as required by section 20.2.99.138 NMAC for conformity~~

determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for 8-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 8-hour NAAQS.

~~(3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NO<sub>x</sub>, as required by section 20.2.99.138 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determination is a fifteen percent (15%) plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO<sub>x</sub>. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation plan or plan submission contains an explicit NO<sub>x</sub> motor vehicle emissions budget that is intended to act as a ceiling on future NO<sub>x</sub> emissions, and the NO<sub>x</sub> motor vehicle emissions budget is a net reduction from NO<sub>x</sub> emissions levels in 2002.~~

~~(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually marginal and certain Clean Air Act, part D, subpart 1 areas) must satisfy one of the following requirements:~~

~~(a) the interim emissions tests required by section 20.2.99.138 NMAC; or~~

~~(b) the department shall submit to EPA an implementation plan revision for the 8-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by section 20.2.99.137 NMAC must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (1) of Subsection D of 20.2.99.128 NMAC).~~

~~(5) Notwithstanding Paragraphs (1) and (2) of Subsection D of 20.2.99.128 NMAC, ozone nonattainment areas with three (3) years of clean data for the 8-hour ozone NAAQS that have not submitted maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 9-hour ozone NAAQS must satisfy one of the following requirements:~~

~~(a) the interim emissions tests as required by section 20.2.99.138 NMAC;~~

~~(b) the budget test as required by section 20.2.99.137 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS (subject to the timing requirements of Paragraph (1) of Subsection D of 20.2.99.128 NMAC); or~~

~~(c) the budget test as required by section 20.2.137 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.~~

~~E. 8-hour ozone NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1-hour ozone NAAQS that cover all or a portion of the 8-hour nonattainment area. This provision applies one (1) year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of section 2.20.99.109 NMAC. In addition to the criteria listing in table 1 in Subsection B of this section (2.20.2.128 NMAC) that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following.~~

~~(1) In such 8-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by section 20.2.99.137 NMAC for conformity determinations made on or after:~~

~~(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS is adequate for transportation conformity purposes;~~

~~(b) the publication date of EPA's approval of such a budget in the federal register; or~~

~~(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.~~

~~(2) Prior to Paragraph (1) of Subsection E of 20.2.99.128 NMAC applying, the following test(s) must be satisfied.~~

~~(a) If the 8-hour ozone nonattainment area covers the same geographic area as the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by section 20.2.99.137 NMAC using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission.~~

~~(b) If the 8-hour ozone nonattainment area covers a smaller geographic area within the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by section 20.2.99.137 NMAC for either the 8-hour nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where such~~

1 portion(s) can reasonably be identified through the interagency consultation process required by section 20.2.99.116  
2 NMAC; or the 1-hour nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1-  
3 hour ozone applicable implementation plan or implementation plan submission. If additional emission reductions  
4 are necessary to meet the budget test for the 8-hour ozone NAAQS in such cases, these emissions reductions must  
5 come from within the 8-hour nonattainment area.

6 ~~\_\_\_\_\_ (c) If the 8-hour ozone nonattainment area covers a larger geographic area and encompasses  
7 the entire 1-hour ozone nonattainment or maintenance area(s) the budget test as required by section 20.2.99.137  
8 NMAC for the portion of the 8-hour ozone nonattainment area covered by the approved or adequate motor vehicle  
9 emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; and the  
10 interim emissions tests as required by section 20.2.99.138 NMAC for either: the portion of the 8-hour ozone  
11 nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the  
12 entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an  
13 individual state, in the case where separate 1-hour SIP budgets are established for each state of a multi-state 1-hour  
14 nonattainment area partially covers a 1-hour ozone nonattainment or maintenance area(s).~~

15 ~~\_\_\_\_\_ (d) If the 8-hour ozone nonattainment area partially covers a 1-hour ozone nonattainment of  
16 maintenance area(s) the budget test as required by section 20.2.99.137 NMAC for the portion of the 8-hour ozone  
17 nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions  
18 budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where they can be  
19 reasonably identified through the interagency consultation process required by section 20.2.99.116 NMAC; and the  
20 interim emissions tests as required by section 20.2.99.138 NMAC, when applicable, for either: the portion of the 8-  
21 hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone  
22 implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone  
23 nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each  
24 state in a multi-state 1-hour nonattainment or maintenance area.~~

25 ~~\_\_\_\_\_ (3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NO<sub>x</sub>, as  
26 required by section 20.2.99.138 NMAC, if the only implementation plan or plan submission that is applicable for the  
27 purposes of conformity determinations is a fifteen percent (15%) plan or other control strategy SIP that addresses  
28 reasonable further progress that does not include a motor vehicle emissions budget for NO<sub>x</sub>. The implementation  
29 plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO<sub>x</sub> if the  
30 implementation plan or plan submission contains an explicit NO<sub>x</sub> motor vehicle emissions budget that is intended to  
31 act as a ceiling on future NO<sub>x</sub> emissions, and the NO<sub>x</sub> motor vehicle emissions budget is a net reduction from NO<sub>x</sub>  
32 emissions levels in 2002. Prior to an adequate or approved NO<sub>x</sub> motor vehicle emissions budget in the  
33 implementation plan submission for the 8-hour ozone NAAQS, the implementation plan for the 1-hour ozone  
34 NAAQS will be considered to establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation plan  
35 contains an explicit NO<sub>x</sub> motor vehicle emissions budget that is intended to act as a ceiling on future NO<sub>x</sub>  
36 emissions, and the NO<sub>x</sub> motor vehicle emission budget is a net reduction from NO<sub>x</sub> emissions levels in 1990.~~

37 ~~\_\_\_\_\_ (4) Notwithstanding Paragraphs (1) and (2) of Subsection E of this section (20.2.99.128 NMAC),  
38 ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a  
39 maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and  
40 attainment demonstration requirement for the 8-hour ozone NAAQS must satisfy one of the following requirements:~~

41 ~~\_\_\_\_\_ (a) the budget test and/or interim emissions tests are required by sections 20.2.99.137 NMAC  
42 and 20.2.99.138 NMAC and as described in Paragraph (2) of Subsection E of this section (20.2.99.128 NMAC);~~

43 ~~\_\_\_\_\_ (b) the budget test as required by section 20.2.99.137 NMAC, using the adequate or approved  
44 motor vehicle emission budgets in the submitted or applicable control strategy implementation plan for the 8-hour  
45 ozone NAAQS (subject to the timing requirements of Paragraph (1) of Subsection E of 20.2.99.128 NMAC; or~~

46 ~~\_\_\_\_\_ (c) the budget test as required by section 20.2.99.137 NMAC, using the motor vehicle  
47 emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such  
48 budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone  
49 NAAQS.~~

50 ~~\_\_\_\_\_ F. CO nonattainment and maintenance areas. In addition to the criteria listed in table 1 in Subsection  
51 B of 20.2.99.128 NMAC that are required to be satisfied at all times, in CO nonattainment and maintenance areas  
52 conformity determinations must include a demonstration that the hot spot, budget and/or interim emissions tests are  
53 satisfied as described in the following:~~

54 ~~\_\_\_\_\_ (1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot spot test  
55 required by Subsection A of 20.2.99.135 NMAC at all times. Until a CO attainment demonstration or maintenance~~

1 plan is approved by US EPA, FHWA/FTA projects must also satisfy the hot spot test required by Subsection B of  
2 20.2.99.135 NMAC.

3 ~~\_\_\_\_\_ (2) In CO nonattainment and maintenance areas the budget test must be satisfied as required by  
4 20.2.99.137 NMAC for conformity determinations made:~~

5 ~~\_\_\_\_\_ (a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted  
6 control strategy implementation plan revision or maintenance plan is adequate for transportation conformity  
7 purposes;~~

8 ~~\_\_\_\_\_ (b) the publication date of EPA's approval of such a budget in the federal register; or~~

9 ~~\_\_\_\_\_ (c) the effective date of EPA's approval of such a budget in the federal register, if such  
10 approval is completed through direct final rulemaking.~~

11 ~~\_\_\_\_\_ (3) Except as provided in Paragraph (4) of Subsection F of 20.2.99.128 NMAC, in CO nonattainment  
12 areas the interim emissions tests must be satisfied as required by 20.2.99.138 NMAC for conformity determinations  
13 made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no  
14 adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or  
15 maintenance plan.~~

16 ~~\_\_\_\_\_ (4) CO nonattainment areas that have not submitted a maintenance plan and that are not required to  
17 submit an attainment demonstration (e.g., moderate CO areas with a design value of 12.7 ppm or less or not  
18 classified CO areas) must satisfy one of the following requirements:~~

19 ~~\_\_\_\_\_ (a) the interim emissions tests required by 20.2.99.138 NMAC; or~~

20 ~~\_\_\_\_\_ (b) the department shall submit to US EPA an implementation plan revision that contains  
21 motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by 20.2.99.137  
22 NMAC must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in  
23 Paragraph (2) of Subsection F of 20.2.99.128 NMAC).~~

24 ~~\_\_\_\_\_ G. PM<sub>10</sub> nonattainment and maintenance areas. In addition to the criteria listed in table 1 in  
25 Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in PM<sub>10</sub> nonattainment and  
26 maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or interim  
27 emissions tests are satisfied as described in the following.~~

28 ~~\_\_\_\_\_ (1) FHWA/FTA projects in PM<sub>10</sub> nonattainment or maintenance areas must satisfy the hot spot test  
29 required by 20.2.99.135 NMAC.~~

30 ~~\_\_\_\_\_ (2) In PM<sub>10</sub> nonattainment and maintenance areas where a budget is submitted for the 24-hour PM<sub>10</sub>  
31 NAAQS, the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made  
32 on or after:~~

33 ~~\_\_\_\_\_ (a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted  
34 control strategy implementation plan revision or maintenance plan is adequate for transportation conformity  
35 purposes;~~

36 ~~\_\_\_\_\_ (b) the publication date of EPA's approval of such a budget in the federal register; or~~

37 ~~\_\_\_\_\_ (c) the effective date of EPA's approval of such a budget in the federal register, if such  
38 approval is completed through direct final rulemaking.~~

39 ~~\_\_\_\_\_ (3) Prior to Paragraph (2) of Subsection G of 20.2.99.128 NMAC applying, the budget test must be  
40 satisfied as required by 20.2.99.137 NMAC using the approved or adequate motor vehicle emissions budget  
41 established for the revoked annual PM<sub>10</sub> NAAQS, if such a budget exists.~~

42 ~~\_\_\_\_\_ (4) In PM<sub>10</sub> nonattainment areas the interim emissions tests must be satisfied as required by  
43 20.2.99.138 NMAC for conformity determinations made:~~

44 ~~\_\_\_\_\_ (a) if there is no approved motor vehicle emissions budget from an applicable implementation  
45 plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan  
46 revision or maintenance plan; or~~

47 ~~\_\_\_\_\_ (b) if the submitted implementation plan revision is a demonstration of impracticability under  
48 CAA Section 189(a)(1)(B)(ii) and does not demonstrate attainment.~~

49 ~~\_\_\_\_\_ H. NO<sub>2</sub> nonattainment and maintenance areas. In addition to the criteria listed in table 1 in  
50 Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in NO<sub>2</sub> nonattainment and  
51 maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions  
52 tests are satisfied as described in the following.~~

53 ~~\_\_\_\_\_ (1) In NO<sub>2</sub> nonattainment and maintenance areas the budget test must be satisfied as required by  
54 20.2.99.137 NMAC for conformity determinations made:~~

1 ~~\_\_\_\_\_ (a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted~~  
2 ~~control strategy implementation plan revision or maintenance plan is adequate for transportation conformity~~  
3 ~~purposes;~~  
4 ~~\_\_\_\_\_ (b) the publication date of EPA's approval of such a budget in the federal register; or~~  
5 ~~\_\_\_\_\_ (c) the effective date of EPA's approval of such a budget in the federal register, if such~~  
6 ~~approval is completed through direct final rulemaking.~~  
7 ~~\_\_\_\_\_ (2) In NO<sub>2</sub> nonattainment areas the interim emissions tests must be satisfied as required by~~  
8 ~~20.2.99.138 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget~~  
9 ~~from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control~~  
10 ~~strategy implementation plan revision or maintenance plan.~~  
11 ~~\_\_\_\_\_ I. 1997 PM<sub>2.5</sub> NAAQS nonattainment and maintenance areas. In addition to the criteria listed in~~  
12 ~~table 1 in Subsection B of section 20.2.99.128 NMAC that are required to be satisfied at all times, in such 1997~~  
13 ~~PM<sub>2.5</sub> nonattainment and maintenance areas conformity determinations must include a demonstration that the budget~~  
14 ~~and/or interim emissions tests are satisfied as described in the following:~~  
15 ~~\_\_\_\_\_ (1) FHWA/FTA projects in such 1997 PM<sub>2.5</sub> nonattainment or maintenance areas must satisfy the~~  
16 ~~appropriate hot spot test required by Subsection A of section 20.2.99.135 NMAC.~~  
17 ~~\_\_\_\_\_ (2) in such 1997 PM<sub>2.5</sub> nonattainment and maintenance areas the budget test must be satisfied as~~  
18 ~~required by 20.2.99.137 NMAC for conformity determinations made on or after:~~  
19 ~~\_\_\_\_\_ (a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted~~  
20 ~~control strategy implementation plan revision or maintenance plan is adequate for transportation conformity~~  
21 ~~purposes;~~  
22 ~~\_\_\_\_\_ (b) the publication date of EPA's approval of such a budget in the federal register; or~~  
23 ~~\_\_\_\_\_ (c) the effective date of EPA's approval of such a budget in the federal register, if such~~  
24 ~~approval is completed through direct final rulemaking;~~  
25 ~~\_\_\_\_\_ (3) in such 1997 PM<sub>2.5</sub> nonattainment areas the interim emissions tests must be satisfied as required~~  
26 ~~by section 20.2.99.138 NMAC for conformity determinations made if there is no approved motor vehicle emissions~~  
27 ~~budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted~~  
28 ~~control strategy implementation plan revision or maintenance plan.~~  
29 ~~\_\_\_\_\_ J. 2006 PM<sub>2.5</sub> NAAQS nonattainment and maintenance areas without 1997 PM<sub>2.5</sub> NAAQS motor~~  
30 ~~vehicle emissions budgets for any portion of the 2006 PM<sub>2.5</sub> NAAQS area. In addition to the criteria listed in Table~~  
31 ~~1 of Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in such 2006 PM<sub>2.5</sub>~~  
32 ~~nonattainment and maintenance areas conformity determinations must include a demonstration that the budget~~  
33 ~~and/or interim emissions tests are satisfied as described in the following:~~  
34 ~~\_\_\_\_\_ (1) FHWA/FTA projects in such PM<sub>2.5</sub> nonattainment and maintenance areas must satisfy the~~  
35 ~~appropriate hot spot test required by Subsection A of 20.2.99.135 NMAC.~~  
36 ~~\_\_\_\_\_ (2) In such PM<sub>2.5</sub> nonattainment and maintenance areas the budget test must be satisfied as required~~  
37 ~~by 20.2.99.137 NMAC for conformity determinations made on or after:~~  
38 ~~\_\_\_\_\_ (a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted~~  
39 ~~control strategy implementation plan revision or maintenance plan for the 2006 PM<sub>2.5</sub> NAAQS is adequate for~~  
40 ~~transportation conformity purposes;~~  
41 ~~\_\_\_\_\_ (b) the publication date of EPA's approval of such a budget in the federal register; or~~  
42 ~~\_\_\_\_\_ (c) the effective date of EPA's approval of such a budget in the federal register, if such~~  
43 ~~approval is completed through direct final rulemaking.~~  
44 ~~\_\_\_\_\_ (3) In such PM<sub>2.5</sub> nonattainment areas the interim emissions tests must be satisfied as required by~~  
45 ~~20.2.99.138 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget~~  
46 ~~from an applicable implementation plan for the 2006 PM<sub>2.5</sub> NAAQS and no adequate motor vehicle emissions~~  
47 ~~budget from a submitted control strategy implementation plan revision or maintenance plan for the 2006 PM<sub>2.5</sub>~~  
48 ~~NAAQS;~~  
49 ~~\_\_\_\_\_ K. 2006 PM<sub>2.5</sub> NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets~~  
50 ~~for the 1997 PM<sub>2.5</sub> NAAQS that cover all or a portion of the 2006 PM<sub>2.5</sub> nonattainment area. In addition to the~~  
51 ~~criteria listed in Table 1 of Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in such~~  
52 ~~2006 PM<sub>2.5</sub> nonattainment and maintenance areas conformity determinations must include a demonstration that the~~  
53 ~~budget and/or interim emissions tests are satisfied as described in the following;~~  
54 ~~\_\_\_\_\_ (1) FHWA/FTA projects in such PM<sub>2.5</sub> nonattainment and maintenance areas must satisfy the~~  
55 ~~appropriate hot spot test required by Subsection A of 20.2.99.135.~~

1 ~~\_\_\_\_\_ (2) In such PM<sub>2.5</sub> nonattainment and maintenance areas the budget test must be satisfied as required~~  
2 ~~by 20.2.99.137 NMAC for conformity determinations made on or after:~~

3 ~~\_\_\_\_\_ (a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted~~  
4 ~~control strategy implementation plan revision or maintenance plan for the 2006 PM<sub>2.5</sub> NAAQS is adequate for~~  
5 ~~transportation conformity purposes;~~

6 ~~\_\_\_\_\_ (b) the publication date of EPA's approval of such a budget in the federal register; or~~

7 ~~\_\_\_\_\_ (c) the effective date of EPA's approval of such a budget in the federal register, if such~~  
8 ~~approval is completed through direct final rulemaking.~~

9 ~~\_\_\_\_\_ (3) Prior to Paragraph (2) of Subsection K of 20.2.99.128 NMAC applying, the following test(s) must~~  
10 ~~be satisfied:~~

11 ~~\_\_\_\_\_ (a) if the 2006 PM<sub>2.5</sub> nonattainment area covers the same geographic area as the 1997 PM<sub>2.5</sub>~~  
12 ~~nonattainment or maintenance area(s), the budget test as required by 20.2.99.137 NMAC using the approved or~~  
13 ~~adequate motor vehicle emissions budgets in the 1997 PM<sub>2.5</sub> applicable implementation plan or implementation plan~~  
14 ~~submission;~~

15 ~~\_\_\_\_\_ (b) if the 2006 PM<sub>2.5</sub> nonattainment area covers a smaller geographic area within the 1997~~  
16 ~~PM<sub>2.5</sub> nonattainment or maintenance area(s), the budget test as required by 20.2.99.137 NMAC for either;~~

17 ~~\_\_\_\_\_ (i) the 2006 PM<sub>2.5</sub> nonattainment area using corresponding portion(s) of the approved or~~  
18 ~~adequate motor vehicle emissions budgets in the 1997 PM<sub>2.5</sub> applicable implementation plan or implementation plan~~  
19 ~~submission where such portion(s) can reasonably be identified through the interagency consultation process required~~  
20 ~~by 20.2.99.116 NMAC through 20.2.99.124 NMAC; or~~

21 ~~\_\_\_\_\_ (ii) the 1997 PM<sub>2.5</sub> nonattainment area using the approved or adequate motor vehicle~~  
22 ~~emissions budgets in the 1997 PM<sub>2.5</sub> applicable implementation plan or implementation plan submission; if~~  
23 ~~additional emissions reductions are necessary to meet the budget test for the 2006 PM<sub>2.5</sub> NAAQS in such cases, these~~  
24 ~~emissions reductions must come from within the 2006 nonattainment area;~~

25 ~~\_\_\_\_\_ (c) if the 2006 PM<sub>2.5</sub> nonattainment area covers a larger geographic area and encompasses the~~  
26 ~~entire 1997 PM<sub>2.5</sub> nonattainment or maintenance area(s);~~

27 ~~\_\_\_\_\_ (i) the budget test as required by 20.2.99.137 NMAC for the portion of the 2006 PM<sub>2.5</sub>~~  
28 ~~nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1997 PM<sub>2.5</sub>~~  
29 ~~applicable implementation plan or implementation plan submission; and the interim emissions tests as required by~~  
30 ~~20.2.99.138 NMAC for either: the portion of the 2006 PM<sub>2.5</sub> nonattainment area not covered by the approved or~~  
31 ~~adequate budgets in the 1997 PM<sub>2.5</sub> implementation plan, the entire 2006 PM<sub>2.5</sub> nonattainment area, or the entire~~  
32 ~~portion of the 2006 PM<sub>2.5</sub> nonattainment area within an individual state, in the case where separate 1997 PM<sub>2.5</sub> SIP~~  
33 ~~budgets are established for each state of a multi-state 1997 PM<sub>2.5</sub> nonattainment or maintenance area; or~~

