

**ALBUQUERQUE-BERNALILLO COUNTY  
AIR QUALITY CONTROL BOARD**

**IN THE MATTER OF THE PETITION TO AMEND 20.11.3 NMAC,  
*TRANSPORTATION CONFORMITY*, AND INCORPORATE SAID  
AMENDMENTS INTO THE NEW MEXICO STATE IMPLEMENTATION PLAN  
FOR AIR QUALITY(SIP)**

*Jan*

**AQCB Petition No. 2010-2**

**Air Quality Division,  
Environmental Health Department,  
City of Albuquerque, Petitioner**

**Petition to Amend 20.11.3 NMAC, *Transportation Conformity*, and Incorporate an  
Amended 20.11.3 NMAC into the New Mexico State Implementation Plan for Air  
Quality (SIP)**

The Environmental Health Department of the City of Albuquerque, by and through the Air Quality Division (AQD), asks the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) for a hearing at which the Air Board will hear the Air Quality Divisions' request to adopt amendments to 20.11.3 NMAC, *Transportation Conformity*, and submit said amendments to U.S. Environmental Protection Agency (EPA) as a revision to the SIP. This Petition includes a request for a hearing on these matters and permission to provide a court reporter and hearing officer for the hearing. As grounds, Petitioner states the following:

1. The New Mexico Air Quality Control Act (Air Act), NMSA 1978, Sections 74-2-4 and 74-2-5.B(1) [1967 as amended through 2007] authorizes and requires the Air Board to adopt, amend, or replace air quality regulations and to adopt air quality plans (SIPs) under NMSA 1978, Section 74-2-5.B(2).

2. On March 24, 2010, the EPA promulgated changes to the transportation conformity rule that primarily affects PM<sub>2.5</sub> and PM<sub>10</sub> nonattainment and maintenance areas. This rule became effective on April 23, 2010 [FR Vol. 75, No. 56, 14260-14285]. In response, and as required by EPA, the City of Albuquerque Environmental Health Department is proposing amendments to update the conformity regulation. EPA's updated rule:

- Provides clear guidance on how to implement transportation conformity under the 2006 PM<sub>2.5</sub> national ambient air quality standards (NAAQS) to ensure that transportation planning and air quality planning are coordinated and that air quality is protected. Conformity will apply in 2006 PM<sub>2.5</sub> nonattainment areas for this NAAQS on December 14, 2010, based on the one-year grace period for newly designated areas in the Clean Air Act (CAA) and the transportation conformity rule;
- Includes the requirements for demonstrating conformity for the 2006 PM<sub>2.5</sub> NAAQS, including the regional emissions test(s) that would apply before and after SIP motor vehicle emissions budgets are established for the revised NAAQS;
- Updates the baseline year for the interim emissions test to calendar year 2008 in 2006 PM<sub>2.5</sub> nonattainment areas;
- Clarifies which budgets PM<sub>10</sub> nonattainment and maintenance areas would use for transportation conformity determinations, now that the annual PM<sub>10</sub> standard has been revoked; and

- Clarifies that federally funded or approved highway and transit projects in PM<sub>2.5</sub>, PM<sub>10</sub> and CO nonattainment and maintenance areas must not delay timely attainment or achievement of other interim milestones.

## **Background**

Transportation conformity is a CAA requirement that ensures that federally supported highway and transit projects are consistent with state air quality implementation plans. Conformity helps protect public health through early consideration of the air quality impacts of transportation decisions in places where air quality does not currently meet federal standards or has not met them in the past.

## **Health and Environmental Benefits**

EPA's final rule improves the health and environmental benefits of the existing transportation conformity program by requiring new PM<sub>2.5</sub> nonattainment areas and existing PM<sub>10</sub> nonattainment and maintenance areas to use conformity tests that ensure that air quality is protected in areas that need to attain or maintain federal air quality standards. The final rule also clarifies that hot-spot analyses are performed in a manner consistent with the CAA public health and environmental requirements.

3. It is anticipated that the hearing will take approximately 1 hour or less.

4. The proposed Public Review Draft of 20.11.3 NMAC, *Transportation Conformity* is attached as Exhibit #1a.

Respectfully submitted,

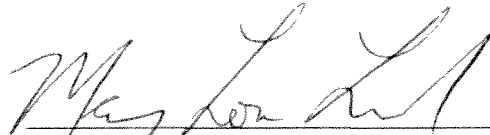


Mary Lou Leonard  
Director, Environmental Health Department  
City of Albuquerque  
One Civic Plaza, NW, Room 3047  
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(505) 768-1965

**CERTIFICATION**

I hereby certify that a copy of this Petition to Amend 20.11.3 NMAC, *Transportation Conformity*, and Incorporate said amendments into the New Mexico State Implementation Plan for Air Quality (SIP), was delivered to the following person on July 6, 2010.

Janice Wright  
Air Quality Control Board Liaison  
Environmental Health Department  
One Civic Plaza, NW, Room 3023  
Albuquerque, New Mexico 87103



Mary Lou Leonard  
Director, Environmental Health Department

1 **TITLE 20 ENVIRONMENTAL PROTECTION**  
2 **CHAPTER 11 ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**  
3 **PART 3 TRANSPORTATION CONFORMITY**

4  
5 **20.11.3.1 ISSUING AGENCY:** Albuquerque-Bernalillo County Air Quality Control Board, c/o  
6 Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.  
7 [7/1/98; 20.11.3.1 NMAC - Rn, 20 NMAC 11.03.1.1, 6/1/02; A, 6/13/05; A, 12/17/08]

8  
9 **20.11.3.2 SCOPE:**

10 **A. Action applicability:**

11 (1) Except as provided for in Subsection C of 20.11.3.2 NMAC or [~~20.11.3.223~~] 20.11.3.126 NMAC,  
12 conformity determinations are required for:

13 (a) the adoption, acceptance, approval or support of transportation plans and transportation plan  
14 amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by the metropolitan planning organization  
15 (MPO) or the United States department of transportation (DOT);

16 (b) the adoption, acceptance, approval or support of transportation improvement programs  
17 (TIPs) and TIP amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by the MPO or DOT; and

18 (c) the approval, funding or implementation of federal highway administration/federal transit  
19 administration (FHWA/FTA) projects.

20 (2) Conformity determinations are not required under 20.11.3 NMAC for individual projects that are  
21 not FHWA/FTA projects. However, [~~20.11.3.218~~] 20.11.3.121 NMAC [~~applies~~] does apply to such projects if they  
22 are regionally significant.

23 **B. Geographic applicability:** This transportation conformity regulation is an Albuquerque-  
24 Bernalillo county air quality control board (AQCB) regulation for Bernalillo county and is included in the state  
25 implementation plan (SIP) revision pertaining to transportation conformity for Bernalillo county. The provisions of  
26 20.11.3 NMAC shall apply to the area within Bernalillo county for which the area is designated nonattainment or  
27 has a maintenance plan for transportation-related criteria pollutants, and shall not apply to Indian lands over which  
28 the AQCB lacks jurisdiction, except that any FHWA/FTA project on Indian land that uses funds received from the  
29 FHWA or FTA or receives a federal permit must comply with 20.11.3 NMAC.

30 (1) The provisions of 20.11.3 NMAC apply with respect to emissions of the following criteria  
31 pollutants: ozone (O<sub>3</sub>), carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), particles with an aerodynamic diameter less  
32 than or equal to a nominal 10 micrometers (PM<sub>10</sub>), and particles with an aerodynamic diameter less than or equal to  
33 a nominal 2.5 micrometers (PM<sub>2.5</sub>).

34 (2) The provisions of 20.11.3 NMAC apply with respect to emissions of the following precursor  
35 pollutants:

36 (a) volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) in ozone areas;

37 (b) NO<sub>x</sub> in NO<sub>2</sub> areas;

38 (c) VOC and NO<sub>x</sub> in PM<sub>10</sub> areas if the environmental protection agency (EPA) regional  
39 administrator or the director of the air agency has made a finding that transportation-related emissions of one or both  
40 of these precursors within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem  
41 and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan  
42 submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further  
43 progress, attainment or maintenance strategy;

44 (d) NO<sub>x</sub> in PM<sub>2.5</sub> areas, unless both the EPA regional administrator and the director of the state  
45 air agency have made a finding that transportation-related emissions of NO<sub>x</sub> within the nonattainment area are not a  
46 significant contributor to the PM<sub>2.5</sub> nonattainment problem and has so notified the MPO and DOT, or the applicable  
47 implementation plan (or implementation plan submission) does not establish an approved (or adequate) budget for  
48 such emissions as part of the reasonable further progress, attainment or maintenance strategy; and

49 (e) VOC, sulfur dioxide (SO<sub>2</sub>) and ammonia (NH<sub>3</sub>) in PM<sub>2.5</sub> areas either if the EPA regional  
50 administrator or the director of the state air agency has made a finding that transportation-related emissions of any of  
51 these precursors within the nonattainment area are a significant contributor to the PM<sub>2.5</sub> nonattainment problem and  
52 has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission)  
53 establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress,  
54 attainment or maintenance strategy.

