



STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT BOARD



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

EIB 14-03(R)

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

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

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

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

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

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

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

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

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

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

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

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

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

**5. List and Description of Exhibits**

The Department submits the following exhibits:

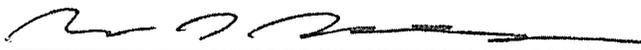
NMED 1	Resume of Cindy Hollenberg
NMED 2	Resume of Gail Cooke
NMED 3	Resume of Rita Bates
NMED 4	Written Testimony of Cindy Hollenberg
NMED 5	Current 20.2.99 NMAC, Proposed for Repeal
NMED 6	Proposed Replacement 20.2.99 NMAC
NMED 7a	73 Fed. Reg. 4420 (Jan. 24, 2008) (Streamlining Amendments to 40 C.F.R.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

**6. Reservation of Rights**

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

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT



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Assistant General Counsel  
New Mexico Environment Department  
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*Education*

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

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

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

*Experience*

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

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

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

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

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

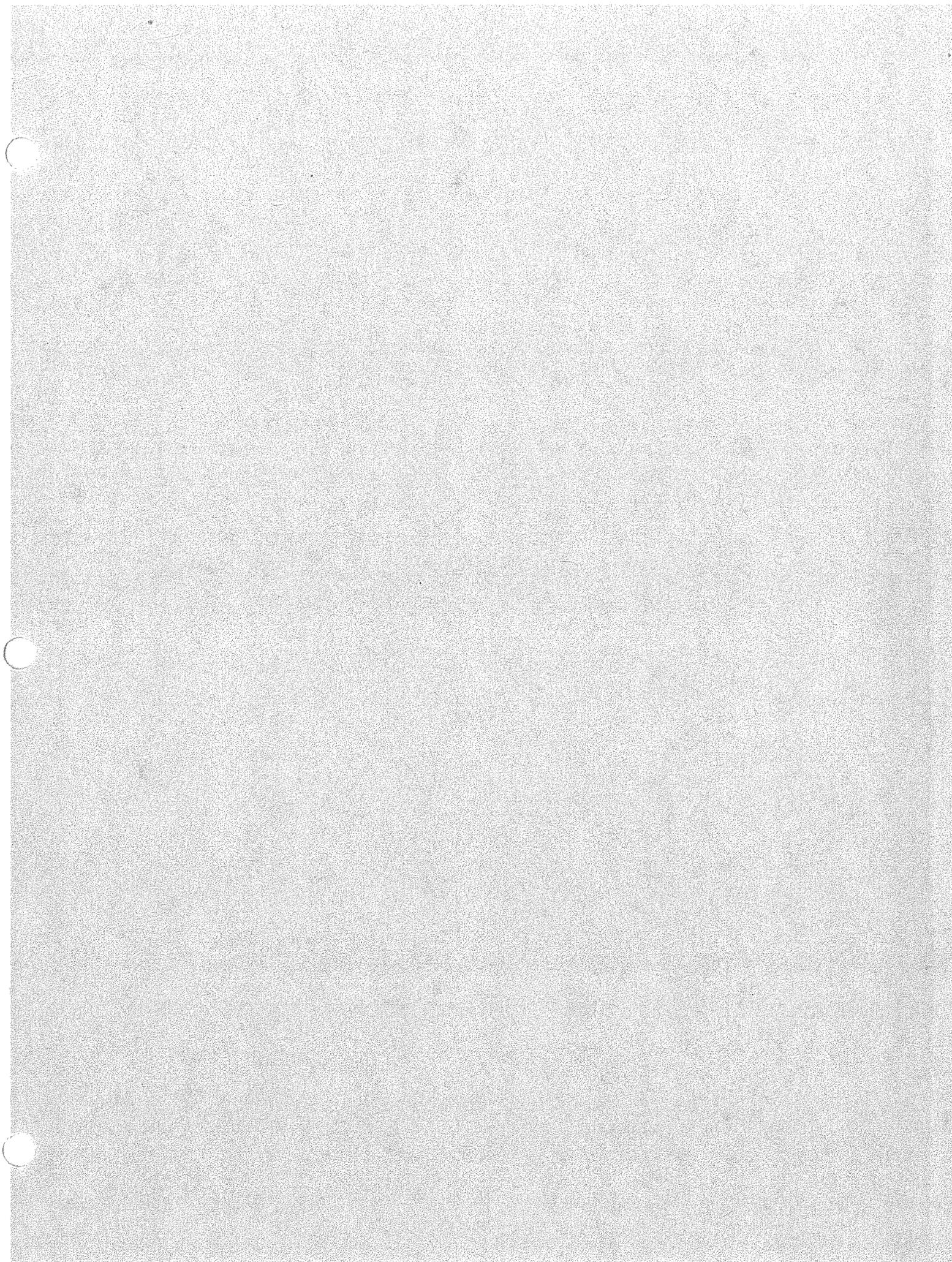
I developed and implemented curricula for 10 high school and middle school science laboratory classes, 3 levels of Spanish, and Communications and managed the high school Chemistry / Physics lab. Coordination responsibilities included the high school Student Assistance Team and the Anti-Bullying Program,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

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

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

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







## Gail F. Cooke

### EDUCATION

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

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

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

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

### WORK HISTORY

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

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

*Taschek Environmental Consulting* *1998-1999*

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

### RELEVANT PROJECT EXPERIENCE

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

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

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

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

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

***Grant County Nonattainment/Redesignation***

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

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

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





# RITA BATES

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## EDUCATION

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

## EXPERIENCE

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

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

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

EMPIRE GROUP, LLC  
Empire, Nevada

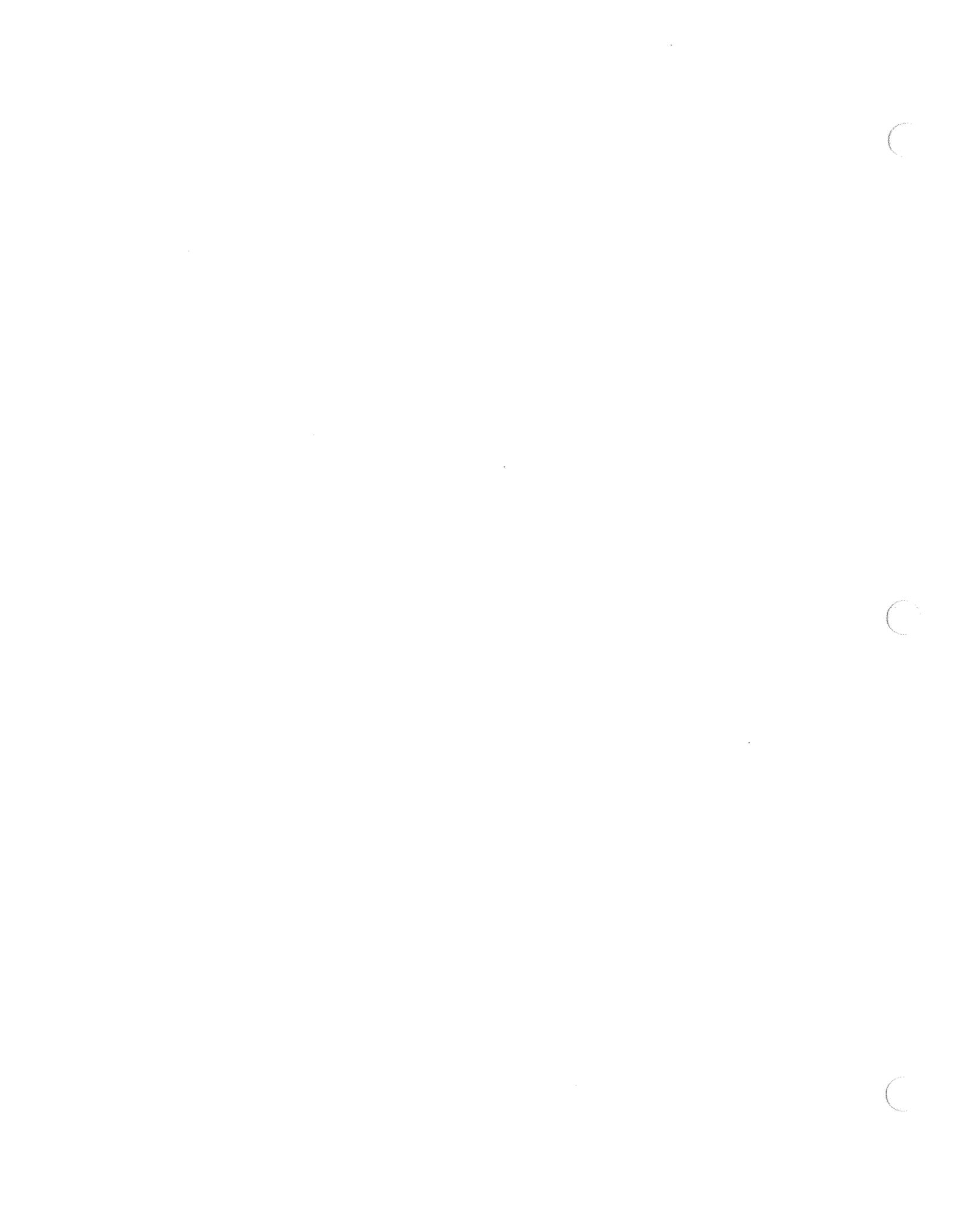
*Environmental Coordinator, June 1996 – July 1998*

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

JBR ENVIRONMENTAL CONSULTANTS, INC.  
Reno, Nevada

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

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







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EXHIBIT NMED 4  
WRITTEN TESTIMONY OF CINDY HOLLENBERG

1 **Witness Qualifications:**

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

7 **I. INTRODUCTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 10 **A. Streamlining of Part 99**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 6                    • 1-hour ozone NAAQS;
- 7                    • 8-hour ozone NAAQS;
- 8                    • 24-hour PM<sub>10</sub> NAAQS;
- 9                    • 1997 PM<sub>2.5</sub> NAAQS;
- 10                   • 2006 PM<sub>2.5</sub> NAAQS; and
- 11                   • Annual PM<sub>10</sub> NAAQS.

12                   These definitions are no longer necessary because the 2012 rulemaking restructured 40 CFR 93.109 and  
13                   40 CFR 93.119 and changed certain definitions in 40 CFR 93.101 so that the federal rule will clearly  
14                   apply to areas designated for any future new or revised NAAQS. Previous to this definition change,  
15                   revising a NAAQS required revising the federal and state transportation conformity rules accordingly. By  
16                   eliminating the sub-definitions for individual NAAQS, the requirements for revising transportation  
17                   conformity rules will be reduced.

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

1           **C. Other proposed changes**

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

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

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

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

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

31    **IV. OUTREACH**

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

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

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

5 **V. CONCLUSION**

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

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







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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 ——— **J.** ——— "**Department**" means the New Mexico environment department.

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

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

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

20 ——— **N.** ——— "**FHWA**" means the federal highway administration of US DOT.

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

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

28 ——— **Q.** ——— "**FTA**" means the federal transit administration of US DOT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 ~~A.~~ Action applicability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 ~~\_\_\_\_\_ C. \_\_\_\_\_~~ Affected agencies:

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

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

14 ~~\_\_\_\_\_ (b) \_\_\_\_\_~~ the department;

15 ~~\_\_\_\_\_ (c) \_\_\_\_\_~~ NMDOT;

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

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

20 ~~\_\_\_\_\_ (f) \_\_\_\_\_~~ EPA Region 6;

21 ~~\_\_\_\_\_ (g) \_\_\_\_\_~~ New Mexico FHWA division offices;

22 ~~\_\_\_\_\_ (h) \_\_\_\_\_~~ FTA region 6;

23 ~~\_\_\_\_\_ (i) \_\_\_\_\_~~ local air quality agencies; and

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

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

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

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

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

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

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

35 ~~\_\_\_\_\_ (b) \_\_\_\_\_~~ department: secretary or designee;

36 ~~\_\_\_\_\_ (c) \_\_\_\_\_~~ NMDOT: secretary or designee;

37 ~~\_\_\_\_\_ (d) \_\_\_\_\_~~ NMDOT district office: district engineer;

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

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

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

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

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

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

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

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

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

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

1 ~~\_\_\_\_\_ A. \_\_\_\_\_ The department shall be the lead agency for the development of:~~  
2 ~~\_\_\_\_\_ (1) applicable control strategy implementation plan revisions for the nonattainment or maintenance~~  
3 ~~area;~~

4 ~~\_\_\_\_\_ (2) the list of TCMs to be submitted as part of the SIP; and~~  
5 ~~\_\_\_\_\_ (3) any amendments or revisions thereto.~~

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

8 ~~\_\_\_\_\_ (1) the development of the unified planning work program under 23 CFR 450.314;~~

9 ~~\_\_\_\_\_ (2) development of the transportation plan for the nonattainment or maintenance area;~~

10 ~~\_\_\_\_\_ (3) development of the TIP for the nonattainment or maintenance area;~~

11 ~~\_\_\_\_\_ (4) any amendments or revisions thereto;~~

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

13 ~~\_\_\_\_\_ (6) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance~~  
14 ~~areas as required by Subparagraph (c) of Paragraph (2) of Subsection N of 20.2.99.128 NMAC; and~~

15 ~~\_\_\_\_\_ (7) development of TCMs, in cooperation with the department.~~

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

18 ~~\_\_\_\_\_ (1) the development of the transportation plan for the nonattainment or maintenance area;~~

19 ~~\_\_\_\_\_ (2) development of the TIP (transportation improvement program) for the nonattainment or~~  
20 ~~maintenance area;~~

21 ~~\_\_\_\_\_ (3) any amendments or revisions thereto;~~

22 ~~\_\_\_\_\_ (4) any determinations of conformity under this part for which an MPO would be otherwise~~  
23 ~~responsible;~~

24 ~~\_\_\_\_\_ (5) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance~~  
25 ~~areas as required by Subparagraph (c) of Paragraph (2) of Subsection N of 20.2.99.128 NMAC; and~~

26 ~~\_\_\_\_\_ (6) development of TCMs, in cooperation with the department.~~

27 [~~12/14/94; 11/23/98; 20.2.99.117 NMAC – Rn, 20 NMAC 2.99.117 10/31/02; A, 10/15/05; A, 11/07/11~~]

28  
29 **20.2.99.118 AGENCY RESPONSIBILITIES IN CONSULTATION.**

30 ~~\_\_\_\_\_ A. \_\_\_\_\_ The department shall be responsible for developing or providing:~~

31 ~~\_\_\_\_\_ (1) emissions inventories;~~

32 ~~\_\_\_\_\_ (2) emissions budgets;~~

33 ~~\_\_\_\_\_ (3) air quality modeling;~~

34 ~~\_\_\_\_\_ (4) attainment demonstrations;~~

35 ~~\_\_\_\_\_ (5) control strategy implementation plan revisions;~~

36 ~~\_\_\_\_\_ (6) regulatory TCMs; and~~

37 ~~\_\_\_\_\_ (7) updated motor vehicle emissions factors.~~

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

40 ~~\_\_\_\_\_ (1) developing transportation plans and TIPs;~~

41 ~~\_\_\_\_\_ (2) developing and evaluating TCM transportation impacts;~~

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

45 ~~\_\_\_\_\_ (4) monitoring regionally significant projects;~~

46 ~~\_\_\_\_\_ (5) developing system- or facility-based or other programmatic (non-regulatory) TCMs;~~

47 ~~\_\_\_\_\_ (6) providing technical input on emissions budgets; and~~

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

50 ~~\_\_\_\_\_ C. \_\_\_\_\_ NMDOT shall be responsible for:~~

51 ~~\_\_\_\_\_ (1) providing technical input on proposed revisions to motor vehicle emissions factors;~~

52 ~~\_\_\_\_\_ (2) distributing draft and final highway or transit project environmental documents to other agencies;~~  
53 ~~and~~

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

56 ~~\_\_\_\_\_ D. \_\_\_\_\_ FHWA New Mexico offices and FTA region 6 shall be responsible for:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 ~~\_\_\_\_\_ G. A meeting that is scheduled or required for another purpose may be used for the purposes of~~  
11 ~~consultation if the conformity consultation purpose is specifically identified in the announcement for the meeting~~  
12 ~~and all participating agencies are notified of such meeting.~~  
13 ~~[12/14/94; 11/23/98; 20.2.99.119 NMAC - Rn, 20 NMAC 2.99.119 10/31/02]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 ~~————— (4) ——— For the purposes of this section (20.2.99.121 NMAC) and 20.2.99.140 NMAC, the phrase "adopt~~  
11 ~~or approve of a regionally significant project" means the first time any action necessary to authorizing a project~~  
12 ~~occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits~~  
13 ~~for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action~~  
14 ~~of a board, commission or administrator authorizing or directing employees to proceed with construction of the~~  
15 ~~project, or any written decision or authorization from the MPO that the project may be adopted or approved.~~  
16 ~~[12/14/94; 11/23/98; 20.2.99.121 NMAC – Rn, 20 NMAC 2.99.121 10/31/02; A, 10/15/05]~~  
17

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

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

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

27 ~~[12/14/94; 11/23/98; 20.2.99.122 NMAC – Rn, 20 NMAC 2.99.122 10/31/02; A, 10/15/05; A, 06/01/09]~~  
28

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

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

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

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

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

55 ~~[12/14/94; 11/23/98; 20.2.99.123 NMAC – Rn, 20 NMAC 2.99.123 10/31/02; A, 10/15/05]~~  
56

1 **20.2.99.124 — PUBLIC CONSULTATION PROCEDURES:**

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

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

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

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

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

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

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

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

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

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

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

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

41 **(2)** For these horizon years:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45  
46 **20.2.99.126 — RELATIONSHIP OF TRANSPORTATION PLAN AND TIP CONFORMITY TO THE**  
47 **NEPA PROCESS:** The degree of specificity required in the transportation plan and the specific travel network  
48 assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other  
49 project development studies. Should the NEPA process result in a project with design concept and scope  
50 significantly different from that in the transportation plan or TIP, the project must meet the criteria in 20.2.99.128  
51 NMAC through 20.2.99.138 NMAC for projects not from a TIP before NEPA process completion.

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

53  
54 **20.2.99.127 — FISCAL CONSTRAINTS FOR TRANSPORTATION PLANS AND TIPS:** Transportation  
55 plans and TIPs must be fiscally constrained consistent with US DOT's metropolitan planning regulations at 23 CFR

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

4  
5 **20.2.99.128 — CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY OF**  
6 **TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS — GENERAL.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 ~~————— (b) — If the 8-hour ozone nonattainment area covers a smaller geographic area within the 1-hour  
54 ozone nonattainment or maintenance area(s), the budget test as required by section 20.2.99.137 NMAC for either the  
55 8-hour nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions  
56 budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where such~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 ~~(i) 20.2.99.137 NMAC;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32  
33 ~~20.2.99.133 — CRITERIA AND PROCEDURES — CURRENTLY CONFORMING TRANSPORTATION  
34 PLAN AND TIP:~~

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

43 [12/14/94; 11/23/98; 20.2.99.133 NMAC – Rn, 20 NMAC 2.99.133 10/31/02; A, 06/01/09]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 \_\_\_\_\_ (2) NO<sub>x</sub> in ozone areas, unless the US EPA administrator determines that additional reductions of  
13 NO<sub>x</sub> would not contribute to attainment;

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

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

16 \_\_\_\_\_ (5) VOC and/or NO<sub>x</sub> in PM<sub>10</sub> areas if the US EPA regional administrator or the department has made  
17 a finding that such precursor emissions from within the area are a significant contributor to the PM<sub>10</sub> nonattainment  
18 problem and has so notified the MPO and US DOT;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 ~~————— A. — Disapprovals.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 ~~\_\_\_\_\_ (1) not regionally significant; or~~

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

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

12 ~~{12/14/94; 11/23/98; 20.2.99.147 NMAC - Rn, 20 NMAC 2.99.147, 10/31/02; 20.2.99.147 NMAC - Rn,  
13 20.2.99.145 NMAC & A, 10/15/05}~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 ~~————— (5) —CO, PM10, and PM2.5 hot-spot analyses are not required to consider construction-related~~  
27 ~~activities which cause temporary increases in emissions. Each site which is affected by construction-related~~  
28 ~~activities shall be considered separately, using established "guideline" methods. Temporary increases are defined as~~  
29 ~~those which occur only during the construction phase and last five years or less at any individual site.~~

30 ~~[12/14/94; 11/23/98; 20.2.99.148 NMAC —Rn, 20 NMAC 2.99.148, 10/31/02; 20.2.99.148 NMAC —Rn,~~  
31 ~~20.2.99.146 NMAC, 10/15/05; A, 9/1/07; A, 06/01/09]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 ~~———— (1) — Safety:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23  
24 ~~**20.2.99.153 — SPECIAL EXEMPTIONS FROM CONFORMITY REQUIREMENTS FOR PILOT**~~  
25 ~~**PROGRAM AREAS.** EPA and NMDOT may exempt no more than six areas for no more than three years from~~  
26 ~~certain requirements of this subpart if these areas are selected to participate in a conformity pilot program and have~~  
27 ~~developed alternative requirements that have been approved by EPA as an implementation plan revision in~~  
28 ~~accordance with 40 CFR part 51.390. For the duration of the pilot program, areas selected to participate in the pilot~~  
29 ~~program must comply with the conformity requirements of the pilot area's implementation plan revision for Section~~  
30 ~~51.390 of this chapter and all other requirements in 40 CFR parts 51 and 93 that are not covered by the pilot area's~~  
31 ~~implementation plan revision for 40 CFR part 51.390. The alternative conformity requirements in conjunction with~~  
32 ~~any applicable state and/or federal conformity requirements must be proposed to fulfill all of the requirements of and~~  
33 ~~achieve results equivalent to or better than Section 176(c) of the Clean Air Act. After the three-year duration of the~~  
34 ~~pilot program has expired, areas will again be subject to all of the requirements of this subpart and 40 CFR part 51,~~  
35 ~~subpart T, and/or to the requirements of any implementation plan revision that was previously approved by EPA in~~  
36 ~~accordance with 40 CFR part 51.390.~~

37 [~~20.2.99.153 NMAC – N, 10/15/05]~~

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

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

49  
50 **HISTORY OF 20.2.99 NMAC:**

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

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

54  
55 **Other History:**

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





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

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

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

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

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

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

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

23 (2) nitrogen oxides in nitrogen dioxide areas;

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

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

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

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

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

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

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

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

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

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

8 **20.2.99.4 DURATION:** Permanent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7           **H.**     "**Criteria pollutants**" are the six principal pollutants for which national ambient air quality  
8 standards exist.

9           **I.**     "**Department**" means the New Mexico environment department.

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

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

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

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

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

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

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

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

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

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

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

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

44          **S.**     "**Isolated rural nonattainment and maintenance areas**" are areas that do not contain or are not  
45 part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural  
46 areas that do not have federally required metropolitan transportation plans or transportation improvement programs  
47 (TIPs) and do not have projects that are part of the emissions in such areas are instead included in statewide TIPs.  
48 These are not donut areas.

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

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

1           V.       **"Maintenance plan"** means an implementation plan under Section 175A of the CAA, as  
2 amended.  
3           W.       **"Memorandum of Agreement (MOA)"** means a document agreed upon by cooperating parties.  
4           X.       **"Metropolitan planning organization (MPO)"** means the policy board of an organization  
5 created as a result of the designation process in 23 U.S.C.134(d).  
6           Y.       **"Motor vehicle emissions budget"** is that portion of the total allowable emissions, defined in the  
7 submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the  
8 purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the  
9 NAAQS, for any criteria pollutant or its precursors, allocated by the SIP to highway and transit vehicle use and  
10 emissions.  
11          Z.       **"National ambient air quality standards (NAAQS)"** are those standards established pursuant to  
12 Section 109 of the CAA.  
13          AA.      **"NEPA"** means the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, *et*  
14 *seq.*  
15          AB.      **"NEPA process completion"** means, for the purposes of this part, with respect to FHWA or  
16 FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to  
17 make a finding of no significant impact, or to issue a record of decision on a final environmental impact statement  
18 under NEPA.  
19          AC.      **"NMDOT"** means the New Mexico department of transportation or its successor agency or  
20 authority, as represented by the department secretary or his or her designee.  
21          AD.      **"Nonattainment area"** means any geographic region of the United States which has been  
22 designated as nonattainment under Section 107 of the CAA for any pollutant for which a national ambient air quality  
23 standard exists.  
24          AE.      **"Project"** means a highway project or transit project.  
25          AF.      **"Recipient of funds designated under title 23 U.S.C. or the federal transit laws"** means any  
26 agency at any level of state, county, city, or regional government that routinely receives title 23 U.S.C. or federal  
27 transit law funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase  
28 equipment, or undertake other services or operations via contracts or agreements. This definition does not include  
29 private landowners or developers, or contractors or entities that are only paid for services or products created by  
30 their own employees.  
31          AG.      **"Re-entrained road dust"** means emissions which are produced by travel on paved and unpaved  
32 roads, including emissions from anti-skid and de-icing material(s).  
33          AH.      **"Regionally significant project"** means a transportation project (other than an exempt project)  
34 that is on a facility which serves regional transportation needs (such as access to and from the area outside of the  
35 region, major activity centers in the region, major planned developments such as new retail malls, sports complexes,  
36 etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the  
37 modeling of a metropolitan area's transportation network, including at a minimum:  
38           (1) all principal arterial highways; and  
39           (2) all fixed guideway transit facilities that offer an alternative to regional highway travel.  
40          AI.      **"Standard"** means a national ambient air quality standard.  
41          AJ.      **"State implementation plan (SIP)"** means an applicable implementation plan and the applicable  
42 portion (or portions) of the New Mexico state implementation plan, or most recent revision thereof, which has been  
43 approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to  
44 regulations promulgated under Section 301(d) of the CAA and which implements the relevant requirements of the  
45 CAA (see the definition for "applicable implementation plan").  
46          AK.      **"Title 23 U.S.C."** means title 23 of the United States Code.  
47          AL.      **"Transit"** means mass transportation by bus, rail, or other conveyance which provides general or  
48 special service to the public on a regular and continuing basis. It does not include school buses or charter or  
49 sightseeing services.  
50          AM.      **"Transit project"** means an undertaking to: implement or modify a transit facility or transit-  
51 related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It  
52 does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes,  
53 schedules or fares. It may consist of several phases. For analytical purposes, it shall be defined inclusively enough  
54 to:  
55           (1) connect logical termini and be of sufficient length to address environmental matters on a broad  
56 scope;

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

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

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

12 **AO. "Transportation improvement program (TIP)"** means a transportation improvement program  
13 developed by a metropolitan planning organization under 23 U.S.C. 134(j).

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

17 **AQ. "Transportation project"** is a highway project or a transit project.

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

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

20 **AT. "Written commitment"** means, for the purposes of this part, a written commitment that includes  
21 a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding  
22 necessary to implement the action has been authorized by the appropriating or authorizing body; and an  
23 acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.  
24 [20.2.99.7 NMAC - Rp, 20.2.99.7 NMAC, XX/XX/14]

25  
26 **20.2.99.8 DOCUMENTS:** Documents incorporated and cited in this part may be viewed at the New  
27 Mexico environment department, air quality bureau, Santa Fe, NM.  
28 [20.2.99.8 NMAC - Rp, 20.2.99.8 NMAC, XX/XX/14]

29  
30 **20.2.99.9 - 20.2.99.100 [RESERVED]**

31  
32 **20.2.99.101 APPLICABILITY:**

33 **A.** Action applicability.

34 (1) Except as provided for in Subsection C of 20.2.99 NMAC conformity determinations are required  
35 for:

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

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

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

43 (2) Conformity determinations are not required under this part for individual projects which are not  
44 FHWA/FTA projects.

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

46 **C.** Limitations. In order to receive any FHWA/FTA approval or funding actions, including NEPA  
47 approvals, for a project phase subject to this subpart, a currently conforming transportation plan and TIP must be in  
48 place at the time of project approval.

49 **D.** Grace period for new nonattainment areas. For areas or portions of areas which have been  
50 continuously designated attainment or not designated for any standard for ozone, CO, PM<sub>10</sub>, PM<sub>2.5</sub> or NO<sub>2</sub> since  
51 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any standard for any of  
52 these pollutants, the provisions of this subpart shall not apply with respect to that standard for 10 months following  
53 the effective date of final designation to nonattainment for each standard for such pollutant.

54 [20.2.99.101 NMAC - Rp, 20.2.99.109 NMAC, XX/XX/14]

55  
56 **20.2.99.102 CONSULTATION:**

1           **A.**     20.2.99.102 through 20.2.99.110 NMAC provide procedures for the interagency (federal, state,  
2 and local) consultation process, resolution of conflicts, and public consultation. Public consultation procedures will  
3 be developed in accordance with the requirements for public involvement in 23 CFR part 450. The affected  
4 agencies listed in Subsection C of 20.2.99.102 NMAC shall undertake a consultation process with each other prior  
5 to the development of: 1) conformity determinations; 2) major activities listed in 20.2.99.103 NMAC below; 3)  
6 specific major activities listed in 20.2.99.106 NMAC below; and 4) specific routine activities listed in 20.2.99.107  
7 NMAC below. This consultation process shall follow the consultation procedures described in 20.2.99.105 NMAC  
8 below.

9           **B.**     Prior to US EPA's approval of this part, any MPO (or NMDOT in the absence of an MPO) and  
10 NMDOT, before making any conformity determinations, shall provide reasonable opportunity for consultation with  
11 the department, the local transportation agency in the county where the nonattainment or maintenance area is  
12 located, the local air quality agency in the county in which the nonattainment or maintenance area is located, New  
13 Mexico FHWA division offices, FTA region 6 offices, and US EPA region 6, including consultation on the issues  
14 described in 20.2.99.103 NMAC. This opportunity for consultation shall be provided prior to the determination of  
15 conformity.

16           **C.**     Affected agencies.

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

- 19                   (a)     the designated MPO for the nonattainment or maintenance area;
- 20                   (b)     the department;
- 21                   (c)     NMDOT;
- 22                   (d)     the local transportation agency for the county or city in which the nonattainment or  
23 maintenance area is located;
- 24                   (e)     the local transit agency for the city or county in which the nonattainment or maintenance  
25 area is located;
- 26                   (f)     US EPA region 6;
- 27                   (g)     New Mexico FHWA division offices;
- 28                   (h)     FTA region 6;
- 29                   (i)     local air quality agencies; and
- 30                   (j)     any other organization or resource agency within the state responsible under state law for  
31 developing, submitting or implementing transportation-related provisions of an implementation plan.

32           (2)     Agencies which may be affected by this part and which are entitled to participate in the  
33 interagency consultation process include:

- 34                   (a)     NMDOT district office for the county in which the nonattainment or maintenance area is  
35 located; and
- 36                   (b)     the city or county government in the city or county where the nonattainment or  
37 maintenance area is located.

38           **D.**     Policy level points of contact and policy level meetings.

39           (1)     The policy level points of contact for participating organizations are as follows:

- 40                   (a)     MPO: executive director or designee;
- 41                   (b)     department: secretary or designee;
- 42                   (c)     NMDOT: secretary or designee;
- 43                   (d)     NMDOT district office: district engineer;
- 44                   (e)     local government: chief administrative officer or designee;
- 45                   (f)     US EPA region 6: regional administrator or designee;
- 46                   (g)     FHWA NM division office: division administrator or designee;
- 47                   (h)     FTA region 6: regional administrator or designee; and
- 48                   (i)     other organizations: as directed in writing.

49           (2)     Policy level meetings shall be those meetings to which the following individuals have been given  
50 ample notice thereof:

- 51                   (a)     policy level points of contact for all agencies which are required to participate in the  
52 conformity process; and
- 53                   (b)     the policy level points of contact for all agencies and organizations which are entitled to  
54 participate and have submitted a written request to participate in the conformity process.

55 [20.2.99.102 NMAC - Rp, 20.2.99.116 NMAC, XX/XX/14]

56

1 **20.2.99.103 AGENCY ROLES IN CONSULTATION:** Specific roles of the agencies participating in the  
2 interagency consultation process are listed below. Specific responsibilities of the agencies participating in the  
3 interagency consultation process are listed in 20.2.99.104 NMAC. For the purposes of this part, the lead agency for  
4 all conformity processes and procedures is that agency which is responsible for initiating the consultation process,  
5 preparing the initial and final drafts of the document or decision, and for assuring the adequacy of the interagency  
6 consultation process.

7 A. The department shall be the lead agency for the development of:

- 8 (1) applicable control strategy implementation plan revisions for the nonattainment or maintenance  
9 area;  
10 (2) the list of TCMs to be submitted as part of the SIP; and  
11 (3) any amendments or revisions thereto.

12 B. In the case of areas in which an MPO has been established, the designated MPO for the  
13 nonattainment or maintenance area shall be the lead agency for:

- 14 (1) development of the unified planning work program under 23 CFR 450.314;  
15 (2) development of the transportation plan for the nonattainment or maintenance area;  
16 (3) development of the TIP for the nonattainment or maintenance area;  
17 (4) any amendments or revisions thereto;  
18 (5) any determinations of conformity under this part for which that MPO is responsible;  
19 (6) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance  
20 areas; and  
21 (7) development of TCMs, in cooperation with the department.

22 C. In the case of areas in which an MPO has not been established, NMDOT shall be the lead agency  
23 for:

- 24 (1) development of the transportation plan for the nonattainment or maintenance area;  
25 (2) development of the TIP for the nonattainment or maintenance area;  
26 (3) any amendments or revisions thereto;  
27 (4) any determinations of conformity under this part for which an MPO would otherwise be  
28 responsible;  
29 (5) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance  
30 areas; and  
31 (6) development of TCMs, in cooperation with the department.

32 [20.2.99.103 NMAC - Rp, 20.2.99.117 NMAC, XX/XX/14]  
33

34 **20.2.99.104 AGENCY RESPONSIBILITIES IN CONSULTATION:**

35 A. The department shall be responsible for developing or providing:

- 36 (1) emissions inventories;  
37 (2) emissions budgets;  
38 (3) air quality modeling;  
39 (4) attainment demonstrations;  
40 (5) control strategy implementation plan revisions;  
41 (6) regulatory TCMs; and  
42 (7) updated motor vehicle emissions factors.

43 B. The designated MPO (or, in nonattainment or maintenance areas where an MPO has not been  
44 established, NMDOT) shall be responsible for:

- 45 (1) developing transportation plans and TIPs;  
46 (2) developing and evaluating TCM transportation impacts;  
47 (3) developing transportation and socioeconomic data and planning assumptions and providing such  
48 data and planning assumptions for use in air quality analysis to determine conformity of transportation plans, TIPs,  
49 and projects;  
50 (4) monitoring regionally significant projects;  
51 (5) developing system or facility-based or other programmatic (non-regulatory) TCMs;  
52 (6) providing technical input on emissions budgets; and  
53 (7) performing transportation modeling, regional emissions analyses and documentation of timely  
54 implementation of TCMs needed for conformity assessments.

55 C. NMDOT shall be responsible for:

- 56 (1) providing technical input on proposed revisions to motor vehicle emissions factors;

- 1 (2) distributing draft and final highway or transit project environmental documents to other agencies;  
2 and  
3 (3) convening air quality technical review meetings on specific highway or transit plans, programs  
4 and projects when requested by other agencies or as needed.

5 **D.** FHWA New Mexico offices and FTA region 6 shall be responsible for:

6 (1) assuring timely action on final findings of conformity, after consultation with other agencies as  
7 provided in 20.2.99.102 through 20.2.99.110 NMAC; and

8 (2) providing guidance on conformity and the transportation planning process to agencies  
9 participating in the interagency consultation process.

10 **E.** US EPA region 6 shall be responsible for providing guidance on conformity criteria and  
11 procedures to agencies participating in the interagency consultation process.  
12 [20.2.99.104 NMAC - Rp, 20.2.99.118 NMAC, XX/XX/14]

13  
14 **20.2.99.105 GENERAL CONSULTATION PROCEDURES:** The following are the responsibilities of lead  
15 and participating agencies at each stage of the consultation process.

16 **A.** It shall be the affirmative responsibility of the lead agency to initiate the consultation process by:

17 (1) notifying other participants of the plan, program or project which must undergo the interagency  
18 consultation process;

19 (2) preparing an initial draft of the document being developed, together with necessary supporting  
20 information;

21 (3) convening consultation meetings and agendas when the initial draft of the document being  
22 developed is complete; and

23 (4) appointing the conveners of technical meetings.

24 **B.** It shall be the responsibility of the lead agency to facilitate the interagency consultation process  
25 by:

26 (1) conferring with all other agencies identified under Subsection C of 20.2.99.102 NMAC who are  
27 participating in the particular consultation process;

28 (2) providing all appropriate information needed for meaningful input to the participating agencies,  
29 including timely notification of all policy level and relevant technical meetings;

30 (3) soliciting early and continuing input from participating agencies;

31 (4) scheduling consultation meetings as specified in this part;

32 (5) conducting the consultation process as described in this section (20.2.99.105 NMAC);

33 (6) Assuring that all relevant documents and information, including drafts of the document being  
34 developed and necessary background documents, are supplied to all participants in the consultation process in a  
35 timely manner;

36 (7) Where required, assuring policy-level contact with those agencies;

37 (8) considering the views of each participating agency and (except with respect to those actions for  
38 which only notification is required) responding to written comments in a timely, substantive written manner prior to  
39 making any final decision on the document that is the subject of the consultation process; and

40 (9) assuring that such views and written responses are made part of the record of any decision or  
41 action.