34 ~~\_\_\_\_\_ (ii) the budget test as required by 20.2.99.137 NMAC for the entire 2006 PM<sub>2.5</sub>~~  
35 ~~nonattainment area using the approved or adequate motor vehicle emissions budgets in the applicable 1997 PM<sub>2.5</sub>~~  
36 ~~implementation plan or implementation plan submission;~~

37 ~~\_\_\_\_\_ (d) if the 2006 PM<sub>2.5</sub> nonattainment area partially covers a 1997 PM<sub>2.5</sub> nonattainment or~~  
38 ~~maintenance area(s);~~

39 ~~\_\_\_\_\_ (i) the budget test as required by 20.2.99.137 NMAC for the portion of the 2006 PM<sub>2.5</sub>~~  
40 ~~nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions~~  
41 ~~budgets in the 1997 PM<sub>2.5</sub> applicable implementation plan or implementation plan submission where they can be~~  
42 ~~reasonably identified through the interagency consultation process required by 20.2.99.116 NMAC through~~  
43 ~~20.2.99.124 NMAC; and~~

44 ~~\_\_\_\_\_ (ii) the interim emissions tests as required by 20.2.99.138 NMAC, when applicable, for~~  
45 ~~either: the portion of the 2006 PM<sub>2.5</sub> nonattainment area not covered by the approved or adequate budgets in the~~  
46 ~~1997 PM<sub>2.5</sub> implementation plan, the entire 2006 PM<sub>2.5</sub> nonattainment area, or the entire portion of the 2006 PM<sub>2.5</sub>~~  
47 ~~nonattainment area within an individual state, in the case where separate 1997 PM<sub>2.5</sub> SIP budgets are established for~~  
48 ~~each state in a multi-state 1997 PM<sub>2.5</sub> nonattainment or maintenance area.~~

49 ~~\_\_\_\_\_ L. Areas with limited maintenance plans. Notwithstanding the other paragraphs of this section, an~~  
50 ~~area is not required to satisfy the regional emissions analysis for sections 20.2.99.137 NMAC and/or 20.2.99.138~~  
51 ~~NMAC for a given pollutant and NAAQS, if the area has an adequate or approved limited maintenance plan would~~  
52 ~~have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor~~  
53 ~~vehicle emissions growth for a NAAQS violations to occur. A conformity determination that meets other applicable~~  
54 ~~criteria in table 1 or Subsection B of this section (20.2.99.128 NMAC) is still required, including the hot spot~~  
55 ~~requirements for projects in CO, PM<sub>10</sub>, and PM<sub>2.5</sub> areas.~~

1 ~~\_\_\_\_\_ M. \_\_\_\_\_ Areas with insignificant motor vehicle emissions. Notwithstanding the other subsections in this~~  
2 ~~section (20.2.99.128 NMAC), and area is not required to satisfy a regional emissions analysis for sections~~  
3 ~~20.2.99.137 NMAC and/or 20.2.99.138 NMAC for a given pollutant/precursor and NAAQS, if EPA finds through~~  
4 ~~the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant~~  
5 ~~contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate~~  
6 ~~that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth~~  
7 ~~in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors,~~  
8 ~~including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air~~  
9 ~~quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures, and~~  
10 ~~historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that~~  
11 ~~meets other applicable criteria in table 1 or Subsection B of this section (20.2.99.128 NMAC) is still required,~~  
12 ~~including regional emissions analyses for sections 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for other~~  
13 ~~pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO, PM<sub>10</sub>, and PM<sub>2.5</sub> areas in~~  
14 ~~section 20.2.99.135 NMAC must also be satisfied, unless EPA determined that the SIP also demonstrates that~~  
15 ~~projects will not create new localized violations and/or increase the severity or number of existing violations of such~~  
16 ~~NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this~~  
17 ~~subsection would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS.~~

18 ~~\_\_\_\_\_ N. \_\_\_\_\_ Isolated rural nonattainment and maintenance areas. This subsection applies to any nonattainment~~  
19 ~~or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose~~  
20 ~~projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This~~  
21 ~~subsection does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the~~  
22 ~~nonattainment/maintenance area boundary.~~

23 ~~\_\_\_\_\_ (1) \_\_\_\_\_ FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the~~  
24 ~~requirements of 20.2.99.129 NMAC through 20.2.99.131 NMAC, Subsection D of 20.2.99.132 NMAC, 20.2.99.135~~  
25 ~~NMAC, and 20.2.99.136 NMAC. Until US EPA approves the control strategy implementation plan or maintenance~~  
26 ~~plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of~~  
27 ~~Subsection B of 20.2.99.135 NMAC ("Localized CO, PM<sub>10</sub>, and PM<sub>2.5</sub> violations (hot spots)").~~

28 ~~\_\_\_\_\_ (2) \_\_\_\_\_ Isolated rural nonattainment and maintenance areas are subject to the budget and/or interim~~  
29 ~~emissions tests as described in Subsections C through M of 20.2.99.128 NMAC, with the following modifications:~~

30 ~~\_\_\_\_\_ (a) \_\_\_\_\_ when the requirements of Subsection D of 20.2.99.125 NMAC, 20.2.99.135 NMAC,~~  
31 ~~20.2.99.137 NMAC and 20.2.99.138 NMAC apply to isolated rural nonattainment and maintenance areas,~~  
32 ~~references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation~~  
33 ~~plan or statewide TIP which are in the rural nonattainment or maintenance area; when the requirements of~~  
34 ~~Subsection D of 20.2.99.125 NMAC apply to isolated rural nonattainment and maintenance areas, references to~~  
35 ~~"MPO" should be taken to mean NMDOT;~~

36 ~~\_\_\_\_\_ (b) \_\_\_\_\_ in isolated rural nonattainment and maintenance areas that are subject to 20.2.99.137~~  
37 ~~NMAC, FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the~~  
38 ~~timeframe of the attainment demonstration or maintenance plan; for years after the attainment year (if a maintenance~~  
39 ~~plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one of~~  
40 ~~the following requirements:~~

41 ~~\_\_\_\_\_ (i) \_\_\_\_\_ 20.2.99.137 NMAC;~~

42 ~~\_\_\_\_\_ (ii) \_\_\_\_\_ 20.2.99.138 NMAC (including regional emissions analysis for NO<sub>x</sub> in all ozone~~  
43 ~~nonattainment and maintenance areas, notwithstanding Paragraph (2) of Subsection F of 20.2.99.138 NMAC; or~~

44 ~~\_\_\_\_\_ (iii) \_\_\_\_\_ as demonstrated by the air quality dispersion model or other air quality modeling~~  
45 ~~technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with~~  
46 ~~all other regionally significant projects expected in the area in the timeframe of the statewide transportation plan,~~  
47 ~~must not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of~~  
48 ~~any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim~~  
49 ~~emission reductions or other milestones in any area; control measures assumed in the analysis must be enforceable;~~

50 ~~\_\_\_\_\_ (c) \_\_\_\_\_ the choice of requirements in Subparagraph (b) of Paragraph (2) of Subsection N of~~  
51 ~~20.2.99.128 NMAC and the methodology used to meet the requirements of item (iii) of Subparagraph (b) of~~  
52 ~~Paragraph (2) of Subsection N of 20.2.99.128 NMAC must be determined through the interagency consultation~~  
53 ~~process required in Paragraph (6) of Subsection B of 20.2.99.117 NMAC and Paragraph (5) of Subsection C of~~  
54 ~~20.2.99.117 NMAC through which the relevant recipients of title 23 U.S.C. or federal transit laws funds, NMDOT,~~  
55 ~~the department, or the local air quality agency should reach consensus about the option and methodology selected;~~  
56 ~~US EPA and US DOT must be consulted through this process as well; in the event of unresolved disputes, conflicts~~

1 may be escalated to the governor consistent with the procedure in 20.2.99.123 NMAC, which applies to department  
2 comments on a conformity determination.  
3 [12/14/94; 11/23/98; 20.2.99.128 NMAC—Rn, 20 NMAC 2.99.128 10/31/02; A, 10/15/05; A, 9/1/07; A, 06/01/09;  
4 A, 11/07/11]

5  
6 **20.2.99.129 — CRITERIA AND PROCEDURES — LATEST PLANNING ASSUMPTIONS.**

7 ~~———— A. ——— Except as provided in this paragraph, the conformity determination, with respect to all other  
8 applicable criteria in 20.2.99.130 NMAC through 20.2.99.138 NMAC, must be based upon the most recent planning  
9 assumptions in force at the time the conformity analysis begins. The conformity determination must satisfy the  
10 requirements of Subsections B through F of 20.2.99.129 NMAC using the planning assumptions available at the  
11 time the conformity analysis begins as determined through the interagency consultation process required  
12 Subparagraph (a) of Paragraph (1) of Subsection C of Section 20.2.99.116 NMAC. The "time the conformity  
13 analysis begins" for a transportation plan or TIP determination is the point at which the MPO or the other designated  
14 agency begins to model the impact of the proposed transportation plan or TIP on travel and/or emissions. New data  
15 that becomes available after an analysis begins is required to be used in the conformity determination only if a  
16 significant delay in the analysis has occurred, as determined through interagency consultation.~~

17 ~~———— B. ——— Assumptions (including, but not limited to, vehicle miles traveled per capita or per household, trip  
18 generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, and the  
19 geographic distribution of population growth) must be derived from the estimates of current and future population,  
20 employment, travel, and congestion most recently developed by the MPO, or other agency authorized to make such  
21 estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions  
22 about current and future background concentrations.~~

23 ~~———— C. ——— The conformity determination for each transportation plan and TIP must discuss how transit  
24 operating policies (including fares and service levels) and assumed transit ridership have changed since the previous  
25 conformity determination.~~

26 ~~———— D. ——— The conformity determination must include reasonable assumptions about transit service and  
27 increases in transit fares and road and bridge tolls over time.~~

28 ~~———— E. ——— The conformity determination must use the latest existing information regarding the effectiveness  
29 of the TCMs and other implementation plan measures which have already been implemented.~~

30 ~~———— F. ——— Key assumptions shall be specified and included in the draft documents and supporting materials  
31 used for the interagency and public consultation required by 20.2.99.116 NMAC through 20.2.99.124 NMAC.  
32 [12/14/94; 11/23/98; 20.2.99.129 NMAC—Rn, 20 NMAC 2.99.129 10/31/02; A, 10/15/05]~~

33  
34 **20.2.99.130 — CRITERIA AND PROCEDURES — LATEST EMISSIONS MODEL:**

35 ~~———— A. ——— The conformity determination shall be based on the latest emission estimation model available.  
36 This criterion is satisfied if the most current version of the motor vehicle emissions model specified by US EPA for  
37 use in the preparation or revision of implementation plans in the State or area is used for the conformity analysis.  
38 Where EMFAC is the motor vehicle emissions model used in preparing or revising the SIP, new versions must be  
39 approved by US EPA before they are used in the conformity analysis.~~

40 ~~———— B. ——— US EPA will consult with US DOT to establish a grace period following the specification of any  
41 new model. The grace period will be no less than three (3) months and no more than twenty-four (24) months after  
42 notice of availability is published in the Federal Register. The length of the grace period will depend on the degree  
43 of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity.  
44 If the grace period will be longer than three (3) months, US EPA will announce the appropriate grace period in the  
45 Federal Register.~~

46 ~~———— C. ——— Conformity analyses for which the emissions analysis was begun before the Federal Register  
47 notice of availability of the latest emission model, or during the grace period announced in such notice, may  
48 continue to use the previous version of the model for transportation plans and TIPs. The previous model may also  
49 be used for projects if the analysis was begun during the grace period or before the Federal Register notice of  
50 availability, provided no more than three (3) years have passed since the draft environmental document was issued.  
51 [12/14/94; 11/23/98; 20.2.99.130 NMAC—Rn, 20 NMAC 2.99.130 10/31/02]~~

52  
53 **20.2.99.131 — CRITERIA AND PROCEDURES — CONSULTATION:** Conformity determinations must be  
54 determined according to the consultation procedures in this Part, and according to the public involvement  
55 procedures established in compliance with 23 CFR part 450. Until this Part is fully approved by US EPA as an

1 implementation plan revision, the conformity determination must be made according to the procedures in 40 CFR  
2 93.105(a)(2) and (e).  
3 [12/14/94; 11/23/98; 20.2.99.131 NMAC—Rn, 20 NMAC 2.99.131 10/31/02]

4  
5 ~~20.2.99.132 — CRITERIA AND PROCEDURES — TIMELY IMPLEMENTATION OF TCMs:~~

6 ~~———— A. ——— The transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and  
7 TIP must provide for the timely implementation of TCMs from the SIP.~~

8 ~~———— B. ——— For transportation plans, this criterion is satisfied if the following two conditions are met:~~

9 ~~———— (1) ——— The transportation plan, in describing the envisioned future transportation system, provides for the  
10 timely completion or implementation of all TCMs in the SIP, which are eligible for funding under title 23 U.S.C. or  
11 the Federal Transit Laws, consistent with schedules included in the SIP.~~

12 ~~———— (2) ——— Nothing in the transportation plan interferes with the implementation of any TCM in the SIP.~~

13 ~~———— C. ——— For TIPs, this criterion is satisfied if the following conditions are met:~~

14 ~~———— (1) ——— An examination of the specific steps and funding source(s) needed to fully implement each TCM  
15 indicates that TCMs, which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws, are on or  
16 ahead of the schedule established in the SIP, or, if such TCMs are behind the schedule established in the SIP, the  
17 MPO (or the NMSHTD in the absence of an MPO) and US DOT have determined that past obstacles to  
18 implementation of the TCMs have been identified and have been or are being overcome, and that all State and local  
19 agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of  
20 TCMs over other projects within their control, including projects in locations outside the nonattainment or  
21 maintenance area.~~

22 ~~———— (2) ——— If TCMs in the applicable SIP have previously been programmed for Federal funding but the  
23 funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP  
24 cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than  
25 TCMs (or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects  
26 which are eligible for Federal funding intended for air quality improvement projects, e.g., the Congestion Mitigation  
27 and Air Quality Improvement Program).~~

28 ~~———— (3) ——— Nothing in the TIP interferes with the implementation of any TCM in the SIP.~~

29 ~~———— D. ——— For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this  
30 criterion is satisfied if the project does not interfere with the implementation of any TCM in the SIP.~~

31 [12/14/94; 11/23/98; 20.2.99.132 NMAC—Rn, 20 NMAC 2.99.132 10/31/02]

32  
33 ~~20.2.99.133 — CRITERIA AND PROCEDURES — CURRENTLY CONFORMING TRANSPORTATION  
34 PLAN AND TIP: There must be a currently conforming transportation plan and currently conforming TIP at the  
35 time of project approval, or a project must meet the requirements in Subsection B of 20.2.99.111 NMAC during the  
36 twelve (12) month lapse grace period. Only one conforming transportation plan or TIP may exist in an area at any  
37 time; conformity determinations of a previous transportation plan or TIP expire once the conformity determination  
38 for the current plan or TIP is made by US DOT. The conformity determination on a transportation plan or TIP will  
39 also lapse if conformity is not determined according to the frequency requirements of 20.2.99.111 NMAC through  
40 20.2.99.115 NMAC. This criterion is not required to be satisfied at the time of project approval for a TCM  
41 specifically included in the SIP, provided that all other relevant criteria of this Part are satisfied.~~

42 [12/14/94; 11/23/98; 20.2.99.133 NMAC—Rn, 20 NMAC 2.99.133 10/31/02; A, 06/01/09]

43  
44 ~~20.2.99.134 — CRITERIA AND PROCEDURES — PROJECTS FROM A TRANSPORTATION PLAN  
45 AND TIP:~~

46 ~~———— A. ——— The project must come from a conforming transportation plan and TIP. If this criterion is not  
47 satisfied, the project must satisfy all criteria in table 1 of Subsection B of 20.2.99.128 NMAC for a project not from  
48 a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it  
49 meets the requirements of Subsection B of 20.2.99.134 NMAC and from a conforming TIP if it meets the  
50 requirements of Subsection C of 20.2.99.134 NMAC. Special provisions for TCMs in an applicable implementation  
51 plan are provided in Subsection D of 20.2.99.134 NMAC.~~

52 ~~———— B. ——— A project is considered to be from a conforming transportation plan if one of the following  
53 conditions apply:~~

54 ~~———— (1) ——— for projects which are required to be identified in the transportation plan in order to satisfy  
55 20.2.99.125 NMAC, the project is specifically included in the conforming transportation plan and the project's~~

1 design concept and scope have not changed significantly from those which were described in the transportation plan,  
2 or in a manner which would significantly impact use of the facility; or

3 ~~———— (2) ————~~ for projects which are not required to be specifically identified in the transportation plan, the  
4 project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the  
5 transportation plan and will not interfere with other projects specifically included in the transportation plan.

6 ~~———— C. ————~~ A project is considered to be from a conforming TIP if the following conditions are met:

7 ~~———— (1) ————~~ the project is included in the conforming TIP and the design concept and scope of the project  
8 were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional  
9 emissions, and the project design concept and scope have not changed significantly from those which were  
10 described in the TIP; and

11 ~~———— (2) ————~~ if the TIP describes a project design concept and scope which includes project-level emissions  
12 mitigation or control measures, written commitments to implement such measures must be obtained from the project  
13 sponsor and/or operator as required by Subsection A of 20.2.99.148 NMAC in order for the project to be considered  
14 to be from a conforming program; any change in these mitigation or control measures that would significantly  
15 reduce their effectiveness constitutes a change in the design concept and scope of the project.

16 ~~———— D. ————~~ TCMs: This criterion is not required to be satisfied for TCMs specifically included in an  
17 applicable implementation plan.

18 ~~———— E. ————~~ Notwithstanding the requirements of Subsections A, B, and C of this section (20.2.99.134  
19 NMAC), a project must meet the requirements of Subsection B of 20.2.99.111 NMAC during the twelve (12) month  
20 lapse grace period.

21 [~~12/14/94; 11/23/98; 20.2.99.134 NMAC — Rn, 20 NMAC 2.99.134 10/31/02; A, 06/01/09~~]

22  
23 ~~**20.2.99.135 — CRITERIA AND PROCEDURES — LOCALIZED CO, PM<sub>10</sub>, AND PM<sub>2.5</sub> VIOLATIONS**~~  
24 ~~**(HOT SPOTS).**~~

25 ~~———— A. ————~~ This subsection (Subsection A of 20.2.99.135 NMAC) applies at all times. The FHWA/FTA  
26 project must not cause or contribute to any new localized CO, PM<sub>10</sub>, and/or PM<sub>2.5</sub> violations, increase the frequency  
27 or severity of any existing CO, PM<sub>10</sub>, and/or PM<sub>2.5</sub> violations, or delay timely attainment of any NAAQS or any  
28 required interim emission reductions or other milestones in CO, PM<sub>10</sub>, and PM<sub>2.5</sub> nonattainment and maintenance  
29 areas. This criterion is satisfied without a hotspot analysis in PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment and maintenance areas  
30 for FHWA/FTA projects that are not identified in Paragraph (1) of Subsection B of 20.2.99.148 NMAC. This  
31 criterion is satisfied for all other FHWA/FTA projects in CO, PM<sub>10</sub>, and PM<sub>2.5</sub> nonattainment and maintenance areas  
32 if it is demonstrated that during the time frame of the transportation plan no new local violations will be created and  
33 the severity or number of existing violations will not be increased as a result of the project, and the project has been  
34 included in a regional emissions analysis that meets applicable 20.2.99.137 NMAC and/or 20.2.99.138 NMAC  
35 requirements. The demonstration shall be performed according to the consultation requirements of Subsection A of  
36 20.2.99.120 NMAC and the methodology requirements of 20.2.99.148 NMAC.

37 ~~———— B. ————~~ This subsection (Subsection B of 20.2.99.135 NMAC) applies for CO nonattainment areas as  
38 described in Paragraph (1) of Subsection F of 20.2.99.128 NMAC. Each FHWA/FTA project must eliminate or  
39 reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO  
40 nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated  
41 that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO  
42 violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must  
43 be performed according to the consultation requirements of Subsection A of 20.2.99.120 NMAC and the  
44 methodology requirements of 20.2.99.146 NMAC.