55 (3) The provisions of 20.11.3 NMAC apply to PM<sub>2.5</sub> nonattainment and maintenance areas with  
56 respect to PM<sub>2.5</sub> from re-entrained road dust if the EPA regional administrator or the director of the air agency has

1 made a finding that re-entrained road dust emissions within the area are a significant contributor to the PM<sub>2.5</sub>  
2 nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or  
3 implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the  
4 reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by  
5 travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).

6 (4) The provisions of 20.11.3 NMAC apply to maintenance areas ~~[for]~~ through the last year of a  
7 maintenance area's approved CAA Section 175A(b) maintenance plan, unless the applicable implementation plan  
8 specifies that the provisions of 20.11.3 NMAC shall apply for more than 20 years.

9 **C. Limitations:** In order to receive any FHWA/FTA approval or funding actions, including NEPA  
10 approvals, for a project phase subject to 20.11.3. NMAC, a currently conforming transportation plan and TIP shall  
11 be in place at the time of project approval as described in ~~[20.11.3.211]~~ 20.11.3.114 NMAC, except as provided by  
12 Subsection B of ~~[20.11.3.211]~~ 20.11.3.114 NMAC.

13 **D. Grace period for new nonattainment areas:** For areas or portions of areas which have been  
14 continuously designated attainment or not designated for any NAAQS for ozone, CO, PM<sub>10</sub>, PM<sub>2.5</sub> or NO<sub>2</sub> since  
15 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of  
16 these pollutants, the provisions of 20.11.3. NMAC shall not apply with respect to that NAAQS for 12 months  
17 following the effective date of final designation to nonattainment for each NAAQS for such pollutant.  
18 [7/1/98; 20.11.3.2 NMAC - Rn, 20 NMAC 11.03.I.2, 6/1/02; A, 6/13/05; A, 12/17/08; A, 11/15/10]

19  
20 **20.11.3.3 STATUTORY AUTHORITY:** 20.11.3 NMAC is adopted pursuant to the authority provided in  
21 the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control  
22 Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance,  
23 Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.  
24 [7/1/98; 20.11.3.3 NMAC - Rn, 20 NMAC 11.03.I.3, 6/1/02]

25  
26 **20.11.3.4 DURATION:** Permanent.  
27 [7/1/98; 20.11.3.4 NMAC - Rn, 20 NMAC 11.03.I.4, 6/1/02]

28  
29 **20.11.3.5 EFFECTIVE DATE:** July 1, 1998, unless a later date is cited at the end of a section.  
30 [7/1/98; 20.11.3.5 NMAC - Rn, 20 NMAC 11.03.I.5, & A, 6/1/02]

31  
32 **20.11.3.6 OBJECTIVE:** To implement Section 176(c) of the CAA, as amended (42 U.S.C. 7401 et seq.),  
33 and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs  
34 and projects which are developed, funded or approved by the United States DOT, and by the MPO or other  
35 recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53) to the Bernalillo  
36 county portion of the SIP. 20.11.3 NMAC sets forth policy, criteria and procedures for demonstrating and assuring  
37 conformity of such activities to an applicable implementation plan developed pursuant to Section 110 and Part D of  
38 the CAA.  
39 [7/1/98; 20.11.3.6 NMAC - Rn, 20 NMAC 11.03.I.6, 6/1/02; A, 6/13/05]

40  
41 **20.11.3.7 DEFINITIONS:** Terms used but not defined in 20.11.3 NMAC shall have the meaning given to  
42 them by the CAA, Titles 23 and 49 U.S.C., other EPA regulations, or other DOT regulations, in that order of  
43 priority. In addition to the definitions in ~~[this]~~ Section 20.11.3.7 NMAC, the definitions in 20.11.1 NMAC shall  
44 apply unless there is a conflict between definitions, in which case the definition in 20.11.3 NMAC shall govern.

45 **A. "1-hour ozone NAAQS"** means the 1-hour ozone national ambient air quality standard codified at  
46 40 CFR 50.9.

47 **B. "8-hour ozone NAAQS"** means the 8-hour ozone national ambient air quality standard codified at  
48 40 CFR 50.10.

49 **C. "24-hour PM<sub>10</sub> NAAQS"** means the 24-hour PM<sub>10</sub> national ambient air quality standard codified  
50 at 40 CFR 50.6.

51 **D. "1997 PM<sub>2.5</sub> NAAQS"** means the PM<sub>2.5</sub> national ambient air quality standards codified at 40 CFR  
52 50.7.

53 **E. "2006 PM<sub>2.5</sub> NAAQS"** means the 24-hour PM<sub>2.5</sub> national ambient air quality standard codified at  
54 40 CFR 50.13.

55 **[C.]F. "Air agency"** means the air quality division (AQD) of the city of Albuquerque environmental  
56 health department (EHD). The EHD, or its successor agency or authority, as represented by the department director

1 or his designee, is the lead air quality planning agency for Albuquerque-Bernalillo county nonattainment/  
2 maintenance areas. The EHD serves as staff to the AQCB and is responsible for administering and enforcing AQCB  
3 regulations.

4 ~~[D.]~~ [Reserved]

5 [E.]G. **“Albuquerque metropolitan planning area (AMPA)”** means the portion of New Mexico state  
6 planning and development district 3 that comprises the area for which federal transportation funding allocated for  
7 areas of a 200,000 or greater population is expended. The AMPA is described in the MPO’s most recent  
8 transportation planning documents.

9 H. **“Annual PM<sub>10</sub> NAAQS”** means the annual PM<sub>10</sub> national ambient air quality standard that EPA  
10 revoked on December 18, 2006.

11 [F.]L. **“Applicable implementation plan”** is defined in Section 302(q) of the CAA and means the  
12 portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under  
13 Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated  
14 under Section 301(d) and which implements the relevant requirements of the CAA.

15 [G.]J. **“CAA”** means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

16 [H.]K. **“Cause or contribute to a new violation”** for a project means:

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

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

22 [I.]L. **“Clean data”** means air quality monitoring data determined by EPA to meet the requirements of  
23 40 CFR Part 58 that indicate attainment of the national ambient air quality standard.

24 [J.]M. **“Conformity analysis”** means any regional emissions analysis or localized hot-spot computer  
25 modeling assessments or any other analyses, which serve as the basis for the conformity determination.

26 [K.]N. **“Conformity determination”** means the demonstration of consistency with motor vehicle  
27 emissions budgets or with the appropriate interim emissions test identified at ~~[20.11.3.215]~~ 20.11.3.118 NMAC for  
28 each pollutant and precursor identified in the applicable SIP. The conformity determination is the affirmative  
29 written documentation declaring conformity with the applicable implementation plan, which is submitted to FHWA  
30 and FTA for approval with EPA consultation. An affirmative conformity determination means conformity to the  
31 plan’s purpose of eliminating or reducing the severity and number of violations of the national ambient air quality  
32 standards and achieving expeditious attainment of such standards; and that such activities shall not:

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

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

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

37 [L.]O. **“Consultation”** means the process by which the affected agencies identified in ~~[20.11.3.202]~~  
38 20.11.3.105 NMAC confer with each other, provide to the agencies all relevant information needed for meaningful  
39 input and, prior to taking any action, consider the views of the other agencies and (except with respect to those  
40 actions for which only notification is required and those actions subject to Subsection C of ~~[20.11.3.202]~~  
41 20.11.3.105 NMAC and Subparagraph (g) of Paragraph (1) of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC)  
42 respond in writing to substantive written comments in a timely manner prior to any final decision on such action.

43 [M.]P. **“Control strategy implementation plan revision”** means a revision to the implementation plan  
44 that contains specific strategies for controlling emissions of and reducing ambient levels of pollutants in order to  
45 satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including  
46 implementation plan revisions submitted to satisfy CAA Sections 172 (c) , 182(b)(1), 182(c)(2)(A), 182(c)(2)(B),  
47 187(a)(7), 187(g), 189(a)(1)(B), 189(b)(1)(A) and 189(d); Sections 192(a) and 192(b), for nitrogen dioxide; and any  
48 other applicable CAA provision requiring a demonstration of reasonable further progress or attainment).