42 **C.** Regular consultation on major activities, as defined in 20.2.99.106 NMAC, shall include policy  
43 level meetings beginning no later than nine months prior to the date a final document is required (or the date on  
44 which such agency begins its own work on such document, if later) and continuing at regular, scheduled intervals no  
45 less frequently than quarterly. In addition, technical meetings shall be convened as necessary. Not later than 30  
46 days prior to the adoption or approval of the final document or decision, the lead agency shall supply the final draft  
47 document, including all relevant information and documents, as appropriate, to the participating agencies.

48 **D.** Regular consultation on routine activities, as defined in 20.2.99.107 NMAC, shall include  
49 meetings at regular, scheduled intervals no less frequently than semiannually, and shall be on the agenda of at least  
50 one policy level meeting. In addition, technical meetings shall be convened as necessary.

51 **E.** The lead agency shall provide each final document for which a consultation process was required  
52 to be undertaken (including, but not limited to, the relevant portions of SIPs or implementation plan revisions,  
53 transportation plans, and TIPs, and determinations of conformity), together with all supporting information, as  
54 appropriate, to each participating agency within 14 calendar days after adopting or approving such document or  
55 making such determination. The lead agency may supply a checklist of available supporting information, which the

1 participating agencies may use to request all or part of such supporting information, in lieu of generally distributing  
2 all supporting information.

3 F. It shall be the responsibility of each participating agency (those listed in Paragraph (1) of  
4 Subsection C of 20.2.99.102 NMAC) during the consultation process to:

5 (1) confer with the lead and other participating agencies (those listed in Paragraph (1) of Subsection  
6 C of 20.2.99.102 NMAC) in the consultation process;

7 (2) review and comment as appropriate (including comments in writing) on all proposed and final  
8 draft documents and decisions within 30 days of receipt;

9 (3) attend consultation and decision meetings;

10 (4) assure policy-level contact with other participants;

11 (5) provide input on any area of substantive expertise or responsibility (including, but not limited to  
12 planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or  
13 other requirements); and

14 (6) provide technical assistance to the lead agency or consultation process in accordance with this  
15 section when requested.

16 G. A meeting that is scheduled or required for another purpose may be used for the purposes of  
17 consultation if the conformity consultation purpose is specifically identified in the announcement for the meeting  
18 and all participating agencies are notified of such meeting.

19 [20.2.99.105 NMAC - Rp, 20.2.99.119 NMAC, XX/XX/14]

20  
21 **20.2.99.106 CONSULTATION PROCEDURES FOR SPECIFIC MAJOR ACTIVITIES:** An interagency  
22 consultation process among the members of the lead and participating agencies shall be undertaken for the following  
23 specific major activities in accordance with all the procedures specified in 20.2.99.105 NMAC above. The lead  
24 agency for each activity shall be as specified, and the participating agencies shall be the agencies specified in  
25 Subsection C of 20.2.99.102 NMAC above.

26 A. Evaluation and choice of each model (or models) and associated methods and assumptions to be  
27 used in hot-spot analyses and regional emissions analyses, including vehicle miles traveled (VMT) forecasting. The  
28 lead agency shall be the MPO (or NMDOT in the absence of an MPO).

29 B. Determination of which minor arterials and other transportation projects should be considered  
30 "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as  
31 principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway  
32 travel), and which projects should be considered to have a significant change in design concept and scope from the  
33 transportation plan or TIP. The lead agency shall be the MPO (or NMDOT in the absence of an MPO).

34 C. Evaluation of whether projects otherwise exempted from meeting the requirements of this part  
35 should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. The  
36 lead agency shall be the MPO (or NMDOT in the absence of an MPO).

37 D. Determination of whether past obstacles to implementation of TCMs which are behind the  
38 schedule established in the SIP have been identified and are being overcome, and whether state and local agencies  
39 with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs.  
40 Consultation shall also include consideration of whether delays in TCM implementation necessitate revisions to the  
41 SIP to remove TCMs or substitute TCMs or other emission reduction measures. The lead agency shall be the MPO  
42 (or NMDOT in the absence of an MPO).

43 E. Determination of whether:

44 (1) the project is included in the regional emissions analysis supporting the currently conforming  
45 TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO  
46 project selection or endorsement; and

47 (2) the project's design concept and scope have changed significantly from those which were included  
48 in the regional emissions analysis, or in a manner which would significantly impact use of the facility; the lead  
49 agency shall be the MPO (or NMDOT in the absence of an MPO).

50 F. Determination of what forecast of vehicle miles traveled (VMT) to use in establishing or tracking  
51 emissions budgets, developing transportation plans, TIPs, or making conformity determinations. The lead agency  
52 shall be the MPO (or NMDOT in the absence of an MPO).

53 G. Verification of what forecast of VMT to use in developing SIPs. The lead agency shall be the air  
54 quality bureau of the department.

1           **H.** Consultation, within the context of a memorandum of agreement, on emissions analysis for  
2 transportation activities which cross the borders of MPOs or nonattainment areas or air basins. The lead agency  
3 shall be NMDOT.

4           **I.** Evaluation of events which will trigger new conformity determinations. The lead agency shall be  
5 the MPO (or NMDOT in the absence of an MPO).

6           **J.** In the event that the metropolitan planning area does not include the entire nonattainment or  
7 maintenance area, an interagency consultation process involving the designated MPO for the nonattainment or  
8 maintenance area, NMDOT, local transportation agencies, and the department, shall be undertaken, in the context of  
9 a memorandum of agreement (MOA), for cooperative planning and analysis for purposes of determining conformity  
10 of all projects outside the metropolitan area and within the nonattainment or maintenance area. The lead agency  
11 shall be NMDOT.

12           **K.** In nonattainment or maintenance areas where more than one MPO is involved, such MPOs must  
13 develop an MOA or memorandum of understanding reflecting their consultation.

14           **L.** In nonattainment or maintenance areas where the MPO's jurisdiction does not cover the entire  
15 nonattainment or maintenance area, the MPO and NMDOT must develop an MOA or a memorandum of  
16 understanding reflecting their consultation.

17           **M.** In choosing conformity tests and methodologies for isolated rural nonattainment and maintenance  
18 areas, the lead agency shall be the MPO (or NMDOT in the absence of an MPO).  
19 [20.2.99.106 NMAC - Rp, 20.2.99.120 NMAC, XX/XX/14]

20  
21           **20.2.99.107 CONSULTATION PROCEDURES FOR SPECIFIC ROUTINE ACTIVITIES:** An  
22 interagency consultation process among the lead and participating agencies shall be undertaken for the following  
23 routine activities in accordance with all the procedures specified in 20.2.99.105 NMAC. The lead agency for each  
24 activity shall be as specified, and the participating agencies shall be the agencies specified in Subsection C of  
25 20.2.99.102 NMAC above or as specified for the specific activity. Not later than 30 days prior to the preparation of  
26 the final document or decision, the lead agency shall supply all relevant information and documents, as appropriate,  
27 to the participating agencies.

28           **A.** Identification of projects located at sites in PM<sub>10</sub> nonattainment areas which have vehicle and  
29 roadway emission and dispersion characteristics which are essentially identical to those at sites which have  
30 violations verified by monitoring, and therefore require quantitative PM<sub>10</sub> hot-spot analysis. The lead agency shall  
31 be either the MPO or NMDOT, in cooperation with the department.

32           **B.** Assumption of the location and design concept and scope of projects which are disclosed to the  
33 MPO, as required by Subsection D of 20.2.99.107 NMAC, but whose sponsors have not yet decided these features  
34 in sufficient detail to perform the regional emissions analysis. The lead agency shall be either the MPO or NMDOT.  
35 Participating agencies shall include recipients of funds designated under title 23 U.S.C. or the federal transit laws.

36           **C.** The design, schedule, and funding of research and data collection efforts and regional  
37 transportation model development by the MPO (e.g., household/travel transportation surveys). The lead agency  
38 shall be either the NMDOT or the MPO, as applicable. Participating agencies shall be the MPO, the department,  
39 and NMDOT.

40           **D.** Regionally significant non-FHWA/FTA projects.

41           **(1)** Assurance that plans for construction of regionally significant projects which are not FHWA/FTA  
42 projects (including projects for which alternative locations, design concept and scope, or the no-build option are still  
43 being considered), including all those sponsored by recipients of funds designated under title 23 U.S.C. or the  
44 federal transit laws, are disclosed to the MPO on a regular basis, and assurance that any changes to those plans are  
45 immediately disclosed. The lead agency for this process shall be the agency which is implementing the project.  
46 Participating agencies shall be the MPO, the department, NMDOT, local transportation and transit agencies for the  
47 city or county in which the nonattainment or maintenance area is located, and recipients of funds designated under  
48 title 23 U.S.C. or the federal transit laws.

49           **(2)** The sponsor of any such regionally significant project, and any agency that becomes aware of any  
50 such project through applications for approval, permitting, funding or otherwise, shall disclose such project to the  
51 designated MPO for the nonattainment or maintenance area and NMDOT in a timely manner. Such disclosure shall  
52 be made not later than the first occasion on which any of the following actions is sought:

- 53           **(a)** any policy board action necessary for the project to proceed;  
54           **(b)** the issuance of administrative permits for the facility or for construction of the facility;  
55           **(c)** the execution of a contract to design or construct the facility;  
56           **(d)** the execution of any indebtedness for the facility;

1 (e) any final action of a board, commission or administrator authorizing or directing employees  
2 to proceed with design, permitting or construction of the project; or

3 (f) the execution of any contract to design or construct or any approval needed for any facility  
4 that is dependent on the completion of a regionally significant project.

5 (3) In the case of any such regionally significant project that has not been disclosed in a timely  
6 manner to the designated MPO for the nonattainment or maintenance area, NMDOT, and other interested agencies  
7 participating in the consultation process, such regionally significant project and all other regionally significant  
8 projects of that sponsor shall be deemed to be not included in the regional emissions analysis supporting the  
9 currently conforming TIP's conformity determination and to be not consistent with the motor vehicle emissions  
10 budget in the SIP. In the case of repeated failures to disclose regionally significant projects by an agency that  
11 becomes aware of any such project through applications for approval, permitting or funding, all other regionally  
12 significant projects within the jurisdiction of such agency shall be deemed to be not included in the regional  
13 emissions analysis supporting the currently conforming TIP's conformity determination and to be not consistent  
14 with the motor vehicle emissions budget in the SIP.

15 (4) For the purposes of this section (20.2.99.107 NMAC), the phrase "adopt or approve of a  
16 regionally significant project" means the first time any action necessary to authorizing a project occurs, such as any  
17 policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for  
18 construction of the facility, the execution of a contract to construct the facility, any final action of a board,  
19 commission or administrator authorizing or directing employees to proceed with construction of the project, or any  
20 written decision or authorization from the MPO that the project may be adopted or approved.

21 [20.2.99.107 NMAC - Rp, 20.2.99.121 NMAC, XX/XX/14]  
22

23 **20.2.99.108 NOTIFICATION PROCEDURES FOR ROUTINE ACTIVITIES:** Notification of affected  
24 agencies (including those listed in Paragraph (1) of Subsection C of 20.2.99.102 NMAC) of transportation plan or  
25 TIP amendments which merely add or delete exempt projects shall be the affirmative responsibility of NMDOT or  
26 the MPO. Such notification shall be provided not later than 30 days prior to the preparation of the final draft of the  
27 document or decision. This process shall include:

28 A. notification of the affected agencies (including those listed in Paragraph (1) of Subsection C of  
29 20.2.99.102 NMAC) early in the process of decision on the final document; and

30 B. supplying all relevant documents and information to the affected agencies (including those listed  
31 in Paragraph (1) of Subsection C of 20.2.99.102 NMAC).

32 [20.2.99.108 NMAC - Rp, 20.2.99.122 NMAC, XX/XX/14]  
33

34 **20.2.99.109 CONFLICT RESOLUTION AND APPEALS TO THE GOVERNOR:**

35 A. Any conflict among state agencies or between state agencies and an MPO shall be escalated to the  
36 governor if the conflict cannot be resolved by the heads of the involved agencies. Prior to such escalation, such  
37 agencies shall make every effort to resolve any differences, including personal meetings between the heads of such  
38 agencies or their policy-level representatives, to the extent possible.

39 B. The department has 14 calendar days to appeal a determination of conformity (or other policy  
40 decision under this part) to the governor after NMDOT or the MPO has notified the department of the resolution of  
41 all comments on such determination of conformity or policy decision. Such 14-day period shall commence when  
42 the MPO or NMDOT has confirmed receipt by the secretary of the department of the resolution of the comments of  
43 the department. If the department appeals to the governor, the final conformity determination must have the  
44 concurrence of the governor. The department must provide notice of any appeal under this subsection to the MPO  
45 and NMDOT. If the department does not appeal to the governor within 14 days, the MPO or NMDOT may proceed  
46 with the final conformity determination.

47 C. In the case of any comments with regard to findings of fiscal constraint or air quality effects of any  
48 determination of conformity, NMDOT has 14 calendar days to appeal a determination of conformity (or other policy  
49 decision under this part) to the governor after the MPO has notified the department or NMDOT of the resolution of  
50 all comments on such determination of conformity or policy decision. Such 14-day period shall commence when  
51 the MPO has confirmed receipt by the secretary of the department or NMDOT of the resolution of the comments of  
52 NMDOT. If NMDOT appeals to the governor, the final conformity determination must have the concurrence of the  
53 governor. NMDOT must provide notice of any appeal under this subsection to the MPO and the department. If  
54 NMDOT does not appeal to the governor within 14 days, the MPO may proceed with the final conformity  
55 determination.

1 D. The governor may delegate the role of hearing any such appeal under this subsection and of  
2 deciding whether to concur in the conformity determination to another official or agency within the state, but not to  
3 the head or staff of the department or any local air quality agency, NMDOT, a state transportation commission or  
4 board, any agency that has responsibility for one of these functions or an MPO.  
5 [20.2.99.109 NMAC - Rp, 20.2.99.123 NMAC, XX/XX/14]  
6

7 **20.2.99.110 PUBLIC CONSULTATION PROCEDURES:**

8 A. Affected agencies making conformity determinations on transportation plans, programs and  
9 projects shall establish a proactive public involvement process which provides opportunity for public review and  
10 comment by, at a minimum, providing reasonable public access to technical and policy information considered by  
11 the agency at the beginning of the public comment period and prior to taking formal action on a conformity  
12 determination for all transportation plans, TIPs, and projects, consistent with the requirements of 23 CFR part 450,  
13 including Sections 450.316 (a), 450.322(c), and 450.324(c) as in effect on the date of adoption of this part. Any  
14 charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR  
15 7.43. In addition, any such agency must specifically address in writing all public comments which allege that  
16 known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not  
17 been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan  
18 or TIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for  
19 projects to the extent otherwise required by law (e.g. NEPA).

20 B. The opportunity for public involvement provided under this section (20.2.99.110 NMAC) shall  
21 include access to information, emissions data, analyses, models and modeling assumptions used to perform a  
22 conformity determination, and the obligation of any such agency to consider and respond in writing to significant  
23 comments.

24 C. No transportation plan, TIP or project may be found to conform unless the determination of  
25 conformity has been subject to a public involvement process in accordance with this section, without regard to  
26 whether the US DOT has certified any process under 23 CFR part 450.  
27 [20.2.99.110 NMAC - Rp, 20.2.99.124 NMAC, XX/XX/14]  
28

29 **20.2.99.111 ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL  
30 MITIGATION AND CONTROL MEASURES:**

31 A. Prior to determining that a transportation project is in conformity, the MPO, other recipient of  
32 funds designated under title 23 U.S.C. or the federal transit laws, FHWA or FTA must obtain from the project  
33 sponsor or operator written commitments to implement in the construction of the project and operation of the  
34 resulting facility or service any project-level mitigation or control measures which are identified as conditions for  
35 NEPA process completion with respect to local CO, PM<sub>10</sub>, or PM<sub>2.5</sub> impacts. Before a conformity determination is  
36 made, written contractual commitments must also be obtained for project-level mitigation or control measures which  
37 are conditions for making conformity determinations for a transportation plan or TIP and included in the project  
38 design concept and scope which is used in the regional emissions analysis or used in the project-level hot-spot  
39 analysis.

40 B. Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity  
41 determinations shall provide written contractual commitments and must comply with the obligations of such  
42 commitments.

43 C. Written contractual commitments to mitigation or control measures shall be obtained prior to a  
44 positive conformity determination, and project sponsors must comply with such commitments.

45 D. If the MPO or project sponsor believes the mitigation or control measure is no longer necessary  
46 for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or  
47 control measure if it can demonstrate that the applicable hot-spot requirements, emission budget requirements and  
48 interim emissions requirements are satisfied without the mitigation or control measure, and so notifies the agencies  
49 involved in the interagency consultation process required under 20.2.99.102 through 20.2.99.110 NMAC. The MPO  
50 (or NMDOT in the absence of an MPO) and US DOT must find that the transportation plan and TIP still satisfy the  
51 applicable requirements for vehicle emissions budgets and interim vehicle emissions budgets, and that the project  
52 still satisfies the requirements for hot spots, and therefore that the conformity determinations for the transportation  
53 plan, TIP and project are still valid. This finding is subject to the applicable public consultation requirements in  
54 20.2.99.110 NMAC for conformity determinations for projects.

55 [20.2.99.111 NMAC - Rp, 20.2.99.150 NMAC, XX/XX/14]  
56

1 **20.2.99.112 SAVINGS PROVISION:** The federal conformity rules under 40 CFR Part 93 Subpart A, in  
2 addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to  
3 meet the requirements of CAA Section 176(c) until such time as this conformity implementation plan revision is  
4 approved by US EPA. Following US EPA approval of this revision to the SIP (or a portion thereof), the approved  
5 (or approved portion of) the department's criteria and procedures would govern conformity determinations and the  
6 federal conformity regulations contained in 40 CFR Part 93 would apply only for the portion, if any, of the  
7 department's conformity provisions that is not approved by US EPA. In addition, any previously applicable SIP  
8 requirements relating to conformity remain enforceable until the department revises its SIP to specifically remove  
9 them and that revision is approved by US EPA.  
10 [20.2.99.112 NMAC - Rp, 20.2.99.154 NMAC, XX/XX/14]

11  
12 **HISTORY OF 20.2.99 NMAC:**

13 **Pre-NMAC History:** None.

14  
15 **History of Repealed Material:**

16 20.2.99 NMAC, Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects, filed  
17 10/16/02 - Repealed effective XX/XX/14.

18  
19 **Other History:**

20 20 NMAC 2.99, Conformity To The State Implementation Plan Of Transportation Plans, Programs, And Projects,  
21 filed 11/14/94 was replaced by 20 NMAC 2.99, Conformity To The State Implementation Plan Of Transportation  
22 Plans, Programs, And Projects, filed 10/23/98, effective 11/23/98.

23 20 NMAC 2.99, Conformity To The State Implementation Plan Of Transportation Plans, Programs, And Projects,  
24 filed 10/23/98 was renumbered, reformatted and replaced by 20.2.99 NMAC, Conformity To The State  
25 Implementation Plan Of Transportation Plans, Programs, And Projects, filed 10/16/02, effective 11/15/02.

26 20.2.99 NMAC, Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects, filed  
27 10/16/02 was replaced by 20.2.99 NMAC, Conformity to the State Implementation Plan of Transportation Plans,  
28 Programs and Projects, effective XX/XX/14.







**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51 and 93**

[EPA-HQ-OAR-2006-0612; FRL-8516-6]

RIN 2060-AN82

**Transportation Conformity Rule Amendments To Implement Provisions Contained in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In this action, EPA is amending the transportation conformity rule to finalize provisions that were proposed on May 2, 2007. The Clean Air Act requires federally supported transportation plans, transportation improvement programs, and projects to be consistent with (“conform to”) the purpose of the state air quality implementation plan. Most of these amendments are necessary to make the rule consistent with Clean Air Act section 176(c) as amended by SAFETEA-LU on August 10, 2005 (Pub. L. 109-59), including changes to the regulations to reflect that the Clean Air Act now provides more time for state and local governments to meet conformity requirements, provides a one-year grace period before the consequences of not meeting certain conformity requirements apply, allows the option of shortening the timeframe of conformity determinations, and streamlines other provisions. This final rule also includes minor amendments

that are not related to SAFETEA-LU, such as allowing the Department of Transportation (DOT) to make categorical hot-spot findings for appropriate projects in carbon monoxide nonattainment and maintenance areas.

EPA has consulted with DOT, and they concur with this final rule.

**DATES:** *Effective Date:* This final rule is effective on February 25, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2006-0612. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000

Traverwood Road, Ann Arbor, MI 48105, e-mail address: [berry.laura@epa.gov](mailto:berry.laura@epa.gov), telephone number: (734) 214-4858, fax number: (734) 214-4052, or Rudy Kapichak, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, e-mail address: [kapichak.rudolph@epa.gov](mailto:kapichak.rudolph@epa.gov), telephone number: (734) 214-4574, fax number: (734) 214-4052.

**SUPPLEMENTARY INFORMATION:** The contents of this preamble are listed in the following outline:

- I. General Information
- II. Background
- III. Frequency of Conformity Determinations
- IV. Deadline for Conformity Determinations When a New Budget Is Established
- V. Lapse Grace Period
- VI. Timeframes for Conformity Determinations
- VII. Conformity SIPs
- VIII. Transportation Control Measure Substitutions and Additions
- IX. Categorical Hot-Spot Findings for Projects in Carbon Monoxide Nonattainment and Maintenance Areas
- X. Removal of Regulation 40 CFR 93.109(e)(2)(v)
- XI. Miscellaneous Revisions
- XII. Statutory and Executive Order Reviews

**I. General Information**

*A. Does This Action Apply to Me?*

Entities potentially regulated by the conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities affected by today’s action include:

Category	Examples of regulated entities
Local government .....	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government .....	State transportation and air quality agencies.
Federal government .....	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final rule. This table lists the types of entities of which EPA is aware that potentially could be regulated by the transportation conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in 40 CFR 93.102. If you have questions regarding the applicability of this action to a

particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. How Can I Get Copies of This Document?*

1. Docket

EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OAR-2006-0612. You can get a paper copy of this **Federal Register** document, as well as the documents specifically referenced in this action, any public comments received, and other information related to this action

at the official public docket. See **ADDRESSES** section for its location.

2. Electronic Access

You may access this **Federal Register** document electronically through EPA’s Transportation Conformity Web site at <http://www.epa.gov/otaq/stateresources/transconf/index.htm>. You may also access this document electronically under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the official public docket is available through [www.regulations.gov](http://www.regulations.gov). You may use

[www.regulations.gov](http://www.regulations.gov) to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

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## II. Background

### A. What Is Transportation Conformity?

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of the state air quality implementation plan (SIP). Conformity currently applies to areas that are designated nonattainment and those redesignated to attainment after 1990 ("maintenance areas" with plans developed under Clean Air Act section 175A) for the following transportation-related criteria pollutants: Ozone, particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>),<sup>1</sup> carbon monoxide (CO), and nitrogen dioxide (NO<sub>2</sub>). Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality

violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS or "standards").

EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP. EPA first promulgated the transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published several other amendments. See EPA's Web site at <http://www.epa.gov/otaq/stateresources/transconf/index.htm> for further information.

### B. Why Are We Issuing This Final Rule?

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was signed into law (Pub. L. 109-59). SAFETEA-LU section 6011 amended Clear Air Act section 176(c) by:

- Changing the required frequency of transportation conformity determinations from three years to four years;
- Providing two years to determine conformity after new SIP motor vehicle emissions budgets are either found adequate, approved or promulgated;
- Adding a one-year grace period before the consequences of a conformity lapse apply;
- Providing an option for reducing the time period addressed by conformity determinations;
- Streamlining requirements for conformity SIPs; and
- Providing procedures for areas to use in substituting or adding transportation control measures (TCMs) to approved SIPs.

SAFETEA-LU section 6011(g) requires that EPA revise the transportation conformity rule as necessary to address the new statutory provisions. This final rule addresses the relevant changes that SAFETEA-LU made to the Clean Air Act.

This final rule replaces the joint EPA-DOT interim guidance issued February 14, 2006, which provided guidance to areas subject to transportation conformity on implementing the changes to the Clean Air Act made by SAFETEA-LU.<sup>2</sup> This final rule is consistent with the February 2006 guidance.

DOT is our federal partner in implementing the transportation

conformity regulations. EPA has consulted with DOT on the development of this final rule, and DOT concurs with its content.

EPA received comments on the proposed rule from 16 different entities, though some commenters submitted comments jointly. Commenters included state DOTs, MPOs, state and local air quality agencies, government associations, and industry associations.

The majority of commenters supported EPA's proposal in general, and specific provisions in particular, which are discussed below. EPA is addressing these and other comments in the relevant sections of the preamble and in the responses to comments document, which can be found in the public docket for this final rule.

## III. Frequency of Conformity Determinations

### A. Description of Final Rule

EPA is changing § 93.104(b)(3) to require that the MPO and DOT determine conformity of a transportation plan at least every four years, and § 93.104(c)(3) to require that the MPO and DOT determine conformity of a transportation improvement program (TIP) at least every four years. The pre-existing regulations required these determinations to be made at least every three years.

### B. Rationale and Response to Comments

These changes to § 93.104 are needed to make the conformity regulation consistent with the law. In SAFETEA-LU, Congress amended Clean Air Act section 176(c)(4)(D)(ii) to require that conformity be determined with a frequency of four years, unless the MPO decides to update its transportation plan or TIP more frequently, or the MPO is required to determine conformity in response to a trigger (see Section IV.). The Clean Air Act previously required transportation plan and TIP conformity to be determined every three years. These Clean Air Act provisions have been in effect as of August 10, 2005.

Several commenters voiced support for this change because it is consistent with the Clean Air Act, as amended by SAFETEA-LU. One commenter noted that this change will be helpful particularly to small communities. One commenter opposed the proposal because the commenter believes that having more frequent conformity determinations may be important in areas with significant on-road mobile source emissions.

As already stated, and as other commenters noted, this change is

<sup>1</sup> 40 CFR 93.102(b)(1) defines PM<sub>2.5</sub> and PM<sub>10</sub> as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

<sup>2</sup> Note that the TCM portion of the February 14, 2006, guidance is not covered in today's final rule, but in an updated guidance document that will be available on EPA's Web site at <http://www.epa.gov/otaq/stateresources/transconf/policy.htm>.

necessary to make the regulation consistent with the law. Furthermore, EPA believes that despite this change in the required frequency of conformity determinations, the transportation conformity program still achieves its purpose in ensuring transportation actions conform to the SIP.

Transportation plans and TIPs must still conform before they are adopted.

Several commenters suggested that EPA also change "three years" to "four years" in § 93.104(d) of the conformity rule. This provision describes the circumstances when a conformity determination for a project is needed, one of which is when more than three years have elapsed since the most recent major step to advance the project.

Commenters requested that three years be changed to four years to be consistent with SAFETEA-LU provisions of determining conformity on TIPs and transportation plans every four years.

EPA is not changing § 93.104(d) in this rulemaking. First, this change was not proposed, as it was not required by the Clean Air Act as amended by SAFETEA-LU. SAFETEA-LU aligned transportation plan, TIP, and the frequency of transportation plan and TIP conformity determinations to create efficiencies in the overall planning process, rather than to allow more time when project phases are delayed.

Second, the conformity rule requires that a new conformity determination be done for a project if more than three years have elapsed since a major step has occurred to be consistent with the regulations under the National Environmental Policy Act (NEPA), rather than with the frequency of conformity determinations for transportation plans and TIPs. The NEPA regulations require reevaluation of NEPA documents for projects which have not had major action for three years. Please refer to "H. Time Limit on Project-Level Determinations" in the preamble of the November 24, 1993, conformity rule (58 FR 62200) for more explanation of this point.

### C. Overlap With Transportation Planning Frequency Requirements

In addition to changing the required frequency of conformity determinations from at least every three years to every four years, SAFETEA-LU also changed the required frequency for updating transportation plans and TIPs for transportation planning purposes. Prior to SAFETEA-LU, transportation plans in nonattainment and maintenance areas had to be updated every three years and TIPs updated every two years; now both transportation plans and TIPs must be updated every four years in

these areas. However, MPOs can voluntarily update their transportation plans and TIPs more frequently. Consequently, conformity may still need to be determined more frequently than every four years, because an updated or amended transportation plan or TIP still must conform before it is adopted, regardless of the last time a conformity determination was done. Further discussion of the implementation of the SAFETEA-LU statewide and metropolitan transportation planning requirements can be found in DOT's February 14, 2007, final rulemaking on metropolitan and statewide transportation planning (72 FR 7224).

Today's change to the required frequency of transportation plan and TIP conformity determinations does not change other details for implementing conformity and planning frequency requirements. Both the transportation planning update clock and the conformity update clock continue to be reset on the date of the FHWA and FTA conformity determination for the respective transportation plan and/or TIP. For more information, see DOT's May 25, 2001, guidance, available on EPA's Web site at <http://www.epa.gov/otaq/stateresources/transconf/policy.htm> and on DOT's Web site at [http://www.fhwa.dot.gov/environment/conformity/planup\\_m.htm](http://www.fhwa.dot.gov/environment/conformity/planup_m.htm).

### D. Related Change: Consequences of a Control Strategy SIP Disapproval

#### 1. Description of Final Rule

EPA is revising § 93.120(a)(2) to allow projects in the first four years of the conforming transportation plan and TIP, rather than the first three years of the conforming transportation plan and TIP, to proceed after final EPA disapproval of a control strategy SIP without a protective finding, i.e., when a conformity freeze occurs. In this section of the regulation, EPA is changing the two instances of "three years" to "four years," similar to the changes made in §§ 93.104(b)(3) and (c)(3), the other sections of the rule affected by the change in the required frequency of conformity determinations. Though the final regulation at § 93.120(a)(2) differs from the language that was proposed, it is the same in substance as the proposed rule.

#### 2. Rationale and Response to Comments

EPA is making this change to be consistent with the general implementation of SAFETEA-LU, which requires transportation plans and TIPs to be updated every four years and requires TIPs to cover a period of four years. EPA had proposed to generalize

this language to allow a project to proceed during a freeze if it was included in the conforming TIP in order to account for the transition to new SAFETEA-LU transportation planning requirements. EPA believed the proposed language would be useful during the transition to SAFETEA-LU's planning requirements. We believed that when the rule became final, some MPOs would still have three-year TIPs prior to developing four-year TIPs for SAFETEA-LU. See the preamble to the May 2, 2007, proposed rule (72 FR 24475) for EPA's full rationale. Several commenters supported the language we had proposed, because it accounted for the transition to SAFETEA-LU's planning requirements. EPA received no comments opposing it.

However, the transition period ended on July 1, 2007. While some areas may still have three-year TIPs today, these will all be replaced over time by four-year TIPs. EPA believes the better update to § 93.120(a)(2) is simply to change the instances of "three years" to "four years," as it is more clear and more consistent with the prior regulatory language. If EPA disapproves a SIP without a protective finding in an area that still has a three-year TIP, only projects from the first three years of the conforming transportation plan and TIP could proceed, because the regulation states that projects must be in both the conforming transportation plan and TIP (except during the lapse grace period, discussed in Section V.E., below).

Today's final rule at § 93.120(a)(2) is consistent with the proposed rule for this section. Though the proposed language had eliminated the reference to a conforming transportation plan, EPA did not intend to change other rule requirements. In fact, EPA stated so in the preamble to the May 2, 2007, proposed rule:

However, this proposed general language is not intended to change other rule requirements. Although EPA's change to § 93.120(a)(2) would no longer include the phrase "conforming transportation plan," the requirements of § 93.114 continue to apply. Specifically, there must still be a currently conforming transportation plan in place to approve projects during a conformity freeze (except as noted in Section V.E., below). (72 FR 24475)

While it is the same in substance as the proposed rule language, the change to § 93.120(a)(2) in today's final rule is more clear, because it continues to state explicitly that a project must be in both the conforming transportation plan as well as conforming TIP. Note that Section V.E. discusses the exception to this requirement during the lapse grace

period, which is also included in today's final rule for § 93.120(a)(2).

#### IV. Deadline for Conformity Determinations When a New Budget Is Established

##### A. Description of the Final Rule

EPA is revising § 93.104(e), which requires a new transportation plan and TIP conformity determination to be made after actions that establish a new motor vehicle emissions budget for conformity, also known as "triggers." The revision gives MPOs and DOT two years, increased from 18 months, to determine conformity of a transportation plan and TIP when a new budget is established. An MPO and DOT must make a conformity determination within two years of the effective date of:

- EPA's finding that a motor vehicle emissions budget(s) ("budget(s)") in a submitted SIP is adequate (40 CFR 93.104(e)(1));
- EPA's approval of a SIP, if the budget(s) from that SIP have not yet been used in a conformity determination (40 CFR 93.104(e)(2)); and
- EPA's promulgation of a Federal implementation plan (FIP) with a budget(s) (40 CFR 93.104(e)(3)).

##### B. Rationale and Response to Comments

This change makes the conformity regulation consistent with the current law. In SAFETEA-LU, Congress amended the Clean Air Act to give MPOs and DOT two years before conformity must be determined in response to one of the conformity triggers above. Several commenters generally supported this change, noting that it is necessary to be consistent with the current law. This Clean Air Act provision has been in effect as of August 10, 2005.

The regulation's description of events that trigger a new conformity determination have not been changed because they were already consistent with the amendments made to the Clean Air Act in SAFETEA-LU, for the reasons described in the preamble to the May 2, 2007, proposed rule (72 FR 24475-24476). EPA also notes that no change is necessary for the point at which the two-year clocks begin. The two-year clocks begin on the effective date of EPA's adequacy finding or the effective date of EPA's SIP approval or FIP promulgation action. (For more details regarding the triggers, see Section III. of the August 6, 2002, final rule at 67 FR 50810 and Section XIX. of the July 1, 2004, final rule, at 69 FR 40050).

#### V. Lapse Grace Period

##### A. Description of the Final Rule

EPA is adding a one-year grace period before a conformity lapse occurs when an area misses an applicable deadline. The applicable deadlines are those that result from:

- The requirements to determine conformity of a transportation plan and TIP every four years under §§ 93.104(b)(3) and 93.104(c)(3) (see Section III.), and
  - The requirement to determine conformity within two years of a trigger under § 93.104(e) (see Section IV.).
- EPA notes that the regulatory changes discussed in Section V. of this preamble do not impact isolated rural nonattainment or maintenance areas, because these areas do not include an MPO with a transportation plan or TIP conformity determination that would lapse. Isolated rural areas continue to be covered by the requirements in 40 CFR 93.109(l).

To provide the rules to allow projects to meet conformity requirements<sup>3</sup> during the lapse grace period, EPA is adding a new provision to the regulation, § 93.104(f).

- New § 93.104(f)(1) allows non-exempt FHWA/FTA projects to be found to conform during the lapse grace period if they are included in the *currently conforming* transportation plan and TIP.

- New § 93.104(f)(2) allows non-exempt FHWA/FTA projects to be found to conform during the lapse grace period if they were included in the *most recent conforming* transportation plan and TIP. However, even though § 93.104(f)(2) allows a project to be found to conform when the transportation plan and TIP have expired, a project must also meet DOT's planning and other requirements to receive federal funding or approval.

Today's rulemaking does not change how exempt projects and traffic signal synchronization projects are addressed under the transportation conformity rule. These projects are able to proceed during the lapse grace period, and for that matter during a conformity lapse, because exempt projects and traffic signal synchronization projects do not require project-level conformity determinations per 40 CFR 93.126 and 93.128, respectively.

In addition, EPA is revising §§ 93.114, 93.115, and 93.121 by including a reference to § 93.104(f) to account for the lapse grace period:

- Section 93.114 requires that there be a currently conforming transportation

<sup>3</sup> By the phrase "meet conformity requirements," EPA means that FHWA/FTA projects can be found to conform, and non-Federal projects can be approved.

plan and TIP at the time of project approval, except during the lapse grace period, when a non-exempt project must come from the most recent conforming transportation plan and TIP. (A project must also meet DOT's planning and other requirements to receive Federal funding or approval. See Section V.C. below for further discussion.)

- Section 93.115 requires that non-exempt FHWA/FTA projects come from a conforming transportation plan and TIP, except during the lapse grace period, when a project could come from the most recent conforming plan and TIP. (A project must also meet DOT's planning and other requirements to receive federal funding or approval. See Section V.C. below for further discussion.)

