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

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

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

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

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

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

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

(2) nitrogen oxides in nitrogen dioxide areas;

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

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

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

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

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

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

E. The provisions of this part apply to maintenance areas for 20 years from the date US EPA approves the department's request under Section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this part shall apply for more than 20 years.
[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]

20.2.99.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1, et seq., including specifically, section 74-2-5(A), (B) and (C). Section 74-2-5(B) provides that the Environmental Improvement Board shall adopt regulations "to attain and maintain national ambient air quality standards and prevent or abate air pollution...."
[12/14/94; 11/23/98; 20.2.99.3 NMAC - Rn, 20 NMAC 2.99.102 10/31/02]

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

20.2.99.5 EFFECTIVE DATE: November 23, 1998, except where a later date is cited at the end of a section or paragraph.
[12/14/94; 11/23/98; 20.2.99.5 NMAC - Rn, 20 NMAC 2.99.104 10/31/02]
[The latest effective date of any section in this Part is 10/15/05.]

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

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

A. "1-hour ozone NAAQS" means the 1-hour ozone national ambient air quality standard codified at 40 CFR 50.9.

B. "8-hour ozone NAAQS" means the 8-hour ozone national ambient air quality standard codified at 40 CFR 50.10.

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

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

E. "Cause or contribute to a new violation" for a project means:

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

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

F. "CFR" means the code of federal regulations.

G. "Clean data" means air quality monitoring data determined by US EPA to meet the e national ambient air quality standard.

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

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

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

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

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

J. **"Consultation"** means that one party confers with another identified party, provides or makes available all relevant information to that party, and, prior to taking any action, considers the views of that party and (except with respect to those actions for which only notification is required) responds to written comments in a timely, substantive written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action. Specific procedures and processes are described in 20.2.99.116 through 20.2.99.124 NMAC.

K. **"Control strategy implementation plan revision"** is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including implementation plan 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), 189(b)(1)(A) and 189(d); and Sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provisions requiring a demonstration of reasonable further progress or attainment).

L. **"Department"** means the New Mexico environment department.

M. **"Design concept"** means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.

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

O. **"Donut areas"** are geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

P. **"FHWA"** means the federal highway administration of US DOT.

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

R. **"Forecast period"** with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

S. **"FTA"** means the federal transit administration of US DOT.

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

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

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

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

U. **"Horizon year"** is a year for which the transportation plan describes the envisioned transportation system in accordance with 20.2.99.125 NMAC.

V. **"Hot-spot analysis"** is an estimation of likely future localized CO, PM10, and/or PM2.5 pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

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

X. **"Isolated rural nonattainment and maintenance areas"** are areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or TIPs and do not have projects that are part

of the emissions in such areas are instead included in statewide transportation improvement programs. These are not donut areas.

Y. **"Lapse"** means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

Z. **"Limited maintenance plan"** is a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth.

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

AB. **"Maintenance plan"** means an implementation plan under Section 175A of the CAA, as amended.

AC. **"Metropolitan planning organization (MPO)"** is that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making. In the absence of an MPO, the NMDOT shall be responsible for the transportation planning processes assigned to MPOs under this part

AD. **"Milestone"** has the meaning given in CAA Sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM10 nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date on which that level is to be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.

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

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

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

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

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

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

AK. **"Project"** means a highway project or transit project.

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

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

AN. **"Regionally significant project"** means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes,

etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum:

(1) all principal arterial highways; and

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

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

AP. **"Standard"** means a national ambient air quality standard.

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

AR. **"Title 23 U.S.C."** means title 23 of the United States Code.

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

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

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

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

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

AU. **"Transportation control measure (TCM)"** is any measure that is specifically identified and committed to in the SIP that is either one of the types listed in Section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this part.

AV. **"Transportation improvement program (TIP)"** means a staged, multi-year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

AW. **"Transportation plan"** means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

AX. **"Transportation project"** is a highway project or a transit project.

AY. **"US EPA"** means the United States environmental protection agency

AZ. **"US DOT"** means the United States department of transportation.

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

20.2.99.8 **DOCUMENTS:** Documents incorporated and cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Harold Runnels Building, 1190 St. Francis Dr., or 2048 Galisteo St., Santa Fe, NM 87502.
[12/14/94; 11/23/98; 20.2.99.8 NMAC - Rn, 20 NMAC 2.99.108 10/31/02]
[Current location is 2048 Galisteo St., Santa Fe, NM 87505.]

20.2.99.9 to 20.2.99.108 [RESERVED]

20.2.99.109 APPLICABILITY

A. Action applicability.

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

(a) the adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed 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;

(b) the adoption, acceptance, approval or support of TIPs and TIP amendments developed 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; and

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

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

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

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

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

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

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

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

20.2.99.111 FREQUENCY OF CONFORMITY DETERMINATIONS: Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects shall be made according to the requirements of 20.2.99.111 NMAC through 20.2.99.115 NMAC and the SIP.

[12/14/94; 11/23/98; 20.2.99.111 NMAC - Rn, 20.NMAC 2.99.111 10/31/02]

20.2.99.112 FREQUENCY OF CONFORMITY DETERMINATIONS - TRANSPORTATION PLANS.

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

B. All transportation plan revisions shall be found to conform before the transportation plan revisions are approved by the MPO (or NMDOT in the absence of an MPO) or accepted by the US DOT, unless the revision merely adds or deletes exempt projects listed in 20.2.99.149 NMAC and has been made in accordance with the notification provisions of 20.2.99.122 NMAC. The conformity determination shall be based on the transportation plan and the revision taken as a whole.

C. The MPO and US DOT shall determine the conformity of the transportation plan (including a new regional emission analysis) no less frequently than every three (3) years. If more than three (3) years elapse after US DOT's conformity determination without the MPO and US DOT determining conformity of the transportation plan, the existing conformity determination will lapse.