45 [~~12/14/94; 11/23/98; 20.2.99.135 NMAC — Rn, 20 NMAC 2.99.135 10/31/02; A, 10/15/05; A, 9/1/07; A, 06/01/09;~~  
46 ~~A, 11/07/11~~]

47  
48 ~~**20.2.99.136 — CRITERIA AND PROCEDURES — COMPLIANCE WITH PM<sub>10</sub> AND PM<sub>2.5</sub> CONTROL**~~  
49 ~~**MEASURES.**~~ The FHWA/FTA project must comply with PM<sub>10</sub> and PM<sub>2.5</sub> control measures in the applicable  
50 implementation plan. This criterion is satisfied if the project-level conformity determination contains a written  
51 commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those  
52 control measures (for the purpose of limiting PM<sub>10</sub> and PM<sub>2.5</sub> emissions from the construction activities and/or  
53 normal use and operation associated with the project) that are contained in the applicable implementation SIP.  
54 [~~12/14/94; 11/23/98; 20.2.99.136 NMAC — Rn, 20 NMAC 2.99.136 10/31/02; A, 10/15/05~~]

55  
56 ~~**20.2.99.137 — CRITERIA AND PROCEDURES — MOTOR VEHICLE EMISSIONS BUDGET.**~~

1 ~~\_\_\_\_\_ A. \_\_\_\_\_ The transportation plan, TIP, and project not from a conforming transportation plan and TIP must~~  
2 ~~be consistent with the motor vehicle emissions budget(s) in the applicable control strategy implementation plan (or~~  
3 ~~implementation plan submission). This criterion applies as described in Subsections C through N of 20.2.99.128~~  
4 ~~NMAC. This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors~~  
5 ~~described in Subsection C of 20.2.99.137 NMAC are less than or equal to the motor vehicle emissions budget(s)~~  
6 ~~established in the applicable implementation plan or implementation plan submission.~~

7 ~~\_\_\_\_\_ B. \_\_\_\_\_ Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for~~  
8 ~~which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions~~  
9 ~~budget(s), for the attainment year (if it is within the time frame of the transportation plan and conformity~~  
10 ~~determination), for the last year of the timeframe of the conformity determination (as described under Subsection D~~  
11 ~~of 20.2.99.125 NMAC), and for any intermediate years within the timeframe of the conformity determination as~~  
12 ~~necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:~~

13 ~~\_\_\_\_\_ (1) \_\_\_\_\_ Until a maintenance plan is submitted:~~

14 ~~\_\_\_\_\_ (a) \_\_\_\_\_ emissions in each year (such as milestone years and the attainment year) for which the~~  
15 ~~control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or~~  
16 ~~equal to that year's motor vehicle emissions budget(s); and~~

17 ~~\_\_\_\_\_ (b) \_\_\_\_\_ emissions in years for which no motor vehicle emissions budget(s) are specifically~~  
18 ~~established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior~~  
19 ~~year; for example, emissions in years after the attainment year for which the implementation plan does not establish~~  
20 ~~a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.~~

21 ~~\_\_\_\_\_ (2) \_\_\_\_\_ When a maintenance plan has been submitted:~~

22 ~~\_\_\_\_\_ (a) \_\_\_\_\_ emissions must be less than or equal to the motor vehicle emissions budget(s) established~~  
23 ~~for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor~~  
24 ~~vehicle emissions budgets; if the maintenance plan does not establish motor vehicle emissions budgets for any years~~  
25 ~~other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions~~  
26 ~~budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to~~  
27 ~~a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan; the~~  
28 ~~interagency consultation process required by 20.2.99.116 NMAC through 20.2.99.124 NMAC shall determine what~~  
29 ~~must be considered in order to make such a finding;~~

30 ~~\_\_\_\_\_ (b) \_\_\_\_\_ for years after the last year of the maintenance plan, emissions must be less than or equal to~~  
31 ~~the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan;~~

32 ~~\_\_\_\_\_ (c) \_\_\_\_\_ if an approved and/or submitted control strategy implementation plan has established motor~~  
33 ~~vehicle emissions budgets for years in the timeframe of the transportation plan, emissions in these years must be less~~  
34 ~~than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years; and~~

35 ~~\_\_\_\_\_ (d) \_\_\_\_\_ for any analysis years before the last year of the maintenance plan, emissions must be less~~  
36 ~~than or equal to the motor vehicle emissions budget(s) established for the most recent prior year.~~

37 ~~\_\_\_\_\_ C. \_\_\_\_\_ Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant~~  
38 ~~or pollutant precursor in Subsection B of 20.2.99.109 NMAC (or 20.2.99.101 NMAC) for which the area is in~~  
39 ~~nonattainment or maintenance and for which the applicable implementation plan (or implementation plan~~  
40 ~~submission) establishes a motor vehicle emissions budget.~~

41 ~~\_\_\_\_\_ D. \_\_\_\_\_ Consistency with the motor vehicle emissions budget(s) must be demonstrated by including~~  
42 ~~emissions from the entire transportation system, including all regionally significant projects contained in the~~  
43 ~~transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or~~  
44 ~~maintenance area in the timeframe of the transportation plan.~~

45 ~~\_\_\_\_\_ (1) \_\_\_\_\_ Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional~~  
46 ~~emissions analysis that meets the requirements of 20.2.99.141 NMAC through 20.2.99.147 NMAC and 20.2.99.120~~  
47 ~~NMAC.~~

48 ~~\_\_\_\_\_ (2) \_\_\_\_\_ The regional emissions analysis may be performed for any years in the timeframe of the~~  
49 ~~conformity determination (as described under Subsection D of 20.2.99.125 NMAC) provided they are not more than~~  
50 ~~ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the~~  
51 ~~transportation plan and conformity determination) and the last year of the timeframe for the conformity~~  
52 ~~determination. Emissions in years for which consistency with motor vehicle emissions budgets must be~~  
53 ~~demonstrated, as required in Subsection B of 20.2.99.137 NMAC, may be determined by interpolating between the~~  
54 ~~years for which the regional emissions analysis is performed.~~

55 ~~\_\_\_\_\_ (3) \_\_\_\_\_ When the timeframe of the conformity determination is shortened under Paragraph (2) of~~  
56 ~~Subsection D of 20.2.99.125 NMAC, the conformity determination must be accompanied by a regional emissions~~

1 analysis (for informational purposes only) for the last year of the transportation plan, and for any year shown to  
2 exceed motor vehicle emissions budgets in a prior regional emissions analysis (if such a year extends beyond the  
3 timeframe of the conformity determination):

4 ~~\_\_\_\_\_ E. \_\_\_\_\_ Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and  
5 submitted maintenance plans:~~

6 ~~\_\_\_\_\_ (1) \_\_\_\_\_ Consistency with the motor vehicle emissions budgets in submitted control strategy  
7 implementation plan revisions or maintenance plans must be demonstrated if US EPA has declared the motor  
8 vehicle emissions budget(s) adequate for transportation conformity purposes, and the adequacy finding is effective.  
9 However, motor vehicle emissions budgets in submitted implementation plans do not supersede the motor vehicle  
10 emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years  
11 addressed by the previously approved implementation plan, unless US EPA specifies otherwise in its approval of a  
12 SIP.~~

13 ~~\_\_\_\_\_ (2) \_\_\_\_\_ If US EPA has not declared an implementation plan submission's motor vehicle emissions  
14 budget(s) adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the  
15 requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be  
16 demonstrated. If there are no previously approved implementation plans or implementation plan submissions with  
17 adequate motor vehicle emissions budgets, the interim emissions tests required by 20.2.99.138 NMAC must be  
18 satisfied.~~

19 ~~\_\_\_\_\_ (3) \_\_\_\_\_ If US EPA declares an implementation plan submission's motor vehicle emissions budget(s)  
20 inadequate for transportation conformity purposes and conformity of a transportation plan or TIP has already been  
21 determined by US DOT using the budget(s), the conformity determination will remain valid. Projects included in  
22 that transportation plan or TIP could still satisfy 20.2.99.133 NMAC and 20.2.99.134 NMAC, which require a  
23 currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination  
24 and that projects come from a conforming transportation plan and TIP.~~

25 ~~\_\_\_\_\_ (4) \_\_\_\_\_ US EPA will not find a motor vehicle emissions budget in a submitted control strategy  
26 implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the  
27 following minimum criteria are satisfied:~~

28 ~~\_\_\_\_\_ (a) \_\_\_\_\_ the submitted control strategy implementation plan revision or maintenance plan was  
29 endorsed by the governor (or his or her designee) and was subject to a state public hearing;~~

30 ~~\_\_\_\_\_ (b) \_\_\_\_\_ before the control strategy implementation plan or maintenance plan was submitted to US  
31 EPA, consultation among federal, state, and local agencies occurred; full implementation plan documentation was  
32 provided to US EPA; and US EPA's stated concerns, if any, were addressed;~~

33 ~~\_\_\_\_\_ (c) \_\_\_\_\_ the motor vehicle emissions budget(s) is clearly identified and precisely quantified;~~

34 ~~\_\_\_\_\_ (d) \_\_\_\_\_ the motor vehicle emissions budget(s), when considered together with all other emissions  
35 sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance  
36 (whichever is relevant to the given implementation plan submission);~~

37 ~~\_\_\_\_\_ (e) \_\_\_\_\_ the motor vehicle emissions budget(s) is consistent with and clearly related to the emissions  
38 inventory and the control measures in the submitted control strategy implementation plan revision or maintenance  
39 plan; and~~

40 ~~\_\_\_\_\_ (f) \_\_\_\_\_ revisions to previously submitted control strategy implementation plans or maintenance  
41 plans explain and document any changes to previously submitted budgets and control measures; impacts on point  
42 and area source emissions; any changes to established safety margins (see Subsection AM of 20.2.99.7 NMAC for  
43 definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates  
44 of vehicle miles traveled).~~

45 ~~\_\_\_\_\_ (5) \_\_\_\_\_ Before determining the adequacy of a submitted motor vehicle emissions budget, US EPA will  
46 review the department's compilation of public comments and response to comments that are required to be submitted  
47 with any implementation plan. US EPA will document its consideration of such comments and responses in a letter  
48 to the department indicating the adequacy of the submitted motor vehicle emissions budget.~~

49 ~~\_\_\_\_\_ (6) \_\_\_\_\_ When the motor vehicle emissions budget(s) used to satisfy the requirements of this section are  
50 established by an implementation plan submittal that has not yet been approved or disapproved by US EPA, the  
51 MPO and US DOT's conformity determinations will be deemed to be a statement that the MPO and US DOT are not  
52 aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will  
53 cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation  
54 of any standard; or delay timely attainment of any standard or any required interim emission reductions or other  
55 milestones.~~

1  ~~F. Adequacy review process for implementation plan submissions. US EPA will use the procedure~~  
2  ~~listing in Paragraph (1) of Subsection F of this section (20.2.99.137 NMAC) to review the adequacy of an~~  
3  ~~implementation plan.~~

4  ~~(1) When US EPA reviews the adequacy of an implementation plan submission prior to EPA's final~~  
5  ~~action on the implementation plan:~~

6  ~~(a) US EPA will notify the public through US EPA's website when US EPA receives an~~  
7  ~~implementation plan submission that will be reviewed for adequacy;~~

8  ~~(b) the public will have a minimum of 30 days to comment on the adequacy of the~~  
9  ~~implementation plan submission; if the complete implementation plan is not accessible electronically through the~~  
10  ~~internet and a copy is requested within fifteen (15) days of the date of the website notice, the comment period will~~  
11  ~~be extended 30 days from the date that a copy of the implementation plan is mailed;~~

12  ~~(c) after the public comment period closes, US EPA will inform the department in writing~~  
13  ~~whether US EPA has found the submission adequate or inadequate for use in transportation conformity, including~~  
14  ~~response to any comments submitted directly and review of comments submitted through the department process, or~~  
15  ~~US EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or~~  
16  ~~disapproving the implementation plan under Subparagraph (c) of Paragraph (2) of Subsection F of this section~~  
17  ~~(20.2.99.137 NMAC);~~

18  ~~(d) US EPA will publish a federal register notice to inform the public of US EPA's finding; if~~  
19  ~~EPA finds the submission adequate, the effective date of this finding will be fifteen (15) days from the date the~~  
20  ~~notice is published as established in the federal register notice, unless US EPA is taking a final approval action on~~  
21  ~~the SIP as described in Subparagraph (c) of Paragraph (2) for Subsection F for this section (20.2.99.137 NMAC);~~

22  ~~(e) US EPA will announce whether the implementation plan submission is adequate or~~  
23  ~~inadequate for use in transportation conformity on US EPA's website; the website will also include US EPA's~~  
24  ~~response to comments of any comments were received during the public comments period;~~

25  ~~(f) if after US EPA has found a submission adequate, US EPA has cause to reconsider this~~  
26  ~~finding, US EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) of Subsection F or~~  
27  ~~Paragraph (2) of Subsection F of 20.2.99.137 NMAC unless US EPA determines that there is no need for additional~~  
28  ~~public comment given the deficiencies of the implementation plan submission; in all cases where US EPA reverses~~  
29  ~~its previous finding to a finding of inadequacy under Paragraph (1) of Subsection F of 20.2.99.137 NMAC, such a~~  
30  ~~finding will become effective immediately upon the date of US EPA's letter to the department;~~

31  ~~(g) if after EPA has found a submission inadequate, US EPA has cause to reconsider the~~  
32  ~~adequacy of that budget, US EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) of~~  
33  ~~this section (20.2.99.137 NMAC).~~

34  ~~(2) When US EPA reviews the adequacy of an implementation plan submission simultaneously with~~  
35  ~~US EPA's approval or disapproval of the implementation plan:~~

36  ~~(a) US EPA's federal register notice of proposed or direct final rulemaking will serve to notify~~  
37  ~~the public that US EPA will be reviewing the implementation plan submission for adequacy;~~

38  ~~(b) the publication of the notice of proposed rulemaking will start a public comment period of~~  
39  ~~at least thirty (30) days;~~

40  ~~(c) US EPA will indicate whether the implementation plan submission is adequate and thus can~~  
41  ~~be used for conformity either in US EPA's final rulemaking or through the process described in Subparagraphs (e)~~  
42  ~~through (e) of Paragraph (1) of Subsection F of this section (20.2.99.137 NMAC); if US EPA makes an adequacy~~  
43  ~~finding through a final rulemaking that approves the implementation plan submission, such a finding will become~~  
44  ~~effective upon the publication date of US EPA's approval in the federal register, or upon the effective date of US~~  
45  ~~EPA's approval if such action is conducted through direct final rulemaking; US EPA will respond to comments~~  
46  ~~received directly and review comments submitted through the department process and include the response to~~  
47  ~~comments in the applicable docket.~~

48  ~~[12/14/94; 11/23/98; 20.2.99.137 NMAC—Rn, 20 NMAC 2.99.137 10/31/02; A, 10/15/05; A, 06/01/09; A,~~  
49  ~~11/07/11]~~

50  
51 **20.2.99.138 — CRITERIA AND PROCEDURES — INTERIM EMISSIONS IN AREAS WITHOUT**  
52 **MOTOR VEHICLE EMISSIONS BUDGETS.**

53  ~~A. The transportation plan, TIP, and project not from a conforming transportation plan and TIP must~~  
54  ~~satisfy the interim emissions test(s) as described in Subsections C through N of 20.2.99.128 NMAC. This criterion~~  
55  ~~applies to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan~~  
56  ~~and TIP) on motor vehicle emissions from the entire transportation system.~~

1 ~~\_\_\_\_\_ B. \_\_\_\_\_ Ozone areas. The requirements of this subsection (Subsection B of 20.2.99.138 NMAC) apply to~~  
2 ~~all 1-hour ozone and 8-hour ozone NAAQS areas, except for certain requirements as indicated. This criterion may~~  
3 ~~be met.~~

4 ~~\_\_\_\_\_ (1) \_\_\_\_\_ In moderate and above ozone nonattainment areas that are subject to the reasonable further~~  
5 ~~progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of~~  
6 ~~20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through L of 20.2.99.138 NMAC demonstrates~~  
7 ~~that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC:~~

8 ~~\_\_\_\_\_ (a) \_\_\_\_\_ the emissions predicted in the "action" scenario are less than the emissions predicted in the~~  
9 ~~"baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and~~

10 ~~\_\_\_\_\_ (b) \_\_\_\_\_ the emissions predicted in the "action" scenario are lower than 1990 emissions by any~~  
11 ~~nonzero amount, in areas for the 1-hour ozone NAAQS as described in Subsection C of section 20.2.99.128 NMAC;~~  
12 ~~or the 2002 emissions by any nonzero amount, in areas for the 8-hour ozone NAAQS as described in Subsections D~~  
13 ~~and E of 20.2.99.128 NMAC.~~

14 ~~\_\_\_\_\_ (2) \_\_\_\_\_ In marginal and below ozone nonattainment areas and other ozone nonattainment areas that are~~  
15 ~~not subject to the reasonable further progress requirements of the Clean Air Act Section 182(b)(1) if a regional~~  
16 ~~emissions analysis that satisfies the requirements of section 20.2.99.141 NMAC through 20.2.99.147 NMAC and~~  
17 ~~Subsection G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the~~  
18 ~~pollutants described in Subsection F of 20.2.99.138 NMAC:~~

19 ~~\_\_\_\_\_ (a) \_\_\_\_\_ the emissions predicted in the "action" scenario are not greater than the emissions predicted~~  
20 ~~in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years;~~  
21 ~~or~~

22 ~~\_\_\_\_\_ (b) \_\_\_\_\_ the emissions predicted in the "action" scenario are not greater than the 1990 emissions, in~~  
23 ~~areas for the 1-hour NAAQS as described in Subsection C of 20.2.99.128 NMAC; or the 2002 emissions, in areas~~  
24 ~~for the 8-hour ozone NAAQS as described in Subsections D and E for 20.2.99.128 NMAC.~~

25 ~~\_\_\_\_\_ C. \_\_\_\_\_ CO areas. This criterion may be met:~~

26 ~~\_\_\_\_\_ (1) \_\_\_\_\_ in moderate areas with design values greater than 12.7 ppm and serious CO nonattainment areas~~  
27 ~~that are subject to Clean Air Act Section 187(a)(7) if a regional emissions analysis that satisfies their requirements of~~  
28 ~~sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC~~  
29 ~~demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138~~  
30 ~~NMAC:~~

31 ~~\_\_\_\_\_ (a) \_\_\_\_\_ the emissions predicted in the "action" scenario are less than the emissions predicted in the~~  
32 ~~"baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and~~

33 ~~\_\_\_\_\_ (b) \_\_\_\_\_ the emissions predicted in the "action" scenario are lower than 1990 emissions by any~~  
34 ~~nonzero amount.~~

35 ~~\_\_\_\_\_ (2) \_\_\_\_\_ in moderate areas with design values less than 12.7 ppm and not classified CO nonattainment~~  
36 ~~areas if a regional emissions analysis that satisfies the requirements of sections 20.2.99.141 NMAC through~~  
37 ~~20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year~~  
38 ~~and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC:~~

39 ~~\_\_\_\_\_ (a) \_\_\_\_\_ the emissions predicted in the "action" scenario are not greater than the emissions predicted~~  
40 ~~in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years;~~  
41 ~~or~~

42 ~~\_\_\_\_\_ (b) \_\_\_\_\_ the emissions predicted in the "action" scenario are not greater than 1990 emissions.~~

43 ~~\_\_\_\_\_ D. \_\_\_\_\_ PM<sub>10</sub> and NO<sub>2</sub> areas. This criterion may be met in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas if a regional~~  
44 ~~emissions analysis that satisfies the requirements of 20.2.99.141 NMAC through 20.2.99.147 NMAC and~~  
45 ~~Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the~~  
46 ~~pollutants described in Subsection F of 20.2.99.138 NMAC, one of the following requirements is met:~~

47 ~~\_\_\_\_\_ (1) \_\_\_\_\_ the emissions predicted in the "action" scenario are not greater than the emissions predicted in the~~  
48 ~~"baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or~~

49 ~~\_\_\_\_\_ (2) \_\_\_\_\_ the emissions predicted in the "action" scenario are not greater than baseline emissions; baseline~~  
50 ~~emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation~~  
51 ~~plan revision required by 40 CFR 51.390 defines the baseline emissions for a PM<sub>10</sub> area to be those occurring in a~~  
52 ~~different calendar year for which a baseline emissions inventory was developed for the purpose of developing a~~  
53 ~~control strategy implementation plan.~~

54 ~~\_\_\_\_\_ E. \_\_\_\_\_ PM<sub>2.5</sub> areas. This criterion may be met in PM<sub>2.5</sub> nonattainment areas if a regional emissions~~  
55 ~~analysis that satisfies the requirements of sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections~~

1 G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described  
2 in Subsection F of 20.2.99.138 NMAC, one of the following requirements is met:

3 ~~\_\_\_\_\_ (1) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the~~  
4 ~~"baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or~~

5 ~~\_\_\_\_\_ (2) the emissions predicted in the "action" scenario are not greater than:~~