- Similarly, § 93.121 requires that regionally significant non-Federal projects either come from the currently conforming transportation plan and TIP, or the regional emissions analysis that supports such a transportation plan and TIP, except during the lapse grace period, when such projects could be approved if they are from the most recent conforming transportation plan and TIP, or the regional emissions analysis that supported the most recent conforming transportation plan and TIP.

Note that the lapse grace period only applies to transportation conformity, and not to DOT's transportation planning requirements. DOT and EPA agree that planning requirements still must be met during the lapse grace period in order for DOT to fund or approve a project as discussed further in C. of this section.

##### B. Rationale and Response to Comments

These changes are necessary to make the conformity regulation consistent with the amended law and the intentions of Congress. In SAFETEA-LU, Congress amended the Clean Air Act to provide a one-year grace period before the consequences of a conformity lapse apply in section 176(c)(9) and added a definition of "lapse" in section 176(c)(10). The changes to the law have been in effect as of August 10, 2005. See the preamble to the May 2, 2007, proposed rule (72 FR 24476-8) for EPA's full rationale supporting this provision of the final rule.

Six of the seven commenters who commented on the lapse grace period supported EPA's proposal. These commenters generally believe that EPA's proposal to incorporate the lapse grace period into the conformity rule is consistent with the Clean Air Act as amended by SAFETEA-LU. One commenter stated that the lapse grace period allows time and flexibility for

areas to comply with Clean Air Act requirements. Another commenter who supported the lapse grace period specifically agreed with EPA's interpretation that Congress meant to allow conformity requirements to be satisfied for projects during the lapse grace period, even if there is no conforming transportation plan and TIP at the time. This commenter opined that any other interpretation renders Clean Air Act section 176(c)(9) meaningless.

Two commenters requested that EPA clarify the commenters' interpretation that the lapse grace period applies to projects not from a conforming transportation plan and TIP as long as the requirements of 40 CFR 93.115(b)(2) are addressed. EPA disagrees with the commenters' interpretation; merely meeting § 93.115(b)(2) and nothing more would not be sufficient for a project to proceed during the lapse grace period. To be found to conform during the lapse grace period, a project must be from a conforming transportation plan and TIP (§ 93.104(f)(1)), or from the most recent conforming transportation plan and TIP (§ 93.104(f)(2)).

Section 93.115(b) describes the circumstances under which a project is considered to be from a conforming transportation plan. Paragraph (b)(2) provides that if a project is not specifically identified in the transportation plan, it can be considered to be "from" the plan as long as it "is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan."

A project that meets only the requirements of § 93.115(b)(2) can be considered to be from a conforming transportation plan. But to proceed during the lapse grace period, it must also be from a conforming or most recent conforming TIP as well, as required by Clean Air Act sections 176(c)(2)(D) and (c)(2)(C)(i).

The one commenter who opposed EPA's proposal for the lapse grace period thought that it was counter to EPA's mission to protect public health. The commenter stated that on-road mobile source emissions are important and thought that the lapse grace period would increase these emissions. In response, first EPA notes that Congress added the lapse grace period in its amendments to the Clean Air Act, and EPA is simply revising the regulations to make them consistent with the current law. Second, a project cannot actually proceed to completion unless there is a valid, i.e., currently conforming, TIP that also meets transportation planning requirements. Therefore, the project's emissions would

have been considered in the conformity determination for this TIP, eliminating the possibility of unanticipated emissions increases.

#### *C. How Does the Grace Period Work In Practice?*

The one-year conformity lapse grace period begins when the conformity determination required for a transportation plan or TIP is not made by the applicable deadline. As described above, during the grace period, a project may meet conformity requirements as long as it was included in either the currently conforming transportation plan and TIP or the most recent conforming transportation plan and TIP and other project-level conformity requirements are met.

An FHWA/FTA project must also meet DOT's planning requirements to receive federal funding or approval. Specifically, 23 U.S.C. 134(j)(3) and 49 U.S.C. 5303(j)(3) require a TIP to be in place and 23 U.S.C. 135(g)(4) and 49 U.S.C. 5304(g)(4) require a statewide TIP (STIP) to be in place for DOT to authorize transportation projects. The STIP contains all of the metropolitan area TIPs in the state.

Three specific scenarios are presented below to show how expiration of the transportation plan and/or STIP/TIP at the time of the missed deadline affects the ability to advance FHWA/FTA projects during the conformity lapse grace period.<sup>4</sup>

*Scenario 1:* If the transportation plan has expired, but the STIP/TIP are still in effect, FHWA/FTA can continue to authorize and take action on projects in the STIP/TIP throughout the duration of the grace period or the duration of the STIP/TIP, whichever is shorter. The TIP and affected portion of the STIP cannot be amended once the transportation plan expires. Prior to transportation plan expiration, an MPO and state should ensure that the STIP/TIP include the desired projects from the transportation plan to continue to operate during the conformity lapse grace period.<sup>5</sup>

*Scenario 2:* If the transportation plan is still in effect, but the STIP/TIP have expired, FHWA/FTA cannot authorize

<sup>4</sup> These scenarios are consistent with those highlighted in EPA and DOT's joint February 14, 2006, interim guidance, which is superseded by today's final rule.

<sup>5</sup> For example, an MPO may want to amend its TIP before the transportation plan expires to allow projects from the fifth year of the transportation plan to proceed during the lapse grace period. The conformity determination for such an amended TIP would have to be made before the lapse grace period begins, but the determination could rely on the previous regional emissions analysis as long as the requirements of 40 CFR 93.122(g) are met.

FHWA/FTA projects. In order to advance projects, a new STIP/TIP would have to be developed that contains only projects that are consistent with the transportation plan. A conformity determination would have to be made for the new TIP unless it includes only exempt projects, traffic signal synchronization projects, or TCMs in an approved SIP. For example, if a new TIP included a non-exempt project from later years of the transportation plan, the new TIP would require a conformity determination. (However, the determination could rely on the previous regional emissions analysis as long as the requirements of 40 CFR 93.122(g) are met.)

*Scenario 3:* If both the transportation plan and the STIP/TIP have expired, FHWA/FTA will not authorize projects under the planning regulations.

Regardless of the scenario, in addition to transportation planning requirements, project-level conformity requirements must also be met during the lapse grace period including any required hot-spot analysis. Refer to the Table 1 in 40 CFR 93.109 for the conformity criteria and procedures that apply to projects.

#### *D. Newly Designated Nonattainment Areas*

The lapse grace period provision in Clean Air Act section 176(c)(9) does not apply to the deadline for newly designated nonattainment areas to make the initial transportation plan/TIP conformity determination within 12 months of the effective date of the nonattainment designation. The lapse grace period in Clean Air Act section 176(c)(9) applies prior to when a lapse occurs, and Clean Air Act section 176(c)(10) and 40 CFR 93.101 define the term "lapse" to mean that the conformity determination for a transportation plan or TIP has expired. Therefore, the lapse grace period does not apply unless an area has already had a conforming transportation plan and TIP that has expired; it does not apply to a newly designated area that has not yet made its initial conformity determination for a transportation plan and TIP for a new pollutant or air quality standard.

Although the lapse grace period does not apply to newly designated areas, these areas already have similar existing flexibility because Clean Air Act section 176(c)(6) and 40 CFR 93.102(d) give newly designated areas one year before conformity applies, starting from the effective date of final nonattainment designation.<sup>6</sup>

<sup>6</sup> This one-year grace period for newly designated areas most recently applied to the areas designated

Although the statutory and regulatory definitions of lapse do not apply to newly designated areas, once conformity applies, the identical restrictions of a conformity lapse will exist for any newly designated nonattainment area that does not have a conforming transportation plan and TIP in place one year after the effective date of EPA's designation. EPA and DOT will continue to use the term "lapse" informally to describe these situations.

#### E. Conformity Freezes

EPA also notes the interaction of conformity lapse grace periods and conformity freezes. A conformity freeze occurs if EPA disapproves a control strategy SIP without a protective finding for the budgets in that SIP (see § 93.120(a)(2)).<sup>7</sup> During a freeze, some projects can be advanced, but the area cannot adopt a new transportation plan or TIP until a new SIP is submitted with budgets that EPA approves or finds adequate. If conformity of a transportation plan and TIP has not been determined using a new control strategy SIP with budgets that EPA approves or finds adequate within two years of EPA's SIP disapproval, highway sanctions apply (under Clean Air Act section 179(b)(1)) and the freeze becomes a lapse.

The lapse grace period would apply during a freeze only if the transportation plan/TIP expire before highway sanctions apply. The lapse grace period would apply in this case because the grace period applies when an area misses an applicable deadline to determine conformity for the transportation plan and TIP. The transportation plan and TIP would remain in a freeze even once the lapse grace period begins, and would remain frozen until either a conformity determination is made to new adequate or approved SIP budgets as described above, or highway sanctions apply.

An area that is in a conformity freeze and subsequently enters the lapse grace period would lapse at the end of the grace period (one year after the missed deadline), or when highway sanctions apply, whichever comes first. As described above, however, a project must also meet DOT's planning and other requirements to receive Federal funding or approval during the lapse grace period.

for the 8-hour ozone and PM<sub>2.5</sub> standards. All of these metropolitan areas have at this point determined transportation plan/TIP conformity.

<sup>7</sup> Such disapprovals occur infrequently; EPA has only disapproved SIPs without a protective finding in three instances since the 1997 conformity rule was promulgated.

If a freeze becomes a lapse because two years transpire from the effective date of EPA's disapproval of the SIP (when highway sanctions are applied), the area cannot use the lapse grace period. A lapse that occurs because two years have transpired since EPA's disapproval of a SIP is not a lapse that results from missing an applicable deadline to determine conformity. Thus, the lapse grace period would not apply by its own terms when sanctions are applied.

### VI. Timeframes for Conformity Determinations

#### A. Overview

Through SAFETEA-LU, Congress added new paragraph (7) to Clean Air Act section 176(c) to allow areas to elect to shorten the period of time addressed by their transportation plan/TIP conformity determinations, or "timeframe." Prior to this change, every conformity determination for a transportation plan and TIP has had to cover the entire timeframe of the transportation plan. Transportation plans cover a period of 20 years or longer. Because of the requirement to determine conformity of the entire transportation plan, the last year of the transportation plan has had to be analyzed in all transportation plan or TIP conformity determinations, as well as other earlier years in the timeframe of the transportation plan.

Under the amended Clean Air Act, an MPO continues to demonstrate conformity for the entire timeframe of the transportation plan unless the MPO elects to shorten the conformity timeframe. An election to shorten the conformity timeframe could be made only after consulting with the state and local air quality agencies<sup>8</sup> and soliciting public comment and considering such comments. If an MPO makes this election, the conformity determination does not have to cover the entire length of the transportation plan, but in some cases an informational analysis is also required.

This provision giving areas the option to shorten their conformity timeframe took effect on August 10, 2005, when SAFETEA-LU became law. Note, however, that transportation plan/TIP conformity determinations must cover the entire length of the transportation

<sup>8</sup> The amendment to the Clean Air Act that allows areas to shorten the timeframe of conformity determinations, Clean Air Act section 176(c)(7), requires the MPO to consult with "the air pollution control agency." For the reasons explained in the May 2, 2007, proposed rule (72 FR 24479 and 27780), EPA is using the equivalent term "state and local air quality agencies" in this preamble and final rule.

plan unless an election is made to shorten the timeframe.

Today EPA is finalizing several changes in the regulatory language to provide the rules for shortening the conformity timeframe, and most of these changes are found in § 93.106(d). This section discusses these changes and is organized as follows:

- Metropolitan areas that do not have an adequate or approved second maintenance plan (Section VI.B.).
- Metropolitan areas with adequate or approved second maintenance plans (Section VI.C.).
- How elections are made in metropolitan areas to either shorten the conformity timeframe, or revert to the original conformity timeframe once the timeframe has been shortened (Section VI.D.).
- Isolated rural areas (Section VI.E.).
- Conformity implementation in all areas under a shortened conformity timeframe, including which years must be analyzed (Section VI.F.).

#### B. Timeframe Covered by Conformity Determinations in Metropolitan Areas Without Second Maintenance Plans

##### 1. Description of Final Rule

Transportation plan and TIP conformity determinations must cover the timeframe of the transportation plan, unless an MPO elects to shorten the timeframe. This requirement is found in § 93.106(d)(1). In areas without an adequate or approved second maintenance plan (i.e., a maintenance plan addressing Clean Air Act section 175A(b)), the Clean Air Act requires that a shortened conformity determination must extend through the latest of the following years:

- The first 10-year period of the transportation plan;
- The latest year for which the SIP (or FIP) applicable to the area establishes a motor vehicle emission budget; or
- The year after the completion date of a regionally significant project if the project is included in the TIP, or the project requires approval before the subsequent conformity determination.

These requirements are found in EPA's regulation at § 93.106(d)(2)(i). The final language in § 93.106(d)(2)(i) is consistent with the proposed language, although minor clarifications have been made in response to comments. Specifically, the regulation at § 93.106(d)(2)(i) states, "The shortened timeframe of the conformity determination must extend at least to the latest of the following years." The proposed wording was, "The shortened timeframe of the conformity determination must be the longest of the following."

The final regulation at § 93.106(d)(2)(i)(B) is also slightly different than proposed, but the same in substance as the proposed rule. This provision now reads, "The latest year for which an adequate or approved motor vehicle emissions budget(s) is established in a submitted or applicable implementation plan" rather than the proposed wording, "The latest year in the submitted or applicable implementation plan that contains an adequate or approved motor vehicle emissions budget(s)."

Note that an MPO that has shortened its conformity timeframe does not choose which of these three timeframes it prefers to examine in the conformity determination; it must examine the longest of them. Such an MPO would have to determine which timeframe is the longest for each conformity determination, as the longest timeframe could change from determination to determination, because for example new budgets have been established or new regionally significant projects have been added to the TIP since the previous conformity determination.

## 2. Rationale and Response to Comments

These provisions to allow MPOs to shorten the timeframe covered by a conformity determination are necessary to make the conformity regulation consistent with the law. In SAFETEA-LU, Congress amended the Clean Air Act by adding section 176(c)(7), which allows MPOs to elect to shorten the timeframe of conformity determinations. EPA's regulation at § 93.106(d)(1) requires that conformity determinations cover the timeframe of the transportation plan unless the MPO makes an election to shorten the timeframe. The Clean Air Act section 176(c)(7)(A) specifically states, "Each conformity determination \* \* \* shall require a demonstration of conformity for the period ending on either the final year of the transportation plan, or at the election of the metropolitan planning organization, \* \* \*" a shorter timeframe.

EPA's regulation at § 93.106(d)(2)(i), which requires that a shortened timeframe must cover the longest of the three periods specified, also comes directly from the Clean Air Act. Specifically, section 176(c)(7)(A) states that a shortened conformity determination must cover:

The longest of the following periods:

- (i) The first 10-year period of any such transportation plan.
- (ii) The latest year in the implementation plan applicable to the area that contains a motor vehicle emissions budget.

(iii) The year after the completion date of a regionally significant project if the project is included in the transportation improvement program or the project requires approval before the subsequent conformity determination.

EPA received several comments in support of the flexibility to shorten the timeframe of the conformity determination.

EPA is clarifying the language in § 93.106(d)(2)(i) and § 93.106(d)(2)(i)(B) from the proposal based on the suggestion of three commenters, although the meaning is the same as in the proposal. As a result, the final rule clarifies that the shortened timeframe must extend through the latest year of the three periods. EPA modified some of the commenters' suggested language to be consistent with the statute.

The same commenters also suggested we change the language in § 93.106(d)(2)(i)(B) to refer to the latest year for which a budget is established, rather than the latest year that "contains" a budget. EPA has taken this suggestion because this language likewise improves clarity.

### C. Timeframe of Conformity Determinations in Metropolitan Areas With Second Maintenance Plans

#### 1. Description of Final Rule

In areas that have an adequate or approved maintenance plan under Clean Air Act section 175A(b), transportation plan and TIP conformity determinations must cover the timeframe of the transportation plan unless an MPO elects to shorten the timeframe. This requirement is found in § 93.106(d)(1). Section 175A(b) of the Clean Air Act is the provision that describes the submission of a maintenance plan that covers the second ten years of the maintenance period. If an MPO with an adequate or approved second maintenance plan elects to shorten the timeframe, transportation plan and TIP conformity determinations would cover the period of time through the end of the maintenance period, that is, the period of time covered through the second maintenance plan. This period of time is in contrast to the longest of the three periods discussed in Section VI.B. for areas that do not have an adequate or approved second maintenance plan. The regulatory language for shortening the timeframe in areas with second maintenance plans is found in § 93.106(d)(3).

#### 2. Rationale and Response to Comments

This rule provision for shortening the conformity timeframe in metropolitan areas with an adequate or approved

second maintenance plan results directly from the Clean Air Act as amended by SAFETEA-LU. Clean Air Act section 176(c)(7)(C) specifically says that in areas with a second maintenance plan, a shortened conformity timeframe is "required to extend only through the last year of the implementation plan required under section 175(A)(b)" [sic] rather than the longest of the three periods established in Clean Air Act section 176(c)(7)(A).

Several commenters specifically noted their support for this provision. However, one commenter suggested that the proposed language for § 93.106(d)(2)(i) should be revised to be consistent with the fact that the Clean Air Act as amended by SAFETEA-LU allows areas with adequate or approved second 10-year maintenance plans to determine conformity through only the last year of the maintenance plan. EPA's proposed regulation was consistent with the statutory provision for areas with adequate or approved second maintenance plans, and the final rule is as well. EPA believes this commenter may have misread the organization of this section, as we covered areas without second maintenance plans in § 93.106(d)(2), and areas with second maintenance plans in § 93.106(d)(3).

### D. Process for Elections

#### 1. Description of Final Rule

First, before an MPO elects to shorten the conformity timeframe, it has to consult with state and local air quality planning agencies, solicit public comment, and consider those comments. These requirements are found in § 93.106(d)(2). Consultation with the state and local air agencies would occur early in the decision-making process.

Second, once an MPO makes an election to shorten the period of time addressed in its transportation plan/TIP conformity determinations, the election remains in effect until the MPO elects otherwise. An MPO would make its election only once for a pollutant or pollutants and any relevant precursors, unless it chooses to elect otherwise in the future. An MPO that has elected to shorten the timeframe of conformity determinations that wants to revert to analyzing the full timeframe of the transportation plan must consult with the state and local air quality agencies, solicit public comments, and consider such comments before doing so. These provisions are found in § 93.106(d)(4).

EPA believes that consultation with the state and local air quality agencies on shortening the timeframe would typically occur in the context of the

normal interagency consultation process. EPA believes that for this consultation to be meaningful, it needs to occur at an early stage in the decision-making process. Therefore, consultation should occur when the MPO begins to consider shortening the timeframe. For example, it may be appropriate to discuss an election to shorten the conformity timeframe in the preliminary stages of developing the regional emissions analysis.

MPOs should follow their normal process for public participation regarding conformity actions when electing to shorten their conformity timeframe. MPOs are not required to revise their public participation/involvement procedures required by 23 U.S.C. 134(i)(5) to address public consultation on shortening the area's conformity timeframe.

MPOs are encouraged to make their elections prior to the start of the public comment period for their next conformity determination. Making the election prior to the start of the public comment period for the next conformity determination ensures that the public will understand that future conformity determinations will address a shorter period of time. Doing so will also allow the MPO to develop its next conformity determination in a more efficient manner and avoid running analyses for additional years, as described in the following paragraph.

However, there may be instances when an MPO will want to take public comments on the election to shorten the conformity timeframe at the same time that it is taking public comment on a conformity determination. In those cases, the conformity information presented to the public should include both a regional emissions analysis reflecting the election of a shorter timeframe and a regional emissions analysis that reflects the full length of the transportation plan. EPA recommends that both a shortened and a full-length analysis be included so that the MPO can complete its conformity determination according to its desired schedule, even if it receives negative public comment about shortening the timeframe and decides not to do so.

## 2. Rationale and Response to Comments

*General process.* Clean Air Act section 176(c)(7)(A) and (C) are the sections of the statute that allow elections to shorten the conformity timeframe. Both of these sections allow such elections to be made only "after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments." The Clean Air Act refers

only to consultation with the air agency or agencies and does not require their concurrence.

A definition of "air pollution control agency" has been added at Clean Air Act section 176(c)(7)(E), which EPA interprets to mean the relevant state and local air quality agencies that have regularly participated in the conformity consultation process, as discussed in the preamble to the May 2, 2007, proposed rule (72 FR 24480).

EPA's regulation states that once an election to shorten the timeframe is made, it would remain in effect until the MPO elects otherwise, because that statement is specifically included in the statute. Clean Air Act section 176(c)(7)(D) states, "Any election by a metropolitan planning organization under this paragraph shall continue to be in effect until the metropolitan planning organization elects otherwise."

*Changing previous elections.* EPA requested comment on two options for the process that MPOs must follow if they have shortened the conformity timeframe and want to revert back to determining conformity for the full length of the transportation plan. Option A would have required MPOs to consult with state and local air agencies and solicit and consider public comment before reverting back to determining conformity for the full length of the transportation plan; Option B would have allowed MPOs to revert to the full timeframe without additional consultation or public comment.

EPA is finalizing Option A. As explained in the proposal, Clean Air Act section 176(c)(7)(D) states that a shortened timeframe remains in effect unless an MPO "elects otherwise." An "election" to shorten the timeframe under section 176(c)(7) requires consultation with the state and local air quality agencies, solicitation of public comment and consideration of any comments received. EPA's interpretation is that an election to revert to determining conformity for the entire length of the transportation plan is an election under this section and therefore also includes consultation with the state and local air pollution control agencies, solicitation of public comment, and consideration of those comments. Since the Clean Air Act uses the same term—"election"—in both subsections, it is reasonable to conclude that the same process should be followed for both actions.

However, we expect the resource burden of this requirement to be minimal. MPOs can limit the additional burden of consultation with state and local air agencies and solicitation and consideration of public comment by

using procedures developed to meet existing conformity requirements. Consultation with the state and local air quality planning agencies must already occur on the conformity determination within the interagency consultation process. Similarly, the MPO must already seek public comment on the conformity determination, according to the requirements in 40 CFR 93.105(e). By relying on these existing consultation procedures, the MPO could avoid the additional resource costs associated with running another interagency consultation process or full public comment process for electing to revert to the full conformity timeframe.

Two trade associations supported Option A, and stated that their members appreciate the opportunity to comment on significant decisions made by MPOs that have the potential to impact transportation projects or an area's ability to move forward with its transportation plans. These commenters thought that the public comment period should occur early in the conformity process so that conformity timing would not be negatively impacted. EPA appreciates these comments and supports the ability of the public to comment on decisions within the transportation conformity process that affect them.

A couple of commenters supported Option B, allowing an MPO to revert to a full-plan conformity timeframe without additional consultation or solicitation of public comment. Commenters opined that consultation and public comment are already required by 40 CFR 93.105, and those requirements already ensure that state and local air agencies will be consulted before any decisions are made. While MPOs can use these existing consultation and public comment provisions when reverting to the full transportation plan length timeframe, EPA is finalizing Option A so that MPOs will specifically solicit comment on the length of the conformity timeframe within these existing processes.

Other commenters offered an alternative option of using the established interagency consultation process to decide if a new public comment period should be required before an area elects to revert back to determining conformity for the entire timeframe of the transportation plan. The commenters suggested that this option would allow areas the flexibility to decide if a new public comment period is needed, while minimizing resource costs.

EPA did not finalize these commenters' suggestion because it would have required MPOs to consult

with a more extensive set of agencies to return to the full conformity timeframe than required by the statute when shortening the timeframe in the first place. When an MPO elects to shorten the timeframe, the Clean Air Act requires consultation with the state and local air agencies. Under the commenters' suggestion, before electing to revert to the full timeframe, MPOs would have to consult not only with state and local air agencies, but also EPA, DOT, and state and other local transportation agencies (e.g., transit agencies), because the interagency consultation process includes all of these agencies. This additional consultation is beyond what is required by this section of the statute.

As stated above, the existing interagency consultation process can be used to fulfill the requirement for consultation with state and local air quality agencies, because the MPO will be meeting with or speaking to representatives of these agencies in the context of the interagency consultation process. However, EPA believes that consulting with the relevant air agencies within the existing interagency consultation process is different, and less burdensome, than consulting with every agency involved in the interagency process. Second, the statute does not separate the interagency consultation and public comment processes as suggested by the commenters. The Clean Air Act section 176(c)(7) requires both consultation and public involvement whenever a timeframe is shortened, rather than consultation without public involvement. Rather than having agencies decide if the public would benefit by commenting, EPA believes the better interpretation of Congress' intent is to offer the public the opportunity to comment in all cases.

*Placement in regulatory text.* EPA is placing the requirements for state and local air quality agency consultation and public comment for shortening the conformity timeframe in § 93.106 because this type of consultation would only occur when the MPO is considering electing to shorten the timeframe. Furthermore, placing these requirements in § 93.106, rather than in 40 CFR 93.105, assures that no states with approved conformity SIPs have to amend them to add this provision. (See Section VII. for more information about the requirements for conformity SIPs.) EPA received no comments about this placement. See the preamble to the May 2, 2007, proposed rule (72 FR 24481) for EPA's full rationale.

### *E. Isolated Rural Nonattainment and Maintenance Areas*

#### 1. Description of Final Rule

Isolated rural nonattainment and maintenance areas do not have MPOs and are not required to prepare transportation plans or TIPs (40 CFR 93.101). Projects in these areas are generally included in the long-range statewide transportation plan and the statewide TIP. Isolated rural areas are not "donut areas."<sup>9</sup>

The final rule gives isolated rural nonattainment and maintenance areas the flexibility to shorten the conformity timeframe in the same manner as metropolitan areas. The requirements for shortening the conformity timeframe in isolated rural areas are identical to the requirements in metropolitan areas, except the entity that would make the election to shorten the timeframe in an isolated rural area is the state DOT, rather than the MPO. The rule accomplishes this result by including a sentence in § 93.109(l)(2)(i) that says, "When the requirements of § 93.106(d) apply to isolated rural areas, references to "MPO" should be taken to mean the state department of transportation."

#### 2. Rationale and Response to Comments

EPA believes it is appropriate to extend this flexibility to isolated rural areas to be consistent with how the conformity rule has been implemented in isolated rural areas. The Clean Air Act amendment made by SAFETEA-LU allowing areas to shorten their conformity timeframes does not prohibit its use in isolated rural areas. In general, most aspects of the conformity regulation apply consistently to metropolitan and isolated rural areas. Where there are differences, the differences have given isolated rural areas additional flexibility. See the preamble to the May 2, 2007, proposed rule (72 FR 24482) for EPA's full discussion of why EPA concludes it is appropriate to give isolated rural areas the flexibility to shorten their conformity timeframe.

Seven commenters supported allowing isolated rural areas to shorten the timeframe of conformity determinations, and none opposed it. Commenters generally agreed with EPA's rationale that Congress did not prohibit extending the flexibility to isolated rural areas, and that these areas are treated much like MPOs throughout the rest of the conformity rule. One

<sup>9</sup> Donut areas are defined as "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)..." (40 CFR 93.101).

commenter noted that extending this flexibility to isolated rural areas will have no impact on project-level requirements in these areas.

EPA proposed two options for the entity that would make the election in isolated rural areas: Either the state DOT or the project sponsor, and solicited input on whether there are any other alternatives. Six commenters supported the state DOT option, and two supported the project sponsor option; no alternative entities were suggested.

EPA believes that assigning the ability to elect to shorten the conformity timeframe to the state DOT makes the most sense. First, the state DOT prepares the statewide transportation plan and the statewide TIP and therefore in this regard, the state DOT serves a function in an isolated rural area that is similar to an MPO. Two commenters that supported the state DOT option cited this reason as well. Also, the state DOT may be better able to coordinate the consultation necessary to make an election with the state and local air quality planning agencies and with the public than any other entity in an isolated rural area. One commenter noted that given the consultation and public participation requirements associated with preparing transportation planning documents, the state DOT would be in the best position to satisfy similar requirements for electing to shorten the timeframe.

Though the state DOT is typically the project sponsor who prepares the conformity determination, several commenters were concerned about the possibility of there being more than one project sponsor in an area. Commenters noted that there may be multiple small entity project sponsors in an area, which could possibly lead to conflicts. A couple of commenters thought that the project sponsor option could result in confusion, inconsistent decisions in a state, and unpredictability.

The two commenters that supported the project sponsor option thought that project sponsors would be more closely attuned to local concerns. However, these commenters recognized that if there were multiple project sponsors, conflicts could arise, and recommended that in those cases, the state DOT should have the ability to shorten the timeframe. In considering these comments, EPA solicited input from EPA and DOT field offices, and concluded that in all recent cases, the state DOT is in fact the project sponsor for all FHWA/FTA projects in isolated rural areas. These areas are different than donut areas where county agencies sometimes are the project sponsor.

Finally, EPA believes it appropriate to name the state DOT as the entity with the ability to shorten the timeframe in an isolated rural area for specificity, because the state DOT is already relied upon in the conformity rule and guidance for isolated rural area conformity requirements.

#### *F. Specific Analysis Requirements Under a Shortened Timeframe*

##### 1. Description of Final Rule

EPA is including most of the necessary regulatory language for shortening the conformity timeframe within § 93.106, and is also updating §§ 93.118 and 93.119. Note that these provisions apply to both metropolitan and isolated rural areas.

- First, § 93.106 is being renamed as "Content of transportation plans and timeframe of conformity determination."

- Second, § 93.106(a)(1) is being amended to update the horizon years that apply when an area shortens the conformity timeframe. (Section 93.106(a)(1) only applies to serious, severe or extreme ozone and serious CO nonattainment areas with urbanized populations greater than 200,000.)

- Third, EPA is updating §§ 93.118 and 93.119 to indicate that particular years must be analyzed only if they are in the conformity timeframe and to include the requirements for any needed informational analyses.

*Areas that use the budget test.* In areas that have budgets that choose to shorten the timeframe, the requirements for demonstrating consistency with budgets, and analyzing specific years, are similar to requirements that have existed, and still exist, for areas that determine conformity for the full length of the transportation plan. Under a shortened timeframe, consistency with, and an analysis for, the attainment year is necessary only if the attainment year is both within the timeframe of the transportation plan and conformity determination. In addition, under a shortened timeframe, instead of analyzing the last year of the transportation plan for the conformity determination, the analysis must be done for the last year of the shortened timeframe.

In areas that do not have an adequate or approved second maintenance plan budget, the conformity determination must also be accompanied by a regional emissions analysis for the last year of the transportation plan, as well as for any year where the budgets were exceeded in a previous regional emissions analysis if that year is later than the shortened conformity

timeframe. These regional emissions analyses must be done in a manner consistent with how the budget test is performed and all relevant requirements of the transportation conformity regulation (e.g., 40 CFR 93.110, 93.111, and 93.122). However, these analyses would be for informational purposes only, and emissions would not have to meet the budgets in these years.

Documentation of any informational analysis should clearly state that its purpose is informational only, and that conformity is not required to be demonstrated for the last year of the transportation plan or any year where the budgets were exceeded in a previous regional emissions analysis if that year is later than the shortened conformity timeframe. There is no similar requirement for information-only analyses in areas with an adequate or approved second maintenance plan budget, for the reasons described below.

*Areas that use the interim emissions tests.* In areas that do not have budgets and use the interim emissions tests, the requirements for analysis years in areas that shorten their conformity timeframe are similar to the requirements in § 93.119 that have applied and still apply under a full transportation plan-length conformity determination. Under a shortened timeframe, instead of analyzing the last year of the transportation plan, the analysis would be done for the last year of the shortened timeframe.

The conformity determination must be accompanied by a regional emissions analysis for the last year of the transportation plan in areas that use the interim emissions tests. This regional emissions analysis would be for informational purposes only, and must be done in a manner consistent with all relevant requirements of the transportation conformity regulation (e.g., 40 CFR 93.110, 93.111, and 93.122). Note that there is no requirement for an informational regional emissions analysis for years where the interim tests were not met in a previous regional analysis, as there is for areas that use the budget test that do not have adequate or approved second maintenance plans.

EPA proposed three options for the informational analysis for the last year of the transportation plan in areas that use the interim emissions tests: To compare estimated emissions to the interim emissions test(s) used in the conformity determination (Option X), to compare estimated emissions to either interim emissions test (Option Y), or just to estimate emissions without comparing them to either test (Option Z). EPA is finalizing Option Z.

While the final rule requires only an estimate of regional emissions for the transportation system that would exist in the last year of the transportation plan, EPA encourages MPOs and state DOTs to present this informational analysis in context so that it is truly informative for members of the public or state and local air agencies who are reviewing it. One possible way of doing so is to present a summary table of all of the years for which an analysis was run, including both the years analyzed in the conformity determination and the last year analyzed for informational purposes only. Another possible method would be to present a comparison with the emissions level from the baseline year (e.g., 2002), as is done for the baseline year test under 40 CFR 93.119. Furthermore, it would also be acceptable for an area to complete the build/no-build test as well, if desired. Documentation of any informational analysis should clearly state that its purpose is informational only, and that conformity is not required to be demonstrated for the last year of the transportation plan.

##### 2. Rationale and Response to Comments

*General.* EPA has made these changes to the conformity regulation because SAFETEA-LU has amended the Clean Air Act to allow MPOs to shorten their conformity timeframes. EPA is implementing the specific requirements of the new Clean Air Act provision in today's regulatory changes. These changes for required analysis years for conformity determinations with shortened timeframes are generally consistent with what has been current practice when conformity is determined for the full length of the transportation plan.

Given that the statute did not specify the years that must be analyzed in a conformity determination with a shortened timeframe, EPA reasonably concluded that the existing conformity requirements should apply. Therefore, in areas that use the budget test, a shortened conformity determination would have to include the attainment year if it is in the timeframe of the conformity determination, similar to the existing requirement to include the attainment year if it is in the timeframe of the transportation plan. In areas that use the interim emissions test, a shortened conformity determination would include an analysis year no more than five years into the future, just as full-length conformity determinations do.

In addition, regardless of the test used under a shortened timeframe, the last year of the conformity determination

would need to be analyzed. This requirement is similar to the existing one to analyze the last year of the transportation plan. Likewise, under a shortened timeframe, analysis years would be no more than ten years apart, just as under a full-length conformity determination. No comments were received on these general provisions.

*Areas that use the budget test.* If the conformity timeframe is shortened in an area that does not have an adequate or approved second maintenance plan, EPA's regulation requires that the conformity determination be accompanied by an informational analysis. The rule language for the regional emissions analysis for the last year of the transportation plan, and for any year where the budgets were exceeded in a previous regional emissions analysis if that year is later than the shortened conformity timeframe, is also based in the new statutory language. Clean Air Act section 176(c)(7)(B) requires that the conformity determination "be accompanied by a regional emissions analysis" for these years. Absent a definition for "regional emissions analysis" in the statute, EPA assumes that the phrase has its usual meaning in the context of transportation conformity. Therefore, these analyses need to be done in a manner consistent with all the general requirements of the conformity regulations for such analyses.

This same statutory language is the reason that these analyses do not need to meet the required conformity tests. The statutory language makes it clear that these emissions analyses only "accompany" the conformity determination, and thus are not part of the conformity determination. Therefore, EPA concludes that conformity need not be demonstrated with respect to these analyses.

*Areas that use the interim emissions tests.* In areas that use the interim emissions tests, an informational analysis is required only for the last year of the transportation plan. In contrast, areas that use budgets also must do an informational analysis for any years that exceeded the budgets in a prior analysis. Such years would be years that extended beyond the shortened timeframe of prior conformity determinations, which were analyzed for informational purposes only. This result is because Clean Air Act section 176(c)(7)(B) states that these information-only regional emissions analyses are to be done "for the last year of the transportation plan and for any year shown to exceed emissions budgets by a prior analysis, if such year extends beyond" the end of the shortened

timeframe. Areas subject to the interim emissions tests for a given pollutant or precursor do not have budgets for that pollutant or precursor. Therefore, there will not be any years for which a prior analysis shows the budget will be exceeded, and as such there is no statutory requirement for these areas to perform an informational regional emissions analysis for any year other than the last year of the transportation plan.

EPA requested comment on three options for what an information-only regional emissions analysis would consist of in an area that uses the interim emissions test. Option X would have required that emissions be compared to the same interim emissions test (i.e., build/no-build and/or the baseline year test(s)) as is used in the conformity determination. Option Y would have required that emissions be compared to either interim emissions test. Option Z, which we finalized, requires simply the estimate of emissions in the last year of the transportation plan with no comparison to either interim emissions test.

The statutory language is ambiguous regarding the information-only regional emissions analysis prior to the establishment of SIP budgets. Section 176(c)(7)(B) states that the regional emissions analysis that accompanies the conformity determination must be performed for the last year of the transportation plan, but does not specify that the interim emissions tests be conducted. The Congressional report language for this section states, "Generating this information will be helpful in ensuring that conformity is maintained,"<sup>10</sup> but does not include any direction on how this goal should be met in those areas that use the interim emissions tests.