49 [N.]Q. **“Design concept”** means the type of facility identified by the project, e.g., freeway, expressway,  
50 arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive  
51 busway, etc.

52 [O.]R. **“Design scope” or “scope”** means the design aspects that shall affect the proposed facility’s  
53 impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number  
54 of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate  
55 number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

1           [P.]S. “Donut areas” means geographic areas outside a metropolitan planning area boundary, but inside  
2 the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas  
3 are not isolated rural nonattainment and maintenance areas.

4           [Q.]T. “DOT” means the United States department of transportation.

5           [R.]U. “EPA” means the United States environmental protection agency.

6           [S.]V. “FHWA” means the federal highway administration of the DOT.

7           [T.]W. “FHWA/FTA project” means any highway or transit project that is proposed to receive funding  
8 assistance and approval through the federal-aid highway program or the federal mass transit program, or requires  
9 federal highway administration (FHWA) or federal transit administration (FTA) approval for some aspect of the  
10 project, such as connection to an interstate highway or deviation from applicable design standards on the interstate  
11 system.

12           [U.]X. “Fiscally constrained” means, consistent with DOT’s metropolitan transportation planning  
13 regulations at 23 CFR Part 450.

14           [V.]Y. “Forecast period” means, with respect to a transportation plan, the time period covered by the  
15 transportation plan pursuant to 23 CFR Part 450.

16           [W.]Z. “FTA” means the federal transit administration of the DOT.

17           [X.]AA. “Highway project” means an undertaking to implement or modify a highway facility or highway-  
18 related program. Such an undertaking consists of all required phases necessary for implementation. For analytical  
19 purposes, it shall be defined sufficiently to:

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

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

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

26           [Y.]BB. “Horizon year” means a year for which the transportation plan describes the envisioned  
27 transportation system according to [20.11.3.203] 20.11.3.106 NMAC.

28           [Z.]CC. “Hot-spot analysis” means an estimation of likely future localized CO, PM<sub>10</sub> and PM<sub>2.5</sub> pollutant  
29 concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot  
30 analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area including, for  
31 example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion  
32 model to determine the effects of emissions on air quality.

33           [AA.]DD. “Increase the frequency or severity” means to cause a location or region to exceed a  
34 standard more often or to cause a violation at a greater concentration than previously existed or would otherwise  
35 exist during the future period in question if the project were not implemented.

36           [BB.]EE. “Isolated rural nonattainment and maintenance areas” mean areas that do not contain  
37 or are not part of any metropolitan planning area as designated under the transportation planning regulations.  
38 Isolated rural areas do not have federally required metropolitan transportation plans or TIPs and do not have projects  
39 that are part of the emissions analysis of any MPO’s metropolitan transportation plan or TIP. Projects in such areas  
40 are instead included in statewide transportation improvement programs. These areas are not donut areas.

41           [——]CC. [Reserved]

42           [DD.]FF. “Lapse” means that the conformity determination for a transportation plan or a TIP has  
43 expired, and thus there is no currently conforming transportation plan and TIP.

44           [EE.]GG. “Limited maintenance plan” means a maintenance plan that EPA has determined meets  
45 EPA’s limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited  
46 maintenance plan, for example, an area shall have a design value that is significantly below a given NAAQS, and it  
47 shall be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle  
48 emissions growth.

49           [FF.]HH. “Local publicly-owned transit operator” means the current transit operator, the city of  
50 Albuquerque.

51           [GG.]II. “Maintenance area” means any geographic region of the United States previously designated  
52 nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the  
53 requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

54           [HH.]JJ. “Maintenance plan” means an implementation plan under Section 175A of the CAA, as  
55 amended.



1 ~~[H.]~~~~[KK.]~~ **“Metropolitan planning organization (MPO)”** means the policy board of an organization  
2 created as a result of the designation process in 23 U.S.C. 134(d).

3 ~~[JJ.]~~~~[LL.]~~ **“Mid-region council of governments (MRCOG)”** means the association of local governments  
4 within New Mexico state planning and development district 3 (Bernalillo, Sandoval, Torrance and Valencia  
5 counties) that is designated by the governor of New Mexico, in consultation with the elected officials of the area, as  
6 the MPO for the Albuquerque metropolitan planning area.

7 ~~[KK.]~~~~[MM.]~~ **“Milestone”** has the meaning given in CAA Sections 182(g)(1) and 189(c) for serious  
8 and above ozone nonattainment areas and PM<sub>10</sub> nonattainment areas, respectively. For all other nonattainment  
9 areas, a milestone consists of an emissions level and the date when that level shall be achieved as required by the  
10 applicable CAA provision for reasonable further progress towards attainment.

11 ~~[LL.]~~~~[NN.]~~ **“Motor vehicle emissions budget (MVEB)”** means the portion of the total allowable  
12 emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan  
13 for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or  
14 maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use  
15 and emissions.

16 ~~[MM.]~~~~[OO.]~~ **“National ambient air quality standards (NAAQS)”** are those standards established  
17 pursuant to Section 109 of the CAA.

18 ~~[NN.]~~~~[PP.]~~ **“NEPA”** means the National Environmental Policy Act of 1969, as amended (42 U.S.C.  
19 4321 et seq.).

20 ~~[OO.]~~~~[QQ.]~~ **“NEPA process completion”** means, with respect to the FHWA and the FTA, the point  
21 at which there is a specific action to make a determination that a project is categorically excluded, to make a finding  
22 of no significant impact or to issue a record of decision on a final environmental impact statement under NEPA.

23 ~~[PP.]~~~~[RR.]~~ **“Nonattainment area”** means any geographic region of the United States that has been  
24 designated as nonattainment under Section 107 of the CAA for any pollutant for which a national ambient air quality  
25 standard exists.

26 ~~[QQ.]~~~~[SS.]~~ **“Project”** means a highway project or a transit project.

27 ~~[RR.]~~~~[TT.]~~ **“Protective finding”** means a determination by EPA that a submitted control strategy  
28 implementation plan revision contains adopted control measures or written commitments to adopt enforceable  
29 control measures that fully satisfy the emissions reductions requirement relevant to the statutory provision for which  
30 the implementation plan revision was submitted, such as reasonable further progress or attainment.

31 ~~[SS.]~~~~[UU.]~~ **“Public involvement committee (PIC)”** means the permanent advisory committee  
32 established by the MRCOG to provide proactive public input to the transportation planning process.

33 ~~[TT.]~~~~[VV.]~~ **“Recipient of funds designated under Title 23 U.S.C. or the Federal Transit Laws”**  
34 means any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C.  
35 or federal transit laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase  
36 equipment or undertake other services or operations via contracts or agreements. This definition does not include  
37 private landowners or developers or contractors or entities that are only paid for services or products created by their  
38 own employees.

39 ~~[UU.]~~~~[WW.]~~ **“Regionally significant project”** means a transportation project (other than an exempt  
40 project) that is on a facility which serves regional transportation needs (such as access to and from the area outside  
41 of the region, major activity centers in the region, major planned developments such as new retail malls, sports  
42 complexes, etc. or transportation terminals) and would normally be included in the modeling of a metropolitan  
43 area’s transportation network, including at a minimum all principal arterial highways and all fixed guideway transit  
44 facilities that offer an alternative to regional highway travel.

45 ~~[VV.]~~~~[XX.]~~ **“Safety margin”** means the amount by which the total projected emissions from all  
46 sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for  
47 reasonable further progress, attainment or maintenance.

48 ~~[WW.]~~~~[YY.]~~ **“Standard”** means a national ambient air quality standard.

49 ~~[XX.]~~~~[ZZ.]~~ **“State implementation plan (SIP)”** (see applicable implementation plan).

50 ~~[YY.]~~~~[AAA.]~~ **“State DOT”** means the New Mexico department of transportation or its successor  
51 agency or authority, as represented by the department secretary or his designee.

52 ~~[ZZ.]~~~~[BBB.]~~ **“Title 23 U.S.C.”** means Title 23 of the United States Code.

53 ~~[AAA.]~~~~[CCC.]~~ **“Transit”** is mass transportation by bus, rail or other conveyance that provides general or  
54 special service to the public on a regular and continuing basis. It does not include school buses or charter or  
55 sightseeing services.