6 ~~\_\_\_\_\_ (a) 2002 emissions, in areas designated nonattainment for the 1997 PM<sub>2.5</sub> NAAQS; or~~

7 ~~\_\_\_\_\_ (b) emissions in the most recent year for which EPA's air emissions reporting requirements (40~~  
8 ~~CFR Part 51, Subpart A) requires submission of on-road mobile source emissions inventories, as of the effective~~  
9 ~~date of nonattainment designations for any PM<sub>2.5</sub> NAAQS other than the 1997 PM<sub>2.5</sub> NAAQS.~~

10 ~~\_\_\_\_\_ F. \_\_\_\_\_ Pollutants. The regional emissions analysis must be performed for the following pollutants:~~

11 ~~\_\_\_\_\_ (1) VOC in ozone areas;~~

12 ~~\_\_\_\_\_ (2) NOx in ozone areas, unless the US EPA administrator determines that additional reductions of~~  
13 ~~NOx would not contribute to attainment;~~

14 ~~\_\_\_\_\_ (3) CO in CO areas;~~

15 ~~\_\_\_\_\_ (4) PM<sub>10</sub> in PM<sub>10</sub> areas;~~

16 ~~\_\_\_\_\_ (5) VOC and/or NOx in PM<sub>10</sub> areas if the US EPA regional administrator or the department has made~~  
17 ~~a finding that such precursor emissions from within the area are a significant contributor to the PM<sub>10</sub> nonattainment~~  
18 ~~problem and has so notified the MPO and US DOT;~~

19 ~~\_\_\_\_\_ (6) NOx in NO<sub>2</sub> areas;~~

20 ~~\_\_\_\_\_ (7) PM<sub>2.5</sub> areas;~~

21 ~~\_\_\_\_\_ (8) re-entrained road dust in PM<sub>2.5</sub> areas only if the US EPA regional administrator or the department~~  
22 ~~has made a finding that emissions from re-entrained road dust within the area are a significant contributor to the~~  
23 ~~PM<sub>2.5</sub> nonattainment problem and has so notified the MPO and US DOT;~~

24 ~~\_\_\_\_\_ (9) nitrogen oxides in PM<sub>2.5</sub> areas, unless the EPA regional administrator and the department have~~  
25 ~~made a finding that emissions of nitrogen oxides from within the area are not a significant contributor to the PM<sub>2.5</sub>~~  
26 ~~nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT; and~~

27 ~~\_\_\_\_\_ (10) VOC, SO<sub>2</sub> and/or ammonia in PM<sub>2.5</sub> areas if the EPA regional administrator or the department~~  
28 ~~has made a finding that any of such precursor emissions from within the area are a significant contributor to the~~  
29 ~~PM<sub>2.5</sub> nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US~~  
30 ~~DOT.~~

31 ~~\_\_\_\_\_ G. \_\_\_\_\_ Analysis years.~~

32 ~~\_\_\_\_\_ (1) The regional emissions analysis must be performed for analysis years that are no more than ten~~  
33 ~~(10) years apart. The first analysis year must be no more than five (5) years beyond the year in which the conformity~~  
34 ~~determination is being made. The last year of the timeframe of the conformity determination (as described under~~  
35 ~~Subsection D of 20.2.99.125 NMAC) must also be an analysis year.~~

36 ~~\_\_\_\_\_ (2) For areas using Subparagraph (a) of Paragraph (2) of Subsection B of section 20.2.99.138 NMAC,~~  
37 ~~Subparagraph (a) of Paragraph (2) of Subsection C of section 20.2.99.138 NMAC, Paragraph (1) of Subsection D of~~  
38 ~~section 20.2.99.138 NMAC, and Paragraph (1) of Subsection E of section 20.2.99.138 NMAC, a regional emissions~~  
39 ~~analysis that satisfies the requirements of sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections~~  
40 ~~G through J of section 20.2.99.138 would not be required for analysis years in which the transportation projects and~~  
41 ~~planning assumptions in the "action" and "baseline" scenarios are exactly the same. In such a case, Subsection A of~~  
42 ~~section 20.2.99.138 NMAC can be satisfied by documenting that the transportation projects and planning~~  
43 ~~assumptions in both scenarios are exactly the same, and consequently, the emissions predicted in the "action"~~  
44 ~~scenario are not greater than the emissions predicted in the "baseline" scenario for such analysis years.~~

45 ~~\_\_\_\_\_ (3) When the timeframe of the conformity determination is shortened under Paragraph (2) of~~  
46 ~~Subsection D of 20.2.99.125 NMAC, the conformity determination must be accompanied by a regional emissions~~  
47 ~~analysis (for informational purposes only) for the last year of the transportation plan.~~

48 ~~\_\_\_\_\_ H. \_\_\_\_\_ "Baseline" scenario. The regional emissions analysis required by Subsections B and E of~~  
49 ~~20.2.99.138 NMAC must estimate the emissions that would result from the "baseline" scenario in each analysis~~  
50 ~~year. The "baseline" scenario must be defined for each of the analysis years. The "baseline" scenario is the future~~  
51 ~~transportation system that will result from current programs, including the following (except that exempt projects~~  
52 ~~listed in Subsection A of 20.2.99.149 NMAC and projects exempt from regional emissions analysis as listed in~~  
53 ~~Subsection B of 20.2.99.149 NMAC need not be explicitly considered):~~

54 ~~\_\_\_\_\_ (1) all in-place regionally significant highway and transit facilities, services and activities;~~

55 ~~\_\_\_\_\_ (2) all ongoing travel demand management or transportation system management activities; and~~

1 ~~\_\_\_\_\_ (3) completion of all regionally significant projects, regardless of funding source, which are currently~~  
2 ~~under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective~~  
3 ~~buying); come from the first year of the previously conforming transportation plan and/or TIP; or have completed~~  
4 ~~the NEPA process.~~

5 ~~\_\_\_\_\_ I. "Action" scenario. The regional emissions analysis required by Subsections B and C of~~  
6 ~~20.2.99.138 NMAC must estimate the emissions that would result from the "action" scenario in each analysis year.~~  
7 ~~The "action" scenario must be defined for each of the analysis years. The "action" scenario is the transportation~~  
8 ~~system that would result from the implementation of the proposed action (transportation plan, TIP, or project not~~  
9 ~~from a conforming transportation plan and TIP) and all other expected regionally significant projects in the~~  
10 ~~nonattainment area. The "action" scenario must include the following (except that exempt projects listed in~~  
11 ~~Subsection A of 20.2.99.149 NMAC and projects exempt from regional emissions analysis as listed in Subsection B~~  
12 ~~of 20.2.99.149 NMAC need not be explicitly considered):~~

13 ~~\_\_\_\_\_ (1) all facilities, services, and activities in the "baseline" scenario;~~

14 ~~\_\_\_\_\_ (2) completion of all TCMs and regionally significant projects (including facilities, services, and~~  
15 ~~activities) specifically identified in the proposed transportation plan which will be operational or in effect in the~~  
16 ~~analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is~~  
17 ~~already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;~~

18 ~~\_\_\_\_\_ (3) all travel demand management programs and transportation system management activities known~~  
19 ~~to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval,~~  
20 ~~which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last~~  
21 ~~conformity determination;~~

22 ~~\_\_\_\_\_ (4) the incremental effects of any travel demand management programs and transportation system~~  
23 ~~management activities known to the MPO, but not included in the applicable implementation plan or utilizing any~~  
24 ~~federal funding or approval, which were adopted and/or funded prior to the date of the last conformity~~  
25 ~~determination, but which have been modified since then to be more stringent or effective;~~

26 ~~\_\_\_\_\_ (5) completion of all expected regionally significant highway and transit projects which are not from~~  
27 ~~a conforming transportation plan and TIP; and~~

28 ~~\_\_\_\_\_ (6) completion of all expected regionally significant non-FHWA/FTA highway and transit projects~~  
29 ~~that have clear funding sources and commitments leading toward their implementation and completion by the~~  
30 ~~analysis year.~~

31 ~~\_\_\_\_\_ J. Projects not from a conforming transportation plan and TIP. For the regional emissions analysis~~  
32 ~~required by Subsections B and E of 20.2.99.138 NMAC, if the project which is not from a conforming transportation~~  
33 ~~plan and TIP is a modification of a project currently in the plan or TIP, the "baseline" scenario must include the~~  
34 ~~project with its original design concept and scope, and the "action" scenario must include the project with its new~~  
35 ~~design concept and scope.~~

36 ~~[12/14/94; 11/23/98; 20.2.99.138 NMAC Rn, 20 NMAC 2.99.138 10/31/02; A, 10/15/05; A, 9/1/07; A, 06/01/09;~~  
37 ~~A, 11/07/11]~~

38  
39 ~~**20.2.99.139 CONSEQUENCES OF CONTROL STRATEGY IMPLEMENTATION PLAN FAILURES.**~~

40 ~~\_\_\_\_\_ A. Disapprovals.~~

41 ~~\_\_\_\_\_ (1) If US EPA disapproves any submitted control strategy implementation plan revision (with or~~  
42 ~~without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that~~  
43 ~~highway sanctions as a result of the disapproval are imposed on the nonattainment area under Section 179(b)(1) of~~  
44 ~~the CAA. No new transportation plan, TIP, or project may be found to conform until another control strategy~~  
45 ~~implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission~~  
46 ~~is determined.~~

47 ~~\_\_\_\_\_ (2) If US EPA disapproves a submitted control strategy implementation plan revision without making~~  
48 ~~a protective finding, only projects in the first four (4) years of the currently conforming transportation plan and TIP~~  
49 ~~or that meet the requirements of Subsection B of 20.2.99.111 NMAC during the 12-month lapse grace period may~~  
50 ~~be found to conform. This means that beginning on the effective date of a disapproval without a protective finding,~~  
51 ~~no transportation plan, TIP, or project not in the first four (4) years of the currently conforming transportation plan~~  
52 ~~and TIP or that meets the requirements of Subsection B of 20.2.99.111 NMAC during the 12-month lapse grace~~  
53 ~~period may be found to conform until another control strategy implementation plan revision fulfilling the same~~  
54 ~~Clean Air Act requirements is submitted, US EPA finds its motor vehicle emissions budget(s) adequate pursuant to~~  
55 ~~section 20.2.99.137 NMAC or approves the submission, and conformity to the implementation plan revision is~~  
56 ~~determined.~~

1 ~~\_\_\_\_\_ (3) In disapproving a control strategy implementation plan revision, US EPA would give a protective~~  
2 ~~finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable~~  
3 ~~control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for~~  
4 ~~which the implementation plan revision was submitted, such as reasonable further progress or attainment.~~

5 ~~\_\_\_\_\_ B. Failure to submit and incompleteness. In areas where US EPA notifies the department, MPO, and~~  
6 ~~US DOT of the department's failure to submit a control strategy implementation plan or submission of an~~  
7 ~~incomplete control strategy implementation plan revision (either of which initiates the sanction process under CAA~~  
8 ~~Sections 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that~~  
9 ~~highway sanctions are imposed on the nonattainment area for such failure under Section 179(b)(1) of the CAA,~~  
10 ~~unless the failure has been remedied and acknowledged by a letter from the US EPA regional administrator.~~

11 ~~\_\_\_\_\_ C. Federal implementation plans. If US EPA promulgates a federal implementation plan that~~  
12 ~~contains motor vehicle emissions budget(s) as a result of a department failure, the conformity lapse imposed by~~  
13 ~~20.2.99.139 NMAC because of the department failure is removed.~~

14 ~~[12/14/94; 11/23/98; 20.2.99.139 NMAC—Rn, 20 NMAC 2.99.139 10/31/02; A, 10/15/05; A, 06/01/09]~~

15  
16 **20.2.99.140 — REQUIREMENTS FOR ADOPTION OR APPROVAL OF PROJECTS BY OTHER**  
17 **RECIPIENTS OF FUNDS DESIGNATED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT LAWS**

18 ~~\_\_\_\_\_ A. Except as provided in Subsection B of 20.2.99.140 NMAC, no recipient of federal funds~~  
19 ~~designated under title 23 U.S.C. or the federal transit laws shall adopt or approve a regionally significant highway or~~  
20 ~~transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following~~  
21 ~~are met:~~

22 ~~\_\_\_\_\_ (1) the project comes from the currently conforming transportation plan and TIP (or meets the~~  
23 ~~requirements of Subsection B of 20.2.99.111 NMAC during the 12-month lapse grace period), and the project's~~  
24 ~~design concept and scope have not changed significantly from those that were included in the regional emissions~~  
25 ~~analyses for that transportation plan and TIP; or~~

26 ~~\_\_\_\_\_ (2) the project is included in the regional emissions analysis for the currently conforming~~  
27 ~~transportation plan and TIP conformity determination (or meets the requirements of Subsection B of 20.2.99.111~~  
28 ~~NMAC during the 12-month lapse grace period), even if the project is not strictly included in the transportation plan~~  
29 ~~or TIP for the purpose of MPO project selection or endorsement, and the project's design concept and scope have not~~  
30 ~~changed significantly from those which were included in the regional emissions analysis; or~~

31 ~~\_\_\_\_\_ (3) a new regional emissions analysis including the project and the currently conforming~~  
32 ~~transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were~~  
33 ~~implemented (consistent with the requirements of 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for a project not~~  
34 ~~from a conforming transportation plan and TIP).~~

35 ~~\_\_\_\_\_ B. In isolated rural nonattainment and maintenance areas subject to Subsection N of 20.2.99.128~~  
36 ~~NMAC, no recipient of federal funds designated under title 23 U.S.C. or the federal transit laws shall adopt or~~  
37 ~~approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds~~  
38 ~~that the requirements of one of the following are met:~~

39 ~~\_\_\_\_\_ (1) the project was included in the regional emissions analysis supporting the most recent conformity~~  
40 ~~determination that reflects the portion of the statewide transportation plan and TIP which are in the nonattainment or~~  
41 ~~maintenance area, and the project's design concept and scope has not changed significantly; or~~

42 ~~\_\_\_\_\_ (2) a new regional emissions analysis including the project and all other regionally significant~~  
43 ~~projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide~~  
44 ~~transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the~~  
45 ~~project were implemented (consistent with the requirements of 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for~~  
46 ~~projects not from a conforming transportation plan and TIP).~~

47 ~~\_\_\_\_\_ C. Notwithstanding Subsections A and B of section 20.2.99.140 NMAC, in nonattainment and~~  
48 ~~maintenance areas subject to Subsections L or M of section 20.2.99.128 NMAC for a given pollutant/precursor and~~  
49 ~~NAAQS, no recipient of federal funds designated under title 23 U.S.C. or the federal transit laws shall adopt or~~  
50 ~~approve a regionally significant highway or transit project, regardless of funding source. Unless the recipient finds~~  
51 ~~that the requirements of one of the following are met for that pollutant/precursor and NAAQS:~~

52 ~~\_\_\_\_\_ (1) the project was included in the most recent conformity determination for the transportation plan~~  
53 ~~and TIP and the project's design concept and scope has not changed significantly; or~~

54 ~~\_\_\_\_\_ (2) the project as included in the most recent conformity determination that reflects the portions of~~  
55 ~~the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the~~  
56 ~~project's design concept and scope has not changed significantly.~~

1 [12/14/94; 11/23/98; 20.2.99.140 NMAC – Rn, 20 NMAC 2.99.140-10/31/02; A, 10/15/05; A, 06/01/09; A,  
2 11/07/11]

3  
4 **20.2.99.141 — PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION RELATED  
5 POLLUTANT EMISSIONS — GENERAL REQUIREMENTS:**

6 ~~———— A. ——— The regional emissions analysis required by 20.2.99.137 NMAC and 20.2.99.138 NMAC for the  
7 transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant  
8 projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the  
9 transportation plan and TIP, and all other regionally significant projects which are disclosed to the MPO as required  
10 by 20.2.99.116 NMAC through 20.2.99.124 NMAC. Projects which are not regionally significant are not required  
11 to be explicitly modeled, but vehicle miles traveled (VMT) from such projects shall be estimated in accordance with  
12 reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may  
13 also be estimated in accordance with reasonable professional practice.~~

14 ~~———— B. ——— The emissions analysis may not include for emissions reduction credit any TCMs or other  
15 measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such  
16 time as their implementation has been assured. If the measure has been partially implemented and it can be  
17 demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that  
18 emissions reduction credit.~~

19 ~~———— C. ——— Emissions reduction credit from projects, programs, or activities which require a regulatory action  
20 in order to be implemented may not be included in the emissions analysis unless:~~

21 ~~———— (1) ——— The regulatory action is already adopted by the enforcing jurisdiction;~~

22 ~~———— (2) ——— The project, program, or activity is included in the applicable implementation plan;~~

23 ~~———— (3) ——— The control strategy implementation plan submission or maintenance plan submission that  
24 establishes the motor vehicle emissions budget (s) for the purposes of 20.2.99.137 NMAC contains a written  
25 commitment to the project, program, or activity by the agency with authority to implement it; or~~

26 ~~———— (4) ——— US EPA has approved an opt-in to a Federally enforced program, US EPA has promulgated the  
27 program (if the control program is a Federal responsibility, such as vehicle tailpipe standards), or the CAA requires  
28 the program without need for individual State action and without any discretionary authority for US EPA to set its  
29 stringency, delay its effective date, or not implement the program.~~

30 ~~———— D. ——— Emissions reduction credit from control measures that are not included in the transportation plan  
31 and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions  
32 analysis unless the conformity determination includes written commitments to implementation from the appropriate  
33 entities.~~

34 ~~———— (1) ——— Persons or entities voluntarily committing to control measures must comply with the obligations  
35 of such commitments.~~

36 ~~———— (2) ——— The conformity implementation plan revision required in 40 CFR 51.390 must provide that  
37 written commitments to control measures that are not included in the transportation plan and TIP must be obtained  
38 prior to a conformity determination and that such commitments must be fulfilled.~~

39 ~~———— E. ——— A regional emissions analysis for the purpose of satisfying the requirements of 20.2.99.138  
40 NMAC must make the same assumptions in both the "Baseline" and "Action" scenarios regarding control measures  
41 that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits  
42 on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or  
43 diesel fuel.~~

44 ~~———— F. ——— The ambient temperatures used for the regional emissions analysis shall be consistent with those  
45 used to establish the emissions budget in the applicable implementation plan. All other factors, for example the  
46 fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless  
47 modified after interagency consultation according to 20.2.99.120 NMAC to incorporate additional or more  
48 geographically specific information or represent a logically estimated trend in such factors beyond the period  
49 considered in the applicable implementation plan.~~

50 ~~———— G. ——— Reasonable methods shall be used to estimate nonattainment or maintenance area VMT on off-  
51 network roadways within the urban transportation planning area, and on roadways outside the urban transportation  
52 planning area.~~

53 [12/14/94; 11/23/98; 20.2.99.141 NMAC – Rn, 20 NMAC 2.99.141-10/31/02]

54  
55 **20.2.99.142 — PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION RELATED  
56 POLLUTANT EMISSIONS — ANALYSIS IN SERIOUS, SEVERE, AND EXTREME OZONE**

1 ~~NONATTAINMENT AREAS AND SERIOUS CARBON MONOXIDE AREAS:~~ Regional emissions analyses  
2 must meet the requirements of subsections A through C of 20.2.99.142 NMAC if their metropolitan planning area  
3 contains an urbanized area population over two hundred thousand (200,000).

4 ~~\_\_\_\_\_ A. \_\_\_\_\_~~ By January 1, 1997, estimates of regional transportation-related emissions used to support  
5 conformity determinations must be made at a minimum using network-based travel models according to procedures  
6 and methods that are available and in practice and supported by current and available documentation. These  
7 procedures, methods, and practices are available from US DOT and will be updated periodically. Agencies must  
8 discuss these modeling procedures and practices through the interagency consultation process, as required by  
9 20.2.99.120 NMAC. Network-based travel models must at a minimum satisfy the following requirements:

10 ~~\_\_\_\_\_ (1) \_\_\_\_\_~~ Network-based models must be validated against observed counts (peak and off-peak, if possible)  
11 for a base year that is not more than ten (10) years prior to the date of the conformity determination. Model  
12 forecasts must be analyzed for reasonableness and compared to historical trends and other factors, and the results  
13 must be documented;

14 ~~\_\_\_\_\_ (2) \_\_\_\_\_~~ Land use, population, employment, and other network-based travel model assumptions must be  
15 documented and based on the best available information;

16 ~~\_\_\_\_\_ (3) \_\_\_\_\_~~ Scenarios of land development and use must be consistent with the future transportation system  
17 alternatives for which emissions are being estimated. The distribution of employment and residences for different  
18 transportation options must be reasonable;

19 ~~\_\_\_\_\_ (4) \_\_\_\_\_~~ A capacity-sensitive assignment methodology must be used, and emissions estimates must be  
20 based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds  
21 based on final assigned volumes;

22 ~~\_\_\_\_\_ (5) \_\_\_\_\_~~ Zone-to-zone travel impedances used to distribute trips between origin and destination pairs shall  
23 be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes. Where use  
24 of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should  
25 also be used for modeling mode splits; and

26 ~~\_\_\_\_\_ (6) \_\_\_\_\_~~ Network-based travel models must be reasonably sensitive to changes in the time(s), cost(s), and  
27 other factors affecting travel choices.