[12/14/94; 11/23/98; 20.2.99.112 NMAC - Rn, 20 NMAC 2.99.112 10/31/02; A, 10/15/05]

2020.2.99.113 FREQUENCY OF CONFORMITY DETERMINATIONS - TRANSPORTATION IMPROVEMENT PROGRAMS.

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

B. A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO (or NMDOT in the absence of an MPO) or accepted by the US DOT, unless

the amendment merely adds or deletes exempt projects listed in 20.2.99.149 NMAC and has been made in accordance with the notification provisions of 20.2.99.122 NMAC.

C. The MPO and US DOT shall determine the conformity of the TIP (including a new regional emissions analysis) no less frequently than every three years or else the existing conformity determination will lapse.
[12/14/94; 11/23/98; 20.2.99.113 NMAC - Rn, 20 NMAC 2.99.113 10/31/02; A, 10/15/05]

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

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

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

(1) NEPA process completion;

(2) start of final design;

(3) acquisition of a significant portion of the right-of-way; and

(4) construction (including federal approval of plans, specifications and estimates); or

(C) initiation of a supplemental environmental document for air quality purposes.
[12/14/94; 11/23/98; 20.2.99.114 NMAC - Rn, 20 NMAC 2.99.114; A, 10/15/05]

20.2.99.115 FREQUENCY OF CONFORMITY DETERMINATIONS - TRIGGERS FOR TRANSPORTATION PLAN AND TIP CONFORMITY DETERMINATIONS. Conformity of existing transportation plans and TIPs shall be redetermined within eighteen (18) months of the following, or the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and US DOT:

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

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

C. the effective date of US EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget.
[12/14/94; 11/23/98; 20.2.99.115 NMAC - Rn, 20 NMAC 2.99.115 10/31/02; A, 10/15/05]

20.2.99.116 CONSULTATION.

A. 20.2.99.116 NMAC through 20.2.99.124 NMAC provide procedures for the interagency (federal, state, and local) consultation process, resolution of conflicts, and public consultation. Public consultation procedures will be developed in accordance with the requirements for public involvement in 23 CFR part 450. The affected agencies listed in Subsection C of 20.2.99.116 NMAC shall undertake a consultation process with each other prior to the development of: 1) conformity determinations, 2) major activities listed in 20.2.9.117 NMAC below; 3) specific major activities listed in 20.2.99.120 NMAC below; and 4) specific routine activities listed in 20.2.99.121 NMAC below. This consultation process shall follow the consultation procedures described in 20.2.99.119 NMAC below.

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

C. Affected agencies.

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

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

(b) the department;

(c) NMDOT;

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

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

(f) EPA Region 6;

(g) New Mexico FHWA division offices;

(h) FTA region 6;

(i) local air quality agencies; and

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

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

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

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

D. Policy level points of contact and policy level meetings.

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

(a) MPO: executive director or designee;

(b) department: secretary or designee;

(c) NMDOT: secretary or designee;

(d) NMDOT district office: district engineer;

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

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

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

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

(i) other organizations: as directed in writing.

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

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

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

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

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

A. The department shall be the lead agency for the development of:

(1) applicable control strategy implementation plan revisions for the nonattainment or maintenance area;

(2) the list of TCMs to be submitted as part of the SIP; and

(3) any amendments or revisions thereto.

B. In the case of areas in which an MPO has been established, the designated MPO for the nonattainment or maintenance area shall be the lead agency for:

(1) the development of the unified planning work program under 23 CFR 450.314;

(2) development of the transportation plan for the nonattainment or maintenance area;

(3) development of the TIP for the nonattainment or maintenance area;

(4) any amendments or revisions thereto;

(5) any determinations of conformity under this part for which that MPO is responsible;

(6) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas as required by Subparagraph (c) of Paragraph (2) of Subsection L of 20.2.99.128 NMAC; and

(7) development of TCMs, in cooperation with the department.

C. In the case of areas in which an MPO has not been established, NMDOT shall be the lead agency for:

(1) the development of the transportation plan for the nonattainment or maintenance area;

(2) development of the TIP (transportation improvement program) for the nonattainment or maintenance area;

(3) any amendments or revisions thereto;

(4) any determinations of conformity under this part for which an MPO would be otherwise responsible;

(5) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas as required by Subparagraph (c) of Paragraph (2) of Subsection L of 20.2.99.128 NMAC; and

(6) development of TCMs, in cooperation with the department.

[12/14/94; 11/23/98; 20.2.99.117 NMAC - Rn, 20 NMAC 2.99.117 10/31/02; A, 10/15/05]

20.2.99.118 AGENCY RESPONSIBILITIES IN CONSULTATION.

A. The department shall be responsible for developing or providing:

(1) emissions inventories;

(2) emissions budgets;

(3) air quality modeling;

(4) attainment demonstrations;

(5) control strategy implementation plan revisions;

(6) regulatory TCMs; and

(7) updated motor vehicle emissions factors.

B. The designated MPO (or, in nonattainment or maintenance areas where an MPO has not been established, NMDOT) shall be responsible for:

(1) developing transportation plans and TIPs;

(2) developing and evaluating TCM transportation impacts;

(3) developing transportation and socioeconomic data and planning assumptions and providing such data and planning assumptions for use in air quality analysis to determine conformity of transportation plans, TIPs, and projects;

(4) monitoring regionally significant projects;

(5) developing system- or facility-based or other programmatic (non-regulatory) TCMs;

(6) providing technical input on emissions budgets; and

(7) performing transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments.

C. NMDOT shall be responsible for:

(1) providing technical input on proposed revisions to motor vehicle emissions factors;

(2) distributing draft and final highway or transit project environmental documents to other agencies; and

(3) convening air quality technical review meetings on specific highway or transit plans, programs and projects when requested by other agencies or as needed.