1           ~~[BBB.]~~[DDD.]    **“Transit project”** means an undertaking to implement or modify a transit facility or  
2 transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations.  
3 It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes,  
4 schedules or fares and may consist of several phases. For analytical purposes, a transit project shall be defined  
5 inclusively enough to:

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

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

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

12           ~~[CCC.]~~[EEE.]    **“Transportation conformity technical committee (TCTC)”** means the group that  
13 provides interagency consultation and consists of transportation, planning and air quality staff of the MPO, local  
14 government staff, staff from the state DOT, EPA, FHWA, FTA, and staff from the air agency, and that is responsible  
15 for evaluating and establishing the assumptions and circumstances for the application of transportation and air  
16 quality models.

17           ~~[DDD.]~~[FFF.]    **“Transportation control measure (TCM)”** means any measure that is specifically  
18 identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is  
19 incorporated into the applicable SIP through the process established in CAA Section 176(c)(8), that is either one of  
20 the types listed in Section 108 of the CAA, or any other measure that reduces emissions or concentrations of air  
21 pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.  
22 Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based and maintenance-based  
23 measures that control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of  
24 20.11.3 NMAC.

25           ~~[EEE.]~~[GGG.]    **“Transportation improvement program (TIP)”** means a transportation improvement  
26 program developed by a metropolitan planning organization under 23 U.S.C. 134(j).

27           ~~[FFF.]~~[HHH.]    **“Transportation plan”** means the official 20-year fiscally constrained intermodal  
28 metropolitan transportation plan (MTP) that is developed for the metropolitan planning area through the  
29 metropolitan planning process, pursuant to 23 CFR Part 450.

30           ~~[GGG.]~~[III.]    **“Transportation project”** is a highway project or a transit project.

31           ~~[HHH.]~~[JJJ.]    **“Written commitment”** means a written commitment that includes a description of the  
32 action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement  
33 the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the  
34 commitment is an enforceable obligation under the applicable implementation plan.

35           ~~[HH.]~~[KKK.]    **Acronyms**

- 36           (1) **AMPA**-Albuquerque metropolitan planning area
- 37           (2) **AQCB**-Albuquerque-Bernalillo county air quality control board
- 38           (3) **CAA**-Clean Air Act, as amended
- 39           (4) **CFR**-code of federal regulations
- 40           (5) **CO**-carbon monoxide
- 41           (6) **DOT**-U.S. department of transportation
- 42           (7) **EHD**-Albuquerque environmental health department
- 43           (8) **EPA**-U.S. environmental protection agency
- 44           (9) **FHWA**-federal highway administration, DOT
- 45           (10) **FTA**-federal transit administration, DOT
- 46           (11) **MPO**-metropolitan planning organization
- 47           (12) **MRCOG**-mid-region council of governments
- 48           (13) **MTB**-metropolitan transportation board
- 49           (14) **MTP**-metropolitan transportation plan
- 50           (15) **MVEB**-motor vehicle emissions budget
- 51           (16) **NAAQS**-national ambient air quality standards
- 52           (17) **NEPA**-National Environmental Policy Act
- 53           (18) **NO<sub>x</sub>** -oxides of nitrogen
- 54           (19) **PIC**-public involvement committee
- 55           (20) **PM<sub>2.5</sub>**-particulate matter less than or equal to 2.5 micrometers in diameter
- 56           (21) **PM<sub>10</sub>**-particulate matter less than or equal to 10 micrometers in diameter

- 1 (22) **SIP**-state implementation plan (applicable implementation plan)
- 2 (23) **State DOT**-New Mexico department of transportation
- 3 (24) **STIP**-state transportation improvement program
- 4 (25) **TCC**-transportation coordinating committee
- 5 (26) **TCM**-transportation control measure
- 6 (27) **TCTC**-transportation conformity technical committee
- 7 (28) **TIP**-transportation improvement program
- 8 (29) **VOC**-volatile organic compound
- 9 (30) **VMT**-vehicle miles traveled

10 [7/1/98; 20.11.3.7 NMAC - Rn, 20 NMAC 11.03.I.7, & A, 6/1/02; A, 6/13/05; A, 12/17/08; A, 11/15/10]

11  
12 **20.11.3.8 VARIANCES:** [Reserved]

13 [7/1/98; 20.11.3.8 NMAC - Rn, 20 NMAC 11.03.I.8, 6/1/02]

14  
15 **20.11.3.9 SAVINGS CLAUSE:** Any amendment to 20.11.3 NMAC that is filed with the state records  
16 center shall not affect actions pending for violation of a city or county ordinance or board regulation. Prosecution  
17 for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or  
18 section in effect at the time the violation was committed.

19 [7/1/98; 20.11.3.9 NMAC - Rn, 20 NMAC 11.03.I.9, 6/1/02; A, 6/13/05]

20  
21 **20.11.3.10 SEVERABILITY:** If any section, paragraph, sentence, clause or word of 20.11.3 NMAC or any  
22 federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court,  
23 the decision shall not affect the validity of the remaining provisions of 20.11.3 NMAC.

24 [7/1/98; 20.11.3.10 NMAC - Rn, 20 NMAC 11.03.I.10, 6/1/02; A, 6/13/05]

25  
26 **20.11.3.11 DOCUMENTS:** Documents incorporated and cited in 20.11.3 NMAC may be viewed at the  
27 Albuquerque environmental health department, one civic plaza NW, room 3023, 400 Marquette NW, Albuquerque,  
28 NM 87102.

29 [7/1/98; 20.11.3.11 NMAC - Rn, 20 NMAC 11.03.I.11, 6/1/02; A, 6/13/05]

30  
31 **20.11.3.12** [Reserved]

32 [7/1/98; 20.11.3.12 NMAC - Rn, 20 NMAC 11.03.I.12, & A, 6/1/02; Repealed, 6/13/05]

33  
34 **20.11.3.13 to ~~20.11.3.199~~ 20.11.3.102** [Reserved]

35  
36 ~~20.11.3.200~~ **20.11.3.103 PRIORITY:** When assisting or approving any action with air quality-related  
37 consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an  
38 applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with  
39 statutory requirements for allocation of funds among states or other jurisdictions.

40 [7/1/98; 20.11.3.200 NMAC - Rn, 20 NMAC 11.03.II.1, 6/1/02; Rn, 20.11.3.103 NMAC, 11/15/10]

41  
42 ~~20.11.3.201~~ **20.11.3.104 FREQUENCY OF CONFORMITY DETERMINATIONS:**

43 **A.** Conformity determinations and conformity redetermination for transportation plans, TIPs and  
44 FHWA/FTA projects shall be made according to the requirements of ~~20.11.3.201~~ 20.11.3.104 NMAC and the  
45 applicable implementation plan.

46 **B. Frequency of conformity determinations for transportation plans:**

47 (1) Each new transportation plan shall be demonstrated to conform before the transportation plan is  
48 approved by the MPO or accepted by DOT.

49 (2) All transportation plan amendments shall be found to conform before the transportation plan  
50 amendments are approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt  
51 projects listed in ~~20.11.3.223~~ 20.11.3.126 NMAC or ~~20.11.3.224~~ 20.11.3.127 NMAC. The conformity  
52 determination shall be based on the transportation plan and the amendment taken as a whole.

53 (3) The MPO and DOT shall determine the conformity of the transportation plan (including a new  
54 regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's  
55 conformity determination without the MPO and DOT determining conformity of the transportation plan, a 12-month

1 grace period will be implemented as described in Subsection F of ~~[20.11.3.201]~~ 20.11.3.104 NMAC. At the end of  
2 this 12-month grace period, the existing conformity determination shall lapse.

3 **C. Frequency of conformity determinations for transportation improvement programs:**

4 (1) A new TIP shall be demonstrated to conform before the TIP is approved by the MPO or accepted  
5 by DOT.

6 (2) A TIP amendment requires a new conformity determination for the entire TIP before the  
7 amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt  
8 projects listed in ~~[20.11.3.223]~~ 20.11.3.126 NMAC or ~~[20.11.3.224]~~ 20.11.3.127 NMAC and has been made in  
9 accordance with the notification provisions of Subparagraph (g) of Paragraph (1) of Subsection D of ~~[20.11.3.202]~~  
10 20.11.3.105 NMAC.

11 (3) The MPO and DOT shall determine the conformity of the TIP (including a new regional  
12 emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity  
13 determination without the MPO and DOT determining conformity of the TIP, a 12-month grace period will be  
14 implemented as described in Subsection F of ~~[20.11.3.201]~~ 20.11.3.104 NMAC. At the end of this 12-month grace  
15 period, the existing conformity determination shall lapse.