28 ~~\_\_\_\_\_ B. \_\_\_\_\_~~ Reasonable methods in accordance with good practice must be used to estimate traffic speeds and  
29 delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the  
30 network-based travel model.

31 ~~\_\_\_\_\_ C. \_\_\_\_\_~~ Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled (VMT)  
32 shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and  
33 for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban  
34 area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and  
35 calibrate the network-based model estimates of VMT in the base year of its validation to the HPMS estimates for the  
36 same period. These factors may then be applied to model estimates of future VMT. In this factoring process,  
37 consideration will be given to differences between HPMS and network-based travel models, such as differences in  
38 the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs  
39 and other departures from these procedures are permitted subject to the interagency consultation procedures of  
40 20.2.99.120 NMAC.

41 [~~12/14/94; 11/23/98; 20.2.99.142 NMAC Rn, 20 NMAC 2.99.142 10/31/02~~]

42  
43 ~~20.2.99.143 \_\_\_\_\_ PROCEDURES FOR DETERMINING REGIONAL TRANSPORTION RELATED~~  
44 ~~POLLUTION EMISSIONS TWO YEAR GRACE PERIOD FOR REGIONAL EMISSIONS ANALYSIS~~  
45 ~~REQUIREMENTS IN CERTAIN OZONE AND CO AREAS.~~ The requirements of 20.2.99.142 NMAC apply in  
46 such areas or portions of such areas that have not previously been required to meet these requirements for any  
47 existing NAAQS two years from the following:

48 ~~\_\_\_\_\_ A. \_\_\_\_\_~~ the effective date of US EPA's reclassification of an ozone or CO nonattainment area that have an  
49 urbanized area population greater than 200,000 to serious or above;

50 ~~\_\_\_\_\_ B. \_\_\_\_\_~~ the official notice by the census bureau that determines the urbanized area population of a serious  
51 or above ozone or CO nonattainment area to be greater than 200,000; or

52 ~~\_\_\_\_\_ C. \_\_\_\_\_~~ the effective date of US EPA's action that classifies a newly designated ozone or CO  
53 nonattainment area that has an urbanized area population greater than 200,000 as serious or above.

54 [~~12/14/94; 11/23/98; 20.2.99.143 NMAC Rn, 20 NMAC 2.99.143, 10/31/02; 20.2.99.143 NMAC N, 10/15/05~~]

1 ~~20.2.99.144 — PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION RELATED~~  
2 ~~POLLUTANT EMISSIONS — AREAS WHICH ARE NOT SERIOUS, SEVERE OR EXTREME OZONE~~  
3 ~~NONATTAINMENT AREAS OR SERIOUS CARBON MONOXIDE AREAS.~~ In all areas not otherwise  
4 subject to 20.2.99.142 NMAC, regional emissions analyses must use those procedures described in 20.2.99.142  
5 NMAC if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to  
6 20.2.99.142 NMAC may estimate regional emissions using any appropriate methods that account for VMT growth  
7 by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and  
8 historical growth trends for VMT per person. These methods must also consider future economic activity, transit  
9 alternatives, and transportation system policies.  
10 [12/14/94; 11/23/98; 20.2.99.144 NMAC — Rn, 20 NMAC 2.99.144, 10/31/02; 20.2.99.144 NMAC — Rn,  
11 20.2.99.143 NMAC, 10/15/05]

12  
13 ~~20.2.99.145 — PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION RELATED~~  
14 ~~POLLUTANT EMISSIONS — PM10 FROM CONSTRUCTION RELATED FUGITIVE DUST.~~

15 ~~—— A. ——~~ For areas in which the implementation plan does not identify construction-related fugitive PM10  
16 as a contributor to the nonattainment problem, the fugitive PM10 emissions associated with highway and transit  
17 project construction are not required to be considered in the regional emissions analysis.

18 ~~—— B. ——~~ In PM10 nonattainment and maintenance areas with implementation plans which identify  
19 construction-related fugitive PM10 as a contributor to the nonattainment problem, the regional PM10 emissions  
20 analysis shall consider construction-related fugitive PM10 and shall account for the level of construction activity,  
21 the fugitive PM10 control measures in the SIP, and the dust-producing capacity of the proposed activities.  
22 [12/14/94; 11/23/98; 20.2.99.145 NMAC — Rn, 20 NMAC 2.99.145, 10/31/02; 20.2.99.145 NMAC — Rn,  
23 20.2.99.144 NMAC, 10/15/05]

24  
25 ~~20.2.99.146 — PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION RELATED~~  
26 ~~POLLUTANT EMISSIONS — PM2.5 FROM CONSTRUCTION RELATED FUGITIVE DUST.~~

27 ~~—— A. ——~~ For PM2.5 areas in which the implementation plan does not identify construction-related fugitive  
28 PM2.5 as a significant contributor to the nonattainment problem, the fugitive PM2.5 emissions associated with  
29 highway and transit project construction are not required to be considered on the regional emissions analysis.

30 ~~—— B. ——~~ In PM2.5 nonattainment and maintenance areas with implementation plans which identify  
31 construction-related fugitive PM2.5 as a significant contributor to the nonattainment problem, the regional PM2.5  
32 emissions analysis shall consider construction-related fugitive PM2.5 and shall account for the level of construction  
33 activity, the fugitive PM2.5 control measures in the applicable implementation plan, and the dust-producing capacity  
34 of the proposed activities.

35 [12/14/94; 11/23/98; 20.2.99.146 NMAC — Rn, 20 NMAC 2.99.146, 10/31/02; 20.2.99.146 NMAC — N, 10/15/05]

36  
37 ~~20.2.99.147 — PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION RELATED~~  
38 ~~POLLUTANT EMISSIONS — RELIANCE ON PREVIOUS REGIONAL EMISSIONS ANALYSIS.~~

39 ~~—— A. ——~~ Conformity determinations for a new transportation plan and/or TIP may be demonstrated to  
40 satisfy the requirements of Section 20.2.99.137 NMAC ("Motor vehicle emissions budget") or Section 20.2.99.138  
41 NMAC ("Emission reductions in areas without motor vehicle emissions budgets") without new regional emissions  
42 analysis if the regional emissions analysis if the previous regional emissions analysis also applies to the new plan  
43 and/or TIP. This requires a demonstration that:

44 ~~—— (1) ——~~ the new plan and/or TIP contains all projects which must be started in the plan and TIP's  
45 timeframe in order to achieve the highway and transit system envisioned by the transportation plan;

46 ~~—— (2) ——~~ all plan and TIP projects which are regionally significant are included in the transportation plan  
47 with design concept and scope adequate to determine their contribution to the transportation plan's and/or TIP's  
48 regional emissions at the time of the previous conformity determination; and

49 ~~—— (3) ——~~ the design concept and scope of each regionally significant project in the new plan and/or TIP are  
50 not significantly different from that described in the previous transportation plan; and

51 ~~—— (4) ——~~ the previous regional emissions analysis is consistent with the requirements of Section  
52 20.2.99.137 NMAC (including that conformity to all currently applicable budgets is demonstrated) and/or Section  
53 20.2.99.138 NMAC, as applicable.

54 ~~—— B. ——~~ A project which is not from a conforming transportation plan and a conforming TIP may be  
55 demonstrated to satisfy the requirements of 20.2.99.137 NMAC or 20.02.99.138 NMAC without additional regional  
56 emissions analysis if allocating funds to the project will not delay the implementation of projects in the

1 transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the  
2 transportation plan, the previous regional emissions analysis is still consistent with the requirements of Section  
3 20.2.99.137 NMAC (including that conformity to all currently applicable budgets is demonstrated) and/or Section  
4 20.2.99.138 NMAC, as applicable, and if the project is either:

5 ~~\_\_\_\_\_ (1) not regionally significant; or~~  
6 ~~\_\_\_\_\_ (2) included in the conforming transportation plan (even if it is not specifically included in the latest~~  
7 ~~conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's~~  
8 ~~regional emissions at the time of the transportation plan's conformity determination, and the design concept and~~  
9 ~~scope of the project is not significantly different from that described in the transportation plan.~~

10 ~~\_\_\_\_\_ C. A conformity determination that relies on this section (20.2.99.147 NMAC) does not satisfy the~~  
11 ~~frequency requirements of Sections 20.2.99.112 NMAC and 20.2.99.113 NMAC.~~  
12 ~~[12/14/94; 11/23/98; 20.2.99.147 NMAC - Rn, 20 NMAC 2.99.147, 10/31/02; 20.2.99.147 NMAC - Rn,~~  
13 ~~20.2.99.145 NMAC & A, 10/15/05]~~

14  
15 **20.2.99.148 PROCEDURES FOR DETERMINING LOCALIZED CO, PM10 AND PM2.5**  
16 **CONCENTRATIONS (HOT SPOT ANALYSIS).**

17 ~~\_\_\_\_\_ A. CO Hot spot Analysis.~~

18 ~~\_\_\_\_\_ (1) The demonstrations required by 20.2.99.135 NMAC shall be based on quantitative analysis using~~  
19 ~~the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51 appendix W~~  
20 ~~("Guideline on Air Quality Models"). These procedures shall be used in the following cases, unless, different~~  
21 ~~procedures developed through the interagency consultation process required in 20.2.99.116 NMAC through~~  
22 ~~20.2.99.124 NMAC and approved by the EPA region 6 administrator are used:~~

23 ~~\_\_\_\_\_ (a) for projects in or affecting locations, areas, or categories of sites which are identified in the~~  
24 ~~SIP as sites of violation or possible violation;~~

25 ~~\_\_\_\_\_ (b) for projects affecting intersections that are at level of service D, E, or F, or those that will~~  
26 ~~change to level of service D, E, or F because of increased traffic volumes related to the project;~~

27 ~~\_\_\_\_\_ (c) for any project affecting one or more of the intersections which the SIP identifies as the top~~  
28 ~~three intersections in the nonattainment or maintenance area based on the highest traffic volumes; and~~

29 ~~\_\_\_\_\_ (d) for any project affecting one or more of the intersections which the SIP identifies as the top~~  
30 ~~three intersections in the nonattainment or maintenance area based on the worst level of service.~~

31 ~~\_\_\_\_\_ (2) In cases other than those described in Paragraph (1) of Subsection A of 20.2.99.146 NMAC, the~~  
32 ~~demonstrations required by 20.2.99.135 NMAC may be based on either:~~

33 ~~\_\_\_\_\_ (a) quantitative methods that represent reasonable and common professional practice; or~~

34 ~~\_\_\_\_\_ (b) a qualitative consideration of local factors, if this can provide a clear demonstration that the~~  
35 ~~requirements of 20.2.99.135 NMAC are met.~~

36 ~~\_\_\_\_\_ (3) US DOT, in consultation with US EPA, may also choose to make a categorical hot spot finding~~  
37 ~~that Subsection A of 20.2.99.135 NMAC is met without further hot spot analysis for any project described in~~  
38 ~~Paragraphs (1) and (2) of Subsection A of 20.2.99.148 NMAC) based on appropriate modeling, US DOT, in~~  
39 ~~consultation with US EPA, may also consider the current air quality circumstances of a given CO nonattainment or~~  
40 ~~maintenance area in categorical hot spot findings for applicable FHWA or FTA projects.~~

41 ~~\_\_\_\_\_ B. PM10 and PM2.5 Hot spot Analysis.~~

42 ~~\_\_\_\_\_ (1) The hot spot demonstration required by 20.2.99.135 NMAC shall be based on quantitative~~  
43 ~~analysis methods for the following types of projects:~~

44 ~~\_\_\_\_\_ (a) new highway projects that have a significant number of diesel vehicles, and expanded~~  
45 ~~highway projects that have a significant increase in the number of diesel vehicles;~~

46 ~~\_\_\_\_\_ (b) projects affecting intersections that are at level of service D, E, or F with a significant~~  
47 ~~number of diesel vehicles, or those that will change to level of service D, E, or F because of increased traffic~~  
48 ~~volumes from a significant number of diesel vehicles related to the project; and~~

49 ~~\_\_\_\_\_ (c) new bus and rail terminals and transfer points which have a significant number of diesel~~  
50 ~~vehicles congregating at a single location;~~

51 ~~\_\_\_\_\_ (d) expanded bus and rail terminals and transfer points that significantly increase the number of~~  
52 ~~diesel vehicles congregating at a single location; and~~

53 ~~\_\_\_\_\_ (e) projects in or affecting locations, areas, or categories of sites which are identified in the~~  
54 ~~PM10 or PM2.5 applicable implementation plan submission, as appropriate, as sites of violation or possible~~  
55 ~~violations.~~

1 ~~————— (2) —Where quantitative analysis methods are not required, the demonstration required by 20.2.99.135~~  
2 ~~NMAC for projects described in Paragraph (1) of Subsection B of this section must be based on a qualitative~~  
3 ~~consideration of local factors.~~

4 ~~————— (3) —US DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that~~  
5 ~~section 20.2.99.135 NMAC is met without further hot-spot analysis for any project described in Paragraph (1) of~~  
6 ~~Subsection B of this section based on appropriate modeling. US DOT, in consultation with EPA, may also consider~~  
7 ~~the current air quality circumstances of a given PM2.5 or PM10 nonattainment or maintenance area in categorical~~  
8 ~~hot-spot findings for applicable FHWA or FTA projects.~~

9 ~~————— (4) —The requirements of this Subsection B of 20.2.99.146 NMAC for quantitative analysis will not~~  
10 ~~take effect until EPA releases modeling guidance on this subject and announces in the federal register that these~~  
11 ~~requirements are in effect.~~

12 ~~————— C. —General Requirements.~~

13 ~~————— (1) —Estimated pollutant concentrations shall be based on the total emissions burden which may result~~  
14 ~~from the implementation of the project, summed together with future background concentrations. The total~~  
15 ~~concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially affected by~~  
16 ~~the project.~~

17 ~~————— (2) —Hot-spot analyses shall include the entire project, and may be performed only after the major~~  
18 ~~design features which will significantly impact concentrations have been identified. The future background~~  
19 ~~concentration should be estimated by multiplying current background by the ratio of future to current traffic and the~~  
20 ~~ratio of future to current emission factors.~~

21 ~~————— (3) —Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for~~  
22 ~~those inputs which are required for both analyses.~~

23 ~~————— (4) —CO, PM10 or PM2.5 mitigation or control measures shall be assumed in the hot-spot analysis~~  
24 ~~only where there are written commitments from the project sponsor or operator to implement such measures, as~~  
25 ~~required by Subsection A of 20.2.99.148 NMAC.~~

26 ~~————— (5) —CO, PM10, and PM2.5 hot-spot analyses are not required to consider construction-related~~  
27 ~~activities which cause temporary increases in emissions. Each site which is affected by construction-related~~  
28 ~~activities shall be considered separately, using established "guideline" methods. Temporary increases are defined as~~  
29 ~~those which occur only during the construction phase and last five years or less at any individual site.~~  
30 ~~[12/14/94; 11/23/98; 20.2.99.148 NMAC—Rn, 20 NMAC 2.99.148, 10/31/02; 20.2.99.148 NMAC—Rn,~~  
31 ~~20.2.99.146 NMAC, 10/15/05; A, 9/1/07; A, 06/01/09]~~

32  
33 **20.2.99.149 — USING THE MOTOR VEHICLE EMISSIONS BUDGET IN THE SIP (OR**  
34 **IMPLEMENTATION PLAN SUBMISSION).**

35 ~~————— A. —In interpreting an SIP (or implementation plan submission) with respect to its motor vehicle~~  
36 ~~emissions budget(s), the MPO (or NMDOT in the absence of an MPO) and the US DOT may not infer additions to~~  
37 ~~the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the~~  
38 ~~implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still~~  
39 ~~allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly~~  
40 ~~states an intent that some or all of this additional amount should be available to the MPO (or NMDOT in the absence~~  
41 ~~of an MPO), and the US DOT, in the emission budget for conformity purposes, neither the MPO (or NMDOT in the~~  
42 ~~absence of an MPO) nor US DOT may interpret the budget to be higher than the implementation plan's estimate of~~  
43 ~~future emissions. This applies in particular to SIPs (or submissions) which demonstrate that after implementation of~~  
44 ~~control measures in the implementation plan:~~

45 ~~————— (1) —emissions from all sources will be less than the total emissions that would be consistent with a~~  
46 ~~required demonstration of an emissions reduction milestone;~~

47 ~~————— (2) —either emissions from all sources will result in achieving attainment prior to the attainment~~  
48 ~~deadline, and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate~~  
49 ~~attainment; or~~

50 ~~————— (3) —emissions will be lower than needed to provide for continued maintenance.~~

51 ~~————— B. —A conformity demonstration shall not trade emissions among budgets which the SIP (or~~  
52 ~~implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to~~  
53 ~~motor vehicles and other sources, unless the implementation plan establishes appropriate mechanisms for such~~  
54 ~~trades.~~

55 ~~————— C. —If the applicable SIP (or implementation plan submission) estimates future emissions by~~  
56 ~~geographic subarea of the nonattainment area, the MPO (or NMDOT in the absence of an MPO), and the US DOT~~

1 are not required to consider this to establish subarea budgets, unless the SIP (or implementation plan submission)  
2 explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

3 ~~———— D. ——— If a nonattainment area includes more than one MPO, the applicable SIP may establish motor  
4 vehicle emissions budgets for each MPO. Otherwise, the MPOs shall collectively make a conformity determination  
5 for the entire nonattainment area.~~

6 ~~[12/14/94; 11/23/98; 20.2.99.149 NMAC — Rn, 20 NMAC 2.99.149, 10/31/02; 20.2.99.149 NMAC — Rn,  
7 20.2.99.147 NMAC & A, 10/15/05]~~

8  
9 ~~**20.2.99.150 — ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT LEVEL  
10 MITIGATION AND CONTROL MEASURES.**~~

11 ~~———— A. ——— Prior to determining that a transportation project is in conformity, the MPO, other recipient of  
12 funds designated under title 23 U.S.C. or the federal transit laws, FHWA, or FTA must obtain from the project  
13 sponsor and/or operator written commitments to implement in the construction of the project and operation of the  
14 resulting facility or service any project level mitigation or control measures which are identified as conditions for  
15 NEPA process completion with respect to local CO, PM10, or PM2.5 impacts. Before a conformity determination is  
16 made, written contractual commitments must also be obtained for project level mitigation or control measures which  
17 are conditions for making conformity determinations for a transportation plan or TIP and included in the project  
18 design concept and scope which is used in the regional emissions analysis required by 20.2.99.137 NMAC and  
19 20.2.99.138 NMAC or used in the project level hot spot analysis required by 20.2.99.135 NMAC.~~

20 ~~———— B. ——— Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity  
21 determinations shall provide written contractual commitments and must comply with the obligations of such  
22 commitments.~~

23 ~~———— C. ——— Written contractual commitments to mitigation or control measures shall be obtained prior to a  
24 positive conformity determination, and project sponsors must comply with such commitments.~~

25 ~~———— D. ——— If the MPO or project sponsor believes the mitigation or control measure is no longer necessary  
26 for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or  
27 control measure if it can demonstrate that the applicable hot spot requirements of 20.2.99.135 NMAC, emission  
28 budget requirements of 20.2.99.137 NMAC, and interim emissions requirements of 20.2.99.138 NMAC are satisfied  
29 without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation  
30 process required under 20.2.99.116 NMAC through 20.2.99.124 NMAC. The MPO (or NMDOT in the absence of  
31 an MPO) and US DOT must find that the transportation plan and TIP still satisfy the applicable requirements of  
32 20.2.99.137 NMAC and 20.2.99.138 NMAC and that the project still satisfies the requirements of 20.2.99.135  
33 NMAC and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.  
34 This finding is subject to the applicable public consultation requirements in 20.2.99.124 NMAC for conformity  
35 determinations for projects.~~

36 ~~[12/14/94; 11/23/98; 20.2.99.150 NMAC — Rn, 20 NMAC 2.99.150, 10/31/02; 20.2.99.150 NMAC — Rn,  
37 20.2.99.148 NMAC & A, 10/15/05; A, 9/1/07]~~