Five commenters provided opinions on these options. One commenter preferred Option X (i.e., to use the same test(s) as in the conformity determination) because it involves use of similar information to that presented elsewhere in the determination. This commenter thought that presenting the estimate of emissions in context of the interim emissions tests is helpful in informing state and local agencies and the public about future emissions trends, and is consistent with the intent of Congress.

The remaining four commenters preferred Option Z. Some of these commenters thought that comparisons to the interim emissions tests could be

confusing to stakeholders if a test is not met for the informational analysis. One of these commenters thought that EPA should allow for the presentation of these results at the discretion of the MPO and state DOT after interagency consultation. This commenter thought that states and MPOs understand the local context for transportation conformity and are best suited for determining what information should be presented for the last year of the transportation plan under a shortened timeframe.

As described above, EPA is finalizing Option Z to be consistent with the statute, which does not require that the interim emissions tests be performed for informational purposes. Under the final rule, MPOs and state DOTs have the discretion in presenting the results of the informational analysis for the last year of the transportation plan, and EPA encourages them to provide useful information to other involved agencies and the public. See Section F.1. above for additional suggestions on how to present such analyses to the public.

*Areas with second maintenance plans that shorten their conformity timeframe.* No information-only analyses is required in areas with an adequate or approved second maintenance plan, given Clean Air Act section 176(c)(7)(C). The statute labels this section, which applies to areas that have an adequate or approved second maintenance plan, as "Exception." EPA interprets section 176(c)(7)(C) to mean that areas with adequate or approved second maintenance plans that shorten their conformity timeframe do not have to comply with the requirements of Clean Air Act section 176(c)(7)(A) or (B), and section 176(c)(7)(C) itself does not require any informational analyses. Therefore, areas with a second maintenance plan that shorten their conformity timeframe do not have to perform a regional emissions analysis for the last year of their transportation plans, or for a year shown to exceed budgets by a prior analysis, as required by Clean Air Act section 176(c)(7)(B) for other areas that have shortened their timeframe. EPA received no comments on this particular point.

## VII. Conformity SIPs

### A. Description of Final Rule

EPA is changing 40 CFR 51.390 to streamline the requirements for state conformity SIPs. A conformity SIP is different from a control strategy SIP or maintenance plan, as a conformity SIP only includes state conformity procedures and not motor vehicle

<sup>10</sup> Joint Explanatory Statement of the Committee of Conference, "Section 6011, Transportation Conformity," p. 1059.

emissions budgets or air quality demonstrations.

EPA is finalizing requirements for states to submit conformity SIPs that address only the following sections of the pre-existing federal rule. These three sections that need to be tailored to a state's individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which states that conformity SIPs must require that written commitments to control measures be obtained prior to a conformity determination if the control measures are not included in an MPO's transportation plan and TIP, and that such commitments be fulfilled; and
- 40 CFR 93.125(c), which states that conformity SIPs must require that written commitments to mitigation measures be obtained prior to a project-level conformity determination, and that project sponsors comply with such commitments.

Prior to SAFETEA-LU, states were required to address these provisions as well as all other federal conformity rule provisions in their conformity SIPs. The rule had previously required states' conformity SIPs to include most of the sections of the federal rule verbatim.

In addition, EPA is also deleting the requirement for states to submit conformity SIPs to DOT. States must continue to submit conformity SIPs to EPA. EPA is also reorganizing the conformity SIP regulatory language to improve clarity and readability. The regulatory language in § 51.390 is re-ordered to more naturally fall into three topics: Purpose and applicability, conformity implementation plan content, and timing and approvals. The language retains existing requirements with appropriate modifications based on the new Clean Air Act amendment from SAFETEA-LU.

#### *B. Rationale and Response to Comments*

EPA is primarily changing § 51.390 to make the transportation conformity regulation consistent with the law, which has been in effect since August 10, 2005. In SAFETEA-LU, Congress amended the Clean Air Act so that states are no longer required to adopt much of the federal transportation conformity rule into their SIPs. Instead, Clean Air Act section 176(c)(4)(e) now requires states to include in their conformity SIPs:

Criteria and procedures for consultation required by subparagraph (D)(i), and enforcement and enforceability (pursuant to section 93.125(c) and 93.122(a)(4)(ii) of title 40, Code of Federal Regulations) in accordance with the Administrator's criteria

and procedures for consultation, enforcement, and enforceability.

Subparagraph (D)(i) in Clean Air Act section 176(c)(4) requires EPA to write regulations that address consultation procedures to be undertaken by MPOs and DOT with state and local air quality agencies and state DOTs before making conformity determinations. EPA's regulations governing consultation are found at 40 CFR 93.105. Therefore, in effect the statute now requires states to address and tailor only the three sections of the conformity rule noted above in their conformity SIPs.

EPA believes that the new conformity SIP requirements will reduce the administrative burden for state and local agencies significantly, because the new requirements will result in fewer required conformity SIP revisions in most areas. Four commenters supported these changes. Three commenters specifically agreed that these changes streamline the conformity SIP process and preclude the need for a state to update its conformity SIP each time the federal rule is revised. These commenters requested that EPA urge states to include only the three required sections in their conformity SIPs to minimize the possibility of having to revise the SIP when the federal rule is updated. EPA agrees with this point. However, the fourth commenter also requested that states still be able to incorporate the rest of the transportation conformity rule by reference. This option is further discussed in Section D.2 below.

EPA is removing the requirement for states to submit conformity SIPs to DOT to be consistent with SAFETEA-LU's changes. In revising the Clean Air Act's previous conformity SIP requirements, Congress did not retain the previous requirement that "each State shall submit to the Administrator and the Secretary of Transportation \* \* \* a revision to its implementation plan \* \* \*." The new statutory language in Clean Air Act section 176(c)(4)(E) does not include this previous requirement, and therefore, we are removing this requirement to reduce state and local air agency processing of their conformity SIPs. However, EPA does not believe that this proposal will substantively change DOT's involvement in conformity SIP development. This does not change the existing conformity rule's requirement that EPA provide DOT with a 30-day comment period on conformity SIP revisions.

The re-organizational changes to § 51.390 are for clarity and readability and not related to changes in the law. EPA is making these changes to make

this section more user-friendly, and the changes do not affect the substance of the pre-existing regulatory requirements.

#### *C. How Does the Final Rule Impact States?*

##### 1. Areas That Have Never Submitted a Conformity SIP

States that have never submitted a conformity SIP are required to address only the three provisions noted above in their conformity SIPs according to any existing conformity SIP deadline (see D. of this section below).

##### 2. Areas That Have Submitted a Conformity SIP That Was Never Approved

In some cases, states have submitted conformity SIPs to EPA for approval, but EPA has not yet acted on them. These states can write their EPA Regional Office and request that EPA approve only the three provisions that are required to be included in their SIPs and that EPA take no action on the remainder of the submission. States can also leave the full conformity SIP pending before EPA for rulemaking action. However, if EPA approves the full SIP, states could not apply any subsequent changes that EPA makes to the federal rule without first revising their state conformity SIP and obtaining EPA's approval.

##### 3. Areas With Approved Conformity SIPs

States with EPA-approved conformity SIPs that decide to eliminate the provisions that are no longer mandatory would need to revise the SIP to eliminate those provisions. EPA would have to approve the changes to a state's conformity SIP through the **Federal Register** rulemaking process. Such a SIP revision should not be controversial because the provisions are no longer required by the Clean Air Act as amended by SAFETEA-LU. In addition, their elimination from a state's conformity SIP would not change conformity's implementation in practice because the federal conformity rule applies for any provision not addressed in a state's conformity SIP. States are encouraged to work with their EPA Regional Office as early in the process as possible to ensure the SIP submission meets all requirements and is fully approvable.

##### 4. Areas That Submit a Partial Conformity SIP

A state may choose to submit a conformity SIP that addresses only one or two of the three required sections of the federal rule. In this situation, EPA

could approve the submitted section(s) if it sufficiently addresses the requirement it is intended to fulfill. However, the Clean Air Act as amended by SAFETEA-LU requires states to address all three sections in their conformity SIP, so a state that addresses only one or two of the requirements would still have an outstanding requirement.

#### D. When Are Conformity SIPs Due?

SAFETEA-LU did not create any new deadlines for conformity SIPs. Any nonattainment or maintenance area that has missed earlier deadlines to submit conformity SIP revisions (e.g., after previous conformity rulemakings, or new nonattainment designations) continues to be subject to these previous deadlines, but only in regard to the three provisions now required by the Clean Air Act. Two scenarios are described below.

##### 1. Areas With Conformity SIPs That Address Only the Three Required Provisions

Once a state has an approved conformity SIP that addresses only the three sections that the Clean Air Act now requires, the state would need to revise its conformity SIP only if EPA revises one of these sections of the conformity rule, or the state chooses to revise one of these three provisions. Any future changes to the federal conformity rules beyond these three provisions would apply in any state that has only these three provisions in its approved conformity SIP, and these changes would not need to be adopted into the state's SIP.

##### 2. Areas That Choose To Either Retain or Submit Additional Sections of the Conformity Rule

A state with a previously approved conformity SIP may decide to retain all or some of the federal rule in its SIP or a state without an approved conformity SIP could choose to submit for EPA approval all or some of the other sections of the federal rule. As noted above, one of the commenters expressly asked that EPA retain this option presumably so its state could avoid revising its conformity SIP. In such a case, the state should be aware that the conformity determinations in the state continue to be governed by the state's approved conformity SIP. Such a state would need to revise its conformity SIP when EPA makes changes to the federal rule in order to have those changes apply in the state. As stated earlier, EPA strongly encourages states to only include the three required provisions in a conformity SIP to take advantage of

the streamlining flexibilities provided for by the Clean Air Act, as amended by SAFETEA-LU. EPA is updating our previous guidance on conformity SIPs. The guidance will be available on EPA's Web site at: <http://www.epa.gov/otaq/stateresources/transconf/policy.htm>. State and local agencies that need to prepare a conformity SIP should review this guidance and consult with the appropriate EPA Regional Office.

#### VIII. Transportation Control Measure Substitutions and Additions

SAFETEA-LU section 6011(d) amended the Clean Air Act by adding a new section 176(c)(8) that establishes specific criteria and procedures for replacing TCMs in an approved SIP with new TCMs and adding TCMs to an approved SIP.

EPA is revising the definition of a TCM in § 93.101 to clarify that TCMs as defined for conformity purposes also include any TCMs that are incorporated into the SIP through this new TCM substitution and addition process. However, EPA has determined that no additional revision of the transportation conformity regulations is necessary to implement the TCM substitution and addition provision. EPA did not receive any comments on this portion of the proposed rulemaking.

EPA concluded no implementing regulations are necessary for the reasons explained in the preamble to the May 2, 2007 proposed rule (72 FR 24485-6).

EPA is updating our previous guidance on TCM substitutions and additions. The guidance will be available on EPA's Web site at: <http://www.epa.gov/otaq/stateresources/transconf/policy.htm>. This guidance is consistent with the TCM substitution and additions portion (Section 5) of the EPA-DOT February 2006 Interim Guidance for implementing SAFETEA-LU. State and local agencies considering TCM substitutions or additions should review this guidance and consult with the appropriate EPA Regional Office.

Clean Air Act section 176(c)(8) requires that the EPA Administrator consult and concur on TCM substitutions and additions. However, as has been done with most other responsibilities related to the approval of SIP revisions, the Administrator has delegated this authority to the Regional Administrators. On September 29, 2006, the EPA Administrator signed a delegation of authority (Delegation of Authority 7-158: Transportation Control Measure Substitutions and Additions) providing EPA Regional Administrators with the authority to consult and concur on TCM substitutions and additions. The delegation of authority allows the

Regional Administrators to further delegate these responsibilities to the regional air division directors, but no further.

#### IX. Categorical Hot-Spot Findings for Projects in Carbon Monoxide Nonattainment and Maintenance Areas

##### A. Background

Since the initial conformity rule was promulgated in 1993, a hot-spot analysis has been required for all project-level conformity determinations in CO nonattainment and maintenance areas (40 CFR 93.116 and 93.123(a)). A CO hot-spot analysis is an estimation of likely future localized pollutant concentrations and a comparison of those concentrations to the CO national ambient air quality standards ("standards") (40 CFR 93.101). A hot-spot analysis assesses air quality impacts on a scale smaller than the entire nonattainment or maintenance area, such as a congested roadway intersection.

A CO hot-spot analysis must show that a non-exempt FHWA/FTA project does not cause any new violations of the CO standards or increase the frequency or severity of existing violations (40 CFR 93.116(a)). Until a CO attainment demonstration or maintenance plan is approved, non-exempt FHWA/FTA projects must also eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (40 CFR 93.116(b)). These existing requirements remain unchanged by today's final rule.

The type of CO hot-spot analysis varies depending on the type of project involved. Section 93.123(a)(1) requires quantitative hot-spot analyses for projects of most concern; section 93.123(a)(2) requires either a quantitative or qualitative hot-spot analysis for all other projects. These existing requirements also remain unchanged by today's final rule.

Hot-spot analyses are also required for certain projects in PM<sub>2.5</sub> and PM<sub>10</sub> nonattainment and maintenance areas. The conformity rule allows DOT, in consultation with EPA, to make a "categorical hot-spot finding" in PM<sub>2.5</sub> and PM<sub>10</sub> nonattainment and maintenance areas if there is appropriate modeling that shows that a particular category of highway or transit projects will meet applicable Clean Air Act conformity requirements without further analysis (40 CFR 93.123(b)(3)). If DOT makes such a finding, then no further hot-spot analysis to meet 40 CFR 93.116(a) is needed for any project that fits the category addressed by the finding. A project sponsor would simply

reference a categorical hot-spot finding in the project-level conformity determination to meet hot-spot analysis requirements. See EPA's March 10, 2006, final rule for further information (71 FR 12502–12506) on categorical hot-spot findings in PM<sub>2.5</sub> or PM<sub>10</sub> areas.

#### B. Description of Final Rule

EPA is extending the categorical hot-spot finding provision that applies in PM areas to CO nonattainment and maintenance areas in today's final rule. This provision allows DOT, in consultation with EPA, to make categorical hot-spot findings for appropriate cases in CO nonattainment and maintenance areas if appropriate modeling shows that a type of highway or transit project does not cause or contribute to a new or worsened local air quality violation of the CO standards, as required under 40 CFR 93.116(a).<sup>11</sup> The regulatory text for this provision is found in § 93.123(a)(3).

Any DOT categorical hot-spot finding would have to be supported by a credible quantitative modeling demonstration showing that all potential projects in a category satisfy statutory requirements without further hot-spot analysis. Such modeling would need to be derived in consultation with EPA, and consistent with EPA's existing CO quantitative hot-spot modeling requirements, as described in 40 CFR 93.123(a), and approved emissions model requirements in 40 CFR 93.111. Modeling used to support a categorical hot-spot finding could consider the emissions produced from a category of projects based on potential project sizes, configurations, and levels of service. Modeling could also consider the emissions produced by a category of projects and the resulting impact on air quality under different circumstances.

The new provision does not affect the requirement for conformity determinations to be completed for all non-exempt projects in CO areas. The modeling on which a categorical finding is based would serve to fulfill the hot-spot analysis requirements for qualifying projects. The modeled scenarios used by DOT to make categorical hot-spot findings would be derived through consultation and participation by EPA.

Existing interagency consultation procedures for project-level conformity determinations also must be followed (40 CFR 93.105). Any project-level conformity determination that relies on

a categorical hot-spot finding is also still subject to existing public involvement requirements, during which commenters could address all appropriate issues relating to the categorical findings used in the conformity determination. See D. of this section for further information on how EPA and DOT will implement this new provision.

#### C. Rationale and Response to Comments

EPA believes it is both appropriate and in compliance with the Clean Air Act for DOT to be able to make categorical hot-spot findings where modeling shows that such projects will not cause or contribute to new or worsened air quality violations. As long as modeling shows that all potential projects in a category meet the current conformity rule's hot-spot requirements (40 CFR 93.116(a))—either through an analysis of a category of projects or a hot-spot analysis for a single project—then certain Clean Air Act conformity requirements are met.

Clean Air Act section 176(c)(1)(B) is the statutory criterion that must be met by all projects in CO nonattainment and maintenance areas that are subject to transportation conformity. Section 176(c)(1)(B) states that federally-supported transportation projects must not “cause or contribute to any new violation of any standard in any area; 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.”

EPA has not amended the existing CO hot-spot requirements in 40 CFR 93.116(a) that ensure areas meet Clean Air Act section 176(c)(1)(B) requirements. Today's provision for DOT to make categorical hot-spot findings simply allows future information to be taken into account in an expedited manner, so that further CO hot-spot analyses are not performed on an individual basis for projects where it is determined to be unnecessary to meet certain statutory requirements. Making hot-spot findings for certain projects on a category basis may reduce the resource burden for state, regional and local agencies, and provide greater certainty and stability to the transportation planning process, while still ensuring that all projects meet Clean Air Act requirements.

As noted above, CO categorical hot-spot findings under today's final rule could not be used to meet an additional hot-spot requirement for CO areas without approved attainment demonstrations or maintenance plans.

Clean Air Act section 176(c)(3)(B)(ii) requires projects in these CO areas to also “eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.” This criterion is stipulated by 40 CFR 93.109(f)(1) and 93.116(b) for FHWA/FTA projects in these CO areas. EPA believes that this criterion is more appropriately met by evaluating the unique circumstances of an individual project, rather than based on a broader analysis of a category of projects. Since most CO areas already have approved attainment demonstrations or maintenance plans, there should be limited practical impact of this aspect of today's proposal.

Six commenters supported this provision. These commenters agreed that allowing DOT to make categorical hot-spot findings, in consultation with EPA, provides an opportunity to streamline hot-spot analyses in all CO areas for certain projects.

Additionally, commenters thought these categorical hot-spot findings would be consistent with the practice in many states already, and would reduce resource burdens while still ensuring that projects meet Clean Air Act requirements.

Some commenters thought that allowing DOT to make categorical hot-spot findings in CO areas would offer flexibility in satisfying the intent of the Clean Air Act. A commenter recognized that categorical hot-spot findings would have to be supported by credible quantitative modeling, and the scenarios modeled by DOT to make categorical findings would be derived through consultation and participation by EPA. EPA notes that the commenter's understanding is correct; see Section IX.D. below for further description of how modeling would be developed.

While six commenters supported allowing DOT to make categorical hot-spot findings for projects in CO areas, one commenter was concerned that the provision to allow U.S. DOT to make categorical hot-spot findings would be a requirement, rather than an option. This provision is an optional flexibility and not a requirement. Once DOT has made a finding for a category of projects, a sponsor of a project in that category can choose whether to rely on DOT's modeling, or do its own project-level analysis. In other words, a project sponsor can always decide to do its own project-level analysis, even for a project that belongs to a category that DOT has already analyzed.

This same commenter thought that this provision is unnecessary. The commenter thought that the similar

<sup>11</sup> As discussed further below, categorical hot-spot findings under the proposal could not be used to meet 40 CFR 93.116(b) requirements in the limited number of CO areas without approved attainment demonstrations or maintenance plans.

provision that applies in PM areas was created because of uncertainties regarding PM and because interagency consultation is needed to determine which projects are "projects of air quality concern" and what constitutes a "significant number of diesel vehicles." This commenter also opined that the PM provision for categorical hot-spot analyses was developed because there are not acceptable modeling tools for PM<sub>2.5</sub> or PM<sub>10</sub>. In contrast, the commenter explained that the parameters used to identify the need for a CO hot-spot analysis are clearly stated under § 93.123(a), and the technology for CO hot-spot analyses is accepted by EPA and FHWA.

EPA disagrees with the commenter and believes it is useful to have a provision for categorical hot-spot analyses in CO areas. This provision will be useful because all non-exempt projects in CO areas that belong to a category for which DOT has made a hot-spot finding will have a hot-spot analysis available for use in future conformity determinations. As noted above, project sponsors have discretion on whether they want to model each project even if DOT has already made a categorical hot-spot finding for projects of that type.

This same commenter also stated that interagency consultation on CO analyses simply adds a layer of costly and inefficient bureaucracy that is unnecessary to complete the analysis. EPA disagrees with the commenter on this point as well. No additional layer of bureaucracy will be added to project-level conformity determinations in CO areas as a result of this provision. EPA and DOT's coordination on modeling for categorical hot-spot findings will occur separately from any particular project's conformity determination.

#### *D. General Implementation for Categorical Hot-Spot Findings*

EPA and DOT will implement the CO categorical hot-spot finding provision similar to the implementation of PM<sub>2.5</sub> and PM<sub>10</sub> categorical hot-spot findings, as described in the March 10, 2006, final rule. A project-level conformity determination continues to be required for all non-exempt FHWA/FTA projects in CO areas. Modeling used to support a categorical hot-spot finding would be based on appropriate motor vehicle emissions factor models, dispersion models, and EPA's existing requirements for quantitative CO hot-spot modeling as specified in 40 CFR 93.123(a)(1) (40 CFR part 51, Appendix W (Guideline on Air Quality Models)). Categorical hot-spot findings and modeling to support such findings

would primarily involve EPA and DOT headquarters offices rather than field offices. Such coordination at the headquarters level will ensure national consistency in applying § 93.123(a)(3) and (b)(3).

In the March 2006 final rule (71 FR 12505), EPA and DOT described the general process for categorical hot-spot findings to be as follows:

- FHWA and/or FTA, as applicable, would develop modeling, analyses, and documentation to support the categorical hot-spot finding. This would be done with early and comprehensive consultation and participation with EPA.

- FHWA and/or FTA would provide EPA an opportunity to review and comment on the complete categorical hot-spot finding documentation. Any comments would need to be resolved in a manner acceptable to EPA prior to issuance of the categorical hot-spot finding. Consultation with EPA on issue resolution would be documented.

- FHWA and/or FTA would make the final categorical hot-spot finding in a memorandum or letter, which would be posted on EPA's and DOT's respective conformity Web sites.

Subsequently, transportation projects that meet the criteria set forth in the categorical hot-spot finding would reference that finding in their project-level conformity determination, which would be subject to interagency consultation and the public involvement requirements of the National Environmental Policy Act (NEPA) process and the conformity rule (40 CFR 93.105(e)). The existing consultation and public involvement processes would be used to consider the categorical hot-spot finding for a particular project.

#### **X. Removal of Regulation 40 CFR 93.109(e)(2)(v)**

##### *A. Description of Final Rule*

EPA is removing a provision of the transportation conformity rule that was vacated by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense v. EPA, et al.*, D.C. Cir. No. 04-1291) on October 20, 2006. This provision, 40 CFR 93.109(e)(2)(v), allowed 8-hour ozone areas to use the interim emissions test(s) for conformity instead of 1-hour ozone SIP budgets where the interim emissions test(s) was determined to be more appropriate to meet Clean Air Act requirements. The court vacated this provision and remanded it to EPA.

##### *B. Rationale and Response to Comments*

As discussed in the July 1, 2004, preamble (69 FR 40025), EPA

anticipated that this provision would be used infrequently but that there would be some cases where using the interim emissions test(s) would be more appropriate to meet Clean Air Act requirements. Because of the court's decision on this provision, 8-hour ozone areas can no longer rely on § 93.109(e)(2)(v) to use an interim emissions test(s) instead of using 1-hour ozone budget(s). Areas must now use all relevant existing 1-hour ozone budgets in future conformity determinations until 8-hour ozone emissions budgets are found adequate or are approved for a given analysis year. EPA received one comment agreeing that the removal is consistent with the court ruling.

The court's decision has minimal impact since most 8-hour ozone areas are already either using their 1-hour or 8-hour ozone SIP budgets. EPA, in cooperation with DOT, has already provided assistance to the limited number of areas affected by the recent court decision.

#### **XI. Miscellaneous Revisions**

##### *A. Minor Revision to § 93.102(b)(4)*

EPA is making a minor revision to § 93.102(b)(4), which addresses the period of time that transportation conformity applies in maintenance areas. This is the period of time during which the requirements of the conformity rule apply in an area, and not the timeframe any one conformity determination examines, as discussed in Section VI., "Timeframes for Conformity Determinations."

Section 93.102(b)(4) had previously stated that conformity applied in "maintenance areas for 20 years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this subpart shall apply for more than 20 years." We are clarifying this section to ensure that conformity would apply in maintenance areas through the last year of their approved Clean Air Act section 175A(b) maintenance plan (i.e., the area's second 10-year maintenance plan), unless the applicable implementation plan specifies that conformity would continue to apply beyond the end of that maintenance plan. We received two comments that supported this clarification.

EPA is only clarifying § 93.102(b)(4) because the previous regulation may have been read to not account for the situation where a maintenance area submits a second maintenance plan that establishes a budget for a year more than 20 years beyond the date of EPA's

approval of the area's redesignation request and first maintenance plan.

For example, suppose an area's redesignation request and first maintenance plan are approved in 2006 and the maintenance plan establishes budgets for 2016. This area submits a second maintenance plan that extends through 2030 and establishes budgets for that year. Under the previous regulatory language, conformity applied in this area "for 20 years from the date EPA approves" the area's redesignation to maintenance, i.e., until 2026, despite the fact that the area would have budgets for 2030. This result would have been inconsistent with the Clean Air Act, which requires that transportation activities conform to the SIP. EPA's clarification that conformity applies through the last year of the approved second maintenance plan ensures that conformity applies throughout the time period covered by the SIP budgets. In this example, conformity would apply until 2030.

This revision will not change the implementation of conformity requirements in maintenance areas. The Clean Air Act requires that maintenance plans cover a period of 20 years from the year that EPA approves the area's redesignation request. With this change in the regulation, conformity would continue to apply in maintenance areas for at least 20 years beyond the date of EPA's redesignation of an area to maintenance. This clarification is consistent with EPA's intention as expressed in the preamble to the 1993 final transportation conformity rule, which stated, "If the maintenance plan establishes emissions budgets for more than twenty years, the area would be required to show conformity to that maintenance plan for more than twenty years" (58 FR 62206).

#### *B. Technical Corrections to §§ 93.102(b)(2)(v) and 93.119(f)(10)*

EPA is making corrections to §§ 93.102(b)(2)(v) and 93.119(f)(10) to change "sulfur oxides" to "sulfur dioxide" and "SO<sub>x</sub>" to "SO<sub>2</sub>." In the May 6, 2005, transportation conformity final rule (70 FR 24279), EPA finalized requirements for PM<sub>2.5</sub> precursors. In that final rulemaking, we included "sulfur oxides" as one of the precursors and referred to sulfur oxides as SO<sub>x</sub>. Since that rulemaking was finalized, EPA has finalized the PM<sub>2.5</sub> implementation rule (72 FR 20586) and indicated that sulfur dioxide (SO<sub>2</sub>) would be regulated as a PM<sub>2.5</sub> precursor rather than all sulfur oxides. We are making these corrections to the transportation conformity rule in order to make it consistent with EPA's broader

PM<sub>2.5</sub> implementation strategy. We received two comments that supported these corrections. This change will not impact current conformity practice.

#### *C. Revisions to "Table 2—Exempt Projects" in § 93.126*

EPA is making several minor clarifications to "Table 2—Exempt Projects" in § 93.126, under the category of "Safety." Specifically, EPA is updating the following terms:

- "Hazard elimination program" is now "Projects that correct, improve, or eliminate a hazardous location or feature;"
- "Safety improvement program" is now "Highway Safety Improvement Program implementation;" and
- "Pavement marking demonstration" is now "Pavement marking."

EPA is updating these terms to make them consistent with the terms in 23 U.S.C. 148, which has been amended by SAFETEA-LU section 1401. These revisions to Table 2 of the conformity regulation do not change the types of safety projects that are exempt from transportation conformity requirements. These revisions would only update the terminology to be consistent with the changes made by SAFETEA-LU to 23 U.S.C. 148. For more details see Section XI. C. "Revisions to 'Table 2—Exempt Projects' in § 93.126" in the May 2, 2007, notice of proposed rulemaking (72 FR 24488).

We received five comments on this portion of the proposal. Several of the commenters indicated that they support the changes to the list of exempt projects.

One commenter asked if EPA had considered revising the list of exempt projects in 40 CFR 93.126 to further clarify the types of projects that are exempt or non-exempt under "Transportation Enhancement Activities." FHWA's guidance on activities that may be funded with Transportation Enhancement Activities is available on DOT's Web site at: <http://www.fhwa.dot.gov/environment/te/guidance.htm#eligible>. After reviewing this guidance, we have concluded that 40 CFR 93.126 is correct and additional changes are not required.

Some commenters recommended additions to the list of exempt projects in § 93.126. Given that we did not propose and request public comment on these additional changes to the list of exempt projects, these comments are outside the scope of today's rulemaking.

#### *D. Definitions*

Today's final rule revises the definitions of "metropolitan planning organization (MPO)" and

"transportation improvement program (TIP)" to reflect the definitions in SAFETEA-LU sections 3005(a) and 6001(a). Pursuant to SAFETEA-LU, the term "MPO" now refers to the policy board for the organization that is designated under 23 U.S.C. 134(d) and 49 U.S.C. 5303(d). EPA is revising the definitions of these terms in § 93.101 to be consistent with the new statutory definitions. These changes have no practical impact in conformity implementation.

EPA received three comments supporting the revisions to the definitions of MPO and TIP because these changes make the transportation conformity regulation consistent with SAFETEA-LU.

#### *E. Minor Clarifications for Hot-Spot Analyses*

EPA is incorporating two minor clarifications to the conformity rule's hot-spot analysis provisions. These changes do not substantively change current requirements but should improve understanding and implementation of the conformity rule, in light of other rule changes. Three commenters supported these changes related to hot-spot analyses.

First, EPA is making minor changes to §§ 93.109(l)(2)(i) and 93.116(a) to ensure that CO, PM<sub>10</sub>, and PM<sub>2.5</sub> hot-spot analyses will continue to consider a project's air quality impact over the entire timeframe of the transportation plan or long-range statewide transportation plan, as appropriate. Specifically, EPA's minor change to § 93.116(a) ensures that hot-spot analyses cover the timeframe of the transportation plan in metropolitan and donut nonattainment and maintenance areas. The addition to § 93.109(l)(2)(i) ensures that hot-spot analyses in isolated rural areas examine a project's air quality impact over the timeframe of the long-range statewide transportation plan.

As discussed in Section VI., today's final rule allows MPOs to elect to shorten the timeframe addressed by transportation plan and TIP conformity determinations, and allows state DOTs to elect to shorten the timeframe addressed by regional emissions analyses in isolated rural areas. The minor changes to §§ 93.116(a) and 93.109(l)(2)(i) ensure that project-level hot-spot analyses examine the appropriate time period, even if the timeframe of the long-range transportation plan or TIP conformity determination or regional emissions analysis is shortened. The Clean Air Act provisions that allow an election to shorten the timeframe covered by

conformity determinations apply only to transportation plan and TIP conformity determinations, or regional emissions analyses in isolated rural areas, and do not apply to hot-spot analyses.

Second, today's final rule incorporates a technical clarification to § 93.123(b)(1)(i) to address some confusion in the field since our March 10, 2006, final rule (71 FR 12468). Section 93.123(b)(1)(i) requires PM<sub>2.5</sub> or PM<sub>10</sub> hot-spot analyses to be completed for "New highway projects that have a significant number of diesel vehicles, and expanded projects that have a significant increase in the number of diesel vehicles." The prior wording was "New or expanded highway projects that have a significant number of or significant increase in diesel vehicles."

Since the March 2006 final rule was promulgated, EPA and DOT have received several questions regarding what types of new and expanded highway projects are covered by § 93.123(b)(1)(i). For example, some state and local transportation agencies have asked how the current rule's reference to a "significant increase in diesel vehicles" applies to new highway projects. Although EPA and DOT have answered these and other questions,<sup>12</sup> clarifying this provision of the conformity rule will assist planners as they implement the rule in the future. The technical clarification in today's final rule does not change the type of new or expanded highway projects that would require PM<sub>2.5</sub> or PM<sub>10</sub> hot-spot analyses for transportation conformity purposes; we are simply clarifying the provision through a grammatical change.

#### *F. Minor Revision for Terms Used To Describe Transportation Plan Revisions*

EPA is finalizing a minor revision to how §§ 93.104(b)(2) and 93.105(c)(1)(v) describe transportation plan changes that require conformity determinations, but are not comprehensive transportation plan updates. EPA is changing references for transportation plan "revision(s)" to be transportation plan "amendment(s)," to be consistent with the revised planning definitions in DOT's February 14, 2007, final transportation planning regulations (72 FR 7224). Today's changes provide consistency between how mid-cycle transportation plan and TIP changes are currently described in the conformity rule. The revision does not change the

substantive requirements for when a conformity determination is required for transportation plan changes. In addition, the minor wording change to § 93.105(c)(1)(v) does not necessitate a conformity SIP revision. Three commenters supported the changes.

#### *G. Minor Revision to Reference for Public Consultation Provision*

EPA is updating a reference in § 93.105(e) of the conformity rule to be consistent with DOT's transportation planning regulations. Section 93.105(e) describes the procedures for consulting with the general public on conformity determinations. This provision now refers to 23 CFR 450.316(a) of DOT's transportation planning regulations, which describes how public involvement occurs during the development of transportation plans and TIPs. In its February 14, 2007, final rule (72 FR 7224), DOT reorganized 23 CFR 450.316 to reflect the new SAFETEA-LU statute. DOT moved the public consultation procedures that EPA has historically relied upon in the conformity rule from 23 CFR 450.316(b) to 23 CFR 450.316(a). Today's final rule reflects this change in DOT's transportation planning regulations. Three commenters supported this change.

This revision does not change the substantive requirements for the public consultation requirements for conformity determinations. In addition, today's change does not cause states to revise their conformity SIPs, since the revision involves an administrative change to one reference in DOT's regulations. EPA has not required conformity SIP revisions for similar reference changes in the past; the public participation requirements in existing approved conformity SIPs can be implemented as intended even if they do not reflect the most current citation in DOT's regulations.

## **XII. Statutory and Executive Order Reviews**

### *A. Executive Order 12866: Regulatory Planning and Review*

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

### *B. Paperwork Reduction Act*

Transportation conformity determinations are required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with ("conform

to") the purpose of the SIP. Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant air quality standards. Transportation conformity applies under EPA's conformity regulations at 40 CFR parts 51.390 and 93 to areas that are designated nonattainment and those redesignated to attainment after 1990 ("maintenance areas" with SIPs developed under Clean Air Act section 175A) for transportation-source criteria pollutants. The Clean Air Act gives EPA the statutory authority to establish the criteria and procedures for determining whether transportation activities conform to the SIP.

This action does not impose any new information collection burden or any new information collection requirements. The Office of Management and Budget has previously approved the information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements of EPA's existing transportation conformity rule and the revisions in today's action are addressed by two information collection requests (ICRs). Requirements for carbon monoxide, PM<sub>10</sub>, nitrogen dioxide, and 1-hour ozone nonattainment and maintenance areas are covered under the DOT ICR entitled, "Metropolitan and Statewide Transportation Planning," with the OMB control number of 2132-0529. Requirements related to PM<sub>2.5</sub> and 8-hour ozone nonattainment and maintenance areas are covered by the EPA ICR entitled, "Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects Under the New 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards," with OMB control number 2060-0561, EPA ICR number 2130.02. EPA is currently revising its ICR to cover all transportation conformity burden (EPA ICR No. 2130.03, OMB Control No. 2060-0561), and this ICR will incorporate the efficiencies in today's final rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing, and providing information; adjust the existing ways to

<sup>12</sup> For additional information about PM<sub>2.5</sub> and PM<sub>10</sub> hot-spot analysis requirements, including regulations, guidance, and Q and As, see EPA's and DOT's Web sites at: <http://www.epa.gov/otaq/stateresources/transconf/index.htm> and <http://www.fhwa.dot.gov/environment/conform.htm>.

comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not collect information, and a person is not required to respond to an agency's request for information unless it has a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This regulation directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the Regulatory Flexibility Act.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit

analysis, for proposed and final rules with "federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule itself does not contain a federal mandate that may result in expenditures of \$100 million or more by state, local, and tribal governments, in the aggregate, or the private sector in any one year. The primary purpose of this rule is to amend the conformity rule to be consistent with Clean Air Act section 176(c) as amended by SAFETEA-LU. The Clean Air Act amendments made by SAFETEA-LU were intended to reduce the burden of demonstrating conformity in designated nonattainment and maintenance areas subject to conformity requirements. Thus, although this rule explains how to implement these Clean Air Act amendments, it merely implements already established law that imposes conformity requirements and does not itself impose requirements that may result in expenditures of \$100 million or more in any year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA and EPA has not prepared a statement with respect to budgetary impacts.

EPA has determined that this rule contains no regulatory requirements that

might significantly or uniquely affect small governments. This rule will not significantly or uniquely impact small governments because it directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. Additionally, this rule explains how to implement Clean Air Act requirements, as such it merely implements already established law that imposes conformity requirements and does not itself impose requirements.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act requires conformity to apply in certain nonattainment and maintenance areas as a matter of law, and this rule merely establishes and revises procedures for transportation planning entities in subject areas to follow in meeting their existing statutory obligations. Thus, Executive Order 13132 does not apply to this rule.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175: "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the federal

government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.”