16 **D. Projects:** FHWA/FTA projects shall be found to conform before they are adopted, accepted,  
17 approved or funded. Conformity shall be re-determined for any FHWA/FTA project if one of the following occurs:  
18 a significant change in the project's design concept and scope; three years have elapsed since the most recent major  
19 step to advance the project; or initiation of a supplemental environmental document for air quality purposes. Major  
20 steps include NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way;  
21 and, construction (including federal approval of plans, specifications and estimates).

22 **E. Triggers for transportation plan and TIP conformity determinations:** Conformity of existing  
23 transportation plans and TIPs shall be re-determined within two years of the following, or after a 12-month grace  
24 period (as described in Subsection F of ~~[20.11.3.201]~~ 20.11.3.104 NMAC) the existing conformity determination  
25 shall lapse, and no new project-level conformity determinations may be made until conformity of the transportation  
26 plan and TIP has been determined by the MPO and DOT.

27 (1) The effective date of EPA's finding that motor vehicle emission budgets from an initially  
28 submitted control strategy implementation plan or maintenance plan are adequate pursuant to Subsection E of  
29 ~~[20.11.3.215]~~ 20.11.3.118 NMAC and can be used for transportation conformity purposes.

30 (2) The effective date of EPA approval of a control strategy implementation plan revision or  
31 maintenance plan that establishes or revises a motor vehicle emissions budget if that budget has not yet been used in  
32 a conformity determination prior to approval.

33 (3) The effective date of EPA promulgation of an implementation plan that establishes or revises a  
34 motor vehicle emissions budget or adds, deletes or changes TCMs.

35 **F. Lapse grace period.** During the 12-month grace period referenced in Paragraph (3) of Subsection  
36 B of ~~[20.11.3.201]~~ 20.11.3.104 NMAC, Paragraph (3) of Subsection C of ~~[20.11.3.210]~~ 20.11.3.113 NMAC, and  
37 Subsection E of ~~[20.11.3.210]~~ 20.11.3.113 NMAC, a project may be found to conform according to the requirements  
38 of 20.11.3 NMAC:

39 (1) the project is included in the currently conforming transportation plan and TIP (or regional  
40 emissions analysis); or

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

43 [7/1/98; 20.11.3.201 NMAC - Rn, 20NMAC 11.03.II.2, & A, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.104  
44 NMAC, 11/15/10]

45  
46 ~~[20.11.3.202]~~ 20.11.3.105 **CONSULTATION:**

47 **A. General:** Transportation plans and programs shall be in conformity with the applicable  
48 implementation plan (SIP) for the nonattainment/maintenance area of Bernalillo county. The MRCOG, as the MPO,  
49 is responsible for conducting the air quality transportation conformity analyses for all of Bernalillo county. The  
50 applicable plans and programs are the TIP and the MTP. The document serving to demonstrate conformity is the  
51 transportation/air quality conformity finding. ~~[20.11.3.202]~~ 20.11.3.105 NMAC provides procedures for  
52 interagency consultation (federal, state and local) and resolution of conflicts. Such consultation procedures shall be  
53 undertaken by the MPO, state DOT and DOT with the air agency and EPA before making conformity  
54 determinations and by the air agency and EPA with the MPO, state DOT and DOT in developing applicable  
55 implementation plan revisions.

1           **B. Interagency consultation procedures: General factors:** The affected agencies shall participate  
2 in an interagency consultation process to assure that proposed transportation investments conform with the  
3 applicable implementation plan developed pursuant to the CAA. The affected agencies shall participate in a  
4 consultation process during the development of the transportation-related elements in the applicable SIP (i.e. TCMs,  
5 the MTP, and the TIP under 23 CFR Section 450.314 and 49 CFR Section 613.100), any significant revisions to the  
6 preceding documents and all conformity determinations required by 20.11.3 NMAC.

7           (1) The affected agencies acting in consultation include: EHD; EPA; FHWA; FTA; MPO; state  
8 DOT; local publicly-owned transit operator; appropriate local government transportation agencies and land use  
9 planning agencies (e.g. city of Albuquerque and Bernalillo county planning departments); and other federal and state  
10 agencies as appropriate.

11           (2) Each lead agency in the consultation process required under Subsection D of ~~[20.11.3.202]~~  
12 20.11.3.105 NMAC (i.e. the agency responsible for preparing the final document subject to the interagency  
13 consultation process) shall provide reasonable opportunity for consultation with the affected agencies identified  
14 above. The lead agency shall provide to the affected agencies all information needed for meaningful input and shall  
15 consider the views of each agency and respond in writing to substantive written comments submitted during the  
16 formal comment period prior to making a final decision on such document. Such written response shall be made  
17 part of the record of any decision or action. Roles of these agencies are further described in Paragraph (1) of  
18 Subsection C of ~~[20.11.3.202]~~ 20.11.3.105 NMAC below.

19           (3) Project planning, public involvement, management systems, project development and other  
20 requirements for the MPO, state DOT and the local publicly-owned transit operator are covered by the applicable  
21 DOT rules and regulations for MPOs and state DOTs (23 CFR Part 450, 500, 626 and 771, 49 CFR 613).

22           **C. Interagency consultation procedures roles and responsibilities:**

23           **(1) Development of transportation plans and programs and associated conformity**  
24 **determinations.**

25           (a) The MPO, as the lead transportation planning agency, has the primary responsibility in the  
26 AMPA for developing the MTP, TIP and technical analyses related to travel demand and other associated modeling,  
27 data collection and coordination of consultation for these activities with the agencies specified in Paragraph (1) of  
28 Subsection B of ~~[20.11.3.202]~~ 20.11.3.105 NMAC, in accordance with 23 CFR Part 450, 500 and 626. The MPO  
29 shall be responsible for regional emissions and travel demand analyses of the MTP and TIP in consultation with the  
30 EHD. Corridor and project-level hot spot and emissions analyses, developed in consultation with the EHD, shall be  
31 the responsibility of the project-implementing agency through the NEPA process or similar environmental  
32 evaluation process.

33           (b) The committees and member agencies, identified in the most recent MPO document  
34 regarding public involvement procedures for transportation plans and programs, entitled *Public Involvement*  
35 *Procedures for the Mid-Region Council of Governments Acting as the MPO for the Albuquerque Metropolitan*  
36 *Planning Area*, shall participate in the MPO process for the development, monitoring and revision of the MTP and  
37 the development of the TIP.

38           (i) The MPO shall forward a preliminary version of the MTP, the TIP and the draft  
39 conformity finding to the AQCB for review with a minimum of 14 calendar days to provide comments. Upon  
40 release of the final draft of the MTP and TIP for public review, the MPO shall submit the final drafts of the MTP,  
41 TIP and accompanying conformity documents to the AQCB and agencies in Paragraph (1) of Subsection B of  
42 ~~[20.11.3.202]~~ 20.11.3.105 NMAC for review and comment before adoption and final approval by the MTB.  
43 Following review of the conformity determination, the AQCB shall state whether the TIP, the MTP or both are in  
44 compliance with the applicable implementation plan. The MPO shall provide a review and comment period  
45 consistent with the Metropolitan Planning Rule (23 CFR Section 450.316(a), 49 CFR Section 613). Briefings to the  
46 AQCB shall be provided upon request.

47           (ii) The MPO shall provide information and appropriate advance notification of meeting  
48 places, dates and times, agendas and supporting materials for all of its special and regularly scheduled meetings on  
49 transportation and air quality to each of the agencies specified in Paragraph (1) of Subsection B of ~~[20.11.3.202]~~  
50 20.11.3.105 NMAC in accordance with the public involvement process adopted by the MPO, consistent with the  
51 Metropolitan Planning Rule (23 CFR Section 450.316(a), 49 CFR Section 613) and described in the MRCOG's  
52 public involvement document, entitled *Public Involvement Procedures for the Mid-Region Council of Governments*  
53 *Acting as the MPO for the Albuquerque Metropolitan Planning Area*. The MPO's compliance with the New  
54 Mexico Open Meetings Act is documented annually. Resolution of conflicts shall follow the provisions of  
55 Subsection E of ~~[20.11.3.202]~~ 20.11.3.105 NMAC.