D. FHWA New Mexico offices and FTA region 6 shall be responsible for:

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

(2) providing guidance on conformity and the transportation planning process to agencies participating in the interagency consultation process.

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

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

20.2.99.119 GENERAL CONSULTATION PROCEDURES: The following are the responsibilities of lead and participating agencies at each stage of the consultation process:

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

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

(2) Preparing an initial draft of the document being developed, together with necessary supporting information;

(3) Convening consultation meetings and agendas when the initial draft of the document being developed is complete; and

(4) Appointing the conveners of technical meetings.

B. It shall be the responsibility of the lead agency to facilitate the interagency consultation process by:

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

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

(3) Soliciting early and continuing input from participating agencies;

(4) Scheduling consultation meetings as specified in this Part;

(5) Conducting the consultation process as described in this section (20.2.99.119 NMAC);

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

(7) Where required, assuring policy-level contact with those agencies;

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

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

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

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

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

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

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

(2) Review and comment as appropriate (including comments in writing) on all proposed and final draft documents and decisions within thirty (30) days of receipt;

(3) Attend consultation and decision meetings;

(4) Assure policy-level contact with other participants;

(5) Provide input on any area of substantive expertise or responsibility (including, but not limited to, planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or other requirements); and

(6) Provide technical assistance to the lead agency or consultation process in accordance with this section when requested.

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

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

20.2.99.120 CONSULTATION PROCEDURES FOR SPECIFIC MAJOR ACTIVITIES. An interagency consultation process among the members of the lead and participating agencies shall be undertaken for the following specific major activities in accordance with all the procedures specified in 20.2.119 NMAC above. The lead agency

for each activity shall be as specified, and the participating agencies shall be the agencies specified in Subsection C of 20.2.99.116 NMAC above.

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

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

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

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

E. Determination, as required by 20.2.99.140 NMAC, of whether:

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

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

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

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

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

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

J. In the event that the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process involving the designated MPO for the nonattainment or maintenance area, NMDOT, local transportation agencies, and the department, shall be undertaken, in the context of an MOA, for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area. The lead agency shall be NMDOT.

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

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

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

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

20.2.99.121 CONSULTATION PROCEDURES FOR SPECIFIC ROUTINE ACTIVITIES. An interagency consultation process among the lead and participating agencies shall be undertaken for the following routine activities in accordance with all the procedures specified in 20.2.99.119 NMAC. The lead agency for each activity shall be as specified, and the participating agencies shall be the agencies specified in Subsection C of

20.2.99.116 NMAC above or as specified for the specific activity. Not later than thirty (30) days prior to the preparation of the final document or decision, the lead agency shall supply all relevant information and documents, as appropriate, to the participating agencies.

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

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

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

D. Regionally Significant Non-FHWA/FTA Projects.

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

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

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

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

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

(d) the execution of any indebtedness for the facility;

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

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

(3) In the case of any such regionally significant project that has not been disclosed in a timely manner to the designated MPO for the nonattainment or maintenance area, NMDOT, and other interested agencies participating in the consultation process, such regionally significant project and all other regionally significant projects of that sponsor shall be deemed to be not included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and to be not consistent with the motor vehicle emissions budget in the SIP, for the purposes of 20.2.99.140 NMAC. In the case of repeated failures to disclose regionally significant projects by an agency that becomes aware of any such project through applications for approval, permitting or funding, all other regionally significant projects within the jurisdiction of such agency shall be deemed to be not included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and to be not consistent with the motor vehicle emissions budget in the SIP, for the purposes of 20.2.99.140 NMAC.

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

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

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

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

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

20.2.99.123 CONFLICT RESOLUTION AND APPEALS TO THE GOVERNOR.

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

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

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

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

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

20.2.99.124 PUBLIC CONSULTATION PROCEDURES:

A. Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period, and prior to taking formal action on a conformity determination for all transportation plans and TIPs, and projects, consistent with the requirements of 23 CFR part 450, including sections 450.316 (b)(1), 450.322(c), and 450.324(c) as in effect on the date of adoption of this Part. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.43. In addition, any such agency must specifically address in writing all public comments which allege that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for projects to the extent otherwise required by law (e.g. NEPA).

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

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

20.2.99.125 CONTENT OF TRANSPORTATION PLANS.

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

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

(a) horizon years may be no more than ten (10) years apart.

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

(c) if the attainment year is in the time span of the transportation plan, the attainment year shall be a horizon year.

(d) the last horizon year shall be the last year of the transportation plan's forecast period.

(2) For these horizon years:

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

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

(c) other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

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

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

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

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

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

D. Savings. The requirements of this section (20.2.99.125 NMAC) supplement other requirements of applicable law or regulation governing the format or content of transportation plans.
[12/14/94; 11/23/98; 20.2.99.125 NMAC - Rn, 20 NMAC 2.99.125 10/31/02; A, 10/15/05]

20.2.99.126 RELATIONSHIPOF TRANSPORTATION PLAN AND TIP CONFORMITY TO THE NEPA PROCESS: The degree of specificity required in the transportation plan and the specific travel network

assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in 20.2.99.128 NMAC through 20.2.99.138 NMAC for projects not from a TIP before NEPA process completion.
[12/14/94; 11/23/98; 20.2.99.126 NMAC - Rn, 20 NMAC 2.99.126 10/31/02]

20.2.99.127 FISCAL CONSTRAINTS FOR TRANSPORTATION PLANS AND TIPS: Transportation plans and TIPs must be fiscally constrained consistent with US DOT's metropolitan planning regulations at 23 CFR Part 450 in order to be found in conformity. The determination that a transportation plan or TIP is fiscally constrained shall be subject to consultation in accordance with 20.2.99.116 NMAC through 20.2.99.124 NMAC.
[12/14/94; 11/23/98; 20.2.99.127 NMAC - Rn, 20 NMAC 2.99.127 10/31/02]