Today's amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments, as the Clean Air Act requires transportation conformity to apply in any area that is designated nonattainment or maintenance by EPA. This rule amends the conformity rule to be consistent with Clean Air Act section 176(c) as amended by SAFETEA-LU. The Clean Air Act amendments made by SAFETEA-LU affect nonattainment and maintenance areas subject to conformity requirements. This rule does not have tribal implications, as specified in Executive Order 13175. Accordingly, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use*

This rule is not subject to Executive Order 13211, “Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355; May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we have determined that this rule is not likely to have any significant adverse effects on energy supply.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective February 25, 2008.

**List of Subjects in 40 CFR Parts 51 and 93**

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Highways and roads, Intergovernmental relations, Mass transportation, Nitrogen Dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: January 9, 2008.

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons set out in the preamble, 40 CFR parts 51 and 93 are amended as follows:

**PART 51—[AMENDED]**

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

**Subpart T—[Amended]**

■ 2. An authority citation for subpart T of part 51 is added to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

■ 3. Section 51.390 is revised to read as follows:

**§ 51.390 Implementation plan revision.**

(a) *Purpose and applicability.* The federal conformity rules under part 93, subpart A, of this chapter, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as EPA approves the conformity implementation plan revision required by this subpart. A state with an area subject to this subpart and part 93, subpart A, of this chapter must submit to EPA a revision to its implementation plan which contains criteria and procedures for DOT, MPOs and other state or local agencies to assess the conformity of transportation plans, programs, and projects, consistent with this subpart and part 93, subpart A, of this chapter. The federal conformity regulations contained in part 93, subpart A, of this chapter would continue to apply for the portion of the requirements that the state did not include in its conformity implementation plan and the portion, if any, of the state's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan conformity requirements remain enforceable until the state submits a revision to its applicable implementation plan to specifically remove them and that revision is approved by EPA.

(b) *Conformity implementation plan content.* To satisfy the requirements of Clean Air Act section 176(c)(4)(E), the implementation plan revision required by this section must include the following three requirements of part 93, subpart A, of this chapter: §§ 93.105, 93.122(a)(4)(ii), and 93.125(c). A state may elect to include any other provisions of part 93, subpart A. If the provisions of the following sections of part 93, subpart A, of this chapter are included, such provisions must be included in verbatim form, except insofar as needed to clarify or to give effect to a stated intent in the revision to establish criteria and procedures

more stringent than the requirements stated in this chapter: §§ 93.101, 93.102, 93.103, 93.104, 93.106, 93.109, 93.110, 93.111, 93.112, 93.113, 93.114, 93.115, 93.116, 93.117, 93.118, 93.119, 93.120, 93.121, 93.126, and 93.127. A state's conformity provisions may contain criteria and procedures more stringent than the requirements described in this subpart and part 93, subpart A, of this chapter only if the state's conformity provisions apply equally to non-federal as well as federal entities.

(c) *Timing and approval.* A state must submit this revision to EPA by November 25, 1994 or within 12 months of an area's redesignation from attainment to nonattainment, if the state has not previously submitted such a revision. The state must also revise its conformity implementation plan within 12 months of the date of publication of any final amendments to §§ 93.105, 93.122(a)(4)(ii), and 93.125(c), as appropriate. Any other portions of part 93, subpart A, of this chapter that the state has included in its conformity implementation plan and EPA has approved must be revised in the state's implementation plan and submitted to EPA within 12 months of the date of publication of any final amendments to such sections. EPA will provide DOT with a 30-day comment period before taking action to approve or disapprove the submission. In order for EPA to approve the implementation plan revision submitted to EPA under this subpart, the plan revision must address and give full legal effect to the following three requirements of part 93, subpart A: §§ 93.105, 93.122(a)(4)(ii), and 93.125(c). Any other provisions that are incorporated into the conformity implementation plan must also be done in a manner that gives them full legal effect. Following EPA approval of the state conformity provisions (or a portion thereof) in a revision to the state's conformity implementation plan, conformity determinations will be governed by the approved (or approved portion of the) state criteria and procedures as well as any applicable portions of the federal conformity rules that are not addressed by the approved conformity SIP.

#### PART 93—[AMENDED]

■ 4. The authority citation for part 93 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

■ 5. Section 93.101 is amended by:

■ a. Revising the definitions for “Metropolitan planning organization (MPO)” and “Transportation improvement program (TIP)”; and

■ b. Revising the first sentence of the definition for “Transportation control measure (TCM)”.

The revisions read as follows:

#### § 93.101 Definitions.

\* \* \* \* \*

*Metropolitan planning organization (MPO)* means the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).

\* \* \* \* \*

*Transportation control measure (TCM)* is any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA section 176(c)(8), that is either one of the types listed in CAA section 108, 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. \* \* \*

*Transportation improvement program (TIP)* means a transportation improvement program developed by a metropolitan planning organization under 23 U.S.C. 134(j).

\* \* \* \* \*

#### § 93.102 [Amended]

■ 6. Section 93.102 is amended as follows:

■ a. In paragraph (b)(2)(v), by removing “sulfur oxides (SO<sub>x</sub>)” and adding in its place “sulfur dioxide (SO<sub>2</sub>)”; and

■ b. In paragraph (b)(4), removing “for 20 years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment” and adding in its place “through the last year of a maintenance area's approved CAA section 175A(b) maintenance plan”.

■ 7. Section 93.104 is amended as follows:

■ a. By revising paragraphs (b)(2), (b)(3), and (c)(3);

■ b. By revising paragraph (e) introductory text; and

■ c. By adding paragraph (f).

#### § 93.104 Frequency of conformity determinations.

\* \* \* \* \*

(b) \* \* \*

(2) All transportation plan amendments must be found to conform before the transportation plan amendments are approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in § 93.126 or § 93.127. The conformity determination must be based on the transportation

plan and the amendment taken as a whole.

(3) The MPO and DOT must determine the conformity of the transportation plan (including a new regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, a 12-month grace period will be implemented as described in paragraph (f) of this section. At the end of this 12-month grace period, the existing conformity determination will lapse.

(c) \* \* \*

(3) The MPO and DOT must determine the conformity of the TIP (including a new regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, a 12-month grace period will be implemented as described in paragraph (f) of this section. At the end of this 12-month grace period, the existing conformity determination will lapse.

(e) *Triggers for transportation plan and TIP conformity determinations.* Conformity of existing transportation plans and TIPs must be redetermined within two years of the following, or after a 12-month grace period (as described in paragraph (f) of this section) 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 DOT:

\* \* \* \* \*

(f) *Lapse grace period.* During the 12-month grace period referenced in paragraphs (b)(3), (c)(3), and (e) of this section, a project may be found to conform according to the requirements of this part if:

(1) The project is included in the currently conforming transportation plan and TIP (or regional emissions analysis); or

(2) the project is included in the most recent conforming transportation plan and TIP (or regional emissions analysis).

#### § 93.105 [Amended]

■ 8. Section 93.105 is amended by removing “revisions or” in paragraph (c)(1)(v), and by removing the reference “23 CFR 450.316(b)” in paragraph (e) and adding in its place “23 CFR 450.316(a)”.

■ 9. Section 93.106 is amended as follows:

■ a. By revising the section heading;

- b. By revising paragraphs (a)(1)(iii) and (iv);
- c. By adding new paragraph (a)(v);
- d. By redesignating paragraph (d) as paragraph (e); and
- e. By adding new paragraph (d).

**§ 93.106 Content of transportation plans and timeframe of conformity determinations.**

- (a) \* \* \*
- (1) \* \* \*
- (iii) The attainment year must be a horizon year if it is in the timeframe of the transportation plan and conformity determination;
- (iv) The last year of the transportation plan's forecast period must be a horizon year; and
- (v) If the timeframe of the conformity determination has been shortened under paragraph (d) of this section, the last year of the timeframe of the conformity determination must be a horizon year.

\* \* \* \* \*

**(d) Timeframe of conformity determination.**

(1) Unless an election is made under paragraph (d)(2) or (d)(3) of this section, the timeframe of the conformity determination must be through the last year of the transportation plan's forecast period.

(2) For areas that do not have an adequate or approved CAA section 175A(b) maintenance plan, the MPO may elect to shorten the timeframe of the transportation plan and TIP conformity determination, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(i) The shortened timeframe of the conformity determination must extend at least to the latest of the following years:

- (A) The tenth year of the transportation plan;
- (B) The latest year for which an adequate or approved motor vehicle emissions budget(s) is established in the submitted or applicable implementation plan; or
- (C) The year after the completion date of a regionally significant project if the project is included in the TIP or the project requires approval before the subsequent conformity determination.

(ii) The conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis, if such a year extends beyond the timeframe of the conformity determination.

(3) For areas that have an adequate or approved CAA section 175A(b) maintenance plan, the MPO may elect to shorten the timeframe of the conformity determination to extend through the last year of such maintenance plan after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(4) Any election made by an MPO under paragraphs (d)(2) or (d)(3) of this section shall continue in effect until the MPO elects otherwise, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

\* \* \* \* \*

**§ 93.109 [Amended]**

■ 10. Section 93.109 is amended as follows:

- a. By revising the introductory text of paragraph (e)(2);
- b. By removing paragraph (e)(2)(v); and
- c. By revising paragraph (l)(2)(i):

**§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.**

\* \* \* \* \*

(e) \* \* \*

(2) Prior to paragraph (e)(1) of this section applying, the following test(s) must be satisfied:

\* \* \* \* \*

- (1) \* \* \*
- (2) \* \* \*

(i) When the requirements of §§ 93.106(d), 93.116, 93.118, and 93.119 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. When the requirements of § 93.106(d) apply to isolated rural nonattainment and maintenance areas, references to "MPO" should be taken to mean the state department of transportation.

■ 11. Section 93.114 is amended by revising the introductory text to read as follows:

**§ 93.114 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, or a project must meet the requirements in § 93.104(f) during the 12-month lapse grace period.

\* \* \* \* \*

■ 12. Section 93.115 is amended by revising the section heading and adding a new paragraph (e) to read as follows:

**§ 93.115 Criteria and procedures: Projects from a transportation plan and TIP.**

\* \* \* \* \*

(e) Notwithstanding the requirements of paragraphs (a), (b), and (c) of this section, a project must meet the requirements of § 93.104(f) during the 12-month lapse grace period.

■ 13. Section 93.116(a) is amended in the fourth sentence by removing "(or regional emissions analysis)".

■ 14. Section 93.118 is amended as follows:

- a. By revising paragraph (b) introductory text;
- b. By revising the first sentence in paragraph (d)(2); and
- c. By adding new paragraph (d)(3).

**§ 93.118 Criteria and procedures: Motor vehicle emissions budget.**

\* \* \* \* \*

(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 timeframe of the transportation plan and conformity determination), for the last year of the timeframe of the conformity determination (as described under § 93.106(d)), and for any intermediate years within the timeframe of the conformity determination as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

\* \* \* \* \*

(d) \* \* \*

(2) The regional emissions analysis may be performed for any years in the timeframe of the conformity determination (as described under § 93.106(d)) 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 conformity determination) and the last year of the timeframe of the conformity determination. \* \* \*

(3) When the timeframe of the conformity determination is shortened under § 93.106(d)(2), the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan, and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis (if such a year

extends beyond the timeframe of the conformity determination).

\* \* \* \* \*

■ 15. Section 93.119 is amended as follows:

- a. In paragraph (f)(10), by removing "SO<sub>x</sub>" and adding "SO<sub>2</sub>" in its place;
- b. By revising the last sentence in paragraph (g)(1); and
- c. By adding new paragraph (g)(3).

**§ 93.119 Criteria and procedures: Interim emissions in areas without motor vehicle emissions budgets.**

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \* The last year of the timeframe of the conformity determination (as described under § 93.106(d)) must also be an analysis year.

\* \* \* \* \*

(3) When the timeframe of the conformity determination is shortened under § 93.106(d)(2), the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan.

\* \* \* \* \*

■ 16. Section 93.120 is amended by revising paragraph (a)(2) to read as follows:

**§ 93.120 Consequences of control strategy implementation plan failures.**

(a) \* \* \*

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, only projects in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of § 93.104(f) during the 12-month lapse grace period 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 four years of the currently conforming transportation plan and TIP or that meets the requirements of § 93.104(f) during the 12-month lapse grace period may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, EPA finds its motor vehicle emissions budget(s) adequate pursuant to § 93.118 or approves the submission, and conformity to the implementation plan revision is determined.

\* \* \* \* \*

■ 17. Section 93.121 is amended by revising paragraphs (a)(1) and (2) to read as follows:

**§ 93.121 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) \* \* \*

(1) The project comes from the currently conforming transportation plan and TIP (or meets the requirements of § 93.104(f) during the 12-month lapse grace period), and the project's design concept and scope have not changed significantly from those that were included in the regional emissions analysis for that transportation plan and TIP;

(2) The project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (or meets the requirements of § 93.104(f) during the 12-month lapse grace period), 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 from those that were included in the regional emissions analysis; or

\* \* \* \* \*

■ 18. Section 93.123 is amended by adding paragraph (a)(3) and revising paragraph (b)(1)(i) to read as follows:

**§ 93.123 Procedures for determining localized CO, PM<sub>10</sub>, and PM<sub>2.5</sub> concentrations (hot-spot analysis).**

(a) \* \* \*

(3) DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that (93.116(a) is met without further hot-spot analysis for any project described in paragraphs (a)(1) and (a)(2) of this section based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality circumstances of a given CO nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

(b) \* \* \*

(1) \* \* \*

(i) New highway projects that have a significant number of diesel vehicles, and expanded highway projects that have a significant increase in the number of diesel vehicles;

\* \* \* \* \*

**§ 93.126 [Amended]**

■ 19. Table 2 in § 93.126 is amended under the heading "Safety" as follows:

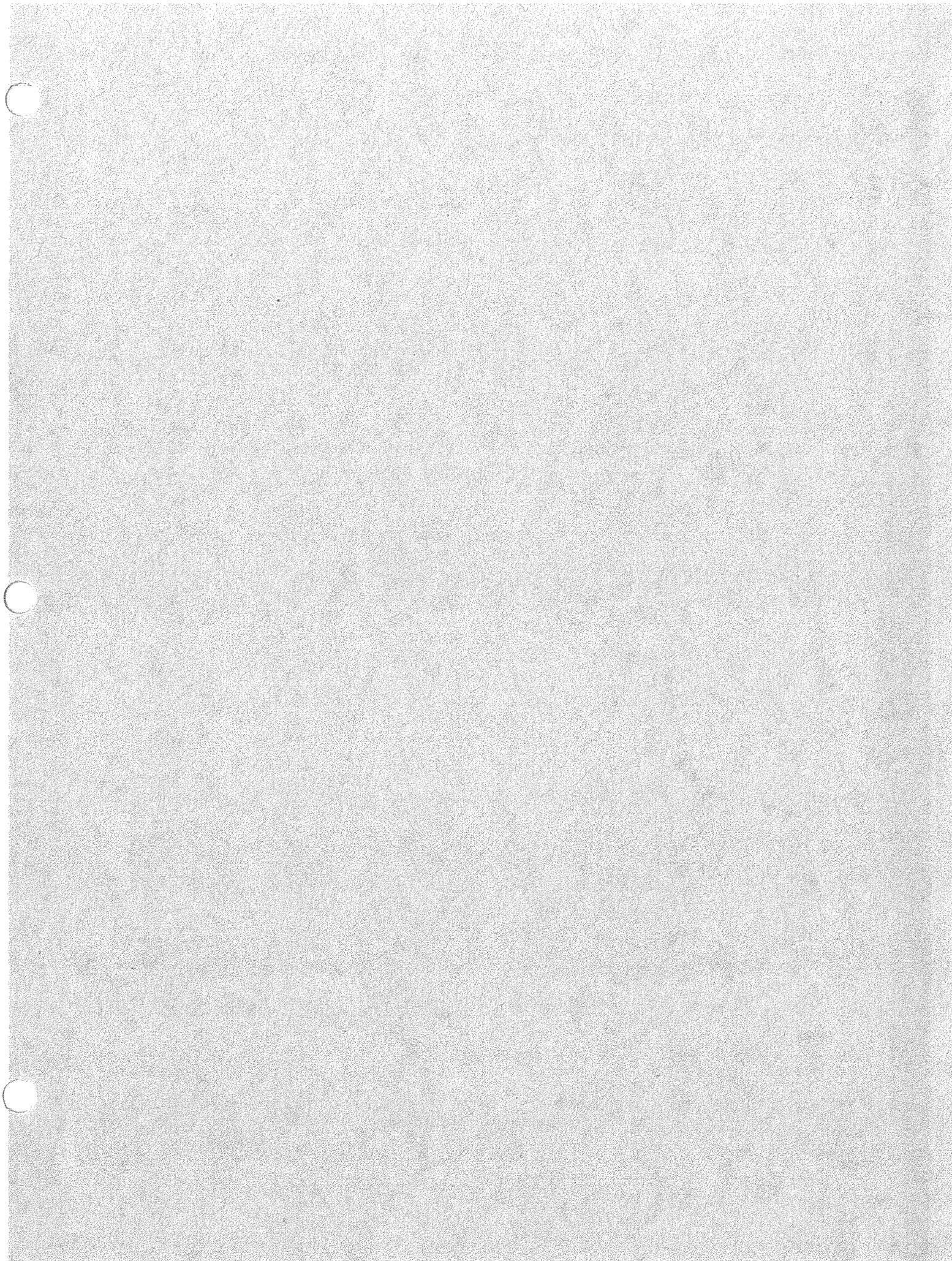
■ a. By removing the entry "Hazard elimination program" and adding in its place "Projects that correct, improve, or eliminate a hazardous location or feature";

■ b. By removing the entry "Safety improvement program" and adding in its place "Highway Safety Improvement Program implementation"; and

■ c. By removing the entry "Pavement marking demonstration" and adding in its place "Pavement marking".

[FR Doc. E8-597 Filed 1-23-08; 8:45 am]

BILLING CODE 6560-50-P







SUSANA MARTINEZ  
Governor  
JOHN A. SANCHEZ  
Lieutenant Governor

*State of New Mexico*  
**ENVIRONMENT DEPARTMENT**

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DAVE MARTIN  
Secretary  
BUTCH TONGATE  
Deputy Secretary

September 26, 2012

Mr. Ron Curry  
Regional Administrator  
U.S. EPA Region 6 (6-RA)  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

RE: Streamlining of New Mexico's Transportation Conformity Regulation, 20.2.99 NMAC

Dear Mr. Curry:

On October 10, 2011, New Mexico submitted to EPA revisions to 20.2.99 NMAC - *Conformity to the State Implementation Plan of Transportation Plans, Programs, and Project*, for EPA's approval and incorporation into New Mexico's State Implementation Plan (SIP). EPA has not yet acted upon this submittal.

The purpose of this letter is to request that in reviewing New Mexico's October 10, 2011 and any future transportation conformity SIP submittals, EPA only consider and act on the three elements (40 CFR § 93.105; § 93.122(a)(4)(ii); and § 93.125(c)) that are required under Clean Air Act section 176(c)(4)(E), as amended in August of 2005 by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), and that EPA take no action on the remainder of the State's transportation conformity SIP.

As you know, EPA "strongly encourages states to only include the three required provisions in a conformity SIP to take advantage of the streamlining possibilities provided by the Clean Air Act, as amended by SAFETEA-LU" in order to "reduce the administrative burden ... by minimize[ing] the possibility of having to revise the conformity SIP each time the federal rule is revised." 73 Fed. Reg. 4420, 4430 - 4432 (Jan. 24, 2008). The New Mexico Environment Department agrees that this approach will reduce our administrative burden without affecting the substantive requirements for transportation conformity, by eliminating the need to replicate verbatim the remainder of 40 C.F.R. Part 93 in the New Mexico Administrative Code. We therefore make this request, as recommended in EPA's *Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)*, at p. 6.

September 26, 2012

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Thank you for your assistance in this matter. If you have any questions, please contact Gail Cooke of my staff at 505-476-4319 or via email at [gail.cooke@state.nm.us](mailto:gail.cooke@state.nm.us).

Sincerely,

A handwritten signature in cursive script that reads "Dave Martin".

Dave Martin

Secretary, New Mexico Environment Department

cc: Mr. Jeffrey Riley, EPA Region VI  
Mr. Guy Donaldson, EPA Region VI  
Mr. Tom Diggs, EPA Region VI  
Mr. Richard Goodyear, Air Quality Bureau  
Ms. Mary Lou Leonard, Director, Environmental Health Department, City of Albuquerque





EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards—Elements 110(a)(1) and (2)(C) and (J).	Tennessee .....	12/14/2007	3/14/2012 [Insert citation of publication].	

[FR Doc. 2012-5764 Filed 3-13-12; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 93**

[EPA-HQ-OAR-2009-0128; FRL-9637-3]

RIN 2060-AP57

**Transportation Conformity Rule Restructuring Amendments**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is amending the transportation conformity rule to finalize provisions that were proposed on August 13, 2010. These amendments restructure several sections of the transportation conformity rule so that they apply to any new or revised National Ambient Air Quality Standards. EPA is also finalizing several clarifications to improve implementation of the rule. EPA is not taking a final action at this time on the proposal that areas analyze a near-term analysis year when using the budget test.

The Clean Air Act requires federally supported transportation plans, transportation improvement programs, and projects to be consistent with (conform to) the purpose of the state air

quality implementation plan. EPA consulted with the U.S. Department of Transportation and they concur in the development of this final rule.

**DATES:** This final rule is effective on April 13, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2009-0128. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Patty Klavon, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, email address: *klavon.patty@epa.gov*, telephone number: (734) 214-4476,

fax number: (734) 214-4052; or Laura Berry, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, email address: *berry.laura@epa.gov*, telephone number: (734) 214-4858, fax number: (734) 214-4052.

**SUPPLEMENTARY INFORMATION:** The contents of this preamble are listed in the following outline:

- I. General Information
- II. Background on the Transportation Conformity Rule
- III. Restructure of Section 93.109—Tests of Conformity for Transportation Plans, TIPs, and Projects—and Changes to Related Sections
- IV. Additional Option for Areas That Qualify for EPA's Clean Data Regulations or Policies
- V. Restructure of the Baseline Year Test for Existing NAAQS and Baseline Year Test for Future NAAQS
- VI. How do these amendments affect conformity SIPs?
- VII. Statutory and Executive Order Reviews

**I. General Information**

*A. Does this action apply to me?*

Entities potentially regulated by the transportation conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Chapter 53. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government .....	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government .....	State transportation and air quality agencies.
Federal government .....	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final rule. This table lists the types of entities of which EPA is aware that potentially could be regulated by the transportation

conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in 40 CFR 93.102. If you have questions regarding

the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. How do I get copies of this document?*

## 1. Docket

EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OAR-2009-0128. You can get a paper copy of this **Federal Register** document, as well as the documents specifically referenced in this action, any public comments received, and other information related to this action at the official public docket. See the **ADDRESSES** section for its location.

## 2. Electronic Access

You may access this **Federal Register** document electronically through EPA's Transportation Conformity Web site at [www.epa.gov/otaq/stateresources/transconf/index.htm](http://www.epa.gov/otaq/stateresources/transconf/index.htm). An electronic version of the official public docket is also available through [www.regulations.gov](http://www.regulations.gov). You may use [www.regulations.gov](http://www.regulations.gov) to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then enter the appropriate docket identification number.

Certain types of information will not be placed in the electronic public docket. Information claimed as CBI and other information for which disclosure is restricted by statute is not available for public viewing in the electronic public docket. EPA's policy is that copyrighted material will not be placed in the electronic public docket but will be available only in printed, paper form in the official public docket.

To the extent feasible, publicly available docket materials will be made available in the electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in the electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the **ADDRESSES** section. EPA intends to provide electronic access in the future to all of the publicly available docket materials through the electronic public docket.

For additional information about the electronic public docket, visit the EPA Docket Center homepage at [www.epa.gov/epahome/dockets.htm](http://www.epa.gov/epahome/dockets.htm).

**II. Background on the Transportation Conformity Rule***A. What is transportation conformity?*

Transportation conformity is required under Clean Air Act (CAA) section

176(c) (42 U.S.C. 7506(c)) to ensure that transportation plans, transportation improvement programs (TIPs) and federally supported highway and transit projects are consistent with (conform to) the purpose of the state air quality implementation plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment or achievement of the relevant National Ambient Air Quality Standards (NAAQS) and interim emission reductions or milestones. Transportation conformity (hereafter, "conformity") applies to areas that are designated nonattainment, and those areas redesignated to attainment after 1990 ("maintenance areas") for transportation-related criteria pollutants: Carbon monoxide (CO), ozone, nitrogen dioxide (NO<sub>2</sub>) and particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>).<sup>1</sup>

EPA's conformity rule (40 CFR Parts 51.390 and 93 Subpart A) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. EPA first promulgated the conformity rule on November 24, 1993 (58 FR 62188), and subsequently published several other amendments. DOT is EPA's federal partner in implementing the conformity regulation. EPA consulted with the U.S. Department of Transportation (DOT), and they concur on this final rule.

*B. Why are we issuing this final rule?*

EPA is amending the conformity rule so that its requirements will clearly apply to areas designated for any future new or revised NAAQS. To achieve this, today's final rule restructures two sections of the conformity rule, 40 CFR 93.109 and 93.119, and makes changes to certain definitions in 40 CFR 93.101. These amendments are intended to minimize the need to make administrative updates to the conformity rule merely to reference a specific new or revised NAAQS. EPA has already undertaken two conformity rulemakings primarily for the purpose of addressing a new or revised NAAQS. See the March 24, 2010 Transportation Conformity Rule PM<sub>2.5</sub> and PM<sub>10</sub> Amendments ("PM Amendments") final rule and the July 1, 2004 final rule (75 FR 14260, and 69 FR 40004, respectively). Due to other CAA requirements, EPA will continue to establish new or revised NAAQS in the future. EPA believes that today's

<sup>1</sup> 40 CFR 93.102(b)(1) defines PM<sub>2.5</sub> and PM<sub>10</sub> as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

conformity rule revisions provide more certainty to implementers without compromising air quality benefits from the current program. These changes are described in Sections III. and V. of today's final rule.

EPA is also clarifying in today's final rule the additional conformity test option available to current ozone "clean data" areas and is extending that option to any nonattainment areas for which EPA has developed a clean data regulation or policy.<sup>2</sup> This provision should eliminate the need to update the conformity rule in the future in order to extend this conformity option to other NAAQS. See Section IV. of today's final rule for further details.

EPA is also finalizing a change to the wording of conformity rule section 93.118(b) that does not change its requirements. Section 93.118(b) of the conformity rule continues to require consistency<sup>3</sup> for any years where the SIP establishes a budget and for any years that are analyzed to meet the requirements in 40 CFR 93.118(d). This change simplifies this provision and eliminates repetitiveness within the regulation, but does not change the requirements for demonstrating consistency. EPA did not receive comments on this section, and we are finalizing it as proposed.

Section VI. covers how today's final rule affects conformity SIPs. A conformity SIP includes a state's specific criteria and procedures for certain aspects of the conformity process.<sup>4</sup>

In the August 13, 2010 **Federal Register** notice, EPA had proposed that a near-term year would have to be analyzed when using the budget test when an area's attainment date has passed or has not yet been established (75 FR 49435). EPA is not taking final action on this proposal at this time.

Finally, EPA received several comments requesting that we issue a rulemaking, rather than guidance, to address conformity requirements in areas designated for a distinct secondary NAAQS. Transportation conformity applies to any NAAQS for transportation-related criteria pollutants, including secondary

<sup>2</sup> Clean data refers to air quality monitoring data determined by EPA to indicate attainment of the NAAQS. Note that we are finalizing a minor change to the definition of clean data found in conformity rule section 93.101; see Section IV. of today's notice.

<sup>3</sup> That is, transportation plan and TIP emissions must be less than or equal to the budget(s) in the applicable SIP.

<sup>4</sup> For more information about conformity SIPs, see EPA's "Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)", (EPA-420-B-09-001, January 2009).

NAAQS.<sup>5</sup> CAA section 176(c) does not distinguish between primary and secondary NAAQS. EPA would issue future transportation conformity guidance as needed to implement new or revised NAAQS, including a distinct secondary NAAQS if one is promulgated in the future.

### III. Restructure of Section 93.109—Tests of Conformity for Transportation Plans, TIPs, and Projects—and Changes to Related Sections

#### A. Overview

Conformity determinations for transportation plans, TIPs, and projects not from a conforming transportation plan and TIP must include a regional emissions analysis that fulfills CAA requirements. The conformity rule provides for several different regional conformity tests that satisfy statutory requirements in different situations. Once a SIP with a budget is submitted for a NAAQS and EPA finds the budget adequate for conformity purposes or approves the SIP, conformity must be demonstrated using the budget test for that pollutant or precursor, as described in 40 CFR 93.118.

EPA has amended the conformity rule on two prior occasions to address a new or revised NAAQS. In the July 1, 2004 final rule (69 FR 40004), EPA amended 40 CFR 93.109 by adding new paragraphs to describe the regional conformity tests for the 1997 ozone areas that do not have 1-hour ozone budgets, 1997 ozone areas that have 1-hour ozone budgets, and 1997 PM<sub>2.5</sub> areas. Also, in the March 24, 2010 PM Amendments rulemaking (75 FR 14260), EPA amended 40 CFR 93.109 again by adding two new paragraphs to describe the regional conformity tests for 2006 PM<sub>2.5</sub> areas without 1997 PM<sub>2.5</sub> budgets, and 2006 PM<sub>2.5</sub> areas that have 1997 PM<sub>2.5</sub> budgets.

Given that CAA section 109(d)(1) requires EPA to revisit the NAAQS for criteria pollutants at least every five years, and that EPA is in the process of considering revisions to other NAAQS per this requirement, EPA anticipates other NAAQS revisions will be made in the future that will be subject to conformity requirements. Today's action restructures 40 CFR 93.109 to eliminate repetition and reduce the need to update the rule each time a NAAQS is promulgated. The same hierarchy of conformity tests as described below in B. of this section generally applies to all areas where conformity is required, and for the reasons described below, EPA believes it would apply to future

nonattainment and maintenance areas for transportation-related pollutants or NAAQS.

#### B. Description of the Final Rule

In today's action, EPA is restructuring 40 CFR 93.109 so that it contains two paragraphs:

- Regional conformity tests, which are covered by section 93.109(c); and,
- Project-level conformity tests, which are covered by section 93.109(d).

*New paragraph (c).* Today's final rule revises 40 CFR 93.109(c) so that requirements for using the budget test and/or interim emissions tests apply for any NAAQS in the following way:

- First, a nonattainment or maintenance area for a specific NAAQS must use the budget test, if the area has adequate or approved SIP budgets for that specific NAAQS (section 93.109(c)(1)). For example, once a 2006 PM<sub>2.5</sub> nonattainment area has adequate or approved SIP budgets for the 2006 PM<sub>2.5</sub> NAAQS, it must use those budgets in the budget test as the regional test of conformity for the 2006 PM<sub>2.5</sub> NAAQS;
- Second, if an area does not have such budgets but has adequate or approved budgets from a SIP that addresses a different NAAQS of the same criteria pollutant, these budgets must be used in the budget test. Where such budgets do not cover the entire area, the interim emissions test(s) may also have to be used (section 93.109(c)(2)). For example, before a 2006 PM<sub>2.5</sub> area has adequate or approved budgets for the 2006 PM<sub>2.5</sub> NAAQS, it must use the budget test, using budgets from an adequate or approved SIP for the 1997 PM<sub>2.5</sub> NAAQS, if it has them. If these budgets do not cover the entire 2006 PM<sub>2.5</sub> area, one of the interim emissions tests may also have to be used;

- Third, if an area has no adequate or approved SIP budgets for that criteria pollutant at all, it must use the interim emissions test(s) (section 93.109(c)(3)). For example, if a 2006 PM<sub>2.5</sub> area has no adequate or approved budgets for any PM<sub>2.5</sub> NAAQS, it must use one of the interim emissions tests, as described in 40 CFR 93.119.

These conformity test requirements are unchanged from the previous regulation; today's rulemaking restates them in terms that apply to any NAAQS.

In addition, in conformity rule section 93.109(c)(5), EPA is expanding the clean data conformity option to all clean data areas for which EPA has a clean data

regulation or policy.<sup>6</sup> See Section IV. below for further information.

*New paragraph (d).* With regard to project-level requirements, today's final rule places the existing rule's requirements for hot-spot analyses of projects in CO, PM<sub>10</sub>, and PM<sub>2.5</sub> nonattainment and maintenance areas together in one paragraph (section 93.109(d)(1), (2), and (3)). These requirements are unchanged from the previous regulation; today's rulemaking simply groups them together under one paragraph.<sup>7</sup>

*Related amendments.* Today's final rule removes the definitions for "1-hour ozone NAAQS", "8-hour ozone NAAQS", "24-hour PM<sub>10</sub> NAAQS", "1997 PM<sub>2.5</sub> NAAQS", "2006 PM<sub>2.5</sub> NAAQS", and "Annual PM<sub>10</sub> NAAQS" from 40 CFR 93.101. These definitions are no longer necessary because the updated regulatory text for sections 93.109 and 93.119<sup>8</sup> applies to any and all NAAQS of those pollutants for which conformity applies. In addition, today's final rule updates references to 40 CFR 93.109 found elsewhere in the regulation. Finally, today's final rule corrects a reference to the consultation requirements found in 93.109(g)(2)(iii) which applies to isolated rural areas.

#### C. Rationale and Response to Comments

EPA is restructuring 40 CFR 93.109 because a recent court decision has already established the legal parameters for regional conformity tests. In *Environmental Defense v. EPA*, 467 F.3d 1329 (DC Cir. 2006), the Court of Appeals for the District of Columbia Circuit held that where a motor vehicle emissions budget developed for the revoked 1-hour ozone NAAQS existed in an approved SIP, that budget must be used to demonstrate conformity to the 8-hour ozone NAAQS until the SIP is revised to include budgets for the new (or revised) NAAQS. EPA incorporated the court's decision for ozone conformity tests in its January 24, 2008 final rule (73 FR 4434). While the *Environmental Defense* case concerned ozone, EPA believes the court's holding is relevant for other pollutants for which

<sup>6</sup> Clean data refers to air quality monitoring data determined by EPA to indicate attainment of the NAAQS. Note that this action finalizes a minor change to the definition of clean data which is found in section 93.101 of the conformity rule; see Section IV. of today's rulemaking.

<sup>7</sup> Project-level conformity determinations are typically developed during the National Environmental Policy Act (NEPA) process, although conformity requirements are separate from NEPA-related requirements. Today's action to restructure 40 CFR 93.109 does not affect how NEPA-related requirements are implemented in the field.

<sup>8</sup> See Section V. of today's rulemaking for revisions to 40 CFR 93.119.

<sup>5</sup> See the preamble to the August 13, 2010 proposal for further background (75 FR 49441).

conformity must be demonstrated. Consequently, EPA believes the hierarchy of regional conformity tests described above, which is already found in the existing rule for 1997 ozone and 2006 PM<sub>2.5</sub> areas, would apply for any NAAQS of a pollutant for which the conformity rule applies.

EPA's restructuring of 40 CFR 93.109 and elimination of certain definitions in 40 CFR 93.101, along with the standardization of the baseline year in 40 CFR 93.119 (see Section V. of today's final rule for details), should make the rule sufficiently flexible to address any future NAAQS changes, including the promulgation of a new or revised NAAQS or revocation of a NAAQS, without additional rulemakings.

The restructured section 93.109 does not change the criteria and procedures for determining conformity of transportation plans, TIPs, and projects and is consistent with the regional conformity test requirements described in the PM Amendments final rule (75 FR 14266–14274). The rationale for the required regional tests has been described in previous rulemakings.<sup>9</sup> The rationale for the requirements for project-level conformity tests in CO, PM<sub>2.5</sub>, and PM<sub>10</sub> areas has also been described in previous rulemakings.<sup>10</sup>

Today's restructuring of 40 CFR 93.109 reduces the likelihood that EPA would have to amend the conformity rule when new or revised NAAQS are promulgated, which has several benefits. First, implementers will know the requirements for regional conformity tests for any potential area designated nonattainment for a new or revised NAAQS, even before such area's official designation, and will not need to wait for any additional conformity rulemaking from EPA to know what type of regional conformity test will apply. Second, reducing the need to amend the conformity regulation each time a NAAQS change is made will save government resources and taxpayer dollars, and will reduce stakeholder efforts needed to keep track of regulatory changes.

All commenters who addressed this proposal supported EPA's approach for restructuring 40 CFR 93.109. Several commenters agreed with EPA that these changes will help streamline the

conformity regulation and reduce the need to revise the conformity rule when new or revised NAAQS are promulgated. One commenter opined that the restructuring of 40 CFR 93.109 provides a clear and concise organization of the conformity requirements and agreed with EPA's rationale that it will be beneficial for implementing organizations to know the conformity requirements in advance of any new or revised NAAQS.