38  
39 ~~**20.2.99.151 — EXEMPTIONS.**~~

40 ~~———— A. ——— Exempt projects. Notwithstanding the other requirements of this part, highway and transit projects  
41 of the types listed in table 2 of this section are exempt from the requirement to determine conformity. Such projects  
42 may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular  
43 action of the type listed in table 2 (of this section) is not exempt if the MPO in consultation with other agencies (e.g.  
44 the department, see Subsection C of 20.2.99.120 NMAC, the US EPA, and the FHWA (in the case of a highway  
45 project) or the FTA (in the case of a transit project)) concur that it has potentially adverse emissions impacts for any  
46 reason. NMDOT and the MPO, in consultation with the department, as appropriate, must assure that exempt  
47 projects do not interfere with TCM implementation. Table 2 follows. Table 2. Exempt Projects.~~

48 ~~———— (1) — Safety:~~

49 ~~———— (a) — railroad/highway crossing;~~

50 ~~———— (b) — projects that correct, improve, or eliminate a hazardous location or feature;~~

51 ~~———— (c) — safer non federal aid system roads;~~

52 ~~———— (d) — shoulder improvements;~~

53 ~~———— (e) — increasing sight distance;~~

54 ~~———— (f) — highway safety improvement program implementation;~~

55 ~~———— (g) — traffic control devices and operating assistance other than signalization projects;~~

56 ~~———— (h) — railroad/highway crossing warning devices;~~

- 1 ~~\_\_\_\_\_ (i) guardrails, median barriers, crash cushions;~~  
2 ~~\_\_\_\_\_ (j) pavement resurfacing or rehabilitation;~~  
3 ~~\_\_\_\_\_ (k) pavement marking;~~  
4 ~~\_\_\_\_\_ (l) emergency relief (23 U.S.C. 125);~~  
5 ~~\_\_\_\_\_ (m) fencing;~~  
6 ~~\_\_\_\_\_ (n) skid treatments;~~  
7 ~~\_\_\_\_\_ (o) safety roadside rest areas;~~  
8 ~~\_\_\_\_\_ (p) adding medians;~~  
9 ~~\_\_\_\_\_ (q) truck climbing lanes outside the urbanized area;~~  
10 ~~\_\_\_\_\_ (r) lighting improvements;~~  
11 ~~\_\_\_\_\_ (s) widening narrow pavements or reconstructing bridges (no additional travel lanes);~~  
12 ~~\_\_\_\_\_ (t) emergency truck pullovers.~~  
13 ~~\_\_\_\_\_ (2) Mass transit:~~  
14 ~~\_\_\_\_\_ (a) operating assistance to transit agencies;~~  
15 ~~\_\_\_\_\_ (b) purchase of support vehicles;~~  
16 ~~\_\_\_\_\_ (c) rehabilitation of transit vehicles (In PM10 and PM2.5 nonattainment or maintenance areas,~~  
17 ~~only if projects are in compliance with control measures in the SIP.);~~  
18 ~~\_\_\_\_\_ (d) purchase of office, shop, and operating equipment for existing facilities;~~  
19 ~~\_\_\_\_\_ (e) purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.);~~  
20 ~~\_\_\_\_\_ (f) construction or renovation of power, signal, and communications systems;~~  
21 ~~\_\_\_\_\_ (g) construction of small passenger shelters and information kiosks;~~  
22 ~~\_\_\_\_\_ (h) reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings,~~  
23 ~~storage and maintenance facilities, stations, terminals, and ancillary structures);~~  
24 ~~\_\_\_\_\_ (i) rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-~~  
25 ~~way;~~  
26 ~~\_\_\_\_\_ (j) purchase of new buses and rail cars to replace existing vehicles or for minor expansions of~~  
27 ~~the fleet (In PM10 nonattainment or maintenance areas, such projects are exempt only if projects are in compliance~~  
28 ~~with control measures in the SIP.);~~  
29 ~~\_\_\_\_\_ (k) construction of new bus or rail storage/maintenance facilities categorically excluded in 23~~  
30 ~~CFR 771.~~  
31 ~~\_\_\_\_\_ (3) Air quality:~~  
32 ~~\_\_\_\_\_ (a) continuation of ride-sharing and van-pooling promotion activities at current levels;~~  
33 ~~\_\_\_\_\_ (b) bicycle and pedestrian facilities.~~  
34 ~~\_\_\_\_\_ (4) Other:~~  
35 ~~\_\_\_\_\_ (a) specific activities which do not involve or lead directly to construction, such as:~~  
36 ~~\_\_\_\_\_ (i) planning and technical studies;~~  
37 ~~\_\_\_\_\_ (ii) grants for training and research programs;~~  
38 ~~\_\_\_\_\_ (iii) planning activities conducted pursuant to titles 23 and 49 U.S.C.; or~~  
39 ~~\_\_\_\_\_ (iv) federal aid systems revisions;~~  
40 ~~\_\_\_\_\_ (b) engineering to assess social, economic, and environmental effects of the proposed action or~~  
41 ~~alternatives to that action;~~  
42 ~~\_\_\_\_\_ (c) noise attenuation;~~  
43 ~~\_\_\_\_\_ (d) emergency or hardship advance land acquisitions (23 CFR 710.503);~~  
44 ~~\_\_\_\_\_ (e) acquisition of scenic easements;~~  
45 ~~\_\_\_\_\_ (f) plantings, landscaping, etc.;~~  
46 ~~\_\_\_\_\_ (g) sign removal;~~  
47 ~~\_\_\_\_\_ (h) directional and informational signs;~~  
48 ~~\_\_\_\_\_ (i) transportation enhancement activities (except rehabilitation and operation of historic~~  
49 ~~transportation buildings, structures, or facilities);~~  
50 ~~\_\_\_\_\_ (j) repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects~~  
51 ~~involving substantial functional, locational, or capacity changes.~~  
52 ~~\_\_\_\_\_ B. Projects exempt from regional emissions analyses. Notwithstanding the other requirements of this~~  
53 ~~part, highway and transit projects of the types listed in table 3 of this section are exempt from regional emissions~~  
54 ~~analysis requirements. The local effects of these projects with respect to CO concentrations must be considered to~~  
55 ~~determine if a hot-spot analysis is required prior to making a project-level conformity determination. The local~~  
56 ~~effects of projects with respect to PM10 and PM2.5 concentrations must be considered and a hot-spot analysis~~

1 performed prior to making a project-level conformity determination, if a project in table 3 also meets the criteria of  
2 Paragraph (1) of Subsection B of section 20.2.99.148 NMAC. These projects may then proceed to the project  
3 development process even in the absence of a conforming transportation plan and TIP. A particular action of the  
4 type listed in table 3 (of this section) is not exempt from regional emissions analysis if the MPO in consultation with  
5 other agencies (e.g. the department, see Subsection C of 20.2.99.120 NMAC), the US EPA, and the FHWA (in the  
6 case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts  
7 for any reason. Table 3 follows. Table 3. Projects Exempt from Regional Emissions Analyses:

- 8 ~~\_\_\_\_\_ (1) intersection channelization projects;~~
- 9 ~~\_\_\_\_\_ (2) intersection signalization projects at individual intersections;~~
- 10 ~~\_\_\_\_\_ (3) interchange reconfiguration projects;~~
- 11 ~~\_\_\_\_\_ (4) changes in vertical and horizontal alignment;~~
- 12 ~~\_\_\_\_\_ (5) truck size and weight inspection stations;~~
- 13 ~~\_\_\_\_\_ (6) bus terminals and transfer points.~~

14 [~~12/14/94; 11/23/98; 20.2.99.151 NMAC—Rn, 20 NMAC 2.99.151, 10/31/02; 20.2.99.151 NMAC—Rn,~~  
15 ~~20.2.99.149 NMAC & A, 10/15/05; A, 9/1/07; A, 06/01/09]~~

16  
17 **20.2.99.152** ~~TRAFFIC SIGNAL SYNCHRONIZATION PROJECTS.~~ Traffic signal synchronization  
18 projects may be approved, funded, and implemented without satisfying the requirements of this part. However, all  
19 subsequent regional emissions analyses required by 20.2.99.137 NMAC and 20.2.99.138 NMAC for transportation  
20 plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal  
21 synchronization projects.

22 [~~20.2.99.152 NMAC—Rn, 20.2.99.150 NMAC, 10/15/05]~~

23  
24 **20.2.99.153** ~~SPECIAL EXEMPTIONS FROM CONFORMITY REQUIREMENTS FOR PILOT~~

25 **PROGRAM AREAS.** EPA and NMDOT may exempt no more than six areas for no more than three years from  
26 certain requirements of this subpart if these areas are selected to participate in a conformity pilot program and have  
27 developed alternative requirements that have been approved by EPA as an implementation plan revision in  
28 accordance with 40 CFR part 51.390. For the duration of the pilot program, areas selected to participate in the pilot  
29 program must comply with the conformity requirements of the pilot area's implementation plan revision for Section  
30 51.390 of this chapter and all other requirements in 40 CFR parts 51 and 93 that are not covered by the pilot area's  
31 implementation plan revision for 40 CFR part 51.390. The alternative conformity requirements in conjunction with  
32 any applicable state and/or federal conformity requirements must be proposed to fulfill all of the requirements of and  
33 achieve results equivalent to or better than Section 176(c) of the Clean Air Act. After the three-year duration of the  
34 pilot program has expired, areas will again be subject to all of the requirements of this subpart and 40 CFR part 51,  
35 subpart T, and/or to the requirements of any implementation plan revision that was previously approved by EPA in  
36 accordance with 40 CFR part 51.390.

37 [~~20.2.99.153 NMAC—N, 10/15/05]~~

38  
39 **20.2.99.154** ~~SAVINGS PROVISION.~~ The federal conformity rules under 40 CFR part 93 subpart A, in  
40 addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to  
41 meet the requirements of CAA Section 176(c) until such time as this conformity implementation plan revision is  
42 approved by EPA. Following EPA approval of this revision to the SIP (or a portion thereof) the approved (or  
43 approved portion of the) department's criteria and procedures would govern conformity determinations and the  
44 federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the  
45 department's conformity provisions that is not approved by EPA. In addition, any previously applicable SIP  
46 requirements relating to conformity remain enforceable until the department revises its SIP to specifically remove  
47 them and that revision is approved by EPA.

48 [~~20.2.99.154 NMAC—Rn, 20.2.99.151 NMAC, 10/15/05]~~

49  
50 **HISTORY OF 20.2.99 NMAC:**

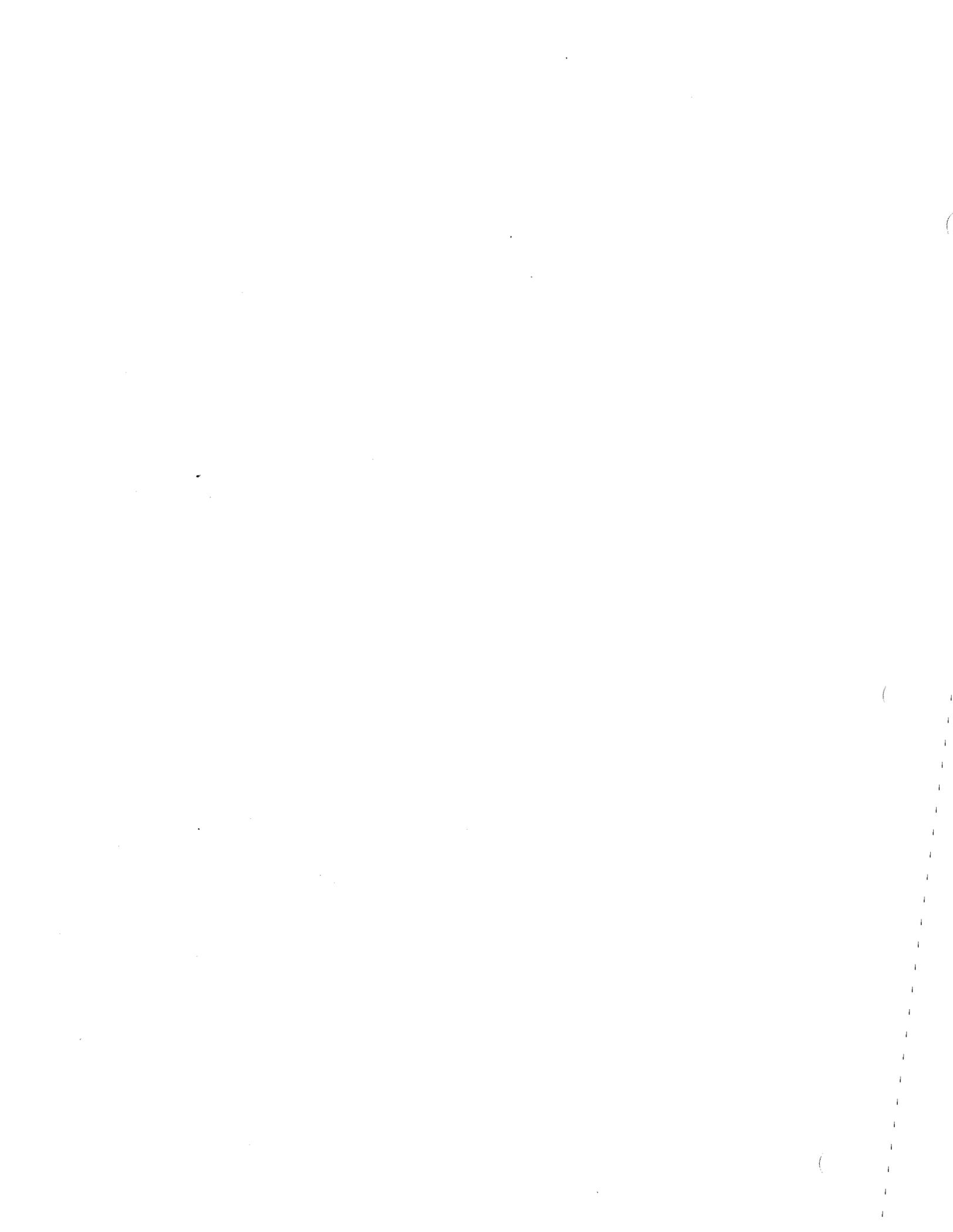
51 **Pre-NMAC History:** None.

52  
53 **History of Repealed Material:** [RESERVED]

54  
55 **Other History:**

1 20 NMAC 2.99, Conformity To The State Implementation Plan Of Transportation Plans, Programs, And Projects,  
2 filed 11/14/94 was replaced by 20 NMAC 2.99, Conformity To The State Implementation Plan Of Transportation  
3 Plans, Programs, And Projects, filed 10/23/98.  
4 20 NMAC 2.99, Conformity To The State Implementation Plan Of Transportation Plans, Programs, And Projects,  
5 filed 10/23/98 was **renumbered, reformatted and replaced** by 20.2.99 NMAC, Conformity To The State  
6 Implementation Plan Of Transportation Plans, Programs, And Projects, effective 10/31/02.  
7 20.2.99 NMAC, Conformity To The State Implementation Plan of Transportation Plans, Programs, And Projects  
8 filed 10/31/02 was revised; renumbered; and replaced by 20.2.99 NMAC, Conformity To The State Implementation  
9 Plan of Transportation Plans, Programs, And Projects, effective 10/15/05.





1 **TITLE 20 ENVIRONMENTAL PROTECTION**  
2 **CHAPTER 2 AIR QUALITY (STATEWIDE)**  
3 **PART 99 CONFORMITY TO THE STATE IMPLEMENTATION PLAN OF TRANSPORTATION**  
4 **PLANS, PROGRAMS AND PROJECTS**  
5

6 **20.2.99.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
7 [20.2.99.1 NMAC - Rp, 20.2.99.1 NMAC, XX/XX/14]  
8

9 **20.2.99.2 SCOPE:** Agencies affected by this part are: federal transportation agencies (the federal highway  
10 administration (FHWA) and the federal transit administration (FTA) of the United States department of  
11 transportation (US DOT)), and state and local agencies responsible for transportation planning and air quality  
12 management that are within the geographic jurisdiction of the environmental improvement board (see also 20.2.99.6  
13 NMAC).

14 **A.** The provisions of this part shall apply in all nonattainment and maintenance areas for  
15 transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

16 **B.** The provisions of this part shall apply with respect to emissions of the following criteria  
17 pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal  
18 to a nominal 10 micrometers (PM<sub>10</sub>) and particles with an aerodynamic diameter less than or equal to a nominal 2.5  
19 micrometers (PM<sub>2.5</sub>).

20 **C.** The provisions of this part apply with respect to emissions of the following precursor pollutants in  
21 nonattainment or maintenance areas:

22 (1) volatile organic compounds (VOCs) and nitrogen oxides in ozone areas;

23 (2) nitrogen oxides in nitrogen dioxide areas;

24 (3) volatile organic compounds or nitrogen oxides in PM<sub>10</sub> areas if:

25 (a) the US EPA region 6 administrator or the department has made a finding (including a  
26 finding as part of the New Mexico state implementation plan (SIP) or a submitted implementation plan revision) that  
27 transportation-related emissions of one or both of these precursor emissions within the nonattainment area are a  
28 significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the metropolitan planning  
29 organization (MPO) (or the New Mexico department of transportation (NMDOT) in the absence of an MPO) and US  
30 DOT; or

31 (b) the applicable SIP (or implementation plan submission) establishes an approved (or  
32 adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy;

33 (4) nitrogen oxides in PM<sub>2.5</sub> areas, unless both the US EPA regional administrator and the department  
34 have made a finding that transportation-related emissions of nitrogen oxides within the nonattainment area are not a  
35 significant contributor to the PM<sub>2.5</sub> nonattainment problem and has notified the MPO (or the NMDOT in the absence  
36 of an MPO) and US DOT, or the applicable implementation plan (or implementation plan submission) does not  
37 establish an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment  
38 or maintenance strategy; and

39 (5) VOCs, sulfur dioxide (SO<sub>2</sub>) or ammonia (NH<sub>3</sub>) in PM<sub>2.5</sub> areas either if the US EPA regional  
40 administrator or the department has made a finding that transportation-related emissions of any of these precursors  
41 within the nonattainment area are a significant contributor to the PM<sub>2.5</sub> nonattainment problem and has so notified  
42 the MPO (or the NMDOT in the absence of an MPO) and US DOT, or if the applicable implementation plan (or  
43 implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the  
44 reasonable further progress, attainment or maintenance strategy.

45 **D.** The provisions of this part apply to PM<sub>2.5</sub> nonattainment and maintenance areas with respect to  
46 PM<sub>2.5</sub> from re-entrained road dust if the US EPA regional administrator or the department has made finding that re-  
47 entrained road dust emissions within the area are a significant contributor to the PM<sub>2.5</sub> nonattainment problem and  
48 has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT, or if the applicable SIP (or  
49 implementation plan submission) includes re-entrained road dust in the approved (or adequate ) budget as part of the  
50 reasonable further progress, attainment or maintenance strategy.

51 **E.** The provisions of this part apply to maintenance areas through the last year of a maintenance  
52 area's approved CAA Section 175A(b) maintenance plan, unless the applicable implementation plan specifies that  
53 the provisions of this part (20.2.99 NMAC) shall apply for more than 20 years.

54 [20.2.99.2 NMAC - Rp, 20.2.99.2 NMAC, XX/XX/14]  
55

1 **20.2.99.3 STATUTORY AUTHORITY:** Environmental Improvement Act, Paragraph (4) and (7) of  
2 Subsection A of Section 74-1-8 NMSA 1978 and Air Quality Control Act, Sections 74-2-1 NMSA 1978 *et seq.*,  
3 including specifically, Subsections (A), (B) and (C) of Section 74-2-5 NMSA 1978. Subsection (B) of Section 74-2-  
4 5 NMSA 1978 provides that the environmental improvement board shall adopt regulations "to attain and maintain  
5 national ambient air quality standards and prevent or abate air pollution."

6 [20.2.99.3 NMAC - Rp, 20.2.99.3 NMAC, XX/XX/14]  
7

8 **20.2.99.4 DURATION:** Permanent.

9 [20.2.99.4 NMAC - Rp, 20.2.99.4 NMAC, XX/XX/14]  
10

11 **20.2.99.5 EFFECTIVE DATE:** Month & day, 2014, except where a later date is cited at the end of a  
12 section.