20.2.99.128 CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS - GENERAL.

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

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

(1) All actions at all times
- **(a)** 20.2.99.129 NMAC. Latest planning assumptions
- **(b)** 20.2.99.130 NMAC. Latest emissions model
- **(c)** 20.2.99.131 NMAC. Consultation

(2) Transportation Plan
- **(a)** Subsection B of 20.2.99.132 NMAC. TCMs
- **(b)** 20.2.99.137 NMAC and/or 20.2.99.138 NMAC. Emissions budget and/or interim emissions

(3) TIP
- **(a)** Subsection C of 20.2.99.132 NMAC. TCMs
- **(b)** 20.2.99.137 NMAC and/or 20.2.99.138 NMAC. Emissions budget and /or interim emissions

(4) Project (From a conforming plan and TIP)
- **(a)** 20.2.99.133 NMAC. Currently conforming plan and TIP
- **(b)** 20.2.99.134 NMAC. Project from a conforming plan and TIP
- **(c)** 20.2.99.135 NMAC. CO, PM10, and PM2.5 hot spots
- **(d)** 20.2.99.136 NMAC. PM10 and PM2.5 control measures

(5) Project (Not from a conforming plan and TIP)
- **(a)** Subsection D of 20.2.99.132 NMAC. TCMs
- **(b)** 20.2.99.133 NMAC. Currently conforming plan and TIP
- **(c)** 20.2.99.135 NMAC. CO, PM10, and PM2.5 hot spots
- **(d)** 20.2.99.136 NMAC. PM10 and PM2.5 control measures
- **(e)** 20.2.99.137 NMAC and/or 20.2.99.138 NMAC. Emissions budget and/or interim emissions.

C. 1-hour ozone nonattainment and maintenance areas. This Subsection (Subsection C of Section 20.2.99.128 NMAC) applies when an area is nonattainment or maintenance for the 1-hour ozone NAAQS (i.e., until the effective date of any revocation of the 1-hour ozone NAAQS for an area). In addition to the criteria listed in Table 1 in Subsection B of this section (20.2.99.128 NMAC) that are required to be satisfied at all times, in such

ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emission tests are satisfied as described in the following.

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

(a) the effective data EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS is adequate for transportation conformity purposes;

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

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

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

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

(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 1-hour NAAQS (usually marginal and below areas) must satisfy one of the following requirements:

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

(b) the department shall submit to US EPA an implementation plan revision for the 1-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or an attainment demonstration, and the budget test required by 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 C of 20.2.99.128 NMAC).

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

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

(b) the budget test as required by 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 1-hour ozone NAAQS (subject to the timing requirements of Paragraph (1) of Subsection C of 20.2.99.128 NMAC); or

(c) the budget test as required by 20.2.99.137 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 US EPA rulemaking that determines that the area has clean data .

D. 8-hour ozone NAAQS nonattainment and maintenance areas without motor vehicle emissions budgets for the 1-hour ozone NAAQS for any portion of the 8-hour nonattainment area. This Subsection (Subsection D of Section 20.2.99.128 NMAC) applies to areas that were never designated nonattainment for the 1-hour ozone NAAQS but that never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. This Subsection (Subsection D of Section 20.2.99.128 NMAC) 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 20.2.99.109 NMAC. In the addition to the criteria listed in Table 1 in Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations much 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 much 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) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, part D subpart 1 areas), the interim emissions tests must by 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 NOx, 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 NOx. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NOx if the implementation plan or plan submission contains an explicit NOx motor vehicle emissions budget that is intended to act as a ceiling on future NOx emissions, and the NOx motor vehicle emissions budget is a net reduction from NOx 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, is such approval is completed through direct final rulemaking.

(2) Prior to Paragraph (1) or Subsection E of this section (20.2.99.128 NMAC) applying, the following test(s) must be satisfied, subject to the exception in Subparagraph (e) of Paragraph (2) of Subsection E of this section (20.2.99.128 NMAC).

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

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

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

(e) Notwithstanding Subparagraphs (a), (b), (c), and (d) of Paragraph (2) of Subsection E of this section (20.2.99.128 NMAC), the interim emissions tests as required by Section 20.2.99.138 NMAC, where the budget test using the approved or adequate motor vehicle emissions budget in the 1-hour ozone applicable implementation plan(s) or implementation plan submission(s) for the relevant area or portion thereof is not the appropriate test and the interim emissions tests are more appropriate to ensure that the transportation plan, TIP, or project not from a conforming plan and TIP will not create new violations, worsen existing violations, or delay timely attainment of the 8-hour ozone standard, as determined through the interagency consultation process required by Section 20.2.99.116 NMAC.

(3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NOx, as required by Section 20.2.99.138 NMAC, if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations 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 NOx. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NOx if the implementation plan or plan submission contains an explicit NOx motor vehicle emissions budget that is intended to act as a ceiling on future NOx emissions, and the NOx motor vehicle emissions budget is a net reduction from NOx emissions levels in 2002. Prior to an adequate or approved NOx motor vehicle emissions budget in the implementation plan submission for the 8-hour ozone NAAQS, the implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NOx if the implementation plan contains on explicit NOx motor vehicle emissions budget that is intended to act as a ceiling on future NOx emissions, and the NOx motor vehicle emission budget is a net reduction from NOx emissions levels in 1990.

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

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

(b) the budget test as required by Section 20.2.99.137 NMAC, using the adequate or approved motor vehicle emission 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 E of 20.2.99.128 NMAC; or

(c) the budget test as required by Section 20.2.99.137 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.

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

(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot spot test required by Subsection A of 20.2.99.135 NMAC at all times. Until a CO attainment demonstration or maintenance plan is approved by US EPA, FHWA/FTA projects must also satisfy the hot spot test required by Subsection B of 20.2.99.135 NMAC.