A few commenters requested that EPA clarify whether areas that have an adequate or approved NO<sub>x</sub> SIP budget for a specific NAAQS (e.g., the 1997 ozone NAAQS) would have to use that NO<sub>x</sub> budget to demonstrate conformity for another pollutant, such as PM<sub>2.5</sub>.

A NO<sub>x</sub> budget in an ozone SIP would apply for conformity for an ozone NAAQS only, and could not be used as a budget for any other pollutant. CAA section 176(c)(1)(A) establishes that nonattainment and maintenance areas must demonstrate conformity to a SIP's "purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards." The purpose of a SIP is tied to the pollutant it addresses. The 2006 court case cited above in this section supports this point. In that ruling, the court held that where a budget developed for the revoked 1-hour ozone NAAQS existed in an approved SIP, that budget must be used to demonstrate conformity to the 8-hour ozone NAAQS until a SIP is revised to include budgets for the new or revised NAAQS. The court did not refer to adequate or approved NO<sub>x</sub> or VOC budgets from a SIP that addressed a pollutant other than ozone, and did not indicate that such budgets would need to be used. In accordance with this court decision, if, for example, a 1997 ozone area has an approved 1997 ozone attainment demonstration with a NO<sub>x</sub> budget, this NO<sub>x</sub> budget must be used to demonstrate conformity for the 1997 ozone NAAQS and could also be used to demonstrate conformity for any future ozone NAAQS before the area has a SIP for that ozone NAAQS. However, the NO<sub>x</sub> budget could not be used to demonstrate conformity for a PM or NO<sub>2</sub> NAAQS because doing so would not be consistent with CAA section 176(c) requirements that conformity be demonstrated to the relevant SIP.

Finally, while pollutants may have precursors in common, control strategies may differ by pollutant and the seasons for which the budget is established may differ by pollutant as well. For example, precursor SIP budgets for the ozone NAAQS address

a typical summer day, because ozone is a summertime air quality problem. However, PM<sub>2.5</sub> violations in the same geographic area may have occurred during winter months. An ozone precursor SIP budget established for a typical summer day has no relevance in addressing a wintertime PM<sub>2.5</sub> problem.

EPA believes that section 93.109(c)(2) in today's final rule provides sufficient clarity for these situations because it specifies that where an area does not have an adequate or approved SIP budget for a NAAQS, it would use an approved or adequate SIP budget(s) for another NAAQS of the same pollutant as the test of conformity. No additional changes are necessary.

#### IV. Additional Option for Areas That Qualify for EPA's Clean Data Regulations or Policies

##### A. Overview

Prior to today's final rule, the conformity rule provided an additional regional conformity test option for certain moderate and above ozone nonattainment areas that meet the criteria of EPA's existing clean data regulation and policy. Today's rule clarifies this option and extends it to any nonattainment areas that are covered by EPA's clean data regulations or clean data policies. See Section IV of the August 13, 2010 proposal for further background on EPA's clean data regulations and policies (75 FR 49439).

##### B. Description of the Final Rule

Today, EPA is clarifying that any nonattainment area that EPA determines has air quality monitoring data that meet the requirements of 40 CFR parts 50 and 58 and that show attainment of a NAAQS—a "clean data" area<sup>11</sup>—can choose to satisfy the regional conformity test requirements by using on-road emissions from the most recent year of clean data as the budget(s) for that NAAQS rather than using the interim emissions test(s) per 40 CFR 93.119. The area may do this if the following are true:

- The state or local air quality agency requests that budgets be established by the EPA determination of attainment (Clean Data) rulemaking for that NAAQS, and EPA approves the request; and,
- The area has not submitted a maintenance plan for that NAAQS and EPA has determined (through the Clean Data rulemaking) that the area is not subject to the CAA reasonable further progress and attainment demonstration requirements for the relevant NAAQS.

<sup>9</sup> See EPA's March 24, 2010 final rule (75 FR 14266–14273). See also EPA's July 1, 2004 final rule (69 FR 40019–40031).

<sup>10</sup> For further details on project-level conformity test requirements, please refer to the March 10, 2006 final rule (71 FR 12469–12506). See also EPA's January 24, 2008 final rule (73 FR 4432–4434), EPA's July 1, 2004 final rule (69 FR 40036–40038; 40056–40058), the August 15, 1997 final rule (62 FR 43798), and the November 24, 1993 final rule (58 FR 62199–62201; 62207–62208; 62212–62213).

<sup>11</sup> See conformity rule section 93.101 for a definition of "clean data."

Otherwise, clean data areas for a NAAQS must satisfy the regional conformity test requirements using either the budget test if they have adequate or approved SIP budgets (per 40 CFR 93.109 and 93.118), or the interim emissions test(s) per 40 CFR 93.119 if they do not have adequate or approved SIP budgets.

In today's rule, EPA is not making changes to its existing clean data regulations or policies or to the conformity option for clean data areas. EPA is merely clarifying this conformity option and extending it to any nonattainment areas that are covered by EPA's clean data regulations or clean data policies.

The regulatory text for this flexibility is found in section 93.109(c)(5) of the conformity rule. This text clarifies that before this flexibility may be used: (1) the state or local air quality agency must make the request that the emissions in the most recent year for which EPA determines the area is attaining (i.e., the most recent year that the area has clean data) be used as budgets, and (2) EPA would have to approve that request through notice-and-comment rulemaking.

Today's rule also updates the definition of "clean data" in 40 CFR 93.101 to describe this term more accurately. The updated definition references the appropriate requirements at 40 CFR part 50, as well as part 58.

#### C. Rationale and Response to Comments

EPA believes that it is reasonable to extend the same conformity option available to clean data ozone areas to all clean data areas for which EPA has a clean data regulation or policy. Furthermore, this provision should work with any clean data policy or regulation that EPA develops; thus, it would eliminate the need to update the conformity rule in the future in order to extend this conformity option to any NAAQS for which EPA develops a clean data policy or regulation. See EPA's previous discussion and rationale for the clean data conformity option in July 1, 2004 final rule (69 FR 40019–40021). See also the preamble to the 1996 conformity proposal and 1997 final rule (July 9, 1996, 61 FR 36116, and August 15, 1997, 62 FR 43784–43785, respectively).

Several commenters requested that EPA clarify whether the use of the most recent year of clean data as the budget becomes binding once EPA approves it for use in completing regional conformity analyses. These commenters also wanted assurance that the state or local air quality agency would need to use the interagency and public

consultation process before such budgets are submitted to EPA for approval. As EPA explained in its proposed rule (August 13, 2010, 75 FR 49439), once the state or local air quality agency makes the request that the emissions in the most recent year for which the area is attaining be used as the budget, and EPA approves that request through a rulemaking, this level of emissions becomes the approved budget for conformity purposes in the clean data area for the relevant NAAQS.<sup>12</sup> The area may not revert back to using the interim emissions test(s) to demonstrate conformity once a budget has been established through a rulemaking, regardless of whether such budget is approved in a Clean Data rulemaking for a NAAQS or is approved as part of a control strategy SIP. Note that should EPA subsequently determine that the area has violated the relevant NAAQS and withdraw the determination of attainment through appropriate rulemaking,<sup>13</sup> EPA will also withdraw its approval for the clean data budget.

Once a clean data area submits a maintenance plan, and its budget(s) are found adequate or approved, the maintenance plan budget(s) must be used for conformity based on the regulation at 40 CFR 93.118(b).

The conformity rule at 93.105(a)(1) requires interagency consultation in SIP development. The final rule is consistent with prior conformity rulemakings that require any clean data budgets to be subject to the existing interagency consultation process and public comment. EPA established in its August 15, 1997 final rule (62 FR 43784–43785) that, regardless of whether a budget is created through the SIP process or through a Clean Data rulemaking, the interagency consultation process must be used and the public must be provided an opportunity to comment. See the August 15, 1997 final rule for further details.

For details on EPA's clean data regulations and policies, see the November 29, 2005 Phase 2 Ozone Implementation rulemaking for the 1997 ozone NAAQS (70 FR 71644–71646), 40 CFR 51.918, and the April 25, 2007 Clean Air Fine Particle Implementation Rule for the 1997 PM<sub>2.5</sub> NAAQS (72 FR

<sup>12</sup> If EPA subsequently finds a different SIP budget adequate or approves a SIP containing a budget, then that budget would be used for conformity purposes, as applicable, under 40 CFR 93.118.

<sup>13</sup> See the November 29, 2005 Phase 2 Ozone Implementation rulemaking for the 1997 ozone NAAQS (70 FR 71644–71646), 40 CFR 51.918, and the April 25, 2007 Clean Air Fine Particle Implementation Rule for the 1997 PM<sub>2.5</sub> NAAQS (72 FR 20603–20605), 40 CFR 1004(c).

20603–20605, 40 CFR 1004(c)). See also various determinations of attainment for PM<sub>10</sub> nonattainment areas using EPA's Clean Data policy (October 30, 2006 final rule (71 FR 63642), February 8, 2006 final rule (71 FR 6352), March 14, 2006 final rule (71 FR 13021), March 23, 2010 proposed rule (75 FR 13710)).

#### V. Restructure of the Baseline Year Test for Existing NAAQS and Baseline Year Test for Future NAAQS

##### A. Overview

As stated above, conformity is demonstrated with one or both of the interim emissions tests if an adequate or approved SIP budget is not available. The interim emissions tests include different forms of the "build/no-build" test and "baseline year" test. In general, the baseline year test compares emissions from the planned transportation system to emissions that occurred in the relevant baseline year. The build/no-build test compares emissions from the planned (or "build") transportation system with the existing (or "no-build") transportation system in the analysis year.

##### B. Description of Final Rule

Today's action revises 40 CFR 93.119 to apply more generally to any NAAQS for a given pollutant. First, the section has been reorganized to place the baseline years for existing NAAQS in one paragraph (revised paragraph (e)). Today's action also revises 40 CFR 93.119 to define the baseline year for any NAAQS promulgated after 1997 by reference to another requirement. Rather than naming a specific year, the conformity rule defines the baseline year for conformity purposes as the most recent year for which EPA's Air Emissions Reporting Requirements (AERR) (40 CFR Part 51.30(b)) requires submission of on-road mobile source emissions inventories, as of the effective date of EPA's nonattainment designations for any NAAQS promulgated after 1997. AERR requires on-road mobile source emission inventories to be submitted for every third year, for example, 2002, 2005, 2008, 2011, 2014, etc.<sup>14</sup>

Today's rule is consistent with the baseline year definition finalized for the 2006 PM<sub>2.5</sub> NAAQS in the PM Amendments final rule. In the PM Amendments final rule, this definition applied to only areas designated for any PM<sub>2.5</sub> NAAQS other than the 1997 PM<sub>2.5</sub> NAAQS. Today's action amends the

<sup>14</sup> These are known as Three-Year Cycle Inventories. See 40 CFR Part 51.30(b) and the EPA's December 17, 2008 final rule (73 FR 76539) for more details.

conformity rule to establish the same baseline year definition for new or revised NAAQS of any pollutant promulgated after 1997, not just the PM<sub>2.5</sub> NAAQS. See the March 24, 2010 p.m. Amendments final rule (75 FR 14265–14266) for further details.

This definition will automatically establish a relevant baseline year for conformity purposes for any areas designated nonattainment for all future NAAQS. For all future NAAQS, EPA will identify the baseline year that results from today's rule in guidance and will maintain a list of baseline years on EPA's Web site.<sup>15</sup> Once the baseline year is established according to this provision, it will not change (i.e., the baseline year would not be a rolling baseline year for a given NAAQS). Today's final rule does not change any baseline years already established for conformity purposes prior to today's action.

The existing interagency consultation process (40 CFR 93.105(c)(1)(i)) must be used to determine the latest assumptions and models for generating baseline year motor vehicle emissions to complete any baseline year test. The baseline year emissions level that is used in conformity must be based on the latest planning assumptions available, the latest emissions model, and appropriate methods for estimating travel and speeds as required by 40 CFR 93.110, 93.111, 93.122 of the current conformity rule.

As described in earlier rulemakings, the baseline year interim emissions test can be completed with a submitted or draft baseline year motor vehicle emissions SIP inventory, if the SIP reflects the latest information and models.<sup>16</sup> An MPO or state DOT, in consultation with state and local air agencies, could also develop baseline year emissions as part of the conformity analysis. EPA believes that a submitted or draft SIP baseline inventory may be the most appropriate source for completing the baseline year tests for an area's first conformity determination under a new or revised NAAQS. This is due to the fact that SIP inventories are likely to be under development at the same time as these conformity determinations, and such inventories must be based on the latest available data at the time they are developed (CAA section 172(c)(3)).

<sup>15</sup> See [www.epa.gov/otaq/stateresources/transconf/baseline.htm](http://www.epa.gov/otaq/stateresources/transconf/baseline.htm).

<sup>16</sup> See the March 24, 2010 final rule (75 FR 14265) and the July 1, 2004 final rule (69 FR 40015).

### C. Rationale and Response to Comments

EPA believes that today's final rule results in an environmentally protective and legal baseline year for conformity for any NAAQS promulgated after 1997 and best accomplishes several important goals.

First, as described in the August 13, 2010 proposed rule (75 FR 49440), EPA believes it is important to coordinate the conformity baseline year with the year used for SIP planning and an emissions inventory year. This was EPA's rationale for using 2002 as the baseline year for interim emissions tests in nonattainment areas for the 1997 ozone and PM<sub>2.5</sub> NAAQS (69 FR 40014–40015). It was also EPA's rationale for finalizing the same baseline year definition in today's final rule for 2006 PM<sub>2.5</sub> nonattainment areas in the March 24, 2010 final rule: this definition resulted in a conformity baseline year of 2008 for the 2006 PM<sub>2.5</sub> NAAQS (75 FR 14265–14266). Therefore, today's conformity baseline year is consistent with how EPA has implemented the conformity baseline year for new or revised NAAQS in the past.

Second, today's baseline year definition also ensures that the baseline year for any future NAAQS is always fairly recent, which is appropriate for meeting CAA conformity requirements and is environmentally protective. Because the AERR requires submission of inventories every three years, the baseline year for any NAAQS promulgated after 1997 will always be either the same year as the year in which designations are effective, or one or two years prior to the effective date of the designations. For example, in the case of the 2006 PM<sub>2.5</sub> NAAQS, nonattainment designations became effective on December 14, 2009, and the baseline year for conformity purposes is 2008 for areas designated nonattainment for the 2006 PM<sub>2.5</sub> NAAQS, the year before the effective date of the designations (See the PM Amendments final rule for details (75 FR 14265–14266)).

EPA also believes that coordinating the baseline year for interim emissions tests with other data collection and inventory requirements would allow state and local governments to use their resources more efficiently. Given that the CAA requires EPA to review the NAAQS for possible revision once every five years, today's baseline year provision standardizes the process for selecting an appropriate baseline year for any NAAQS promulgated in the future.

Finally, today's rule for the baseline year definition provides implementers

with knowledge of the baseline year for any future new or revised NAAQS upon the effective date of nonattainment designations for that NAAQS, without having to wait for EPA to amend the conformity rule. As a result, MPOs and other implementers should understand conformity requirements for future NAAQS revisions more quickly, which should enable them to fully utilize the 12-month conformity grace period to complete conformity determinations for new nonattainment areas.

Several commenters voiced support for coordinating the conformity baseline year with an emissions inventory year, in part because EPA could avoid additional rulemakings to implement future baseline year changes. Several commenters also agreed that this change would be beneficial since implementing organizations would know the conformity requirements in advance of any new or revised NAAQS.

Some commenters expressed concern that emissions inventories are not always submitted on time and recommended that the conformity rule require that the baseline year for the baseline year interim emissions test be the most recent emissions inventory year that has been completed and submitted to EPA. One commenter recommended that the baseline year be at least three years older than the date the first conformity determination is required and that if the most recent completed emissions inventory is less than three years old, the previous emissions inventory should be used. However, these suggestions could lead to different baseline years in areas designated for the same NAAQS, which may not meet statutory requirements, and would be confusing to track as well as inequitable. EPA's final rule establishes the same baseline year for every area designated for a particular NAAQS regardless of whether an individual area submitted its inventory on time. If an area has not submitted a final AERR inventory for the relevant conformity baseline year, there are other options for generating on-road mobile source emissions in the baseline year, discussed above under B. of this section.

Another commenter opined that if a later year than currently required is used as a baseline year for the baseline year interim emissions test, and emissions are on a downward trend, the proposed change would make the baseline year interim emissions test more stringent than what was proposed. The commenter suggested that this concern may be mitigated by keeping the baseline year for all future NAAQS at or near the year 2002 that was

established for the 1997 ozone and PM<sub>2.5</sub> NAAQS.

Today's final rule is intended to ensure the same level of stringency for all NAAQS regardless of when the NAAQS was promulgated. The conformity baseline year of 2002 that EPA established for the 1997 ozone and PM<sub>2.5</sub> NAAQS is several years prior to the effective date of the 1997 ozone and PM<sub>2.5</sub> ozone nonattainment designations. Area designations for the 1997 ozone NAAQS became effective on June 15, 2004 and area designations for the 1997 PM<sub>2.5</sub> NAAQS became effective on April 5, 2005 (See the April 30, 2004 (69 FR 23858) and the January 5, 2005 (70 FR 944) final rules, respectively). Further, if there is a downward trend in on-road mobile source emissions, it makes sense to reflect that downward trend in the interim emissions test. Today's final rule accomplishes that by ensuring that the baseline year is always fairly recent.

Finally, EPA would like to clarify a couple of points related to this comment. First, the commenter referred to the baseline year of 2002 in the "current conformity rule." That baseline year of 2002 was established in 2004 for the 1997 ozone and PM<sub>2.5</sub> NAAQS and it remains the baseline year only for these NAAQS. Second, the baseline year definition in today's rule is the same definition EPA established as the baseline year for areas designated nonattainment for the 2006 PM<sub>2.5</sub> NAAQS in the March 24, 2010 p.m. Amendments rule. Thus, today's definition had already been part of the current conformity rule prior to today's action.

#### VI. How do these amendments affect conformity SIPs?

Today's action does not affect existing conformity SIPs that were prepared in accordance with current CAA requirements since the final rule does not affect the provisions that are required to be in a conformity SIP. CAA section 176(c)(4)(E) requires a conformity SIP to include the state's criteria and procedures for interagency consultation (40 CFR 93.105) and two additional provisions related to written commitments for certain control and mitigation measures (40 CFR 93.122(a)(4)(ii) and 93.125(c)).

However, the conformity rule also requires states to submit a new or revised conformity SIP to EPA within 12 months of the *Federal Register* publication date of any final conformity amendments if a state's conformity SIP includes the provisions of such final amendments (40 CFR 51.390(c)). Therefore, such a conformity SIP

revision is required to be submitted by March 14, 2013 in states with approved conformity SIPs containing provisions addressed by today's action. EPA encourages these states to revise their conformity SIP to include only the three required sections so that future changes to the conformity rule do not require further revisions to conformity SIPs. EPA will continue to work with states to approve such revisions as expeditiously as possible through flexible administrative techniques, such as parallel processing and direct final rulemaking.

Finally, any state that has not previously been required to submit a conformity SIP to EPA must submit a conformity SIP within 12 months of an area's nonattainment designation (40 CFR 51.390(c)).

For additional information on conformity SIPs, please refer to the January 2009 guidance entitled, "Guidance for Developing Transportation Conformity State Implementation Plans" available on EPA's Web site at [www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf](http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf).

#### VII. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735; October 4, 1993), this action is a "significant regulatory action" because it raises novel legal and policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden. The information collection requirements of EPA's existing transportation conformity regulations and the proposed revisions in today's action are already covered by EPA information collection request (ICR) entitled, "Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects." The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing conformity regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number

2060-0561. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This regulation directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the Regulatory Flexibility Act. Therefore, this final rule will not impose any requirements on small entities.

##### D. Unfunded Mandates Reform Act

This action does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This final rule implements already established law that imposes conformity requirements and does not itself impose requirements that may result in expenditures of \$100 million or more in any year. Thus, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

This final rule is also not subject to the requirements of Section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule will not significantly or uniquely

impact small governments because it directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA requires conformity to apply in certain nonattainment and maintenance areas as a matter of law, and this action merely establishes and revises procedures for transportation planning entities in subject areas to follow in meeting their existing statutory obligations. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The CAA requires conformity to apply in any area that is designated nonattainment or maintenance by EPA. Because today's amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It does not create a serious inconsistency or otherwise interfere with an action

taken or planned by another agency regarding energy.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it maintains or increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective April 13, 2012.

**List of Subjects in 40 CFR Part 93**

Administrative practice and procedure, Air pollution control, Carbon monoxide, Clean Air Act, Environmental protection, Highways and roads, Intergovernmental relations, Mass transportation, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: March 8, 2012.

**Lisa P. Jackson,**  
*Administrator.*

For the reasons discussed in the preamble, 40 CFR part 93 is amended as follows:

**PART 93—[AMENDED]**

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Section 93.101 is amended by removing paragraphs (1) through (6) of the definition for "National ambient air quality standards (NAAQS)" and by revising the definition for "Clean data" to read as follows:

**§ 93.101 Definitions.**

\* \* \* \* \*

*Clean data* means air quality monitoring data determined by EPA to meet the applicable requirements of 40 CFR Parts 50 and 58 and to indicate attainment of a NAAQS.

\* \* \* \* \*

**§ 93.105 [Amended]**

■ 3. Section 93.105(c)(1)(vi) is amended by removing the citation "§ 93.109(n)(2)(iii)" and adding in its place the citation "§ 93.109(g)(2)(iii)".

■ 4. Section 93.109 is amended as follows:

■ a. By revising paragraphs (b) introductory text, (c), and (d);

■ b. By removing paragraphs (e) through (k), and redesignating paragraphs (l), (m), and (n) as paragraphs (e), (f), and (g);

■ c. In newly redesignated paragraph (g)(2) introductory text, by removing the

citation "paragraphs (c) through (m)" and adding in its place "paragraph (c)";

■ d. In newly redesignated paragraph (g)(2)(iii), by removing the citation "paragraph (n)(2)(ii)" and adding in its place "paragraph (g)(2)(ii)";

■ e. In newly redesignated paragraph (g)(2)(iii), by removing the citation "paragraph (n)(2)(ii)(C)" and adding in its place "paragraph (g)(2)(ii)(C)";

■ f. In newly redesignated paragraph (g)(2)(iii), by removing the citation "§ 93.105(c)(1)(vii)" and adding in its place "§ 93.105(c)(1)(vi)".

**§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.**

\* \* \* \* \*

(b) Table 1 in this paragraph indicates the criteria and procedures in §§ 93.110 through 93.119 which apply for transportation plans, TIPs, and FHWA/FTA projects. Paragraph (c) of this section explains when the budget and interim emissions tests are required for each pollutant and NAAQS. Paragraph (d) of this section explains when a hot-spot test is required. Paragraph (e) of this section addresses conformity requirements for areas with approved or adequate limited maintenance plans. Paragraph (f) of this section addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Paragraph (g) of this section addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

\* \* \* \* \*

(c) *Regional conformity test requirements for all nonattainment and maintenance areas.* This provision applies one year after the effective date of EPA's nonattainment designation for a NAAQS in accordance with § 93.102(d) and until the effective date of revocation of such NAAQS for an area. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in such 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 all nonattainment and maintenance areas for a NAAQS, the budget test must be satisfied as required by § 93.118 for conformity determinations for such NAAQS made on or after:

(i) 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 such NAAQS is

adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(2) Prior to paragraph (c)(1) of this section applying for a NAAQS, in a nonattainment area that has approved or adequate motor vehicle emissions budgets in an applicable implementation plan or implementation plan submission for another NAAQS of the same pollutant, the following tests must be satisfied:

(i) If the nonattainment area covers the same geographic area as another NAAQS of the same pollutant, the budget test as required by § 93.118 using the approved or adequate motor vehicle emissions budgets for that other NAAQS;

(ii) If the nonattainment area covers a smaller geographic area within an area for another NAAQS of the same pollutant, the budget test as required by § 93.118 for either:

(A) The nonattainment area, using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets for that other NAAQS, where such portion(s) can reasonably be identified through the interagency consultation process required by § 93.105; or

(B) The area designated nonattainment for that other NAAQS, using the approved or adequate motor vehicle emissions budgets for that other NAAQS. If additional emissions reductions are necessary to meet the budget test for the nonattainment area for a NAAQS in such cases, these emissions reductions must come from within such nonattainment area;

(iii) If the nonattainment area covers a larger geographic area and encompasses an entire area for another NAAQS of the same pollutant, then either (A) or (B) must be met:

(A)(1) The budget test as required by § 93.118 for the portion of the nonattainment area covered by the approved or adequate motor vehicle emissions budgets for that other NAAQS; and

(2) the interim emissions tests as required by § 93.119 for one of the following areas: the portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor

vehicle emissions budgets for that other NAAQS are established for each state of a multi-state nonattainment or maintenance area.

(B) The budget test as required by § 93.118 for the entire nonattainment area using the approved or adequate motor vehicle emissions budgets for that other NAAQS.

(iv) If the nonattainment area partially covers an area for another NAAQS of the same pollutant:

(A) The budget test as required by § 93.118 for the portion of the nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets for that other NAAQS, where they can be reasonably identified through the interagency consultation process required by § 93.105; and

(B) The interim emissions tests as required by § 93.119, when applicable, for either: the portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor vehicle emissions budgets for that other NAAQS are established for each state of a multi-state nonattainment or maintenance area.

(3) In a nonattainment area, the interim emissions tests required by § 93.119 must be satisfied for a NAAQS if neither paragraph (c)(1) nor paragraph (c)(2) of this section applies for such NAAQS.

(4) An ozone nonattainment area must satisfy the interim emissions test for NO<sub>x</sub>, as required by § 93.119, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that does not include a motor vehicle emissions budget for NO<sub>x</sub>. The implementation plan for an ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation plan or plan submission contains an explicit NO<sub>x</sub> motor vehicle emissions budget that is intended to act as a ceiling on future NO<sub>x</sub> emissions, and the NO<sub>x</sub> motor vehicle emissions budget is a net reduction from NO<sub>x</sub> emissions levels in the SIP's baseline year.

(5) Notwithstanding paragraphs (c)(1), (c)(2), and (c)(3) of this section, nonattainment areas with clean data for a 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 requirements

for that NAAQS must satisfy one of the following requirements:

(i) The budget test and/or interim emissions tests as required by §§ 93.118 and 93.119 as described in paragraphs (c)(2) and (c)(3) of this section;

(ii) The budget test as required by § 93.118, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the NAAQS for which the area is designated nonattainment (subject to the timing requirements of paragraph (c)(1) of this section); or

(iii) The budget test as required by § 93.118, using the motor vehicle emissions in the most recent year of attainment as motor vehicle emissions budgets, if the state or local air quality agency requests that the motor vehicle emissions in the most recent year of attainment be used as budgets, and EPA approves the request in the rulemaking that determines that the area has attained the NAAQS for which the area is designated nonattainment.

(6) For the PM<sub>10</sub> NAAQS only, the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made if the submitted implementation plan revision for a PM<sub>10</sub> nonattainment area is a demonstration of impracticability under CAA Section 189(a)(1)(B)(ii) and does not demonstrate attainment.

(d) *Hot-spot conformity test requirements for CO, PM<sub>2.5</sub>, and PM<sub>10</sub> nonattainment and maintenance areas.* This provision applies in accordance with § 93.102(d) for a NAAQS and until the effective date of any revocation of such NAAQS for an area. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, project-level conformity determinations in CO, PM<sub>10</sub>, and PM<sub>2.5</sub> nonattainment and maintenance areas must include a demonstration that the hot-spot tests for the applicable NAAQS 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 § 93.116(a) at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot-spot test required by § 93.116(b).

(2) FHWA/FTA projects in PM<sub>10</sub> nonattainment or maintenance areas must satisfy the appropriate hot-spot test as required by § 93.116(a).

(3) FHWA/FTA projects in PM<sub>2.5</sub> nonattainment or maintenance areas

must satisfy the appropriate hot-spot test required by § 93.116(a).

**§ 93.116 [Amended]**

■ 5. Section 93.116(b) is amended by removing the citation “§ 93.109(f)(1)” and adding in its place the citation “§ 93.109(d)(1)”.

■ 6. Section 93.118 is amended:

- a. In paragraph (a), by removing the citation “§ 93.109(c) through (n)” and adding in its place the citation “§ 93.109(c) through (g)”;
- b. By revising paragraph (b) introductory text.

**§ 93.118 Criteria and procedures: Motor vehicle emissions budget.**

(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 a motor vehicle emissions budget(s), and for each year for which a regional emissions analysis is performed to fulfill the requirements in paragraph (d) of this section, as follows:

■ 7. Section 93.119 is amended as follows:

- a. In paragraph (a), by removing the citation “§ 93.109(c) through (n)” and adding in its place the citation “§ 93.109(c) through (g)”;
- b. In paragraph (b) introductory text, by removing “1-hour ozone and 8-hour”;
- c. By revising paragraphs (b)(1)(ii) and (b)(2)(ii);
- d. By revising paragraphs (c)(1)(ii) and (c)(2)(ii);
- e. By revising the heading of paragraph (d);
- f. In paragraph (d) introductory text, by removing “PM<sub>10</sub> and NO<sub>2</sub>” and adding in its place “PM<sub>2.5</sub>, PM<sub>10</sub>, and NO<sub>2</sub>”;
- g. By revising paragraph (d)(2);
- h. By revising paragraph (e); and
- i. In paragraph (g)(2), by removing “(b)(2)(i), (c)(2)(i), (d)(1), and (e)(1)” and adding in its place “(b)(2)(i), (c)(2)(i), and (d)(1)”.

**§ 93.119 Criteria and procedures: Interim emissions in areas without motor vehicle emissions budgets.**

- (b) \* \* \*
- (1) \* \* \*
- (ii) The emissions predicted in the “Action” scenario are lower than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section by any nonzero amount.

(2) \* \* \*

(ii) The emissions predicted in the “Action” scenario are not greater than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section.

(c) \* \* \*

(1) \* \* \*

(ii) The emissions predicted in the “Action” scenario are lower than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section by any nonzero amount.

(2) \* \* \*

(ii) The emissions predicted in the “Action” scenario are not greater than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section.

(d) *PM<sub>2.5</sub>, PM<sub>10</sub>, and NO<sub>2</sub> areas.* \* \* \*

(2) The emissions predicted in the “Action” scenario are not greater than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section.

(e) *Baseline year for various NAAQS.* The baseline year is defined as follows:

(1) 1990, in areas designated nonattainment for the 1990 CO NAAQS or the 1990 NO<sub>2</sub> NAAQS.

(2) 1990, in areas designated nonattainment for the 1990 PM<sub>10</sub> NAAQS, unless the conformity implementation plan revision required by § 51.390 of this chapter defines the baseline emissions for a PM<sub>10</sub> 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.

(3) 2002, in areas designated nonattainment for the 1997 ozone NAAQS or 1997 PM<sub>2.5</sub> NAAQS.

(4) The most recent year for which EPA’s Air Emission Reporting Rule (40 CFR Part 51, Subpart A) requires submission of on-road mobile source emissions inventories as of the effective date of designations, in areas designated nonattainment for a NAAQS that is promulgated after 1997.

\* \* \* \* \*

**§ 93.121 [Amended]**

■ 8. Section 93.121 is amended:  
 ■ a. In paragraph (b) introductory text, by removing the citation “§ 93.109(n)” and adding in its place the citation “§ 93.109(g)”.

b. In paragraph (c) introductory text, by removing the citation “§ 93.109(l) or (m)” and adding in its place the citation “§ 93.109(e) or (f)”.





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[Under 40 CFR 51.390, transportation conformity SIPs must include the requirements of 40 CFR §§ 93.105, 93.122(a)(4)(ii), and 93.125(c). Inclusion of other provisions within 40 CFR Part 93 is optional. See 73 Fed. Reg. 4420, 4431 (Jan. 24, 2008). These mandatory provisions are excerpted below.]

**§ 93.105 Consultation.** [Entire Section]

(a) *General.* The implementation plan revision required under § 51.390 of this chapter shall include procedures for interagency consultation (Federal, State, and local), resolution of conflicts, and public consultation as described in paragraphs (a) through (e) of this section. Public consultation procedures will be developed in accordance with the requirements for public involvement in 23 CFR part 450.

(1) The implementation plan revision shall include procedures to be undertaken by MPOs, State departments of transportation, and DOT with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, State departments of transportation, and DOT in developing applicable implementation plans.

(2) Before EPA approves the conformity implementation plan revision required by § 51.390 of this chapter, MPOs and State departments of transportation must provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on the issues described in paragraph (c)(1) of this section, before making conformity determinations.

(b) *Interagency consultation procedures: General factors.* (1) States shall provide well-defined consultation procedures in the implementation plan whereby representatives of the MPOs, State and local air quality planning agencies, State and local transportation agencies, and other organizations with responsibilities for developing, submitting, or implementing provisions of an implementation plan required by the CAA must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations.

(2) Interagency consultation procedures shall include at a minimum the following general factors and the specific processes in paragraph (c) of this section:

(i) The roles and responsibilities assigned to each agency at each stage in the implementation plan development process and the transportation planning process, including technical meetings;

(ii) The organizational level of regular consultation;

(iii) A process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication;

(iv) The frequency of, or process for convening, consultation meetings and responsibilities for establishing meeting agendas;

(v) A process for responding to the significant comments of involved agencies; and

(vi) A process for the development of a list of the TCMs which are in the applicable implementation plan.

(c) *Interagency consultation procedures: Specific processes.* Interagency consultation procedures shall also include the following specific processes:

(1) A process involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT for the following:

(i) Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

(ii) Determining which minor arterials and other transportation projects should be considered “regionally significant” for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or 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;

(iii) Evaluating whether projects otherwise exempt from meeting the requirements of this subpart (see §§ 93.126 and 93.127) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Making a determination, as required by § 93.113(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Notification of transportation plan or TIP amendments which merely add or delete exempt projects listed in § 93.126 or § 93.127; and

(vi) Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by § 93.109(g)(2)(iii).

(2) A process involving the MPO and State and local air quality planning agencies and transportation agencies for the following:

(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in § 93.104; and

(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins.

(3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a process involving the MPO and the State department of transportation for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area.

(4) A process to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed.

(5) A process involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of § 93.122.

(6) A process for consulting on 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).

(7) A process for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption. This process is applicable to all agencies described in paragraph (a)(1) of this section, including Federal agencies.

(d) *Resolving conflicts.* Conflicts among State agencies or between State agencies and an MPO shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies. The State air agency has 14 calendar days to appeal to the Governor after the State DOT or MPO has notified the State air agency head of the resolution of his or her comments. The implementation plan revision required by § 51.390 of this chapter shall define the procedures for starting the 14-day clock. If the State air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If the State air agency does not appeal to the Governor within 14 days, the MPO or State department of transportation may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or an MPO.

(e) *Public consultation procedures.* 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, consistent with these requirements and those of 23 CFR 450.316(a). Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.43. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

[62 FR 43801, Aug. 15, 1997, as amended at 69 FR 40073, July 1, 2004; 70 FR 24291, May 6, 2005; 71 FR 12510, Mar. 10, 2006; 73 FR 4439, Jan. 24, 2008; 75 FR 14284, Mar. 24, 2010; 77 FR 14986, Mar. 14, 2012]

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**§ 93.122 Procedures for determining regional transportation-related emissions.** [*Highlighted Subparagraph Only*]

(a) *General requirements.* (1) The regional emissions analysis required by §§ 93.118 and 93.119 for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include 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 § 93.105. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(2) 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.

(3) 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:

(i) The regulatory action is already adopted by the enforcing jurisdiction;

(ii) The project, program, or activity is included in the applicable implementation plan;

(iii) The control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of § 93.118 contains a written commitment to the project, program, or activity by the agency with authority to implement it; or

(iv) EPA has approved an opt-in to a Federally enforced program, EPA has promulgated the program (if the control program is a Federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(4) 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.

(i) Persons or entities voluntarily committing to control measures must comply with the obligations of such commitments.

(ii) The conformity implementation plan revision required in § 51.390 of this chapter 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.

(5) A regional emissions analysis for the purpose of satisfying the requirements of § 93.119 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.

(6) 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 § 93.105(c)(1)(i) 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.

(7) 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.

(b) Regional emissions analysis in serious, severe, and extreme ozone nonattainment areas and serious CO nonattainment areas must meet the requirements of paragraphs (b) (1) through (3) of this section if their metropolitan planning area contains an urbanized area population over 200,000.

(1) 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 DOT and will be updated periodically. Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required by § 93.105(c)(1)(i). Network-based travel models must at a minimum satisfy the following requirements:

(i) Network-based travel models must be validated against observed counts (peak and off-peak, if possible) for a base year that is not more than 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;

(ii) Land use, population, employment, and other network-based travel model assumptions must be documented and based on the best available information;

(iii) 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;

(iv) 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;

(v) Zone-to-zone travel impedances used to distribute trips between origin and destination pairs must 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

(vi) Network-based travel models must be reasonably sensitive to changes in the time(s), cost(s), and other factors affecting travel choices.