1           **(2) Development of applicable implementation plans:** Within the nonattainment/maintenance area,  
2 the EHD, in consultation with the MPO, shall be responsible for developing the transportation-related components  
3 for the applicable SIP, air quality modeling, general emissions analysis, emissions inventory, all related activities  
4 and coordination of these tasks with the agencies specified in Paragraph (1) of Subsection B of [20.11.3.202]  
5 20.11.3.105 NMAC through the TCTC as described in Subparagraph (a) of Paragraph (1) of Subsection D of  
6 [20.11.3.202] 20.11.3.105 NMAC. Upon release of the final draft of the SIP revision for public review, the EHD  
7 shall submit the final draft document to the MTB and agencies in Paragraph (1) of Subsection B of [20.11.3.202]  
8 20.11.3.105 NMAC for review and comment before final adoption by the AQCB. The EHD shall provide at least a  
9 30 day review and comment period consistent with CAA requirements. Briefings to the MTB shall be provided  
10 upon request.

11           (3) The organizational level of regular consultation is described in Subsection B of [20.11.3.202]  
12 20.11.3.105 NMAC and Subsection C of [20.11.3.202] 20.11.3.105 NMAC. All correspondence concerning  
13 consultation related to the transportation conformity SIP shall be addressed to the designated points of contact  
14 below:

- 15           (a) EPA: regional administrator or designee;
- 16           (b) FHWA: division administrator or designee;
- 17           (c) FTA: regional administrator or designee;
- 18           (d) State DOT: secretary of transportation or designee;
- 19           (e) MPO: MRCOG executive director or designee;
- 20           (f) EHD: director or designee;
- 21           (g) local publicly-owned transit operator: chief administrative officer or designee;
- 22           (h) local governments within the nonattainment/maintenance area: chief administrative officer  
23 or equivalent or designee.

24           (4) The MPO shall respond in writing to substantive written comments from the affected consultation  
25 agencies described in Paragraph (1) of Subsection B of [20.11.3.202] 20.11.3.105 NMAC regarding the MTP, TIP  
26 and related conformity determinations. The project implementing agencies shall respond in writing to substantive  
27 written comments regarding projects in accordance with the provisions of 20.11.3 NMAC. The EHD shall respond  
28 in writing to substantive written comments from the affected consultation agencies described in Paragraph (1) of  
29 Subsection B of [20.11.3.202] 20.11.3.105 NMAC regarding the transportation components of the applicable  
30 implementation plan for the nonattainment/maintenance area, in accordance with the provisions of 20.11.3 NMAC.  
31 All formal comments (e.g. those received during the public comment period) and responses to those comments shall  
32 be included within final documents before they are forwarded for review and final approval by the FHWA/FTA or  
33 EPA, as appropriate.

34           (5) Prior to AQCB adoption of a TCM in the applicable implementation plan, the MPO shall, in  
35 consultation and coordination with the agencies identified in Paragraph (1) of Subsection D of [20.11.3.202]  
36 20.11.3.105 NMAC, develop the proposed TCM in a manner consistent with the MTP and TIP transportation  
37 development processes. After approval of a TIP, MTP or both, the AQCB shall incorporate all proposed TCMs into  
38 the applicable implementation plan. The necessary TCMs shall be specifically described in the applicable  
39 implementation plan. TCMs shall also be cross-referenced to the approved TIP, MTP or both. EHD shall  
40 coordinate the necessary efforts to achieve inclusion of the proposed TCM into the applicable implementation plan.  
41 The TCMs approved by the AQCB and subsequently by the EPA as part of the applicable implementation plan shall  
42 receive priority funding for implementation in a manner consistent with funding and phasing schedules specified in  
43 the MPO's TIP or MTP or both.

44           (a) In the event that implementation of a TCM is infeasible in the time frame for that measure  
45 in the applicable implementation plan (as defined in Subsection D of 20.11.3.7 NMAC), the parties in the  
46 interagency consultation process established pursuant to Paragraph (1) of Subsection D of [20.11.3.202] 20.11.3.105  
47 NMAC shall assess whether such a measure continues to be appropriate. When the MPO and the AQCB concur that  
48 a TCM identified in the applicable implementation plan is no longer appropriate, the agencies may initiate the  
49 process described in Subparagraph (b) through Subparagraph (e) of Paragraph (5) of Subsection C of [20.11.3.202]  
50 20.11.3.105 NMAC to identify and adopt a substitute TCM.

51           **(b) Substitution of TCMs.** Any TCM that is specified in the applicable implementation plan  
52 may be replaced or added to the implementation plan with alternate or additional TCMs without an implementation  
53 plan revision if the proposed measure meets the following provisions:

- 54           (i) upon request by the MPO, the EHD shall convene the TCTC to identify and evaluate  
55 possible substitute and additional measures; consultation with EPA may be accomplished by sending copies of all  
56 draft and final documents, agendas and reports to EPA Region 6;

1 (ii) the substitute TCM shall provide for equivalent or greater emissions reductions than  
2 the TCM to be replaced in the applicable implementation plan, as demonstrated by an emissions impact analysis that  
3 is consistent with the current methodology used for evaluating the replaced TCM in the implementation plan;

4 (iii) the substitute TCM shall be implemented in accordance with a schedule that is  
5 consistent with the schedule provided for the TCM contained in the applicable implementation plan; or if the  
6 implementation plan date for implementation of the TCM to be replaced has already passed, a TCM selected  
7 pursuant to 20.11.3 NMAC that requires funding shall be included in the first year of the next MTP and TIP adopted  
8 by the MPO; however, the substituted TCM shall be implemented as soon as possible, but not later than one year  
9 from the date of the original TCM, and in no case, later than the date on which emission reductions are necessary to  
10 achieve the purpose of the implementation plan;

11 (iv) in order for the AQCB to adopt substitute and additional TCMs, there shall be  
12 evidence of adequate personnel, funding and authority under state or local law to implement, monitor and enforce  
13 the control measures; commitments to implement the substitute TCMs shall be made by the agency with legal  
14 authority for implementation;

15 (v) the TCMs substituted under ~~[20.11.3.202]~~ 20.11.3.105 NMAC for purposes of the  
16 applicable implementation plan shall receive priority funding for implementation within the MPO's MTP and TIP  
17 funding processes; and

18 (vi) no TCM shall be replaced until the substitute TCM has been adopted and the  
19 existing TCM in the applicable implementation plan has been rescinded by the AQCB; adoption of a substitute TCM  
20 by the AQCB formally rescinds the previously applicable TCM and adopts the substitute TCM.

21 (c) **Public participation:** After the concurrence required under Subparagraph (a) of Paragraph  
22 (5) of Subsection C of ~~[20.11.3.202]~~ 20.11.3.105 NMAC, the AQCB shall conduct a public hearing and comment  
23 process, in accordance with 40 CFR 52.102, on the proposed substitute TCM(s). The hearing can only be held after  
24 a reasonable public notice and comment period, which begins at least 30 days prior to the hearing date. The AQCB  
25 shall ensure that:

26 (i) the public is notified by prominent advertising in the area affected announcing the  
27 time, date and place of the hearing;

28 (ii) each proposed plan or revision is available for public inspection in at least one  
29 location in the applicable area;

30 (iii) the MPO, EPA, affected local agencies and other interested parties are notified; and

31 (iv) a description of the TCM(s), analysis supporting the proposal, assumptions and  
32 methodology are available to the public, the MPO and EPA for at least 30 days before the public hearing and at least  
33 30 days prior to the close of the public comment period.

34 (d) **Concurrence process for substitute TCMs:**

35 (i) before initiating any public participation process, the AQCB, MPO and EPA shall  
36 concur with the appropriateness and equivalency of the substitute or additional TCM;

37 (ii) the AQCB shall respond to all public comments and submit to EPA a summary of  
38 comments received during the public comment period along with the responses following the close of the public  
39 comment period;

40 (iii) the EPA shall notify the AQCB within 14 days if EPA's concurrence with the  
41 substitution TCM has changed as a result of public comment;

42 (iv) all substitute TCMs shall be adopted by the AQCB following the public comment  
43 period and EPA's concurrence described in Subparagraph (d) of Paragraph (5) of Subsection C of ~~[20.11.3.202]~~  
44 20.11.3.105 NMAC; if not adopted, the substitute TCM cannot replace the existing TCM.

45 (e) **Technical information:** The analysis of substitute TCMs shall be consistent with  
46 methodology used for evaluating TCMs in the nonattainment or maintenance plan. Where emissions models or  
47 transportation models have changed since those used for purposes of evaluating measures in the nonattainment or  
48 maintenance plan, the TCM to be replaced and the substitute TCMs shall be evaluated using the latest modeling  
49 techniques for purposes of demonstrating equivalency or greater emissions reductions. The key methodology and  
50 assumptions shall be consistent with EPA approved regional and hot-spot emissions models (for CO, PM<sub>10</sub> and  
51 PM<sub>2.5</sub>), the area's transportation model, and population and employment growth projections.