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

(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 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.

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

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

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

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

G. PM10 nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in PM10 nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or interim emissions tests are satisfied as described in the following.

(1) FHWA/FTA projects in PM10 nonattainment or maintenance areas must satisfy the hot spot test required by 20.2.99.135 NMAC.

(2) In PM10 nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made :

(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 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 data of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(3) In PM10 nonattainment areas the interim emissions tests must be satisfied as required by 20.2.99.138 NMAC for conformity determinations made:

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

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

H. NO2 nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in NO2 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 NO2 nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made :

(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 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 data of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(2) In NO2 nonattainment areas the interim emissions tests must be satisfied as required by 20.2.99.138 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

I. PM2.5 nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in Subsection B of Section 20.2.99.128 NMAC that are required to be satisfied at all times, in PM2.5 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) FHWA/FTA projects in PM2.5 nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by Subsection A of 20.2.99.135 NMAC.

(2) in PM2.5 nonattainment and maintenance areas the budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(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 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 data of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(3) In PM2.5 nonattainment areas the interim emissions tests must be satisfied as required by Section 20.2.99.138 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

J. Areas with limited maintenance plans. Notwithstanding the other paragraphs of this section, an area is not required to satisfy the regional emissions analysis for Sections 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for a given pollutant and NAAQS, if the area has an adequate or approved limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violations to occur. A conformity determination that meets other applicable criteria in Table 1 or Subsection B of this section (20.2.99.128 NMAC) is still required, including the hot-spot requirements for projects in CO, PM10, and PM2.5 areas.

K. Areas with insignificant motor vehicle emissions. Notwithstanding the other Subsections in this section (20.2.99.128 NMAC), and area is not required to satisfy a regional emissions analysis for Sections 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for a given pollutant/precursor and NAAQS, if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air

quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures, and historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that meets other applicable criteria in Table 1 or Subsection B of this section (20.2.99.128 NMAC) is still required, including regional emissions analyses for Sections 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO, PM10, and PM2.5 areas in Section 20.2.99.135 NMAC must also be satisfied, unless EPA determined that the SIP also demonstrates that projects will not create new localized violations and/or increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this subsection would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS.

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

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the 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 NMAC, and 20.2.99.136 NMAC. Until US EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of Subsection B of 20.2.99.135 NMAC ("Localized CO, PM10, and PM2.5 violations (hot spots)").

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

(a) when the requirements of 20.2.99.137 NMAC and 20.2.99.138 NMAC apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area.

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

(i) 20.2.99.137 NMAC;

(ii) 20.2.99.138 NMAC (including regional emissions analysis for NOx in all ozone nonattainment and maintenance areas, notwithstanding Paragraph (2) of Subsection F of 20.2.99.138 NMAC; or

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

(c) the choice of requirements in Subparagraph (b) of Paragraph (2) of Subsection G of 20.2.99.128 NMAC and the methodology used to meet the requirements of item (iii) of Subparagraph (b) of Paragraph (2) of Subsection G of 20.2.99.128 NMAC must be determined through the interagency consultation process required in Paragraph (6) of Subsection B of 20.2.99.117 NMAC and Paragraph (5) of Subsection C of 20.2.99.117 NMAC through which the relevant recipients of title 23 U.S.C. or federal transit laws funds, NMDOT, the department, or the local air quality agency should reach consensus about the option and methodology selected; US EPA and US DOT must be consulted through this process as well; in the event of unresolved disputes, conflicts may be escalated to the governor consistent with the procedure in 20.2.99.123 NMAC, which applies to department comments on a conformity determination.

[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]

20.2.99.129 CRITERIA AND PROCEDURES - LATEST PLANNING ASSUMPTIONS.

A. Except as provided in this paragraph, the conformity determination, with respect to all other applicable criteria in 20.2.99.130 NMAC through 20.2.99.138 NMAC, must be based upon the most recent planning assumptions in force at the time the conformity analysis begins. The conformity determination must satisfy the requirements of Subsections B through F of 20.2.99.129 NMAC using the planning assumptions available at the time the conformity analysis begins as determined through the interagency consultation process required

Subparagraph (a) of Paragraph (1) of Subsection C of Section 20.2.99.116 NMAC. The "time the conformity analysis begins" for a transportation plan or TIP determination in the point at which the MPO or the other designated agency begins to model the impact of the proposed transportation plan or TIP on travel and/or emissions. New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred, as determined through interagency consultation.

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

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

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

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

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

20.2.99.130 CRITERIA AND PROCEDURES - LATEST EMISSIONS MODEL

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

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

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

20.2.99.131 CRITERIA AND PROCEDURES - CONSULTATION: Conformity determinations must be determined according to the consultation procedures in this Part, and according to the public involvement procedures established in compliance with 23 CFR part 450. Until this Part is fully approved by US EPA as an implementation plan revision, the conformity determination must be made according to the procedures in 40 CFR 93.105(a)(2) and (e).
[12/14/94; 11/23/98; 20.2.99.131 NMAC - Rn, 20 NMAC 2.99.131 10/31/02]

20.2.99.132 CRITERIA AND PROCEDURES - TIMELY IMPLEMENTATION OF TCMS:

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

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

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

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

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

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

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

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

D. For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the SIP.
[12/14/94; 11/23/98; 20.2.99.132 NMAC - Rn, 20 NMAC 2.99.132 10/31/02]

20.2.99.133 CRITERIA AND PROCEDURES - CURRENTLY CONFORMING TRANSPORTATION PLAN AND TIP: There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the conformity determination for the current plan or TIP is made by US DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of 20.2.99.111 NMAC through 20.2.99.115 NMAC. This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the SIP, provided that all other relevant criteria of this Part are satisfied.
[12/14/94; 11/23/98; 20.2.99.133 NMAC - Rn, 20 NMAC 2.99.133 10/31/02]