(2) 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.

(3) 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 travel 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 § 93.105(c)(1)(i).

(c) *Two-year grace period for regional emissions analysis requirements in certain ozone and CO areas.* The requirements of paragraph (b) of this section apply to 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:

(1) The effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population 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 than 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.

(d) In all areas not otherwise subject to paragraph (b) of this section, regional emissions analyses must use those procedures described in paragraph (b) of this section if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to paragraph (b) of this section 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.

(e) *PM<sub>10</sub> from construction-related fugitive dust.* (1) For areas in which the implementation plan does not identify construction-related fugitive PM<sub>10</sub> as a contributor to the nonattainment problem, the fugitive PM<sub>10</sub> emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM<sub>10</sub> nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM<sub>10</sub> as a contributor to the nonattainment problem, the regional PM<sub>10</sub> emissions analysis shall consider construction-related fugitive PM<sub>10</sub> and shall account for the level of construction activity, the fugitive PM<sub>10</sub> control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(f) *PM<sub>2.5</sub> from construction-related fugitive dust.* (1) For PM<sub>2.5</sub> areas in which the implementation plan does not identify construction-related fugitive PM<sub>2.5</sub> as a significant contributor to the nonattainment problem, the

fugitive PM<sub>2.5</sub> emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM<sub>2.5</sub> nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM<sub>2.5</sub> as a significant contributor to the nonattainment problem, the regional PM<sub>2.5</sub> emissions analysis shall consider construction-related fugitive PM<sub>2.5</sub> and shall account for the level of construction activity, the fugitive PM<sub>2.5</sub> control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(g) *Reliance on previous regional emissions analysis.* (1) Conformity determinations for a new transportation plan and/or TIP may be demonstrated to satisfy the requirements of §§ 93.118 (“Motor vehicle emissions budget”) or 93.119 (“Interim emissions in areas without motor vehicle emissions budgets”) without new regional emissions analysis if the previous regional emissions analysis also applies to the new plan and/or TIP. This requires a demonstration that:

(i) The new plan and/or TIP contain all projects which must be started in the plan and TIP's timeframes in order to achieve the highway and transit system envisioned by the transportation plan;

(ii) 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;

(iii) 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

(iv) The previous regional emissions analysis is consistent with the requirements of §§ 93.118 (including that conformity to all currently applicable budgets is demonstrated) and/or 93.119, as applicable.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of § 93.118 or § 93.119 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 § 93.118 (including that conformity to all currently applicable budgets is demonstrated) and/or § 93.119, as applicable, and if the project is either:

(i) Not regionally significant; or

(ii) 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.

(3) A conformity determination that relies on paragraph (g) of this section does not satisfy the frequency requirements of § 93.104(b) or (c).

[62 FR 43801, Aug. 15, 1997, as amended at 69 FR 40080, July 1, 2004]

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**§ 93.125 Enforceability of design concept and scope and project-level mitigation and control measures.** [*Highlighted Subsection Only*]

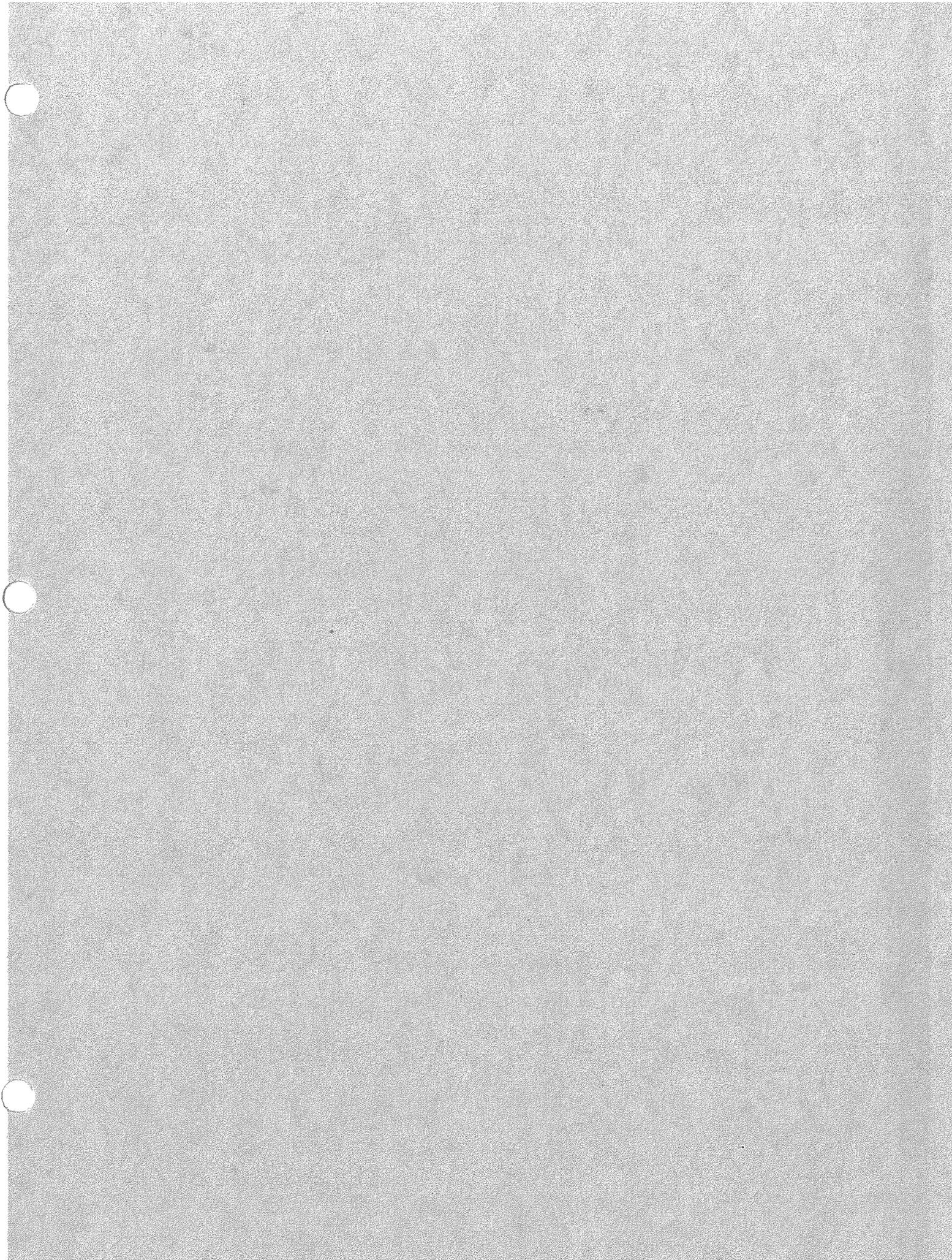
(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project 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, PM<sub>10</sub>, or PM<sub>2.5</sub> impacts. Before a conformity determination is made, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by §§ 93.118 (“Motor vehicle emissions budget”) and 93.119 (“Interim emissions in areas without motor vehicle emissions budgets”) or used in the project-level hot-spot analysis required by § 93.116.

(b) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(c) The implementation plan revision required in § 51.390 of this chapter shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

(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 § 93.116, emission budget requirements of § 93.118, and interim emissions requirements of § 93.119 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under § 93.105. The MPO and DOT must find that the transportation plan and TIP still satisfy the applicable requirements of §§ 93.118 and/or 93.119 and that the project still satisfies the requirements of § 93.116, 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 § 93.105(e) for conformity determinations for projects.

[62 FR 43801, Aug. 15, 1997, as amended at 69 FR 40081, July 1, 2004; 71 FR 12510, Mar. 10, 2006]





Proposed substantive changes to 20.2.99 (in addition to Section deletions with subsequent renumbering, and Definitions deletions and subsequent renumbering)

The following table represents the substantive changes proposed in the repeal and replacement of 20.2.99 NMAC. The changes shown below are in addition to the deletions shown in the "Repeal and Replace Correlations" table, and the deletions and relettering in the "Definitions Correlations" table. The current rule text may be found in column one; the proposed rule text is in the middle column. Each change is represented by strikeouts for wordings to be deleted (in the first column); where applicable, replacement language is represented by underlined text (in the middle column). Some strikeouts do not have replacement text, as these are deletions, rather than replacements or corrections. The reason each change is needed is noted in the third column. Beyond the changes shown in this table and the afore-mentioned tables, a few punctuation changes have also been made (i.e. addition or deletion of commas, colons, semicolons, periods, apostrophes or dashes; addition of italics for foreign words; corrections for capitalization; and addition of subscripts for pollutants and chemical formulas).

Current Rule Text	Proposed Replacement Rule Text	Reason
<p><b>20.2.99.2 SCOPE</b></p> <p><b>C.</b> The provisions of this part apply with respect to emissions of the following precursor pollutants in nonattainment or maintenance areas:</p> <p>(1) volatile organic compounds and nitrogen oxides in ozone areas;</p> <p>(2) nitrogen oxides in nitrogen dioxide areas;</p> <p>(3) volatile organic compounds <del>and/or</del>; nitrogen oxides; in PM10 areas if:</p> <p>(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</p> <p>(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</p> <p>(5) VOC, sulfur dioxide (SO2) <del>and/or</del> 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 <del>nonattainment</del> problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and</p>	<p><b>20.2.99.2 SCOPE</b></p> <p><b>C.</b> The provisions of this part apply with respect to emissions of the following precursor pollutants in nonattainment or maintenance areas:</p> <p>(1) volatile organic compounds (VOCs) and nitrogen oxides in ozone areas;</p> <p>(2) nitrogen oxides in nitrogen dioxide areas;</p> <p>(3) volatile organic compounds or nitrogen oxides in PM<sub>10</sub> areas if:</p> <p>(a) the <u>US</u> EPA region 6 administrator or the department has made a finding (including a finding as part of <u>the New Mexico State Implementation Plan (SIP)</u> 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 PM<sub>10</sub> nonattainment problem and has so notified the <u>metropolitan planning organization (MPO)</u> (or the <u>New Mexico Department of Transportation (NMDOT)</u> in the absence of an MPO) and US DOT; or</p> <p>(4) nitrogen oxides in PM<sub>2.5</sub> 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 PM<sub>2.5</sub> nonattainment problem and has 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 <u>an</u> approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy; and</p> <p>(5) VOC<sub>s</sub>, sulfur dioxide (SO<sub>2</sub>) or ammonia (NH<sub>3</sub>) in PM<sub>2.5</sub> areas either if the <u>US</u> 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 PM<sub>2.5</sub> nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and</p>	<p>(1) Addition of acronym (1<sup>st</sup> time use)</p> <p>(3) Correction of and/or usage</p> <p>(3) (a) Correction of acronym; insertion of full term for 1<sup>st</sup> use and parentheses for acronym;</p> <p>Insertion of full terms for 1<sup>st</sup> uses and parentheses for acronyms</p> <p>(4) Correction of typographical error</p> <p>Correction of typographical error</p> <p>(5) Corrections for acronyms; correction of and/or</p> <p>Correction of typographical error</p>

<p>US DOT, or <u>if</u> the applicable implementation plan (or implementation plan submission) establishes <u>an</u> approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.</p> <p><b>D.</b> The provisions of this part apply to PM<sub>2.5</sub> nonattainment and maintenance areas with respect to PM<sub>2.5</sub> 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 PM<sub>2.5</sub> 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. <del>Re-entrained road dust emissions are produced by travel and paved and unpaved roads (including emissions from anti-skid and deteig material(s)).</del></p> <p><b>E.</b> The provisions of this part apply to maintenance areas through the last year of a maintenance area's approved CAA section 175A(b) maintenance plan.</p>	<p>US DOT, or <u>if</u> the applicable implementation plan (or implementation plan submission) establishes <u>an</u> approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.</p> <p><b>D.</b> The provisions of this part apply to PM<sub>2.5</sub> nonattainment and maintenance areas with respect to PM<sub>2.5</sub> from re-entrained road dust if the <u>US</u> EPA regional administrator or the department has made finding that re-entrained road dust emissions within the area are a significant contributor to the PM<sub>2.5</sub> 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.</p> <p><b>E.</b> The provisions of this part apply to maintenance areas through the last year of a maintenance area's approved CAA section 175A(b) maintenance plan, <u>unless the applicable implementation plan specifies that the provisions of this Part (20.2.99 NMAC) shall apply for more than 20 years.</u></p>	<p>Correction of typographical error Correction of typographical error</p> <p>D. Correction of acronym</p> <p>Definition moved to Section 7 (Definitions)</p> <p>E. Reinsertion of required language corresponding to language in federal transportation conformity rule, inadvertently removed in past revision to 20.2.99 NMAC</p>
<p><b>20.2.99.3</b> <b>STATUTORY AUTHORITY:</b> Environmental Improvement Act, <del>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).</del> 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."</p>	<p><b>20.2.99.3</b> <b>STATUTORY AUTHORITY:</b> Environmental Improvement Act, Paragraph (4) and (7) of Subsection A of Section 74-1-8 NMSA 1978 and Air Quality Control Act, Sections 74-2-1 NMSA 1978 <i>et seq.</i>, including specifically, Subsections (A), (B) and (C) of Section 74-2-5 NMSA 1978. Subsection (B) of Section 74-2-5 NMSA 1978 provides that the environmental improvement board shall adopt regulations "to attain and maintain national ambient air quality standards and prevent or abate air pollution."</p>	<p>Correction of references to state statutes.</p>
<p><b>20.2.99.5</b> <b>EFFECTIVE DATE:</b> <del>November 23, 1998,</del> except where a later date is cited at the end of a section <del>or paragraph.</del></p> <p>[The latest effective date of any section in this Part is <del>11/07/11.</del>]</p> <p><b>20.2.99.6</b> <b>OBJECTIVE:</b> 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 <del>part 51-subpart T and</del> 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</p>	<p><b>20.2.99.5</b> <b>EFFECTIVE DATE:</b> Month &amp; day, 2014, except where a later date is cited at the end of a section.</p> <p>[The latest effective date of any section in this Part is <del>XX/XX/14.</del>]</p> <p><b>20.2.99.6</b> <b>OBJECTIVE:</b> The purpose of this Part is to implement Section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 <i>et seq.</i>), the related requirements of 23 U.S.C. 109(j), and regulations under 40 CFR Part 93 Subpart A, with respect to the conformity of transportation plans, programs and projects which are developed, funded or approved by the US DOT, the NMDOT, 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</p>	<p>Remove "or paragraph" (non-necessary); correct effective date</p> <p>Reflect current effective date</p> <p>Remove regulation reference which is no longer applicable</p>

<p>(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.</p> <p><b>20.2.99.7 DEFINITIONS</b></p> <p><b>G.</b> "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:</p> <ol style="list-style-type: none"> <li>(1) cause or contribute to any new violations of any standard in any area;</li> <li>(2) increase the frequency or severity of any existing violation of any standard in any area; or</li> <li>(3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.</li> </ol> <p><b>H.</b> "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 <del>20.2.99.116 through 20.2.99.124</del> NMAC.</p> <p><b>O.</b> "FHWA/FTA project", <del>for the purpose of this</del> 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.</p>	<p>pursuant to Section 110 and Part D of the CAA. This Part sets forth policy and procedures for consultations demonstrating and assuring conformity of such activities to the SIP; <u>for resolving interagency conflicts; and for obtaining and enforcing written agreements.</u></p> <p><b>20.2.99.7 DEFINITIONS</b></p> <p><b>E.</b> "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 <u>US EPA</u> consultation. An affirmative conformity determination means conformity to the plan's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards (NAAQS) and achieving expeditious attainment of such standards; and that such activities will not:</p> <ol style="list-style-type: none"> <li>(1) cause or contribute to any new violations of any standard in any area;</li> <li>(2) increase the frequency or severity of any existing violation of any standard in any area; or</li> <li>(3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.</li> </ol> <p><b>F.</b> "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 <u>20.2.99.102 through 20.2.99.110</u> NMAC.</p> <p><b>N.</b> "FHWA/FTA project" <u>means, for the purpose of this part, 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.</u></p>	<p>Addition to reflect reality of objectives</p>
		<p>Relettering</p> <p>Addition of full term for clarity (first use)</p> <p>Relettering</p> <p>Correction of references due to deletions and renumbering</p> <p>Relettering; correction of word choice and syntax for clarity and continuity</p>

<p><b>Y.</b> "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.</p> <p><b>X.</b> "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 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.</p> <p><b>AD.</b> "National ambient air quality standards (NAAQS)" are those standards established pursuant to Section 109 of the CAA.</p> <p>(1) "1-hour ozone NAAQS" means the 1-hour ozone national ambient air quality standard codified at 40 CFR 50.9.</p> <p>(2) "8-hour ozone NAAQS" means the 8-hour ozone national ambient air quality standard codified at 40 CFR 50.10.</p> <p>(3) "24-hour PM<sub>10</sub> NAAQS" means the 24-hour PM<sub>10</sub> national ambient air quality standard codified at 40 CFR 50.6.</p> <p>(4) "1997 PM<sub>2.5</sub> NAAQS" means the PM<sub>2.5</sub> national ambient air quality standards codified at 40 CFR 50.7.</p> <p>(5) "2006 PM<sub>2.5</sub> NAAQS" means the 24-hour PM<sub>2.5</sub> national ambient air quality standard codified at 40 CFR 50.13.</p> <p>(6) "Annual PM<sub>10</sub> NAAQS" means the annual PM<sub>10</sub> national ambient air quality standard that EPA revoked on December 18, 2006.</p> <p><b>AF.</b> "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.</p>	<p><b>S.</b> "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 that do not have federally required metropolitan transportation plans or transportation improvement programs (TIPs) and do not have projects that are part of the emissions in such areas are instead included in statewide TIPs. These are not donut areas.</p> <p><b>T.</b> "Limited maintenance plan" means a maintenance plan that US EPA has determined meets US 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.</p> <p><b>W.</b> "Memorandum of Agreement (MOA)" means a document agreed upon by cooperating parties.</p> <p><b>Z.</b> "National ambient air quality standards (NAAQS)" are those standards established pursuant to Section 109 of the CAA.</p>	<p>Relettering</p> <p>Grammar correction</p> <p>Addition of full term for clarity and parentheses for acronym</p> <p>Relettering; word choice for continuity; correction of acronyms</p> <p>Addition of term</p> <p>Relettering due to deletions and additions</p> <p>Delete sub-definitions to match federal language (77 Federal Register 14981 (3-14-12))</p> <p>Relettering; correction of word choice and syntax for clarity and continuity</p>
<p><b>V.</b> "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.</p> <p><b>X.</b> "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 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.</p> <p><b>AD.</b> "National ambient air quality standards (NAAQS)" are those standards established pursuant to Section 109 of the CAA.</p> <p>(1) "1-hour ozone NAAQS" means the 1-hour ozone national ambient air quality standard codified at 40 CFR 50.9.</p> <p>(2) "8-hour ozone NAAQS" means the 8-hour ozone national ambient air quality standard codified at 40 CFR 50.10.</p> <p>(3) "24-hour PM<sub>10</sub> NAAQS" means the 24-hour PM<sub>10</sub> national ambient air quality standard codified at 40 CFR 50.6.</p> <p>(4) "1997 PM<sub>2.5</sub> NAAQS" means the PM<sub>2.5</sub> national ambient air quality standards codified at 40 CFR 50.7.</p> <p>(5) "2006 PM<sub>2.5</sub> NAAQS" means the 24-hour PM<sub>2.5</sub> national ambient air quality standard codified at 40 CFR 50.13.</p> <p>(6) "Annual PM<sub>10</sub> NAAQS" means the annual PM<sub>10</sub> national ambient air quality standard that EPA revoked on December 18, 2006.</p> <p><b>AF.</b> "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.</p>	<p><b>S.</b> "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 that do not have federally required metropolitan transportation plans or transportation improvement programs (TIPs) and do not have projects that are part of the emissions in such areas are instead included in statewide TIPs. These are not donut areas.</p> <p><b>T.</b> "Limited maintenance plan" means a maintenance plan that US EPA has determined meets US 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.</p> <p><b>W.</b> "Memorandum of Agreement (MOA)" means a document agreed upon by cooperating parties.</p> <p><b>Z.</b> "National ambient air quality standards (NAAQS)" are those standards established pursuant to Section 109 of the CAA.</p>	<p>Relettering</p> <p>Grammar correction</p> <p>Addition of full term for clarity and parentheses for acronym</p> <p>Relettering; word choice for continuity; correction of acronyms</p> <p>Addition of term</p> <p>Relettering due to deletions and additions</p> <p>Delete sub-definitions to match federal language (77 Federal Register 14981 (3-14-12))</p> <p>Relettering; correction of word choice and syntax for clarity and continuity</p>

<p><b>AE.</b> "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.</p> <p><b>AR.</b> "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:</p> <ol style="list-style-type: none"> <li>(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;</li> <li>(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</li> <li>(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.</li> </ol> <p><b>AS.</b> "Transportation control measure (TCM)" is any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA section 176(c)(8), 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.</p> <p><b>AX.</b> "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.</p>	<p><b>AG.</b> "Re-entrained road dust" means emissions which are produced by travel on paved and unpaved roads, including emissions from anti-skid and de-icing material(s).</p> <p><b>AL.</b> "Transit" means 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.</p> <p><b>AM.</b> "Transit project" means 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:</p> <ol style="list-style-type: none"> <li>(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;</li> <li>(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</li> <li>(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.</li> </ol> <p><b>AN.</b> "Transportation control measure (TCM)" means any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA Section 176(c)(8), 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.</p> <p><b>AT.</b> "Written commitment" means, for the purposes of this part, 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.</p>	<p>Movement of definition from Section 2.D (see above)</p> <p>Relettering; word choice correction for continuity</p> <p>Relettering; word choice correction for continuity</p> <p>Relettering; word choice correction for continuity</p> <p>Relettering; syntax correction for continuity</p>
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<p><b>20.2.99.8</b> 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.</p> <p>[Current location is 1301 Siler Rd, Building B., Santa Fe, NM 87507.]</p>	<p><b>20.2.99.8</b> DOCUMENTS: Documents incorporated and cited in this Part may be viewed at the New Mexico environment department, air quality bureau, Santa Fe, NM.</p>	<p>Address deletions to make location generic enough that revisions won't be necessary if the AQB moves again; corrections of capitalization</p>
<p><b>20.2.99.9 to 20.2.99.108</b> [RESERVED]</p>	<p><b>20.2.99.9 to 20.2.99.100</b> [RESERVED]</p>	<p>Renumbering</p>
<p><b>20.2.99.109</b> APPLICABILITY</p> <p>A. Action applicability.</p> <p>(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:</p> <p>(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;</p> <p>(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</p> <p>(c) the approval, funding, or implementation of FHWA/FTA projects.</p> <p>(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.</p> <p>C. Limitations. In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project 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.</p>	<p><b>20.2.99.101</b> APPLICABILITY</p> <p>A. Action applicability.</p> <p>(1) Except as provided for in Subsection C of 20.2.99.101 NMAC conformity determinations are required for:</p> <p>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.</p>	<p>Renumbered Section</p> <p>(1) Removal of reference to deleted section</p> <p>(2) Removal of reference to deleted section</p> <p>C. Removal of references to deleted section</p>
<p><b>20.2.99.116</b> CONSULTATION.</p> <p>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</p>	<p><b>20.2.99.102</b> CONSULTATION.</p> <p>A. 20.2.99.102 NMAC through 20.2.99.110 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 20.2.99.102 NMAC shall undertake a consultation process with each other prior to the development of: 1) conformity determinations; 2) major activities listed in 20.2.9.103 NMAC below; 3) specific major activities listed</p>	<p>Renumbered section</p> <p>A. Correction of 7 references to retained sections, due to renumbering</p>

<p>in 20.2.99.106, 107 NMAC below; and 4) specific routine activities listed in 20.2.99.106, 107 NMAC below. This consultation process shall follow the consultation procedures described in 20.2.99.106 NMAC below.</p> <p><b>B.</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 US EPA region 6, including consultation on the issues described in 20.2.99.103 NMAC. This opportunity for consultation shall be provided prior to the determination of conformity.</p> <p><b>C.</b> Affected agencies.</p> <p>(1) Agencies which are affected by this part and which are required to participate in the consultation process are:</p> <p>(a) the designated MPO for the nonattainment or maintenance area;</p> <p>(b) the department;</p> <p>(c) NMDOT;</p> <p>(d) the local transportation agency for the county or city in which the nonattainment or maintenance area is located;</p> <p>(e) the local transit agency for the city or county in which the nonattainment or maintenance area is located;</p> <p>(f) EPA Region 6;</p> <p><b>D.</b> Policy level points of contact and policy level meetings.</p> <p>(1) The policy level points of contact for participating organizations are as follows:</p> <p>(a) MPO: executive director or designee;</p> <p>(b) department: secretary or designee;</p> <p>(c) NMDOT: secretary or designee;</p> <p>(d) NMDOT district office: district engineer;</p> <p>(e) local government: chief administrative officer or designee;</p> <p>(f) EPA region 6: regional administrator or designee;</p>	<p>in 20.2.99.106, 107 NMAC below; and 4) specific routine activities listed in 20.2.99.106, 107 NMAC below. This consultation process shall follow the consultation procedures described in 20.2.99.105 NMAC below.</p> <p><b>B.</b> Prior to US 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 US EPA region 6, including consultation on the issues described in 20.2.99.103 NMAC. This opportunity for consultation shall be provided prior to the determination of conformity.</p> <p><b>C.</b> Affected agencies.</p> <p>(1) Agencies which are affected by this part and which are required to participate in the consultation process are:</p> <p>(a) the designated MPO for the nonattainment or maintenance area;</p> <p>(b) the department;</p> <p>(c) NMDOT;</p> <p>(d) the local transportation agency for the county or city in which the nonattainment or maintenance area is located;</p> <p>(e) the local transit agency for the city or county in which the nonattainment or maintenance area is located;</p> <p>(f) US EPA region 6;</p> <p><b>D.</b> Policy level points of contact and policy level meetings.</p> <p>(1) The policy level points of contact for participating organizations are as follows:</p> <p>(a) MPO: executive director or designee;</p> <p>(b) department: secretary or designee;</p> <p>(c) NMDOT: secretary or designee;</p> <p>(d) NMDOT district office: district engineer;</p> <p>(e) local government: chief administrative officer or designee;</p> <p>(f) US EPA region 6: regional administrator or designee;</p>	<p>B. Correction of acronym</p> <p>Correction of acronym</p> <p>Correction of reference due to renumbering</p> <p>C(1)(f). Correction of acronym</p> <p>D(1)(f). Correction of acronym</p>
<p><b>20.2.99.107</b> <b>AGENCY ROLES IN CONSULTATION.</b> Specific roles of the agencies participating in the interagency consultation process are listed below. Specific responsibilities of the</p>	<p><b>20.2.99.103</b> <b>AGENCY ROLES IN CONSULTATION.</b> Specific roles of the agencies participating in the interagency consultation process are listed below. Specific responsibilities of the</p>	<p>Renumbered Section</p>

<p>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.</p> <p><b>B.</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:</p> <p>(6) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas as required by Subparagraph (c) of Paragraph (2) of Subsection N of 20.2.99.128 NMAC; and</p> <p><b>C.</b> In the case of areas in which an MPO has not been established, NMDOT shall be the lead agency for:</p> <p>(1) the development of the transportation plan for the nonattainment or maintenance area;</p> <p>(2) development of the TIP (transportation improvement program) for the nonattainment or maintenance area;</p> <p>(3) any amendments or revisions thereto;</p> <p>(4) any determinations of conformity under this part for which an MPO would be otherwise responsible;</p> <p>(5) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas as required by Subparagraph (c) of Paragraph (2) of Subsection N of 20.2.99.128 NMAC; and</p>	<p>agencies participating in the interagency consultation process are listed in 20.2.99.104 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.</p> <p><b>B.</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:</p> <p>(6) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas; and</p> <p><b>C.</b> In the case of areas in which an MPO has not been established, NMDOT shall be the lead agency for:</p> <p>(1) development of the transportation plan for the nonattainment or maintenance area;</p> <p>(2) development of the TIP for the nonattainment or maintenance area;</p> <p>(3) any amendments or revisions thereto;</p> <p>(4) any determinations of conformity under this part for which an MPO would otherwise be responsible;</p> <p>(5) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas; and</p>	<p>Correction of 1 reference to retained section, due to renumbering</p> <p>Removal of reference to deleted section</p> <p>Removal of full term (not needed)</p> <p>Removal of reference to deleted Section</p>
<p><b>20.2.99.118 AGENCY RESPONSIBILITIES IN CONSULTATION</b></p> <p><b>D.</b> FHWA New Mexico offices and FTA region 6 shall be responsible for:</p> <p>(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</p> <p><b>E.</b> EPA region 6 shall be responsible for providing guidance on conformity criteria and procedures to agencies participating in the interagency consultation process.</p>	<p><b>20.2.99.104 AGENCY RESPONSIBILITIES IN CONSULTATION</b></p> <p><b>D.</b> FHWA New Mexico offices and FTA region 6 shall be responsible for:</p> <p>(1) assuring timely action on final findings of conformity, after consultation with other agencies as provided in 20.2.99.102 through 20.2.99.110 NMAC; and</p> <p><b>E.</b> US EPA region 6 shall be responsible for providing guidance on conformity criteria and procedures to agencies participating in the interagency consultation process.</p>	<p>Renumbered Section</p> <p>Correction of references to retained Sections, due to renumbering</p> <p>Correction of acronym</p> <p>Renumbered section</p>
<p><b>20.2.99.119 GENERAL CONSULTATION PROCEDURES</b></p>	<p><b>20.2.99.105 GENERAL CONSULTATION PROCEDURES</b></p>	<p>Renumbered section</p>

<p>It shall be the responsibility of the lead agency to facilitate the interagency consultation process by:</p> <p>(1) Conferring with all other agencies identified under subsection C of 20.2.99.146 NMAC who are participating in the particular consultation process;</p> <p>(5) Conducting the consultation process as described in this section (20.2.99.149 NMAC);</p> <p>C. Regular consultation on major activities, as defined in 20.2.99.129 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.</p> <p>D. Regular consultation on routine activities, as defined in 20.2.99.124 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.</p> <p>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.</p> <p>F. It shall be the responsibility of each participating agency (those listed in paragraph (1) of subsection C of 20.2.99.146 NMAC) during the consultation process to:</p> <p>(1) Confer with the lead and other participating agencies (those listed in paragraph (1) of subsection C of 20.2.99.146 NMAC) in the consultation process;</p> <p>(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;</p>	<p>It shall be the responsibility of the lead agency to facilitate the interagency consultation process by:</p> <p>(1) conferring with all other agencies identified under subsection C of 20.2.99.102 NMAC who are participating in the particular consultation process;</p> <p>(5) conducting the consultation process as described in this section (20.2.99.105 NMAC);</p> <p>C. Regular consultation on major activities, as defined in 20.2.99.106 NMAC, shall include policy level meetings beginning no later than nine 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 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.</p> <p>D. Regular consultation on routine activities, as defined in 20.2.99.107 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.</p> <p>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 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.</p> <p>F. It shall be the responsibility of each participating agency (those listed in paragraph (1) of subsection C of 20.2.99.102 NMAC) during the consultation process to:</p> <p>(1) confer with the lead and other participating agencies (those listed in paragraph (1) of subsection C of 20.2.99.102 NMAC) in the consultation process;</p> <p>(2) review and comment as appropriate (including comments in writing) on all proposed and final draft documents and decisions within 30 days of receipt;</p>	<p>Correction of reference to retained section, due to renumbering</p> <p>Correction of reference to retained section, due to renumbering</p> <p>Correction of reference to retained section, due to renumbering; style correction for number</p> <p>Style correction for number</p> <p>Correction of reference to retained section, due to renumbering</p> <p>Style correction for number</p> <p>Correction of reference to retained section, due to renumbering</p> <p>Correction of reference to retained section, due to renumbering</p> <p>Style correction for number</p>
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<p><b>20.2.99.120 CONSULTATION PROCEDURES FOR SPECIFIC MAJOR ACTIVITIES.</b> 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.</p> <p><b>C.</b> 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).</p> <p><b>D.</b> 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).</p> <p><b>E.</b> Determination, as required by 20.2.99.140 NMAC, of whether:</p> <p><b>G.</b> 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.</p> <p><b>I.</b> 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).</p> <p><b>J.</b> 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.</p>	<p><b>20.2.99.106 CONSULTATION PROCEDURES FOR SPECIFIC MAJOR ACTIVITIES.</b> 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 20.2.99.105 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 20.2.99.102 NMAC above.</p> <p><b>C.</b> Evaluation of whether projects otherwise exempted from meeting the requirements of this part 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).</p> <p><b>D.</b> Determination 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).</p> <p><b>E.</b> Determination of whether:</p> <p><b>G.</b> Verification of what forecast of VMT to use in developing SIPs. The lead agency shall be the air quality bureau of the department.</p> <p><b>I.</b> An interagency consultation process shall be undertaken for evaluating events which will trigger new conformity determinations. The lead agency shall be the MPO (or NMDOT in the absence of an MPO).</p> <p><b>J.</b> 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 a memorandum of agreement (MOA), for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment</p>	<p>Renumbered Section</p> <p>Correction of reference (typographical error); corrections of references to retained sections, due to renumbering</p> <p>Removal of reference to deleted Section</p> <p>Removal of reference to deleted Section</p> <p>Removal of reference to deleted Section</p> <p>Removal of full term (acronym used previously)</p> <p>Removal of references to deleted sections</p> <p>Addition of full phrase for 1<sup>st</sup> time use and parentheses for acronym</p>
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<p>The lead agency shall be NMDOT.</p> <p><b>K.</b> 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.</p> <p><b>L.</b> 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.</p> <p><b>M.</b> 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).</p>	<p>or maintenance area. The lead agency shall be NMDOT.</p> <p><b>K.</b> In nonattainment or maintenance areas where more than one MPO is involved, such MPOs must develop an MOA or memorandum of understanding reflecting their consultation.</p> <p><b>L.</b> 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 an MOA or memorandum of understanding reflecting their consultation.</p> <p><b>M.</b> In choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, the lead agency shall be the MPO (or NMDOT in the absence of an MPO).</p>	<p>Removal of full term (acronym used previously)</p> <p>Removal of full term (acronym used previously)</p> <p>Correction of grammar Removal of reference to deleted section</p>
<p><b>20.2.99.141</b> <b>CONSULTATION PROCEDURES FOR SPECIFIC ROUTINE ACTIVITIES.</b> 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 20.2.99.149 NMAC. The lead agency for each activity shall be as specified, and the participating agencies shall be the agencies specified in Subsection C of 20.2.99.146 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.</p> <p><b>A.</b> 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.</p> <p><b>B.</b> Assumption of the location and design concept and scope of projects which are disclosed to the MPO, as required by Subsection D of 20.2.99.144 NMAC, but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of 20.2.99.144 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.</p> <p><b>D.</b> Regionally Significant Non-FHWA/FTA Projects.</p> <p>(3) In the case of any such regionally significant</p>	<p><b>20.2.99.107</b> <b>CONSULTATION PROCEDURES FOR SPECIFIC ROUTINE ACTIVITIES.</b> 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 20.2.99.105 NMAC. The lead agency for each activity shall be as specified, and the participating agencies shall be the agencies specified in Subsection C of 20.2.99.102 NMAC above or as specified for the specific activity. Not later than 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.</p> <p><b>A.</b> Identification of projects located at sites in PM<sub>10</sub> nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM<sub>10</sub> hot-spot analysis. The lead agency shall be either the MPO or NMDOT, in cooperation with the department.</p> <p><b>B.</b> Assumption of the location and design concept and scope of projects which are disclosed to the MPO, as required by Subsection D of 20.2.99.107 NMAC, but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis. 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.</p> <p><b>D.</b> Regionally significant non-FHWA/FTA projects.</p> <p>(3) In the case of any such regionally significant</p>	<p>Renumbered Section</p> <p>Correction of references to retained Sections, due to renumbering</p> <p>Style correction for number</p> <p>Removal of reference to deleted Section</p> <p>Correction of reference to retained Section, due to renumbering</p> <p>Removal of reference to deleted Section</p>

<p>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.</p> <p>(4) For the purposes of this section (20.2.99.141 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 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.</p>	<p>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. 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.</p> <p>(4) For the purposes of this section (20.2.99.107 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.</p>	<p>(3) Removal of reference to deleted section</p> <p>Removal of reference to deleted section</p> <p>(4) Correction of reference to retained section, due to renumbering; removal of reference to deleted section</p>
<p><b>20.2.99.122 NOTIFICATION PROCEDURES FOR ROUTINE ACTIVITIES.</b> Notification of affected agencies (including those listed in Paragraph (1) of Subsection C of 20.2.99.116 NMAC) of transportation plan or TIP 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:</p> <p>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</p> <p>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).</p>	<p><b>20.2.99.108 NOTIFICATION PROCEDURES FOR ROUTINE ACTIVITIES.</b> Notification of affected agencies (including those listed in Paragraph (1) of Subsection C of 20.2.99.102 NMAC) of transportation plan or TIP amendments which merely add or delete exempt projects shall be the affirmative responsibility of NMDOT or the MPO. Such notification shall be provided not later than 30 days prior to the preparation of the final draft of the document or decision. This process shall include:</p> <p>A. notification of the affected agencies (including those listed in Paragraph (1) of Subsection C of 20.2.99.102 NMAC) early in the process of decision on the final document; and</p> <p>B. supplying all relevant documents and information to the affected agencies (including those listed in Paragraph (1) of Subsection C of 20.2.99.102 NMAC).</p>	<p>Renumbered Section</p> <p>Correction of reference to retained section, due to renumbering; removal of reference to deleted section</p> <p>Style correction for number</p> <p>Removal of reference to deleted Section</p> <p>A. &amp; B. Correction of references to retained Section, due to renumbering</p>
<p><b>20.2.99.123 CONFLICT RESOLUTION AND APPEALS TO THE GOVERNOR</b></p>	<p><b>20.2.99.109 CONFLICT RESOLUTION AND APPEALS TO THE GOVERNOR</b></p>	<p>Renumbered Section</p>

<p><b>B.</b> The department has <del>fourteen</del>(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 <del>fourteen</del>-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 <del>fourteen</del>(14) days, the MPO or NMDOT may proceed with the final conformity determination.</p> <p><b>C.</b> In the case of any comments with regard to findings of fiscal constraint <del>under 20.2.99.127-NMAG</del> or the air quality effects of any determination of conformity, NMDOT has <del>fourteen</del>(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 of the resolution of all comments on such determination of conformity or policy decision. Such <del>fourteen</del>-day period shall commence when the MPO has confirmed receipt by the secretary of the department of the resolution of the comments of the MPO or NMDOT of the resolution of the comments of 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 <del>fourteen</del> days, the MPO may proceed with the final conformity determination.</p>	<p><b>B.</b> The department has 14 calendar days to appeal a determination of conformity (or other policy decision under this part) to the governor after NMDOT or the MPO has notified the department of the resolution of all comments on such determination of conformity or policy decision. Such 14-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 14 days, the MPO or NMDOT may proceed with the final conformity determination.</p> <p><b>C.</b> In the case of any comments with regard to findings of fiscal constraint or air quality effects of any determination of conformity, NMDOT has 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 of the resolution of all comments on such determination of conformity or policy decision. Such 14-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 the MPO or 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 14 days, the MPO may proceed with the final conformity determination.</p>	<p>Style corrections for number</p> <p>Removal of reference to deleted Section</p> <p>Style corrections for number</p>
<p><b>20.2.99.124</b> <b>PUBLIC CONSULTATION PROCEDURES</b></p> <p><b>A.</b> 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 (a), 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</p>	<p><b>20.2.99.110</b> <b>PUBLIC CONSULTATION PROCEDURES</b></p> <p><b>A.</b> 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, TIPs, and projects, consistent with the requirements of 23 CFR part 450, including Sections 450.316 (a), 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</p>	<p>Renumbered Section</p> <p>Correction of grammar</p>

<p>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).</p> <p><b>B.</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.</p>	<p>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).</p> <p><b>B.</b> The opportunity for public involvement provided under this section (20.2.99.110 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.</p>	<p>Correction of reference to retained section, due to renumbering</p>
<p><b>20.2.99.150 ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES</b></p> <p><b>A.</b> 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, PM<sub>10</sub>, or PM<sub>2.5</sub> 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.</p>	<p><b>20.2.99.111 ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES</b></p> <p><b>A.</b> 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 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, PM<sub>10</sub>, or PM<sub>2.5</sub> 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 or used in the project-level hot-spot analysis.</p>	<p>Renumbered Section</p> <p>Style correction</p> <p>Removal of references to deleted sections</p>
<p><b>D.</b> 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</p>	<p><b>D.</b> 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, emission budget requirements and interim emissions requirements are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under 20.2.99.102 NMAC through 20.2.99.110 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 for vehicle emissions budgets and interim vehicle emissions budgets, and that the project still satisfies the requirements for hot-spots, and therefore that the conformity determinations for</p>	<p>Removal of 3 references to deleted Sections</p> <p>Correction of references to retained Sections, due to renumbering</p> <p>Clarification of requirements found in deleted Sections</p>

<p>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 20.2.99.424 NMAC for conformity determinations for projects.</p>	<p>the transportation plan, TIP and project are still valid. This finding is subject to the applicable public consultation requirements in 20.2.99.110 NMAC for conformity determinations for projects.</p>	<p>Correction of reference to retained Section, due to renumbering</p>
<p><b>20.2.99.154 SAVINGS PROVISION.</b> 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 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.</p>	<p><b>20.2.99.112 SAVINGS PROVISION:</b> 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 <u>US</u> EPA. Following <u>US</u> 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 <u>US</u> 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 <u>US</u> EPA.</p>	<p>Renumbering of section</p> <p>4 corrections to acronym</p>







2005 SEP 15 AM 9: 59

This is an amendment to 20.2.99 NMAC, Sections 2, 7, 109, 112-118, 120-123, 125, 128-129, 135-140, and 143-154, effective 10/15/05.