52 (f) **Record keeping:** The AQCB shall maintain documentation of approved TCM  
53 substitutions. The documentation shall provide a description of the substitute and replaced TCMs, including  
54 requirements and schedules. The documentation shall also provide a description of the substitution process  
55 including the public and agency participation and coordination with the TCTC, the public hearing and comment  
56 process, EPA concurrence and AQCB adoption. The documentation shall be submitted to EPA following adoption

1 of the substitute TCMs by the AQCB, and made available to the public as an attachment to the applicable  
2 implementation plan.

3 **(g) Adoption:**

4 (i) concurrence by the metropolitan planning organization, the state air pollution control  
5 agency and the administrator as required by Subparagraph (i) of Paragraph (d) of Subsection C of [20.11.3.202]  
6 20.11.3.105 NMAC, shall constitute adoption of the substitute or additional control measures so long as the  
7 requirements of Paragraph (b) of Subsection C of [20.11.3.202] 20.11.3.105 NMAC are met;

8 (ii) once adopted, the substitute or additional control measures become, by operation of  
9 law, part of the state implementation plan and become federally enforceable;

10 (iii) within 90 days of its concurrence under Subparagraph (i) of Paragraph (d) of  
11 Subsection C of [20.11.3.202] 20.11.3.105 NMAC, the state air pollution control agency shall submit the substitute  
12 or additional control measure to the administrator for incorporation in the codification of the applicable  
13 implementation plan; notwithstanding any other provision of the Clean Air Act, no additional state process shall be  
14 necessary to support such revision to the applicable plan.

15 **(h) No requirement for express permission.** The substitution or addition of a transportation  
16 control measure in accordance with Paragraph (5) of Subsection C of [20.11.3.202] 20.11.3.105 NMAC and the  
17 funding or approval of such a control measure shall not be contingent upon the existence of any provision in the  
18 applicable implementation plan that expressly permits such a substitution or addition.

19 **(i) No requirement for new conformity determination.** The substitution or addition of a  
20 transportation control measure in accordance with Paragraph (5) of Subsection C of [20.11.3.202] 20.11.3.105  
21 NMAC shall not require:

22 (i) a new conformity determination for the transportation plan; or

23 (ii) a revision of the implementation plan.

24 **D. Interagency consultation procedures: Specific processes.**

25 (1) Interagency consultation procedures for the Bernalillo county nonattainment/maintenance area, in  
26 accordance with Subsection C of [20.11.3.202] 20.11.3.105 NMAC, shall involve the MPO (transportation, land use  
27 and transit members from within the AMPA), state DOT, EPA, FHWA, FTA and the air agency. The TCTC's role  
28 in interagency consultation for the specific processes is described below. The TCTC shall include representatives as  
29 described in Paragraph (1) of Subsection B of [20.11.3.202] 20.11.3.105 NMAC. The TCTC shall be established by  
30 the air agency in cooperation with the MPO. The TCTC shall meet on an as-needed basis. The air agency, in  
31 consultation with the MPO, shall be responsible for convening meetings and establishing meeting agendas.

32 (a) The TCTC shall evaluate and participate in establishing the circumstances for the  
33 application of a transportation or air quality model (or models). Committee review shall include VMT forecasting  
34 and associated methods and assumptions to be used in: 1) hot-spot and regional emissions analysis for establishing  
35 motor vehicle emissions budgets; 2) developing the MTP and the TIP; 3) developing implementation plan revisions  
36 directly applicable to transportation, and 4) making the conformity determinations and planning assumptions  
37 identified in [20.11.3.207] 20.11.3.110 NMAC. The TCTC shall also review assumptions, analyses and results of  
38 the conformity and fiscal constraint determinations and other applicable implementation plan revisions or actions  
39 affecting the MTP and transportation programs. The TCTC shall function as a cooperative interagency effort to  
40 share mobile source modeling and transportation and air quality modeling information, and to evaluate modeling  
41 assumptions through interagency consultation. Regional modeling shall be the responsibility of the MPO and the air  
42 agency as appropriate. Hot-spot analysis shall be the responsibility of the lead agency of the project requiring the  
43 analysis. Before new models used in hot-spot or regional emissions analyses are adopted for general use, the TCTC  
44 shall be provided an opportunity to review and comment. This process also applies to consultation on the design,  
45 schedule and funding of research and data collection efforts regarding regional transportation models developed by  
46 the MPO (e.g. household travel transportation surveys) described in [20.11.3.207] 20.11.3.110 NMAC. New  
47 modeling information shall be presented by the air agency and the MPO in regularly scheduled meetings.

48 (b) The TCTC shall determine which minor arterials and other transportation projects shall be  
49 considered regionally significant for the purposes of regional emissions analysis (in addition to those functionally  
50 classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional  
51 highway travel), and which projects shall be considered to have a significant change in design concept, timing and  
52 scope from the MTP or TIP. When the TCTC determines that a significant change in design concept, timing and  
53 scope has occurred, the MPO and lead agency shall, as part of the MTP and TIP process, consult with the  
54 appropriate agencies identified in Paragraph (1) of Subsection D of [20.11.3.202] 20.11.3.105 NMAC to assess the  
55 impact of this project change on the conformity determination. The MPO shall redetermine transportation  
56 conformity for air quality if a significant change occurs within the transportation network that is likely to lead to a



1 meaningful increase in a pollutant for which the nonattainment area exceeds the NAAQs, or for an area that is  
2 designated as attainment and is subject to a maintenance plan.

3 (c) The TCTC shall evaluate whether projects otherwise exempt from meeting the regional or  
4 hot-spot conformity analysis requirements shall be treated as non-exempt in cases where potential adverse emissions  
5 impacts may exist for any reason. The MPO's conformity documents shall include a list of transportation projects  
6 exempted from inclusion in a regional conformity determination. Exempt projects are identified in [20.11.3.223]  
7 20.11.3.126 NMAC and [20.11.3.224] 20.11.3.127 NMAC. The process used to reach a determination of exemption  
8 shall include an evaluation of whether or not the exempt project shall interfere with or impede the implementation of  
9 TCMs in the applicable implementation plan. If no substantive comments related to air quality impacts are received  
10 as part of the TIP review process, the lead agency for the project may proceed with implementation of the exempt  
11 project. If substantive air quality impact comments are received which indicate that an exempt project may  
12 adversely affect air quality, the lead agency for the project shall consult with the air agency and the MPO to  
13 determine the appropriate action necessary to address the adverse air quality impacts.

14 (d) If TCMs are included in the SIP, the MPO shall give maximum priority to approval or  
15 funding of those TCMs, report to the AQCB annually whether those TCMs are on schedule and, if not, what delays  
16 have been encountered, what obstacles to implementation have been identified and whether or not these obstacles  
17 are likely to be overcome. The AQCB shall also consider whether delays in TCM implementation necessitate a SIP  
18 revision to remove, substitute, or modify TCMs or identify other reduction measures. If substitute TCMs or other  
19 reduction measures beyond those already in the SIP are deemed necessary through the consultation process specified  
20 in [20.11.3.202] 20.11.3.105 NMAC, the MPO shall work with the members of the TCTC to identify and coordinate  
21 appropriate modifications to the MTP, TIP and conformity determination. All revisions to the MTP, TIP and  
22 conformity determination shall be made as part of the MPO's transportation planning process.

23 (e) The MPO shall, through its transportation planning process, notify the agencies represented  
24 on the TCTC regarding revisions and amendments to the MTP and TIP that merely add or delete exempt projects  
25 identified in [20.11.3.223] 20.11.3.126 NMAC.

26 (f) If Bernalillo county is designated nonattainment for PM<sub>10</sub> or PM<sub>2.5</sub>, the consultative process  
27 as specified in Subsection D of [20.11.3.202] 20.11.3.105 NMAC shall be used to coordinate the identification of  
28 projects located at sites that have vehicle and roadway emission and dispersion characteristics which are similar to  
29 those sites that have violations verified by monitoring. A quantitative PM<sub>10</sub> hot-spot analysis shall be required for  
30 these projects in accordance with Subsection B of [20.11.3.220] 20.11.3.123 NMAC. The air agency, in  
31 consultation with the MPO, shall advise the appropriate lead agency responsible for project development of the  
32 projects identified and the basis for their identification.