20.2.99.134 CRITERIA AND PROCEDURES - PROJECTS FROM A PLAN AND TIP:

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

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

(1) For projects which are required to be identified in the transportation plan in order to satisfy 20.2.99.125 NMAC, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

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

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

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

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

D. TCMs: This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.
[12/14/94; 11/23/98; 20.2.99.134 NMAC - Rn, 20 NMAC 2.99.134 10/31/02]

20.2.99.135 CRITERIA AND PROCEDURES - LOCALIZED CO, PM10, AND PM2.5 VIOLATIONS (HOT SPOTS).

A. This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO, PM10, and/or PM2.5 violations or increase the frequency or severity of any existing CO, PM10, and/or PM2.5 violations in CO, PM10, and PM2.5 nonattainment and maintenance areas. This criterion is satisfied without a hotspot analysis in PM10 and PM2.5 nonattainment and maintenance areas for FHWA/FTA projects that are not identified in paragraph (1) of Subsection B of 20.2.99.148 NMAC. This criterion is satisfied for all other FHWA/FTA projects in CO, PM10, and PM2.5 nonattainment and maintenance areas if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration shall be performed according to the consultation requirements of Subsection A of 20.2.99.120 NMAC and the methodology requirements of 20.2.99.148 NMAC.

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

20.2.99.136 CRITERIA AND PROCEDURES - COMPLIANCE WITH PM10 and PM2.5 CONTROL MEASURES. The FHWA/FTA project must comply with PM10 and PM2.5 control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM10 and PM2.5 emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation SIP.
[12/14/94; 11/23/98; 20.2.99.136 NMAC - Rn, 20 NMAC 2.99.136 10/31/02; A, 10/15/05]

20.2.99.137 CRITERIA AND PROCEDURES - MOTOR VEHICLE EMISSIONS BUDGET.

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

B. Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the attainment year (if it is within the time frame of the transportation plan) for the last year of the transportation plan's forecast period, and for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows.

(1) Until a maintenance plan is submitted:

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

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

(2) When a maintenance plan has been submitted:

(a) emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor

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

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

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

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

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

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

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

(2) The regional emissions analysis may be performed for any years in the timeframe of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan) and the last year of the plan's forecast period. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in Subsection B of 20.2.99.137 NMAC, may be determined by interpolating between the years for which the regional emissions analysis is performed.

E. Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[12/14/94; 11/23/98; 20.2.99.137 NMAC - Rn, 20 NMAC 2.99.137 10/31/02; A, 10/15/05]

20.2.99.138 CRITERIA AND PROCEDURES - INTERIM EMISSIONS IN AREAS WITHOUT MOTOR VEHICLE EMISSIONS BUDGETS.

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

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

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

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

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

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

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

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

C. CO areas. This criterion may be met:

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

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

(b) the emissions predicted in the "action" scenario are lower than 1990 emissions by any nonzero amount.

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

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

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

D. PM10 and NO2 areas. This criterion may be met in PM10 and NO2 nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC, one of the following requirements is met:

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

(2) the emissions predicted in the "action" scenario are not greater than baseline emissions; baseline emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation plan revision required by 40 CFR 51.390 defines the baseline emissions for a PM10 area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

E. PM2.5 areas. This criterion maybe met in PM2.5 nonattainment areas if a regional emissions analysis that satisfies the requirements of Sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC, one of the following requirements is met:

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

(2) the emissions predicted in the "action" scenario are not greater that 2002 emissions.

F. Pollutants. The regional emissions analysis must be performed for the following pollutants:

(1) VOC in ozone areas;

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

(3) CO in CO areas;

(4) PM10 in PM10 areas;

(5) VOC and/or NOx in PM10 areas if the US EPA regional administrator or the department has made a finding that such precursor emissions from within the area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO and US DOT;

(6) NOx in NO2 areas

(7) PM2.5 areas;

(8) reentrained road dust in PM2.5 areas only if the US EPA regional administrator or the department has made a finding that emissions from reentrained road dust within the area are a significant contributor to the PM2.5 nonattainment problem and has so notified the MPO and US DOT;

(9) nitrogen oxides in PM2.5 areas, unless the EPA regional administrator and the department have made a finding that emissions of nitrogen oxides from within the area are not a significant contributor to the PM2.5 nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT; and

(10) VOC, Sox and/or ammonia in PM2.5 areas if the EPA regional administrator or the department has made a finding that any of such precursor emissions from within the area are a significant contributor to the PM2.5 nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT.

G. Analysis years.

(1) The regional emissions analysis must be performed for analysis years that are no more than ten (10) years apart. The first analysis year must be no more than five (5) years beyond the year in which the conformity determination is being made. The last year of transportation plan's forecast period must also be an analysis year.

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

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

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

(2) all ongoing travel demand management or transportation system management activities; and

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

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

(1) all facilities, services, and activities in the "baseline" scenario;

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

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

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

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

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

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

[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]

20.2.99.139 CONSEQUENCES OF CONTROL STRATEGY IMPLEMENTATION PLAN FAILURES.

A. Disapprovals.

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

(2) If US EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, only projects in the first three (3) years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning on the effective date of a disapproval without a protective finding, no transportation plan, TIP, or project not in the first three (3) years of the currently conforming plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted US EPA finds its motor vehicle emissions budget(s) adequate pursuant to Section 20.2.99.137 NMAC or approves the submission, and conformity to the implementation plan revision is determined

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

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

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

[12/14/94; 11/23/98; 20.2.99.139 NMAC - Rn, 20 NMAC 2.99.139 10/31/02; A, 10/15/05]

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

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

(1) the project comes from the currently conforming transportation plan and TIP and the project's design concept and scope have not changed significantly from those analyses for that transportation plan and TIP; or

(2) the project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project selection or endorsement) and the project's design concept and scope have not changed significantly form those which were included in the regional emissions analysis; or

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

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

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

(2) a new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the

project were implemented (consistent with the requirements of 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for projects not from a conforming transportation plan and TIP).