13 [20.2.99.5 NMAC - Rp, 20.2.99.5 NMAC, XX/XX/14]

14 [The latest effective date of any section in this part is XX/XX/14.]  
15

16 **20.2.99.6 OBJECTIVE:** The purpose of this part is to implement Section 176(c) of the Clean Air Act  
17 (CAA), as amended (42 U.S.C. 7401 *et seq.*), the related requirements of 23 U.S.C. 109(j), and regulations under 40  
18 CFR Part 93 Subpart A, with respect to the conformity of transportation plans, programs and projects which are  
19 developed, funded or approved by the US DOT, the NMDOT, MPOs or other recipients of funds under Title 23  
20 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53) to the SIP, as developed pursuant to Section 110 and Part  
21 D of the CAA. This part sets forth policy and procedures for consultations demonstrating and assuring conformity  
22 of such activities to the SIP; for resolving interagency conflicts; and for obtaining and enforcing written agreements.

23 [20.2.99.6 NMAC - Rp, 20.2.99.6 NMAC, XX/XX/14]  
24

25 **20.2.99.7 DEFINITIONS:** Terms used but not defined in this part shall have the meaning given them by  
26 the CAA Titles 23 and 49 U.S.C., US EPA regulations, US DOT regulations, and 20.2.2 NMAC (Definitions), in  
27 that order of priority.

28 **A. "Applicable implementation plan"** is defined in Section 302(q) of the CAA and means the  
29 portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under  
30 Section 110 (of the CAA), promulgated under Section 110(c), or promulgated or approved pursuant to regulations  
31 promulgated under Section 301(d) and which implements the relevant requirements of the CAA.

32 **B. "CAA"** means the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

33 **C. "Cause or contribute to a new violation"** for a project means:

34 (1) to cause or contribute to a new violation of a standard in the area substantially affected by the  
35 project or over a region which would otherwise not be in violation of the standard during the future period in  
36 question, if the project were not implemented; or

37 (2) to contribute to a new violation in a manner that would increase the frequency or severity of a  
38 new violation of a standard in such area.

39 **D. "CFR"** means the code of federal regulations.

40 **E. "Conformity determination"** means the demonstration of consistency with motor vehicle  
41 emissions budgets for each pollutant and precursor identified in the applicable SIP. The conformity determination is  
42 the affirmative written documentation declaring conformity with the applicable SIP which is submitted to FHWA  
43 and FTA for approval with US EPA consultation. An affirmative conformity determination means conformity to the  
44 plan's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality  
45 Standards (NAAQS) and achieving expeditious attainment of such standards; and that such activities will not:

46 (1) cause or contribute to any new violations of any standard in any area;

47 (2) increase the frequency or severity of any existing violation of any standard in any area; or

48 (3) delay timely attainment of any standard or any required interim emission reductions or other  
49 milestones in any area.

50 **F. "Consultation"** means that one party confers with another identified party, provides or makes  
51 available all relevant information to that party, and, prior to taking any action, considers the views of that party and  
52 (except with respect to those actions for which only notification is required) responds to written comments in a  
53 timely, substantive written manner prior to any final decision on such action. Such views and written response shall  
54 be made part of the record of any decision or action. Specific procedures and processes are described in 20.2.99.102  
55 through 20.2.99.110 NMAC.

1           **G. "Control strategy implementation plan revision"** is the implementation plan which contains  
2 specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA  
3 requirements for demonstrations of reasonable further progress and attainment (including implementation plan  
4 revisions submitted to satisfy CAA Sections 172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B),  
5 189(b)(1)(A) and 189(d); and Sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA  
6 provisions requiring a demonstration of reasonable further progress or attainment).

7           **H. "Criteria pollutants"** are the six principal pollutants for which national ambient air quality  
8 standards exist.

9           **I. "Department"** means the New Mexico environment department.

10          **J. "Design concept"** means the type of facility identified by the project, e.g., freeway, expressway,  
11 arterial highway, grade separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive  
12 busway, etc.

13          **K. "Design scope"** means the design aspects of a facility which will affect the proposed facility's  
14 impact on regional emissions, usually as they relate to vehicle or person-carrying capacity and control, e.g., number  
15 of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate  
16 number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

17          **L. "Donut areas"** are geographic areas outside a metropolitan planning area boundary, but inside the  
18 boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are  
19 not isolated rural nonattainment and maintenance areas.

20          **M. "FHWA"** means the federal highway administration of US DOT.

21          **N. "FHWA/FTA project"** means, for the purpose of this part, any highway or transit project which  
22 is proposed to receive funding assistance and approval through the federal-aid highway program or the federal mass  
23 transit program, or requires federal highway administration (FHWA) or federal transit administration (FTA)  
24 approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable  
25 design standards on the interstate system.

26          **O. "FTA"** means the federal transit administration of US DOT.

27          **P. "Highway project"** is an undertaking to implement or modify a highway facility or highway-  
28 related program. Such an undertaking consists of all required phases necessary for implementation. For analytical  
29 purposes, it shall be defined sufficiently to:

30           (1) connect logical termini and be of sufficient length to address environmental matters on a broad  
31 scope;

32           (2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no  
33 additional transportation improvements in the area are made; and

34           (3) not restrict consideration of alternatives for other reasonably foreseeable transportation  
35 improvements.

36          **Q. "Hot-spot analysis"** is an estimation of likely future localized CO, PM<sub>10</sub> or PM<sub>2.5</sub> pollutant  
37 concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot  
38 analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for  
39 example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion  
40 model to determine the effects of emissions on air quality.

41          **R. "Increase the frequency or severity"** means to cause a location or region to exceed a standard  
42 more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during  
43 the future period in question, if the project were not implemented.

44          **S. "Isolated rural nonattainment and maintenance areas"** are areas that do not contain or are not  
45 part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural  
46 areas that do not have federally required metropolitan transportation plans or transportation improvement programs  
47 (TIPs) and do not have projects that are part of the emissions in such areas are instead included in statewide TIPs.  
48 These are not donut areas.

49          **T. "Limited maintenance plan"** means a maintenance plan that US EPA has determined meets US  
50 EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited  
51 maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it  
52 must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle  
53 emissions growth.

54          **U. "Maintenance area"** means any geographic region of the United States previously designated  
55 nonattainment pursuant to the CAA amendments of 1990 and subsequently redesignated to attainment subject to the  
56 requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

1           **V.**     **"Maintenance plan"** means an implementation plan under Section 175A of the CAA, as  
2 amended.

3           **W.**     **"Memorandum of Agreement (MOA)"** means a document agreed upon by cooperating parties.

4           **X.**     **"Metropolitan planning organization (MPO)"** means the policy board of an organization  
5 created as a result of the designation process in 23 U.S.C.134(d).

6           **Y.**     **"Motor vehicle emissions budget"** is that portion of the total allowable emissions, defined in the  
7 submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the  
8 purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the  
9 NAAQS, for any criteria pollutant or its precursors, allocated by the SIP to highway and transit vehicle use and  
10 emissions.

11          **Z.**     **"National ambient air quality standards (NAAQS)"** are those standards established pursuant to  
12 Section 109 of the CAA.

13          **AA.**    **"NEPA"** means the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, *et*  
14 *seq.*

15          **AB.**    **"NEPA process completion"** means, for the purposes of this part, with respect to FHWA or  
16 FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to  
17 make a finding of no significant impact, or to issue a record of decision on a final environmental impact statement  
18 under NEPA.

19          **AC.**    **"NMDOT"** means the New Mexico department of transportation or its successor agency or  
20 authority, as represented by the department secretary or his or her designee.

21          **AD.**    **"Nonattainment area"** means any geographic region of the United States which has been  
22 designated as nonattainment under Section 107 of the CAA for any pollutant for which a national ambient air quality  
23 standard exists.

24          **AE.**    **"Project"** means a highway project or transit project.

25          **AF.**    **"Recipient of funds designated under title 23 U.S.C. or the federal transit laws"** means any  
26 agency at any level of state, county, city, or regional government that routinely receives title 23 U.S.C. or federal  
27 transit law funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase  
28 equipment, or undertake other services or operations via contracts or agreements. This definition does not include  
29 private landowners or developers, or contractors or entities that are only paid for services or products created by  
30 their own employees.

31          **AG.**    **"Re-entrained road dust"** means emissions which are produced by travel on paved and unpaved  
32 roads, including emissions from anti-skid and de-icing material(s).

33          **AH.**    **"Regionally significant project"** means a transportation project (other than an exempt project)  
34 that is on a facility which serves regional transportation needs (such as access to and from the area outside of the  
35 region, major activity centers in the region, major planned developments such as new retail malls, sports complexes,  
36 etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the  
37 modeling of a metropolitan area's transportation network, including at a minimum:

38           (1) all principal arterial highways; and  
39           (2) all fixed guideway transit facilities that offer an alternative to regional highway travel.

40          **AI.**    **"Standard"** means a national ambient air quality standard.

41          **AJ.**    **"State implementation plan (SIP)"** means an applicable implementation plan and the applicable  
42 portion (or portions) of the New Mexico state implementation plan, or most recent revision thereof, which has been  
43 approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to  
44 regulations promulgated under Section 301(d) of the CAA and which implements the relevant requirements of the  
45 CAA (see the definition for "applicable implementation plan").

46          **AK.**    **"Title 23 U.S.C."** means title 23 of the United States Code.

47          **AL.**    **"Transit"** means mass transportation by bus, rail, or other conveyance which provides general or  
48 special service to the public on a regular and continuing basis. It does not include school buses or charter or  
49 sightseeing services.

50          **AM.**    **"Transit project"** means an undertaking to: implement or modify a transit facility or transit-  
51 related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It  
52 does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes,  
53 schedules or fares. It may consist of several phases. For analytical purposes, it shall be defined inclusively enough  
54 to:

55           (1) connect logical termini and be of sufficient length to address environmental matters on a broad  
56 scope;

1 (2) have independent utility or independent significance, i.e., be a reasonable expenditure even if no  
2 additional transportation improvements in the area are made; and

3 (3) not restrict consideration of alternatives for other reasonably foreseeable transportation  
4 improvements.

5 **AN. "Transportation control measure (TCM)"** means any measure that is specifically identified and  
6 committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated  
7 into the applicable SIP through the process established in CAA Section 176(c)(8), that is either one of the types  
8 listed in Section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of  
9 air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.  
10 Notwithstanding the above, vehicle technology-based, fuel-based and maintenance-based measures which control  
11 the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this part.

12 **AO. "Transportation improvement program (TIP)"** means a transportation improvement program  
13 developed by a metropolitan planning organization under 23 U.S.C. 134(j).

14 **AP. "Transportation plan"** means the official intermodal metropolitan transportation plan that is  
15 developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23  
16 CFR part 450.

17 **AQ. "Transportation project"** is a highway project or a transit project.

18 **AR. "US EPA"** means the United States environmental protection agency.

19 **AS. "US DOT"** means the United States department of transportation.

20 **AT. "Written commitment"** means, for the purposes of this part, a written commitment that includes  
21 a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding  
22 necessary to implement the action has been authorized by the appropriating or authorizing body; and an  
23 acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.  
24 [20.2.99.7 NMAC - Rp, 20.2.99.7 NMAC, XX/XX/14]

25  
26 **20.2.99.8 DOCUMENTS:** Documents incorporated and cited in this part may be viewed at the New  
27 Mexico environment department, air quality bureau, Santa Fe, NM.  
28 [20.2.99.8 NMAC - Rp, 20.2.99.8 NMAC, XX/XX/14]

29  
30 **20.2.99.9 - 20.2.99.100 [RESERVED]**

31  
32 **20.2.99.101 APPLICABILITY:**

33 **A.** Action applicability.

34 (1) Except as provided for in Subsection C of 20.2.99 NMAC conformity determinations are required  
35 for:

36 (a) the adoption, acceptance, approval or support of transportation plans and transportation  
37 plan amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO (or NMDOT in the  
38 absence of an MPO) or US DOT;

39 (b) the adoption, acceptance, approval or support of TIPs and TIP amendments developed  
40 pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO (or NMDOT in the absence of an MPO) or US DOT;  
41 and

42 (c) the approval, funding, or implementation of FHWA/FTA projects.

43 (2) Conformity determinations are not required under this part for individual projects which are not  
44 FHWA/FTA projects.

45 **B.** Geographic and pollutant applicability are set out in 20.2.99.2 NMAC (Scope).

46 **C.** Limitations. In order to receive any FHWA/FTA approval or funding actions, including NEPA  
47 approvals, for a project phase subject to this subpart, a currently conforming transportation plan and TIP must be in  
48 place at the time of project approval.

49 **D.** Grace period for new nonattainment areas. For areas or portions of areas which have been  
50 continuously designated attainment or not designated for any standard for ozone, CO, PM<sub>10</sub>, PM<sub>2.5</sub> or NO<sub>2</sub> since  
51 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any standard for any of  
52 these pollutants, the provisions of this subpart shall not apply with respect to that standard for 10 months following  
53 the effective date of final designation to nonattainment for each standard for such pollutant.

54 [20.2.99.101 NMAC - Rp, 20.2.99.109 NMAC, XX/XX/14]

55  
56 **20.2.99.102 CONSULTATION:**

1           **A.**       20.2.99.102 through 20.2.99.110 NMAC provide procedures for the interagency (federal, state,  
2 and local) consultation process, resolution of conflicts, and public consultation. Public consultation procedures will  
3 be developed in accordance with the requirements for public involvement in 23 CFR part 450. The affected  
4 agencies listed in Subsection C of 20.2.99.102 NMAC shall undertake a consultation process with each other prior  
5 to the development of: 1) conformity determinations; 2) major activities listed in 20.2.99.103 NMAC below; 3)  
6 specific major activities listed in 20.2.99.106 NMAC below; and 4) specific routine activities listed in 20.2.99.107  
7 NMAC below. This consultation process shall follow the consultation procedures described in 20.2.99.105 NMAC  
8 below.

9           **B.**       Prior to US EPA's approval of this part, any MPO (or NMDOT in the absence of an MPO) and  
10 NMDOT, before making any conformity determinations, shall provide reasonable opportunity for consultation with  
11 the department, the local transportation agency in the county where the nonattainment or maintenance area is  
12 located, the local air quality agency in the county in which the nonattainment or maintenance area is located, New  
13 Mexico FHWA division offices, FTA region 6 offices, and US EPA region 6, including consultation on the issues  
14 described in 20.2.99.103 NMAC. This opportunity for consultation shall be provided prior to the determination of  
15 conformity.

16           **C.**       Affected agencies.

17           (1)       Agencies which are affected by this part and which are required to participate in the consultation  
18 process are:

- 19                   (a)     the designated MPO for the nonattainment or maintenance area;
- 20                   (b)     the department;
- 21                   (c)     NMDOT;
- 22                   (d)     the local transportation agency for the county or city in which the nonattainment or  
23 maintenance area is located;
- 24                   (e)     the local transit agency for the city or county in which the nonattainment or maintenance  
25 area is located;
- 26                   (f)     US EPA region 6;
- 27                   (g)     New Mexico FHWA division offices;
- 28                   (h)     FTA region 6;
- 29                   (i)     local air quality agencies; and
- 30                   (j)     any other organization or resource agency within the state responsible under state law for  
31 developing, submitting or implementing transportation-related provisions of an implementation plan.

32           (2)       Agencies which may be affected by this part and which are entitled to participate in the  
33 interagency consultation process include:

- 34                   (a)     NMDOT district office for the county in which the nonattainment or maintenance area is  
35 located; and
- 36                   (b)     the city or county government in the city or county where the nonattainment or  
37 maintenance area is located.

38           **D.**       Policy level points of contact and policy level meetings.

39           (1)       The policy level points of contact for participating organizations are as follows:

- 40                   (a)     MPO: executive director or designee;
- 41                   (b)     department: secretary or designee;
- 42                   (c)     NMDOT: secretary or designee;
- 43                   (d)     NMDOT district office: district engineer;
- 44                   (e)     local government: chief administrative officer or designee;
- 45                   (f)     US EPA region 6: regional administrator or designee;
- 46                   (g)     FHWA NM division office: division administrator or designee;
- 47                   (h)     FTA region 6: regional administrator or designee; and
- 48                   (i)     other organizations: as directed in writing.

49           (2)       Policy level meetings shall be those meetings to which the following individuals have been given  
50 ample notice thereof:

- 51                   (a)     policy level points of contact for all agencies which are required to participate in the  
52 conformity process; and
- 53                   (b)     the policy level points of contact for all agencies and organizations which are entitled to  
54 participate and have submitted a written request to participate in the conformity process.

55 [20.2.99.102 NMAC - Rp, 20.2.99.116 NMAC, XX/XX/14]

56

1 **20.2.99.103 AGENCY ROLES IN CONSULTATION:** Specific roles of the agencies participating in the  
2 interagency consultation process are listed below. Specific responsibilities of the agencies participating in the  
3 interagency consultation process are listed in 20.2.99.104 NMAC. For the purposes of this part, the lead agency for  
4 all conformity processes and procedures is that agency which is responsible for initiating the consultation process,  
5 preparing the initial and final drafts of the document or decision, and for assuring the adequacy of the interagency  
6 consultation process.

7 A. The department shall be the lead agency for the development of:  
8 (1) applicable control strategy implementation plan revisions for the nonattainment or maintenance  
9 area;  
10 (2) the list of TCMs to be submitted as part of the SIP; and  
11 (3) any amendments or revisions thereto.

12 B. In the case of areas in which an MPO has been established, the designated MPO for the  
13 nonattainment or maintenance area shall be the lead agency for:

14 (1) development of the unified planning work program under 23 CFR 450.314;  
15 (2) development of the transportation plan for the nonattainment or maintenance area;  
16 (3) development of the TIP for the nonattainment or maintenance area;  
17 (4) any amendments or revisions thereto;  
18 (5) any determinations of conformity under this part for which that MPO is responsible;  
19 (6) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance  
20 areas; and  
21 (7) development of TCMs, in cooperation with the department.

22 C. In the case of areas in which an MPO has not been established, NMDOT shall be the lead agency  
23 for:

24 (1) development of the transportation plan for the nonattainment or maintenance area;  
25 (2) development of the TIP for the nonattainment or maintenance area;  
26 (3) any amendments or revisions thereto;  
27 (4) any determinations of conformity under this part for which an MPO would otherwise be  
28 responsible;  
29 (5) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance  
30 areas; and  
31 (6) development of TCMs, in cooperation with the department.

32 [20.2.99.103 NMAC - Rp, 20.2.99.117 NMAC, XX/XX/14]  
33

34 **20.2.99.104 AGENCY RESPONSIBILITIES IN CONSULTATION:**

35 A. The department shall be responsible for developing or providing:  
36 (1) emissions inventories;  
37 (2) emissions budgets;  
38 (3) air quality modeling;  
39 (4) attainment demonstrations;  
40 (5) control strategy implementation plan revisions;  
41 (6) regulatory TCMs; and  
42 (7) updated motor vehicle emissions factors.

43 B. The designated MPO (or, in nonattainment or maintenance areas where an MPO has not been  
44 established, NMDOT) shall be responsible for:

45 (1) developing transportation plans and TIPs;  
46 (2) developing and evaluating TCM transportation impacts;  
47 (3) developing transportation and socioeconomic data and planning assumptions and providing such  
48 data and planning assumptions for use in air quality analysis to determine conformity of transportation plans, TIPs,  
49 and projects;  
50 (4) monitoring regionally significant projects;  
51 (5) developing system or facility-based or other programmatic (non-regulatory) TCMs;  
52 (6) providing technical input on emissions budgets; and  
53 (7) performing transportation modeling, regional emissions analyses and documentation of timely  
54 implementation of TCMs needed for conformity assessments.

55 C. NMDOT shall be responsible for:

56 (1) providing technical input on proposed revisions to motor vehicle emissions factors;

1 (2) distributing draft and final highway or transit project environmental documents to other agencies;  
2 and  
3 (3) convening air quality technical review meetings on specific highway or transit plans, programs  
4 and projects when requested by other agencies or as needed.

5 **D.** FHWA New Mexico offices and FTA region 6 shall be responsible for:

6 (1) assuring timely action on final findings of conformity, after consultation with other agencies as  
7 provided in 20.2.99.102 through 20.2.99.110 NMAC; and

8 (2) providing guidance on conformity and the transportation planning process to agencies  
9 participating in the interagency consultation process.

10 **E.** US EPA region 6 shall be responsible for providing guidance on conformity criteria and  
11 procedures to agencies participating in the interagency consultation process.

12 [20.2.99.104 NMAC - Rp, 20.2.99.118 NMAC, XX/XX/14]

13  
14 **20.2.99.105 GENERAL CONSULTATION PROCEDURES:** The following are the responsibilities of lead  
15 and participating agencies at each stage of the consultation process.