**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; and
- (3) volatile organic compounds and/or nitrogen oxides, [and PM10] 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 [NMSHTD] NMDOT in the absence of an MPO) and US DOT; or

(b) the applicable SIP (or implementation plan submission) establishes [a] an 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)).

[D]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]

**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.

[A]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.

[B]D. "CAA" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

[C]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.

[D]E. "CFR" means the code of federal regulations.

20.2.99 NMAC

1







MAY 12 2014

Air Quality Bureau



# Invoice

Invoice Number: *NMR-2014- 200*

Date: 5/5/2014

Commission of Public Records  
 Administrative Law Division  
 1205 Camino Carlos Rey  
 Santa Fe, NM 87507  
 Phone: (505) 476-7907  
 Fax: (505) 476-7910

Bill To: Cindy Hollenberg (505) 476-1356  
 Environment Department - Air Qual Bureau  
 525 Camino de los Marquez  
 Santa Fe, NM 87505  
 E-Mail: cindy.hollenberg@state.nm.us

Ship To (if different address):  
 Environment Department - Air Qual Bureau  
 525 Camino de los Marquez  
 Santa Fe, NM 87505

SRC Authorization	Phone Number	Date Requested	Date Shipped	Shipped Via	Bill To (agency code)
Louise Wood	(505) 476-7875	4/30/2014		US Post	667

Quantity	Description	Revenue Code	Unit Price	Total
22	Columnar inch - Notice	431902	\$2.00	\$44.00

Subtotal \$44.00

*For Internal Use Only*

Payment Method: Purchase Order      Number: 067000-0000020222

Payment Amount:

Payment Amount

Amount Due \$44.00

*Please pay promptly to Vendor Number 0000000729*

*State Records Center and Archives  
 Commission of Public Records*



New Mexico Commission of Public Records  
Administrative Law Division

1205 Camino Carlos Rey  
Santa Fe, NM 87507  
505-476-7907

**Affidavit of Publication in the *New Mexico Register***

I, Matthew Ortiz, certify that the agency noted below has published legal notices or rules in the New Mexico Register, and that payment has been assessed by invoice for said legal notice or publication, which appeared on the date and in the volume and issue number noted below.

Date of Publication: 4/30/2014

Volume: XXV Issue #: 8

Invoice #: NMR-2014- 200

Amount: \$44.00

Agency:

Environment Department - Air Qual Bureau

Contact: Cindy Hollenberg

525 Camino de los Marquez

Santa Fe, NM 87505-

Description:

Notice

Notice of Rulemaking Hearing

State of New Mexico, County of Santa Fe

Signed and affirmed before me on Monday, May 05, 2014

by Matthew Ortiz

Notary Public:

Louise Wood

*Louise Wood*

My commission expires:

5 15 17

Affiant:

Publisher, *New Mexico Register*

*Matthew Ortiz*

Date: 5/5/2014

(seal)

~Copies of the published material documented in this affidavit are enclosed~

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

#### Notice of Proposed Rulemaking

The Economic Development Department ("EDD or Department") hereby gives notice that the Department will conduct a public hearing as indicated to obtain input on amending the following rule:

5.5.50 NMAC (Industrial Development Training Program).

The proposed rulemaking actions specific to the Job Training Incentive Program may be accessed on April 30, 2014 on the Department's website (<http://www.gonm.biz/JTIP>) or obtained from Sara Haring at the contact below.

A public hearing regarding the rules will be held on Friday, May 30, 2014 at the CNM Workforce Training Center, 5600 Eagle Rock Ave., NE, Albuquerque, NM. The time for the hearing on the proposed rules is 9:00 AM MDT.

Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking relating to the Job Training Incentive Program to Sara Haring, JTIP Program Manager, New Mexico Economic Development Department, P.O. Box 20003 Santa Fe, New Mexico 87504-5003, or [sara\\_haring@state.nm.us](mailto:sara_haring@state.nm.us) (505) 827-0249. Written comments must be received no later than 5:00 pm on Friday, May 23, 2014.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Therese Varela as soon as possible. The Department requests at least ten days advanced notice to provide requested special accommodations.

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on July 11, 2014 at 9:00 a.m. at the New Mexico State Capitol Building, Room 307, in Santa Fe, New Mexico. The

purpose of the hearing is to consider the matter of EIB 14-03 (R), proposed repeal and replacement to the New Mexico State Implementation Plan ("SIP") regarding Air Quality Control Regulation Part 99 (*Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects*) New Mexico Administrative Code ("20.2.99 NMAC").

The proponent of this regulatory repeal and replacement is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from the NMED to repeal and replace 20.2.99 NMAC. The proposed repeal and replacement of 20.2.99 NMAC is in response to amendments issued by the Environmental Protection Agency January 24, 2008 and March 14, 2012 to 40 CFR Part 93, Subpart A - *Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved under Title 23 U.S.C. or the Federal Transit Laws*. 40 CFR 93 Subpart A was amended to allow states to streamline their regulations and eliminate the provisions unrelated to implementation by the State. Upon adoption by the Board, the repeal and replacement of 20.2.99 NMAC would be submitted to EPA for incorporation into New Mexico's SIP.

The NMED will host an informational open house on the proposed repeal and replacement of 20.2.99 NMAC at the NMED Air Quality Bureau Office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico from 12:00 p.m. - 2:30 p.m. on May 16, 2014. For questions regarding the open house, please contact Cindy Hollenberg at 505-476-1356 or [cindy.hollenberg@state.nm.us](mailto:cindy.hollenberg@state.nm.us).

Full text of NMED's proposed revised regulations are available on NMED's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us) or by contacting Cindy Hollenberg at (505) 476-4356 or [cindy.hollenberg@state.nm.us](mailto:cindy.hollenberg@state.nm.us). The proposed revised regulation may also be examined during office hours at the Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, Section 74-1-9, the Air Quality Control Act, NMSA 1978, Section 74-2-6, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) include a copy of the direct testimony of each technical witness in narrative
- (4) list and attach each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on June 20, 2014, and should reference the docket number, EIB 14-03 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castaneda, Board Administrator  
Environmental Improvement Board  
P. O. Box 5469  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-0310

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Juan Carlos Borrego of the NMED Human Resources Bureau by July 1, 2014 at P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-0424 or email [juancarlos.borrego@state.nm.us](mailto:juancarlos.borrego@state.nm.us). TDY users please access his number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the

conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on July 11, 2014 at 9:00 a.m. at the State Capitol Building, Room 307, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of No. EIB 14-02(R), proposed revision to the New Mexico State Implementation Plan ("SIP") regarding Air Quality Control Regulation Part 12 of 20.2 New Mexico Administrative Code (Cement Kilns) ("20.2.12 NMAC").

The proponent of this regulatory adoption and revision is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED to repeal 20.2.12 NMAC. The proposed repeal is in response to the U.S. Environmental Protection Agency's ("EPA") February 12, 2013 amendments to the federal New Source Performance Standard, 40 CFR Part 60, Subpart F – Standards of Performance for Portland Cement Plants. If adopted by the Board, the repeal of 20.2.12 NMAC would be submitted to EPA for incorporation into New Mexico's SIP.

The NMED will host an informational open house on the proposed repeal of 20.2.12 NMAC at the NMED Air Quality Bureau Office, 525 Camino del los Marquez, Suite 1, Santa Fe, New Mexico from 12:00p.m.-3:00p.m. on June 4, 2014. To attend the informational open house, please contact Michael Baca at 575-617-7983 or michael.baca1@state.nm.us.

The proposed revised regulation may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino del los Marquez, Suite 1, Santa Fe, New Mexico. Full text of NMED's proposed revised regulations are available on NMED's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us), or by contacting Michael Baca at 575-647-7983 or michael.baca1@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC

(Rulemaking Procedures – Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, Section 74-1-9, the Air Quality Control Act Section, NMSA 1978, 74-2-6, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) include a copy of the direct testimony of each technical witness in narrative form;
- (4) list and attach each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on June 20, 2014 and should reference the docket number, EIB 14-02(R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castaneda, Board Administrator  
Environmental Improvement Board  
P.O. Box 5169  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-0310

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Juan Carlos Borrego of the NMED Human Resources Bureau by June 26, 2014 at P.O. Box 5169, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-0124 or email [juancarlos.borrego@state.nm.us](mailto:juancarlos.borrego@state.nm.us). TDD

users please access his number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on July 11, 2014 at 9:00 a.m. in Room 307 at the State Capital in Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of No. EIB 14-01(R), proposed revisions to the New Mexico State Implementation Plan ("SIP") regarding Air Quality Control Regulation Part 74 of 20.2 New Mexico Administrative Code (Permits – Prevention of Significant Deterioration) ("20.2.74 NMAC").

The proponent of this regulatory adoption and revision is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED to revise 20.2.74 NMAC. The proposed revisions are in response to the U.S. Environmental Protection Agency's ("EPA") December 9, 2013, amendments to federal rules 40 CFR 51.166 and 52.21. The amendments by the EPA to the federal rules address the January 22, 2013, United States Court of Appeals for the District of Columbia Circuit vacatur and remand of two prevention of significant deterioration provisions that were promulgated by EPA in 2010. The two provisions include the Significant Impact Levels (SILs) and Significant Monitoring Concentrations (SMC) for particulate matter 2.5 microns in size and less ( $PM_{2.5}$ ). The Court's vacatur of the  $PM_{2.5}$  SILs and the SMC means that these provisions can no longer be relied upon by either permit applicants or permitting authorities. The NMED is proposing to remove the  $PM_{10}$  SILs provision and revise the  $PM_{10}$  SMC provision that were incorporated into 20.2.74 NMAC in May 2011. If adopted by the Board, the revisions to 20.2.74 NMAC would be submitted to EPA for incorporation into New Mexico's SIP.

The NMED will host an informational open house on the proposed revisions to 20.2.74





# AFFIDAVIT OF PUBLICATION

RECEIVED  
ATC QUALITY CONTROL

STATE OF NEW MEXICO  
County of Bernalillo SS

Linda MacEachen, being duly sworn, declares and says that she is Classified Advertising Manager of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 times, the first publication being on the 30<sup>th</sup> day of April, 2014, and the subsequent consecutive publications on \_\_\_\_\_, 20\_\_\_\_.

*Linda MacEachen*

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 30<sup>th</sup> day of April of 2014.

PRICE 286.49

Statement to come at end of month.

ACCOUNT NUMBER 1007594

*2-18-17*  
*Dorinda B. Johnson*

CLA 22-A (R-1/93)

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD



### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on July 11, 2014 at 9:00 a.m. at the New Mexico State Capitol Building, Room 397, in Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 14-03 (A) proposed repeal and replacement to the New Mexico State Implementation Plan ("SIP") regarding Air Quality Control Regulation Part 93 (Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects) New Mexico Administrative Code (20.2.99 NMAC).

The proponent of this regulatory repeal and replacement is the New Mexico Environment Department ("NEMED").

The purpose of the public hearing is to consider and take possible action on a petition from the NEMED to repeal and replace 20.2.99 NMAC. The proposed repeal and replacement of 20.2.99 NMAC is in response to amendments issued by the Environmental Protection Agency January 21, 2009 and March 14, 2010 to 40 CFR Part 93 Subpart A. Con-

Plans, Programs, and Projects Developed, Funded or Approved under Title 23 U.S.C. or the Federal Transit Laws. 40 CFR 93 Subpart A was amended to allow states to streamline their regulations and eliminate the provisions unrelated to implementation by the State. Upon adoption by the Board the repeal and replacement of 20.2.99 NMAC would be submitted to EPA for incorporation into New Mexico's SIP.

The NEMED will host an informational open house on the proposed repeal and replacement of 20.2.99 NMAC at the NEMED Air Quality Bureau Office, 525 Camino de las Marquez, Suite 1, Santa Fe, New Mexico from 12:00 p.m. - 2:30 p.m. on May 16, 2014. For questions regarding the open house, please contact Cindy Hollenberg at 505-476-4356 or cindy.hollenberg@state.nm.us.

Full text of NEMED's proposed revised regulations are available on NEMED's web site at [www.nmemv.state.nm.us](http://www.nmemv.state.nm.us) or by contacting Cindy Hollenberg at (505) 476-4356 or cindy.hollenberg@state.nm.us.

The proposed revised regulation may also be examined during office hours at the Air Quality Bureau office, 525 Camino de las Marquez, Suite 1, Santa Fe, New Mexico.

The hearing will be conducted in accordance with 20.11 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, Section 74-1-9, the Air Quality Control Act, NMSA 1978, Section 74-2-6, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) include a copy of the direct testimony of each technical witness in narrative;
- (4) list and attach each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on June 20, 2014, and should reference the docket number EIB 14-03 (A), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pen Castaneda, Board Administrator  
Environmental Improvement Board  
P. O. Box 5469  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-0310

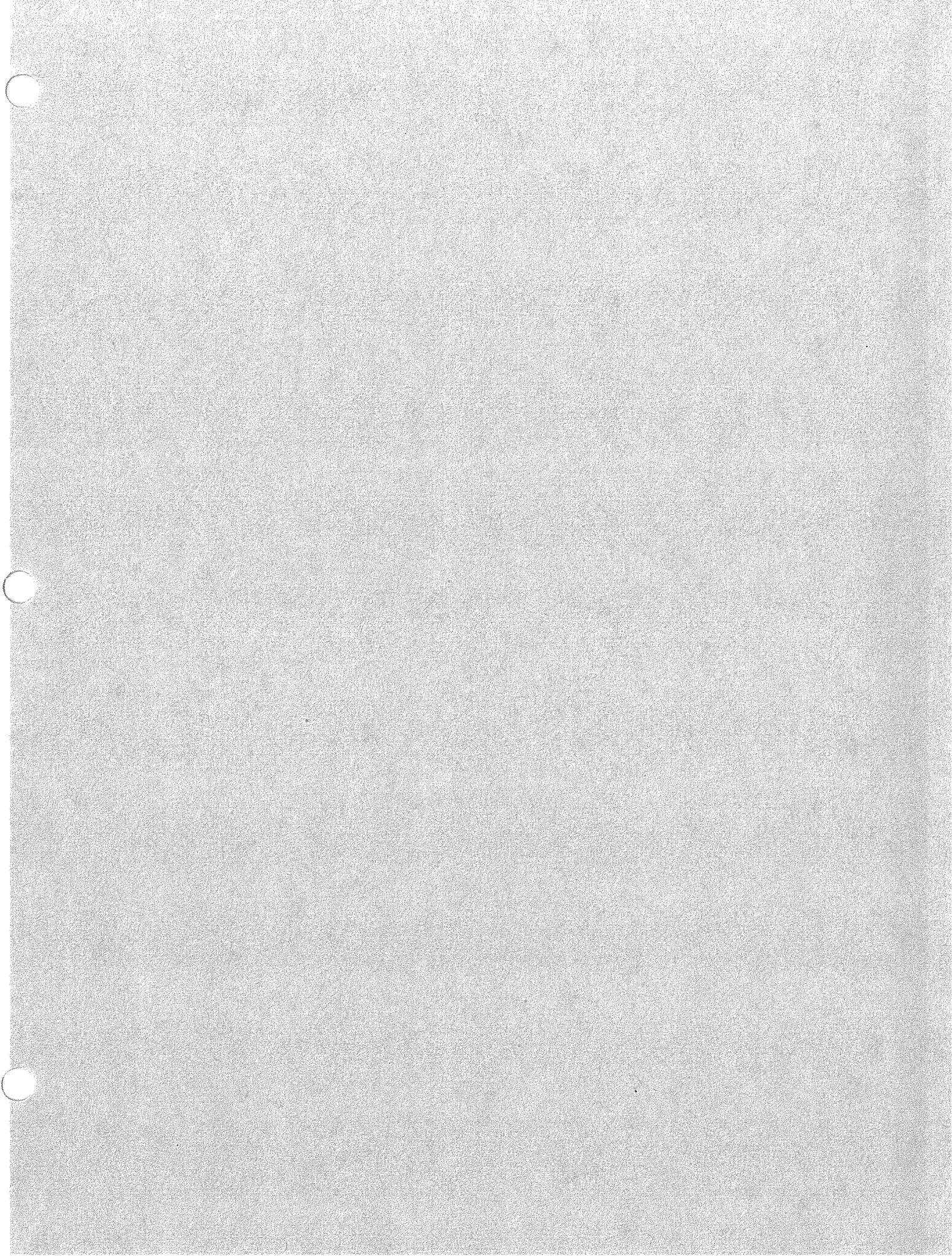
Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Juan Carlos Borrego of the NEMED Human Resources Bureau by July 1, 2014 at P.O. Box 26110, 1150 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-0424 or email [juancarlosborrego@state.nm.us](mailto:juancarlosborrego@state.nm.us). TDY users please access his number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal. *Journal April 30, 2014*







# AFFIDAVIT OF PUBLICATION

RECEIVED

MAY 8 2014

Air Quality Bureau

STATE OF NEW MEXICO

County of Bernalillo

SS

Linda MacEachen, being duly sworn, declares and says that she is Classified Advertising Manager of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 times, the first publication being on the 30 day of April, 2014, and the subsequent consecutive publications on \_\_\_\_\_, 20\_\_\_\_.

Linda MacEachen

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 20 day of April of 2014.

PRICE \$53.69

Statement to come at end of month.

2-18-17  
Shirley B. Jackson

CLA-22-A (R-1/93)

ACCOUNT NUMBER 1007594



CONSEJO PARA LA MEJORA DEL MEDIO AMBIENTE DE NUEVO MÉXICO  
NOTIFICACIÓN DE REUNIÓN PÚBLICA Y AUDIENCIA DE REGLAMENTACIÓN

La Junta de Mejora Ambiental de Nuevo México ("Junta") celebrará una audiencia pública el 11 de julio, 2014 a las 9:00 a.m. en el edificio del Capitolio del Nuevo México, Sala 307, Santa Fe, Nuevo México. La finalidad de la audiencia es considerar el asunto de EIB 13-03(R), propuesta de revocación y reemplazo al Plan de Implementación del Estado de Nuevo México ("SIP") relativa a la Parte 99 de la Regulación de Control de la Calidad del Aire del Código Administrativo de Nuevo México 20.2 (Conformidad al Plan de Implementación del Estado de Planes, Programas y Proyectos de Transportación) ("20.2.99 NMAC").

El proponente de esta revocación y reemplazo reguladora es el Departamento del Medio Ambiente de Nuevo México ("NMED").

La finalidad de la audiencia pública es considerar y posiblemente tomar acción sobre una petición de NMED para revocar y reemplazar 20.2.99 NMAC. La propuesta de revocación y reemplazo es en respuesta a las emendas del 6 de enero de 2008 y de 14 de mayo de 2012 de la

de los EE.UU. ("EPA") a la regla federal de conformidad de transporte, 40 CFR Parte 93, Subparte A - Conformidad a los Planes, Programas, y Proyectos de Implementación Estatales o Federales, Desarrollados, Financiados o Aprobados Según Título 23 U.S.C. o las Leyes de Tránsito Federales. 40 CFR 93 Subparte A fue enmendada para permitir a los estados a simplificar las regulaciones y eliminar los previsos no relacionados con la implementación por parte del estado. Tras la adopción por la Junta, la redacción y reemplazo de 20.2.99 NMAC sería enviada a la EPA para su incorporación en el SIP de Nuevo México.

El NMED patrocinará una jornada informativa de puertas abiertas sobre la revocación y reemplazo propuesta de 20.2.99 NMAC en la Oficina del Departamento de Calidad del Aire del NMED, 525 Camino de los Marquez, Suite 1, Santa Fe, Nuevo México de 12:00 p.m. a 2:30 p.m. el 16 de mayo de 2014. Para asistir a la jornada informativa de puertas abiertas, por favor, póngase en contacto con Cindy Hollenberg en el 505-476-4356 o [cindy.hollenberg@state.nm.us](mailto:cindy.hollenberg@state.nm.us).

El sitio en la Web del NMED, [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us) ofrece el texto completo de la revisión propuesta; también lo puede obtener por contactando Cindy Hollenberg, llamando al teléfono (505) 476-4356 o enviándole un correo electrónico a [cindy.hollenberg@state.nm.us](mailto:cindy.hollenberg@state.nm.us). La regulación revisada propuesta podrá ser examinada en horario de oficina en la Oficina de la Agencia de Calidad del Aire del NMED, en 525 Camino de los Marquez, Suite 1, Santa Fe, Nuevo México.

La audiencia se realizará de conformidad con 20.11 NMAC (Procedimientos de Reglamentación - Consejo para la Mejora del Medio Ambiente), la Ley de Mejora del Medio Ambiente, Sección 74-1-9 NMSA 1978, la Ley de Control de Calidad del Aire, Sección, 74-2-6 NMSA 1978, y otros procedimientos aplicables.

Todas las personas interesadas tendrán oportunidad razonable en la audiencia de presentar pruebas, datos, opiniones y argumentos importantes, ya sea en forma verbal o por escrito, así como de presentar anexos e interrogar testigos. Las personas que deseen entregar testimonios técnicos deben presentar ante el Consejo una notificación por escrito de su intención. La notificación de Intención deberá:

- (1) identificar a la persona para quien testificará(n) el(los) testigo(s);
- (2) identificar a cada uno de los testigos técnicos que las personas desean presentar y declarar las calificaciones de los mismos, incluyendo una descripción de sus antecedentes de educación y trabajo;
- (3) reunir o incluir una copia del testimonio directo de cada testigo técnico y declarar la duración prevista del testimonio de ese testigo;
- (4) enumerar y describir, o adjuntar, cada uno de los anexos que dicha persona prevé ofrecer en la audiencia; y
- (5) adjuntar el texto de cualquier modificación recomendada a las regulaciones propuestas nuevas y revisadas.

Las notificaciones de intención para la audiencia deben ser recibidas en la Oficina del Consejo a más tardar a las 5:00 p.m. el 20 de junio de 2014, y hacer referencia al número de expediente, EIB 13-03(R), y la fecha de la audiencia. Las notificaciones de intención para presentar testimonios técnicos se deben entregar a:

Fam Castaneda, Administradora de la Junta  
Oficina de la Junta de Mejoramiento Ambiental  
Harold Runnels Building  
1190 St. Francis Dr.,  
Room 2150-N  
Santa Fe, NM 87502  
Teléfono: (505) 827-2425, Fax (505) 827-0310

Cualquier miembro del público en general puede testificar en la audiencia. No se requiere notificación previa para presentar testimonios no técnicos en la audiencia. Los miembros del público también pueden ofrecer anexos en relación con su testimonio, en tanto no sean repeticiones excesivas de su testimonio.

Los miembros del público en general que deseen presentar una declaración por escrito para el registro, en vez de ofrecer testimonio verbal en la audiencia, presentarán la declaración por escrito antes de la audiencia, o la presentarán en la misma.

Las personas con discapacidad y que necesiten ayuda para ser parte de este proceso de la audiencia deberán contactar a Juan Carlos Borrego de la oficina de recurso humano NMED por 01 de julio, 2014, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, Nuevo México, 87502, teléfono 505-827-0424 o correo electrónico [juancarlos.borrego@state.nm.us](mailto:juancarlos.borrego@state.nm.us). Los usuarios de TDY deben acceder a su número a través de la Red de Difusión de Nuevo México, al 1-800-659-8331.

La Junta puede tomar la decisión sobre las regulaciones propuestas revisadas a la conclusión de la audiencia, o bien acordar una reunión para una fecha posterior a fin de considerar las acciones sobre la propuesta.  
Journal: April 30, 2014







**STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED REPEAL AND  
REPLACEMENT OF 20.2.99 NMAC –  
CONFORMITY TO THE STATE  
IMPLEMENTATION PLAN OF TRANSPORTATION  
PLANS, PROGRAMS, AND PROJECTS.**

**EIB 14-03 (R)**

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**NMED'S PROPOSED  
ORDER AND STATEMENT OF REASONS  
FOR ADOPTION OF SIP REVISIONS**

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This matter comes before the New Mexico Environmental Improvement Board (“Board”) upon a petition filed by the New Mexico Environment Department (“NMED” or “Department”), proposing repeal and replacement of 20.2.99 NMAC, *Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects*. The Board heard testimony from the Department and admitted exhibits into the record. On July 11, 2014, the Board deliberated and voted to adopt the proposed repeal and replacement for the reasons that follow:

**STATEMENT OF REASONS**

1. The federal Clean Air Act (“CAA”) at Section 176 requires that federally supported transportation plans, programs, and projects be consistent with (“conform to”) air quality implementation plans adopted or promulgated under section 110 of the Act. 42 U.S.C. § 7506(c)(1)(B).
2. CAA Section 176 further requires that the U.S. Environmental Protection Agency (“EPA”) promulgate regulations requiring states to include in their state implementation plans (“SIPs”) criteria and procedures for consultation, enforcement, and enforceability to

ensure the conformity of such transportation plans, programs and projects to the SIP. 42 U.S.C. 7506 (c)(1)(E).

3. Acting pursuant to the requirements of the CAA, the EPA promulgated the federal transportation conformity rule, codified at 40 CFR Part 93, in 1993. 58 Fed. Reg. 62188 (November 24, 1993).
4. Pursuant to CAA Section 176 and 40 C.F.R. Part 93, in 1994 New Mexico adopted regulations to assure conformity to the SIP of transportation plans, programs and projects, and has revised those regulations several times since to comply with revisions in the federal regulations. See 20.2.99 NMAC.
5. Although each state is required to adopt transportation conformity regulations in its SIP, conformity determinations are only required in areas that are in nonattainment with one of the national ambient air quality standards (“NAAQS”). 40 CFR §93.102(b)
6. No areas in New Mexico are currently designated as nonattainment for a NAAQS affecting the transportation conformity provisions. The only area in nonattainment of a NAAQS is Anthony, New Mexico, in Southern Doña Ana County, which is designated nonattainment for PM<sub>10</sub> due to high wind events, not for PM<sub>2.5</sub> from transportation sources. Therefore Anthony is not subject to transportation conformity requirements.
7. The EPA has revised the transportation conformity rule several times since 1993. Recent revisions relevant to this proceeding were made in January 2008 (73 Fed. Reg. 4420, (Jan. 24, 2008)) (Exhibit NMED 7a) and March 2012 (77 Fed. Reg. 14979 (Mar. 14, 2012)) (Exhibit NMED 8).
8. In the 2008 revisions to 40 C.F.R. Part 93, EPA provided that states may submit SIPs addressing only three provisions within Part 93: 40 C.F.R. § 93.105, 40 C.F.R. §

93.122(a)(4)(ii), and 40 C.F.R. § 93.125(c). These changes were in response to amendments to the federal Clean Air Act that Congress made in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The SAFETEA-LU amendments eliminated the requirement that states include verbatim most sections of Part 93 in their SIPs. See 77 Fed. Reg. at 4430 – 4431. See also Exhibit NMED 4, Test. of Cindy Hollenberg, at p.4.

9. On September 26, 2012, NMED requested that EPA, in reviewing transportation conformity SIP revisions previously submitted by the Department, consider only the three portions of 40 C.F.R. Part 93 required for inclusion in SIPs by SAFETEA-LU. See Exhibit NMED 7b, Letter from David Martin to Ron Curry.
10. In the 2012 revisions to 40 C.F.R. Part 93, EPA revised the definition of national ambient air quality standard (“NAAQS”) at 40 C.F.R. § 93.101 by removing paragraphs 1-6 of that definition, which had listed pollutant-specific NAAQS. See 77 Fed. Reg. at 14986. This will reduce the need for updates to the rule each time a NAAQS is promulgated. 77 Fed. Reg. at 14981.
11. The revisions proposed by the Department in this rule-making are responsive to, and comply with, the January 24, 2008, and March 14, 2012 revisions to the federal transportation conformity rule.
12. The proposed revisions eliminate the replication of those parts of 40 C.F.R Part 93 no longer required to be included in SIPs, in light of SAFETEA-LU and the 2008 revisions to Part 93. Accordingly, 34 of the current 54 sections of 20.2.99 NMAC are eliminated. Due to the extent of the revisions, in accordance with the recommendation of the State

Records Center the revisions are in the form of repeal and replacement of Part 99 in its entirety. See Exhibit NMED 4 at p. 5.

13. In accordance with the revisions to 40 C.F.R. § 93.101, the proposed revisions eliminate the listing of specific NAAQS under the definition of NAAQS, at proposed 20.2.99.7.Z NMAC.
14. In considering the proposed SIP revisions, the Board is required by the Air Quality Control Act, NMSA 1978, § 74-2-5.E to give the weight it deems appropriate to all facts and circumstances, including but not limited to (1) character and degree of injury to or interference with health, welfare, visibility and property; (2) the public interest, including the social and economic value of the sources and subjects of air contaminants; and (3) technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.
15. The NAAQS are developed by EPA to protect the public health with an adequate margin of safety. 42 U.S.C. § 7409(b)(1). SIPs are developed by the states to assure attainment and maintenance of the NAAQS. 42 U.S.C. § 7410(a)(1). SIPs must “include enforceable emission limitations and other control measures, means, or techniques ... as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements” of the Clean Air Act. 42 U.S.C. § 7410(a)(2)(A).
16. Transportation conformity assures that transportation plans and projects are consistent with the SIP. Therefore, transportation conformity is designed to ensure that the NAAQS are achieved through the mix of emissions limitations and other control measures previously approved by the Board in New Mexico’s SIP. The transportation conformity

- provisions are built upon, and help preserve, New Mexico's SIP, which considers the (1) character and degree of injury to or interference with health, welfare, visibility and property; (2) the public interest, including the social and economic value of the sources and subjects of air contaminants, in accordance with NMSA 1978, § 74-2.5.E (1) and (2).
17. The transportation conformity regulations do not contemplate or require the application of technological controls on sources of air pollutants. To the extent that conformity determinations involve consideration of economic costs, that consideration will occur in the context of individual determinations, in accordance with NMSA 1978, § 74-2.5.E (3).
  18. The proposed regulatory revisions satisfy the statutory requirements of the Air Quality Control Act, NMSA 1978, Section 74-2-5.E.
  19. Proposed replacement 20.2.99 NMAC is neither more nor less stringent than federal regulations require.
  20. Pursuant to 20.1.300.A NMAC, any person may petition the Board for amendment of regulations within the jurisdiction of the Board.
  21. On February 26, 2014, NMED filed a petition with the Board for a public hearing in this matter.
  22. On March 21, 2014, at a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Board granted the Department's request for a hearing.
  23. On April 30, 2014, Notice of Hearing was published in the Albuquerque Journal (in English and Spanish). *See* Exhibit NMED 12 b and 12c.
  24. On April 30, 2014, Notice of Hearing was published in the New Mexico Register. *See* Exhibit NMED 12a.

25. NMED filed a Notice of Intent to Present Technical Testimony (NOI) on June 19 2014, in accordance with 20.1.1.302 NMAC.
26. A hearing was held in this matter on July 11, 2014 in Santa Fe, New Mexico.
27. The Board has the authority to approve this proposed regulatory provision pursuant to NMSA 1978 § 74-2-5 (B) (1).
28. The Board approves of NMED's proposed replacement 20.2.99 NMAC, as contained in Exhibit NMED 6 admitted at the hearing, as satisfying the applicable requirements of CAA Section 176 and the federal transportation conformity rule as amended by 73 Fed. Reg. 4420 and 77 Fed. Reg. 14979.
29. The notice and hearing requirements of NMSA 1978 Section 74-2-6 and 20.1.1 NMAC were satisfied in this rulemaking process.
30. The proposed amendments are adopted for any or all of the reasons stated above.

### **ORDER**

By a \_\_\_\_ vote of a quorum of the Board members, the proposed regulatory revisions were approved by the Board on July 11, 2014. The Department shall submit replacement 20.2.99 NMAC to the Administrative Law Division of the New Mexico Commission of Public Records for compilation into the New Mexico Administrative Code, with any further revisions necessary to correct typographical errors and to reflect formatting required by the Commission. The Department shall submit the replacement regulations to the U.S. EPA for approval and incorporation into New Mexico's State Implementation Plan.

\_\_\_\_\_  
On Behalf of the Board

Dated: \_\_\_\_\_