C. Notwithstanding Subsections A and B of Section 20.2.99.140 NMAC, in nonattainment and maintenance areas subject to Subsections J or K of Section 20.2.99.128 NMAC for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under title 20 U.S.C. or the federal transit laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source. Unless the recipient finds that the requirements of one of the following are met for that pollutant/precursor and NAAQS:

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

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

[12/14/94; 11/23/98; 20.2.99.140 NMAC - Rn, 20 NMAC 2.99.140 10/31/02; A, 10/15/05]

20.2.99.141 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED POLLUTANT EMISSIONS - GENERAL REQUIREMENTS:

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

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

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

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

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

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

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

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

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

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

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

F. The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the

fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless modified after interagency consultation according to 20.2.99.120 NMAC to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

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

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

20.2.99.142 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED POLLUTANT EMISSIONS -- ANALYSIS IN SERIOUS, SEVERE, AND EXTREME OZONE NONATTAINMENT AREAS AND SERIOUS CARBON MONOXIDE AREAS: Regional emissions analyses must meet the requirements of subsections A through C of 20.2.99.142 NMAC if their metropolitan planning area contains an urbanized area population over two hundred thousand (200,000).

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

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

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

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

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

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

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

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

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

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

20.2.99.143 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTION- RELATED POLLUTION EMISSIONS – TWO-YEAR GRACE PERIOD FOR REGIONAL EMISSIONS ANALYSIS REQUIREMENTS IN CERTAIN OZONE AND CO AREAS. The requirements of 20.2.99.142 NMAC apply in

such areas or portions of such areas that have not previously been required to meet these requirements for any existing NAAQS two years from the following:

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

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

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

[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]

20.2.99.144 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION- RELATED POLLUTANT EMISSIONS -- AREAS WHICH ARE NOT SERIOUS, SEVERE OR EXTREME OZONE NONATTAINMENT AREAS OR SERIOUS CARBON MONOXIDE AREAS. In all areas not otherwise subject to 20.2.99.142 NMAC, regional emissions analyses must use those procedures described in 20.2.99.142 NMAC if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to 20.2.99.142 NMAC may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

[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, 20.2.99.143 NMAC, 10/15/05]

20.2.99.145 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED POLLUTANT EMISSIONS -- PM10 FROM CONSTRUCTION-RELATED FUGITIVE DUST.

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

B. In PM10 nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM10 as a contributor to the nonattainment problem, the regional PM10 emissions analysis shall consider construction-related fugitive PM10 and shall account for the level of construction activity, the fugitive PM10 control measures in the SIP, and the dust-producing capacity of the proposed activities.

[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, 20.2.99.144 NMAC, 10/15/05]

20.2.99.146 PROCEUDURES FOR DETERMINING REGIONAL TRANSPORTATION - RELATED POLLUTANT EMISSIONS -- PM2.5 FROM CONSTRUCTION - RELATED FUGITIVE DUST.

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

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

[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]

20.2.99.147 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED POLLUTANT EMISSIONS -- RELIANCE ON PREVIOUS REGIONAL EMISSIONS ANALYSIS.

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

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

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

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

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

B. A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of 20.2.99.137 NMAC or 20.02.99.138 NMAC without additional regional emissions analysis if allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan, the previous regional emissions analysis is still consistent with the requirements of Section 20.2.99.137NMAC (including that conformity to all currently applicable budgets is demonstrated) and/or Section 20.2.99.138 NMAC, as applicable, and if the project is either:

(1) not regionally significant; or

(2) included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

C. A conformity determination that relies on this section (20.2.99.147 NMAC) does not satisfy the frequency requirements of Sections 20.2.99.112 NMAC and 20.2.99.113 NMAC.

[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, 20.2.99.145 NMAC & A, 10/15/05]

20.2.99.148 PROCEDURES FOR DETERMINING LOCALIZED CO, PM10 AND PM2.5 CONCENTRATIONS (HOT-SPOT ANALYSIS).

A. CO Hot-spot Analysis.

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

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

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

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

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

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

(a) quantitative methods that represent reasonable and common professional practice; or

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

B. PM10 and PM2.5 Hot-spot Analysis.

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

(a) new or expanded highway projects that have a significant number of or significant increase in diesel vehicles;

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

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

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

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

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

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

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

C. General Requirements.

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

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

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

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

(5) CO, PM10, and PM2.5 hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction- related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.
[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, 20.2.99.146 NMAC, 10/15/05; A, 9/1/07]

20.2.99.149 USING THE MOTOR VEHICLE EMISSIONS BUDGET IN THE SIP (OR IMPLEMENTATION PLAN SUBMISSION).

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

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

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

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

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

C. If the applicable SIP (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO (or NMDOT in the absence of an MPO), and the US DOT are not required to consider this to establish subarea budgets, unless the SIP (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

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

[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, 20.2.99.147 NMAC & A, 10/15/05]

20.2.99.150 ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES.

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

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

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

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

[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, 20.2.99.148 NMAC & A, 10/15/05; A, 9/1/07]

20.2.99.151 EXEMPTIONS.

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

(1) Safety:

(a) railroad/highway crossing;

(b) hazard elimination program;

(c) safer non-federal-aid system roads;
(d) shoulder improvements;
(e) increasing sight distance;
(f) safety improvement program;
(g) traffic control devices and operating assistance other than signalization projects;
(h) railroad/highway crossing warning devices;
(i) guardrails, median barriers, crash cushions;
(j) pavement resurfacing or rehabilitation;
(k) pavement marking demonstration;
(l) emergency relief (23 U.S.C. 125);
(m) fencing;
(n) skid treatments;
(o) safety roadside rest areas;
(p) adding medians;
(q) truck climbing lanes outside the urbanized area;
(r) lighting improvements;
(s) widening narrow pavements or reconstructing bridges (no additional travel lanes);
(t) emergency truck pullovers.