16 **A.** It shall be the affirmative responsibility of the lead agency to initiate the consultation process by:

17 (1) notifying other participants of the plan, program or project which must undergo the interagency  
18 consultation process;

19 (2) preparing an initial draft of the document being developed, together with necessary supporting  
20 information;

21 (3) convening consultation meetings and agendas when the initial draft of the document being  
22 developed is complete; and

23 (4) appointing the conveners of technical meetings.

24 **B.** It shall be the responsibility of the lead agency to facilitate the interagency consultation process  
25 by:

26 (1) conferring with all other agencies identified under Subsection C of 20.2.99.102 NMAC who are  
27 participating in the particular consultation process;

28 (2) providing all appropriate information needed for meaningful input to the participating agencies,  
29 including timely notification of all policy level and relevant technical meetings;

30 (3) soliciting early and continuing input from participating agencies;

31 (4) scheduling consultation meetings as specified in this part;

32 (5) conducting the consultation process as described in this section (20.2.99.105 NMAC);

33 (6) Assuring that all relevant documents and information, including drafts of the document being  
34 developed and necessary background documents, are supplied to all participants in the consultation process in a  
35 timely manner;

36 (7) Where required, assuring policy-level contact with those agencies;

37 (8) considering the views of each participating agency and (except with respect to those actions for  
38 which only notification is required) responding to written comments in a timely, substantive written manner prior to  
39 making any final decision on the document that is the subject of the consultation process; and

40 (9) assuring that such views and written responses are made part of the record of any decision or  
41 action.

42 **C.** Regular consultation on major activities, as defined in 20.2.99.106 NMAC, shall include policy  
43 level meetings beginning no later than nine months prior to the date a final document is required (or the date on  
44 which such agency begins its own work on such document, if later) and continuing at regular, scheduled intervals no  
45 less frequently than quarterly. In addition, technical meetings shall be convened as necessary. Not later than 30  
46 days prior to the adoption or approval of the final document or decision, the lead agency shall supply the final draft  
47 document, including all relevant information and documents, as appropriate, to the participating agencies.

48 **D.** Regular consultation on routine activities, as defined in 20.2.99.107 NMAC, shall include  
49 meetings at regular, scheduled intervals no less frequently than semiannually, and shall be on the agenda of at least  
50 one policy level meeting. In addition, technical meetings shall be convened as necessary.

51 **E.** The lead agency shall provide each final document for which a consultation process was required  
52 to be undertaken (including, but not limited to, the relevant portions of SIPs or implementation plan revisions,  
53 transportation plans, and TIPs, and determinations of conformity), together with all supporting information, as  
54 appropriate, to each participating agency within 14 calendar days after adopting or approving such document or  
55 making such determination. The lead agency may supply a checklist of available supporting information, which the

1 participating agencies may use to request all or part of such supporting information, in lieu of generally distributing  
2 all supporting information.

3 F. It shall be the responsibility of each participating agency (those listed in Paragraph (1) of  
4 Subsection C of 20.2.99.102 NMAC) during the consultation process to:

5 (1) confer with the lead and other participating agencies (those listed in Paragraph (1) of Subsection  
6 C of 20.2.99.102 NMAC) in the consultation process;

7 (2) review and comment as appropriate (including comments in writing) on all proposed and final  
8 draft documents and decisions within 30 days of receipt;

9 (3) attend consultation and decision meetings;

10 (4) assure policy-level contact with other participants;

11 (5) provide input on any area of substantive expertise or responsibility (including, but not limited to  
12 planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or  
13 other requirements); and

14 (6) provide technical assistance to the lead agency or consultation process in accordance with this  
15 section when requested.

16 G. A meeting that is scheduled or required for another purpose may be used for the purposes of  
17 consultation if the conformity consultation purpose is specifically identified in the announcement for the meeting  
18 and all participating agencies are notified of such meeting.

19 [20.2.99.105 NMAC - Rp, 20.2.99.119 NMAC, XX/XX/14]

20  
21 **20.2.99.106 CONSULTATION PROCEDURES FOR SPECIFIC MAJOR ACTIVITIES:** An interagency  
22 consultation process among the members of the lead and participating agencies shall be undertaken for the following  
23 specific major activities in accordance with all the procedures specified in 20.2.99.105 NMAC above. The lead  
24 agency for each activity shall be as specified, and the participating agencies shall be the agencies specified in  
25 Subsection C of 20.2.99.102 NMAC above.

26 A. Evaluation and choice of each model (or models) and associated methods and assumptions to be  
27 used in hot-spot analyses and regional emissions analyses, including vehicle miles traveled (VMT) forecasting. The  
28 lead agency shall be the MPO (or NMDOT in the absence of an MPO).

29 B. Determination of which minor arterials and other transportation projects should be considered  
30 "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as  
31 principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway  
32 travel), and which projects should be considered to have a significant change in design concept and scope from the  
33 transportation plan or TIP. The lead agency shall be the MPO (or NMDOT in the absence of an MPO).

34 C. Evaluation of whether projects otherwise exempted from meeting the requirements of this part  
35 should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. The  
36 lead agency shall be the MPO (or NMDOT in the absence of an MPO).

37 D. Determination of whether past obstacles to implementation of TCMs which are behind the  
38 schedule established in the SIP have been identified and are being overcome, and whether state and local agencies  
39 with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs.  
40 Consultation shall also include consideration of whether delays in TCM implementation necessitate revisions to the  
41 SIP to remove TCMs or substitute TCMs or other emission reduction measures. The lead agency shall be the MPO  
42 (or NMDOT in the absence of an MPO).

43 E. Determination of whether:

44 (1) the project is included in the regional emissions analysis supporting the currently conforming  
45 TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO  
46 project selection or endorsement; and

47 (2) the project's design concept and scope have changed significantly from those which were included  
48 in the regional emissions analysis, or in a manner which would significantly impact use of the facility; the lead  
49 agency shall be the MPO (or NMDOT in the absence of an MPO).

50 F. Determination of what forecast of vehicle miles traveled (VMT) to use in establishing or tracking  
51 emissions budgets, developing transportation plans, TIPs, or making conformity determinations. The lead agency  
52 shall be the MPO (or NMDOT in the absence of an MPO).

53 G. Verification of what forecast of VMT to use in developing SIPs. The lead agency shall be the air  
54 quality bureau of the department.

1           **H.** Consultation, within the context of a memorandum of agreement, on emissions analysis for  
2 transportation activities which cross the borders of MPOs or nonattainment areas or air basins. The lead agency  
3 shall be NMDOT.

4           **I.** Evaluation of events which will trigger new conformity determinations. The lead agency shall be  
5 the MPO (or NMDOT in the absence of an MPO).

6           **J.** In the event that the metropolitan planning area does not include the entire nonattainment or  
7 maintenance area, an interagency consultation process involving the designated MPO for the nonattainment or  
8 maintenance area, NMDOT, local transportation agencies, and the department, shall be undertaken, in the context of  
9 a memorandum of agreement (MOA), for cooperative planning and analysis for purposes of determining conformity  
10 of all projects outside the metropolitan area and within the nonattainment or maintenance area. The lead agency  
11 shall be NMDOT.

12           **K.** In nonattainment or maintenance areas where more than one MPO is involved, such MPOs must  
13 develop an MOA or memorandum of understanding reflecting their consultation.

14           **L.** In nonattainment or maintenance areas where the MPO's jurisdiction does not cover the entire  
15 nonattainment or maintenance area, the MPO and NMDOT must develop an MOA or a memorandum of  
16 understanding reflecting their consultation.

17           **M.** In choosing conformity tests and methodologies for isolated rural nonattainment and maintenance  
18 areas, the lead agency shall be the MPO (or NMDOT in the absence of an MPO).  
19 [20.2.99.106 NMAC - Rp, 20.2.99.120 NMAC, XX/XX/14]

20  
21 **20.2.99.107 CONSULTATION PROCEDURES FOR SPECIFIC ROUTINE ACTIVITIES:** An  
22 interagency consultation process among the lead and participating agencies shall be undertaken for the following  
23 routine activities in accordance with all the procedures specified in 20.2.99.105 NMAC. The lead agency for each  
24 activity shall be as specified, and the participating agencies shall be the agencies specified in Subsection C of  
25 20.2.99.102 NMAC above or as specified for the specific activity. Not later than 30 days prior to the preparation of  
26 the final document or decision, the lead agency shall supply all relevant information and documents, as appropriate,  
27 to the participating agencies.

28           **A.** Identification of projects located at sites in PM<sub>10</sub> nonattainment areas which have vehicle and  
29 roadway emission and dispersion characteristics which are essentially identical to those at sites which have  
30 violations verified by monitoring, and therefore require quantitative PM<sub>10</sub> hot-spot analysis. The lead agency shall  
31 be either the MPO or NMDOT, in cooperation with the department.

32           **B.** Assumption of the location and design concept and scope of projects which are disclosed to the  
33 MPO, as required by Subsection D of 20.2.99.107 NMAC, but whose sponsors have not yet decided these features  
34 in sufficient detail to perform the regional emissions analysis. The lead agency shall be either the MPO or NMDOT.  
35 Participating agencies shall include recipients of funds designated under title 23 U.S.C. or the federal transit laws.

36           **C.** The design, schedule, and funding of research and data collection efforts and regional  
37 transportation model development by the MPO (e.g., household/travel transportation surveys). The lead agency  
38 shall be either the NMDOT or the MPO, as applicable. Participating agencies shall be the MPO, the department,  
39 and NMDOT.

40           **D.** Regionally significant non-FHWA/FTA projects.

41           **(1)** Assurance that plans for construction of regionally significant projects which are not FHWA/FTA  
42 projects (including projects for which alternative locations, design concept and scope, or the no-build option are still  
43 being considered), including all those sponsored by recipients of funds designated under title 23 U.S.C. or the  
44 federal transit laws, are disclosed to the MPO on a regular basis, and assurance that any changes to those plans are  
45 immediately disclosed. The lead agency for this process shall be the agency which is implementing the project.  
46 Participating agencies shall be the MPO, the department, NMDOT, local transportation and transit agencies for the  
47 city or county in which the nonattainment or maintenance area is located, and recipients of funds designated under  
48 title 23 U.S.C. or the federal transit laws.

49           **(2)** The sponsor of any such regionally significant project, and any agency that becomes aware of any  
50 such project through applications for approval, permitting, funding or otherwise, shall disclose such project to the  
51 designated MPO for the nonattainment or maintenance area and NMDOT in a timely manner. Such disclosure shall  
52 be made not later than the first occasion on which any of the following actions is sought:

- 53           **(a)** any policy board action necessary for the project to proceed;  
54           **(b)** the issuance of administrative permits for the facility or for construction of the facility;  
55           **(c)** the execution of a contract to design or construct the facility;  
56           **(d)** the execution of any indebtedness for the facility;

1 (e) any final action of a board, commission or administrator authorizing or directing employees  
2 to proceed with design, permitting or construction of the project; or

3 (f) the execution of any contract to design or construct or any approval needed for any facility  
4 that is dependent on the completion of a regionally significant project.

5 (3) In the case of any such regionally significant project that has not been disclosed in a timely  
6 manner to the designated MPO for the nonattainment or maintenance area, NMDOT, and other interested agencies  
7 participating in the consultation process, such regionally significant project and all other regionally significant  
8 projects of that sponsor shall be deemed to be not included in the regional emissions analysis supporting the  
9 currently conforming TIP's conformity determination and to be not consistent with the motor vehicle emissions  
10 budget in the SIP. In the case of repeated failures to disclose regionally significant projects by an agency that  
11 becomes aware of any such project through applications for approval, permitting or funding, all other regionally  
12 significant projects within the jurisdiction of such agency shall be deemed to be not included in the regional  
13 emissions analysis supporting the currently conforming TIP's conformity determination and to be not consistent  
14 with the motor vehicle emissions budget in the SIP.

15 (4) For the purposes of this section (20.2.99.107 NMAC), the phrase "adopt or approve of a  
16 regionally significant project" means the first time any action necessary to authorizing a project occurs, such as any  
17 policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for  
18 construction of the facility, the execution of a contract to construct the facility, any final action of a board,  
19 commission or administrator authorizing or directing employees to proceed with construction of the project, or any  
20 written decision or authorization from the MPO that the project may be adopted or approved.

21 [20.2.99.107 NMAC - Rp, 20.2.99.121 NMAC, XX/XX/14]  
22

23 **20.2.99.108 NOTIFICATION PROCEDURES FOR ROUTINE ACTIVITIES:** Notification of affected  
24 agencies (including those listed in Paragraph (1) of Subsection C of 20.2.99.102 NMAC) of transportation plan or  
25 TIP amendments which merely add or delete exempt projects shall be the affirmative responsibility of NMDOT or  
26 the MPO. Such notification shall be provided not later than 30 days prior to the preparation of the final draft of the  
27 document or decision. This process shall include:

28 A. notification of the affected agencies (including those listed in Paragraph (1) of Subsection C of  
29 20.2.99.102 NMAC) early in the process of decision on the final document; and

30 B. supplying all relevant documents and information to the affected agencies (including those listed  
31 in Paragraph (1) of Subsection C of 20.2.99.102 NMAC).

32 [20.2.99.108 NMAC - Rp, 20.2.99.122 NMAC, XX/XX/14]  
33

34 **20.2.99.109 CONFLICT RESOLUTION AND APPEALS TO THE GOVERNOR:**

35 A. Any conflict among state agencies or between state agencies and an MPO shall be escalated to the  
36 governor if the conflict cannot be resolved by the heads of the involved agencies. Prior to such escalation, such  
37 agencies shall make every effort to resolve any differences, including personal meetings between the heads of such  
38 agencies or their policy-level representatives, to the extent possible.

39 B. The department has 14 calendar days to appeal a determination of conformity (or other policy  
40 decision under this part) to the governor after NMDOT or the MPO has notified the department of the resolution of  
41 all comments on such determination of conformity or policy decision. Such 14-day period shall commence when  
42 the MPO or NMDOT has confirmed receipt by the secretary of the department of the resolution of the comments of  
43 the department. If the department appeals to the governor, the final conformity determination must have the  
44 concurrence of the governor. The department must provide notice of any appeal under this subsection to the MPO  
45 and NMDOT. If the department does not appeal to the governor within 14 days, the MPO or NMDOT may proceed  
46 with the final conformity determination.

47 C. In the case of any comments with regard to findings of fiscal constraint or air quality effects of any  
48 determination of conformity, NMDOT has 14 calendar days to appeal a determination of conformity (or other policy  
49 decision under this part) to the governor after the MPO has notified the department or NMDOT of the resolution of  
50 all comments on such determination of conformity or policy decision. Such 14-day period shall commence when  
51 the MPO has confirmed receipt by the secretary of the department or NMDOT of the resolution of the comments of  
52 NMDOT. If NMDOT appeals to the governor, the final conformity determination must have the concurrence of the  
53 governor. NMDOT must provide notice of any appeal under this subsection to the MPO and the department. If  
54 NMDOT does not appeal to the governor within 14 days, the MPO may proceed with the final conformity  
55 determination.

1           D.       The governor may delegate the role of hearing any such appeal under this subsection and of  
2 deciding whether to concur in the conformity determination to another official or agency within the state, but not to  
3 the head or staff of the department or any local air quality agency, NMDOT, a state transportation commission or  
4 board, any agency that has responsibility for one of these functions or an MPO.  
5 [20.2.99.109 NMAC - Rp, 20.2.99.123 NMAC, XX/XX/14]  
6

7       **20.2.99.110       PUBLIC CONSULTATION PROCEDURES:**

8           A.       Affected agencies making conformity determinations on transportation plans, programs and  
9 projects shall establish a proactive public involvement process which provides opportunity for public review and  
10 comment by, at a minimum, providing reasonable public access to technical and policy information considered by  
11 the agency at the beginning of the public comment period and prior to taking formal action on a conformity  
12 determination for all transportation plans, TIPs, and projects, consistent with the requirements of 23 CFR part 450,  
13 including Sections 450.316 (a), 450.322(c), and 450.324(c) as in effect on the date of adoption of this part. Any  
14 charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR  
15 7.43. In addition, any such agency must specifically address in writing all public comments which allege that  
16 known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not  
17 been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan  
18 or TIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for  
19 projects to the extent otherwise required by law (e.g. NEPA).

20           B.       The opportunity for public involvement provided under this section (20.2.99.110 NMAC) shall  
21 include access to information, emissions data, analyses, models and modeling assumptions used to perform a  
22 conformity determination, and the obligation of any such agency to consider and respond in writing to significant  
23 comments.

24           C.       No transportation plan, TIP or project may be found to conform unless the determination of  
25 conformity has been subject to a public involvement process in accordance with this section, without regard to  
26 whether the US DOT has certified any process under 23 CFR part 450.  
27 [20.2.99.110 NMAC - Rp, 20.2.99.124 NMAC, XX/XX/14]  
28

29       **20.2.99.111       ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL  
30 MITIGATION AND CONTROL MEASURES:**

31           A.       Prior to determining that a transportation project is in conformity, the MPO, other recipient of  
32 funds designated under title 23 U.S.C. or the federal transit laws, FHWA or FTA must obtain from the project  
33 sponsor or operator written commitments to implement in the construction of the project and operation of the  
34 resulting facility or service any project-level mitigation or control measures which are identified as conditions for  
35 NEPA process completion with respect to local CO, PM<sub>10</sub>, or PM<sub>2.5</sub> impacts. Before a conformity determination is  
36 made, written contractual commitments must also be obtained for project-level mitigation or control measures which  
37 are conditions for making conformity determinations for a transportation plan or TIP and included in the project  
38 design concept and scope which is used in the regional emissions analysis or used in the project-level hot-spot  
39 analysis.

40           B.       Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity  
41 determinations shall provide written contractual commitments and must comply with the obligations of such  
42 commitments.

43           C.       Written contractual commitments to mitigation or control measures shall be obtained prior to a  
44 positive conformity determination, and project sponsors must comply with such commitments.

45           D.       If the MPO or project sponsor believes the mitigation or control measure is no longer necessary  
46 for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or  
47 control measure if it can demonstrate that the applicable hot-spot requirements, emission budget requirements and  
48 interim emissions requirements are satisfied without the mitigation or control measure, and so notifies the agencies  
49 involved in the interagency consultation process required under 20.2.99.102 through 20.2.99.110 NMAC. The MPO  
50 (or NMDOT in the absence of an MPO) and US DOT must find that the transportation plan and TIP still satisfy the  
51 applicable requirements for vehicle emissions budgets and interim vehicle emissions budgets, and that the project  
52 still satisfies the requirements for hot spots, and therefore that the conformity determinations for the transportation  
53 plan, TIP and project are still valid. This finding is subject to the applicable public consultation requirements in  
54 20.2.99.110 NMAC for conformity determinations for projects.

55 [20.2.99.111 NMAC - Rp, 20.2.99.150 NMAC, XX/XX/14]  
56

1 **20.2.99.112 SAVINGS PROVISION:** The federal conformity rules under 40 CFR Part 93 Subpart A, in  
2 addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to  
3 meet the requirements of CAA Section 176(c) until such time as this conformity implementation plan revision is  
4 approved by US EPA. Following US EPA approval of this revision to the SIP (or a portion thereof), the approved  
5 (or approved portion of) the department's criteria and procedures would govern conformity determinations and the  
6 federal conformity regulations contained in 40 CFR Part 93 would apply only for the portion, if any, of the  
7 department's conformity provisions that is not approved by US EPA. In addition, any previously applicable SIP  
8 requirements relating to conformity remain enforceable until the department revises its SIP to specifically remove  
9 them and that revision is approved by US EPA.  
10 [20.2.99.112 NMAC - Rp, 20.2.99.154 NMAC, XX/XX/14]

11  
12 **HISTORY OF 20.2.99 NMAC:**

13 **Pre-NMAC History:** None.

14  
15 **History of Repealed Material:**

16 20.2.99 NMAC, Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects, filed  
17 10/16/02 - Repealed effective XX/XX/14.

18  
19 **Other History:**

20 20 NMAC 2.99, Conformity To The State Implementation Plan Of Transportation Plans, Programs, And Projects,  
21 filed 11/14/94 was replaced by 20 NMAC 2.99, Conformity To The State Implementation Plan Of Transportation  
22 Plans, Programs, And Projects, filed 10/23/98, effective 11/23/98.

23 20 NMAC 2.99, Conformity To The State Implementation Plan Of Transportation Plans, Programs, And Projects,  
24 filed 10/23/98 was renumbered, reformatted and replaced by 20.2.99 NMAC, Conformity To The State  
25 Implementation Plan Of Transportation Plans, Programs, And Projects, filed 10/16/02, effective 11/15/02.

26 20.2.99 NMAC, Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects, filed  
27 10/16/02 was replaced by 20.2.99 NMAC, Conformity to the State Implementation Plan of Transportation Plans,  
28 Programs and Projects, effective XX/XX/14.