(2) Mass transit:
(a) operating assistance to transit agencies;
(b) purchase of support vehicles;
(c) rehabilitation of transit vehicles (In PM10 and PM2.5 nonattainment or maintenance areas, only if projects are in compliance with control measures in the SIP.);
(d) purchase of office, shop, and operating equipment for existing facilities;
(e) purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.);
(f) construction or renovation of power, signal, and communications systems;
(g) construction of small passenger shelters and information kiosks;
(h) reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures);
(i) rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way;
(j) purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet (In PM10 nonattainment or maintenance areas, such projects are exempt only if projects are in compliance with control measures in the SIP.);
(k) construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR 771.

(3) Air quality:
(a) continuation of ride-sharing and van-pooling promotion activities at current levels;
(b) bicycle and pedestrian facilities.

(4) Other:
(a) specific activities which do not involve or lead directly to construction, such as:
(i) planning and technical studies;
(ii) grants for training and research programs;
(iii) planning activities conducted pursuant to titles 23 and 49 U.S.C.; or
(iv) federal-aid systems revisions;
(b) engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action;
(c) noise attenuation;
(d) emergency or hardship advance land acquisitions (23 CFR 710.503);
(e) acquisition of scenic easements;
(f) plantings, landscaping, etc.;
(g) sign removal;
(h) directional and informational signs;
(i) transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities);

(j) repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational, or capacity changes.

B. Projects exempt from regional emissions analyses. Notwithstanding the other requirements of this part, highway and transit projects of the types listed in table 3 of this section are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. The local effects of projects with respect to PM10 and PM2.5 concentrations must be considered and a hot-spot analysis performed prior to making a project-level conformity determination, if a project in table 3 also meets the criteria of Paragraph (1) of Subsection B of 20.2.99.148 NMAC. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in table 3 (of this section) is not exempt from regional emissions analysis if the MPO in consultation with other agencies (e.g. the department, see Subsection C of 20.2.99.120 NMAC), the US EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows. Table 3. Projects Exempt from Regional Emissions Analyses:

(1) intersection channelization projects;
(2) intersection signalization projects at individual intersections;
(3) interchange reconfiguration projects;
(4) changes in vertical and horizontal alignment;
(5) truck size and weight inspection stations;
(6) bus terminals and transfer points.

[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, 20.2.99.149 NMAC & A, 10/15/05; A, 9/1/07]

20.2.99.152 TRAFFIC SIGNAL SYNCHRONIZATION PROJECTS. Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of this part. However, all subsequent regional emissions analyses required by 20.2.99.137 NMAC and 20.2.99.138 NMAC for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.
[20.2.99.152 NMAC - Rn, 20.2.99.150 NMAC, 10/15/05]

20.2.99.153 SPECIAL EXEMPTIONS FROM CONFORMITY REQUIREMENTS FOR PILOT PROGRAM AREAS. EPA and NMDOT may exempt no more than six areas for no more than three years from certain requirements of this subpart if these areas are selected to participate in a conformity pilot program and have developed alternative requirements that have been approved by EPA as an implementation plan revision in accordance with 40 CFR part 51.390. For the duration of the pilot program, areas selected to participate in the pilot program must comply with the conformity requirements of the pilot area's implementation plan revision for Section 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 implementation plan revision for 40 CFR part 51.390. The alternative conformity requirements in conjunction with any applicable state and/or federal conformity requirements must be proposed to fulfill all of the requirements of and achieve results equivalent to or better than Section 176(c) of the Clean Air Act. After the three-year duration of the pilot program has expired, areas will again be subject to all of the requirements of this subpart and 40 CFR part 51, subpart T, and/or to the requirements of any implementation plan revision that was previously approved by EPA in accordance with 40 CFR part 51.390.
[20.2.99.153 NMAC - N, 10/15/05]

20.2.99.154 SAVINGS PROVISION. The federal conformity rules under 40 CFR part 93 subpart A, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of CAA Section 176(c) until such time as this conformity implementation plan revision is approved by EPA. Following EPA approval of this revision to the SIP (or a portion thereof) the approved (or approved portion of the) department's criteria and procedures would govern conformity determinations and the federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the department's conformity provisions that is not approved by EPA. In addition, any previously applicable SIP requirements relating to conformity remain enforceable until the department revises its SIP to specifically remove them and that revision is approved by EPA.
[20.2.99.154 NMAC - Rn, 20.2.99.151 NMAC, 10/15/05]

HISTORY OF 20.2.99 NMAC:
Pre-NMAC History: None.

History of Repealed Material: [RESERVED]

Other History:
20 NMAC 2.99, Conformity To The State Implementation Plan Of Transportation Plans, Programs, And Projects, filed 11/14/94 was replaced by 20 NMAC 2.99, Conformity To The State Implementation Plan Of Transportation Plans, Programs, And Projects, filed 10/23/98.
20 NMAC 2.99, Conformity To The State Implementation Plan Of Transportation Plans, Programs, And Projects, filed 10/23/98 was **renumbered, reformatted and replaced** by 20.2.99 NMAC, Conformity To The State Implementation Plan Of Transportation Plans, Programs, And Projects, effective 10/31/02.
20.2.99 NMAC, Conformity To The State Implementation Plan of Transportation Plans, Programs, And Projects filed 10/31/02 was revised; renumbered; and replaced by 20.2.99 NMAC, Conformity To The State Implementation Plan of Transportation Plans, Programs, And Projects, effective 10/15/05.