33 (g) The MPO shall provide written notification to all agencies in the MTP, TIP and conformity  
34 determination processes, including the AQCB, of plan revisions or plan amendments that merely add or delete  
35 exempt projects identified in [20.11.3.223] 20.11.3.126 NMAC.

36 (h) Requirements for conformity tests for isolated rural nonattainment and maintenance areas  
37 shall be governed by [Paragraph (2) of Subsection L of 20.11.3.206 NMAC] Subparagraph (c) of Paragraph (2) of  
38 Subsection N of 20.11.3.109 NMAC.

39 (2) Interagency consultation procedures shall include the agencies specified in Paragraph (1) of  
40 Subsection D of [20.11.3.202] 20.11.3.105 NMAC. These agencies shall participate in the following processes.

41 (a) In addition to the triggers defined in [20.11.3.202] 20.11.3.105 NMAC, the air agency may  
42 request a new conformity determination when an emergency project involves substantial functional, location or  
43 capacity changes, or when the project may otherwise adversely affect the transportation conformity determination.

44 (b) If an adjacent area is designated nonattainment and the area includes another MPO, the  
45 agencies involved shall cooperatively share the responsibility for conducting conformity determinations for  
46 transportation activities that cross borders of the MPOs or nonattainment areas. An agreement shall be developed  
47 between the MPOs and other appropriate local and state government agencies to address the responsibilities of each  
48 for regional emissions analysis.

49 (3) Although the metropolitan planning area may not include all of the nonattainment/ maintenance  
50 area of Bernalillo county, the MPO (which is also the regional planning organization for all of Bernalillo county), in  
51 coordination with the state DOT, shall be responsible for conducting conformity analyses and conformity  
52 determinations for transportation activities for the entire nonattainment/ maintenance area that is located within the  
53 MPO's area of planning responsibility.

54 **(4) Interagency consultation on regionally significant non-FHWA/FTA projects:**

55 (a) Any group, entity or individual planning to construct a regionally significant transportation  
56 project that is not a FHWA/FTA project (including a project for which alternative locations, design concept and

1 scope, or the no-build option is still being considered), including projects planned by recipients of funds designated  
2 under Title 23 U.S.C. or the Federal Transit Act, shall ensure that these plans are disclosed to the MPO on a regular  
3 basis through the MTP and TIP development processes, or as soon as they are identified, and shall notify the MPO  
4 immediately of any changes to an existing plan so that these transportation projects can be incorporated into the  
5 regional emissions analysis and modeling for the nonattainment/maintenance area. Any member of the TCTC may  
6 request that the TCTC make a determination regarding whether a project is regionally significant. Upon receipt of a  
7 written request stating the reasons why the TCTC should make a determination, the EHD in coordination with the  
8 MRCOG shall convene a meeting of the TCTC to make a determination regarding regional significance. If the  
9 TCTC determines that the non-FHWA/FTA project is not regionally significant, no further actions by the TCTC are  
10 required. If the TCTC determines that the non-FHWA/FTA project is regionally significant, the TCTC will follow  
11 the requirements of 20.11.3 NMAC and the MPO will incorporate the project into the regional emissions analysis,  
12 the TIP and the MTP.

13 (b) The sponsor of any regionally significant project, and other recipients of funds designated  
14 under Title 23 U.S.C. or the Federal Transit Act, who knows about any such project through applications for  
15 approval, permitting, funding or otherwise gains knowledge of a regionally significant project, shall promptly  
16 disclose the project to the MPO. Such disclosures shall be made not later than the first occasion on which any of the  
17 following actions is sought: any MTB action or other action by government decision making bodies necessary for  
18 the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the  
19 execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final  
20 action of a board, commission or administrator authorizing or directing employees to proceed with design,  
21 permitting or construction of the project, or the execution of any contract to design or construct or any approval  
22 needed for any facility that is dependent upon the completion of a regionally significant project. At the earliest  
23 opportunity, the MPO shall apprise the agencies participating in the consultation process identified above in  
24 Paragraph (1) of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC of these projects and include them in the  
25 conformity analysis networks.

26 (c) **Procedures to address non-conforming regionally significant projects not in the TIP or**  
27 **MTP or both.** When an regionally significant project has not been included in the TIP or MTP or both, the TCTC  
28 shall participate in the air quality evaluation of a non-conforming regionally significant project to ensure that the  
29 project is integrated into the regional emissions analysis, the TIP and the MTP in a manner consistent with the  
30 MPO's transportation planning process, the requirements of 20.11.3 NMAC and other applicable federal  
31 requirements. Section 23 CFR 450.316 lists factors that shall be considered as part of the planning process. Among  
32 the factors that shall be considered is an analysis of the effects of all transportation projects to be undertaken within  
33 the metropolitan planning area, without regard to the funding source. Therefore, a regionally significant project  
34 funded entirely with local funding is subject to the planning requirements of Section 23 CFR 450.316. The analysis  
35 shall consider the effectiveness, cost effectiveness, and financing of alternative investments in meeting  
36 transportation demand and supporting the overall efficiency and effectiveness of transportation system performance  
37 and related impacts on community/central city goals regarding social and economic development, housing and  
38 employment. Another factor that shall be considered is the overall social, economic, energy and environmental  
39 effects of transportation decisions (including consideration of the effects and impacts of the transportation plan on  
40 the human, natural and man-made environment and consultation with appropriate resource and permit agencies to  
41 ensure early and continued coordination with environmental resource protection and management plans, and  
42 appropriate emphasis on transportation-related air quality problems in support of 23 U.S.C. 109(h) and Section 14 of  
43 the Federal Transit Act (49 U.S.C. 1610), Section 4(f) of the DOT Act (49 U.S.C. 303) and Section 174(b) of the  
44 Clean Air Act (42 U.S.C. 7504(b)). All projects, including regionally significant projects not yet included in a TIP  
45 or MTP or both, shall follow the requirement in 23 CFR 450.316 that calls for a proactive public involvement  
46 process that provides complete information, timely public notice, full public access to key decisions, and supports  
47 early and continuing involvement of the public in developing plans and TIPs and that provides for involvement of  
48 local, state and federal environment resource (e.g., EPA, EHD) and permit agencies as appropriate.

49 (d) If a regionally significant project has not been disclosed in a timely manner to the MPO and  
50 other agencies involved in the consultation process, then, for the purposes of ~~[20.11.3.218]~~ 20.11.3.121 NMAC, the  
51 regionally significant project shall not qualify as a conforming project until the project complies with the  
52 requirements of 20.11.3 NMAC. When a regionally significant project has not been included in the regional  
53 emissions analysis for the current conforming TIP or MTP or both, proceeding toward implementing the project  
54 without complying with ~~[20.11.3.202]~~ 20.11.3.105 NMAC and ~~[20.11.3.218]~~ 20.11.3.121 NMAC may be  
55 inconsistent with federal and local laws including, but not limited to the following.

1 (i) 23 U.S.C. Section 109(i). This requires that the secretary of transportation for the  
2 DOT consult with the administrator for the EPA to develop and promulgate guidelines to assure that highways  
3 constructed pursuant to Title 23 of the U.S. Code are consistent with the applicable implementation plan pertaining  
4 to a nonattainment area or an attainment area subject to a maintenance plan. 20.11.3 NMAC is part of the applicable  
5 implementation plan.

6 (ii) 23 CFR Section 450.312, metropolitan transportation planning:  
7 **Responsibilities, cooperation, and coordination.** This prohibits the MRCOG from approving any transportation  
8 plan or program that does not conform to the applicable implementation plan. Regionally significant projects are  
9 required to be included in the regional emissions analysis for the transportation plan or program.

10 (iii) 23 CFR Section 450.324, transportation improvement program: **General.** This  
11 requires that the TIP include all regionally significant projects to be funded with non-federal funds in the air quality  
12 analysis for nonattainment areas and areas subject to a maintenance plan.

13 (iv) 20.11.3 NMAC, *Transportation Conformity.* This regulation requires that  
14 regionally significant projects be included in the transportation plans and the regional emissions analysis. Failure to  
15 include a regionally significant project in a transportation plan violates 20.11.3 NMAC and jeopardizes approval of  
16 the regional MTP and the TIP.

17 (e) **Consequences of implementing a non-conforming regionally significant project:**  
18 Violations of 20.11.3 NMAC may result in criminal, civil and administrative penalties, including a potential  
19 administrative penalty of \$15,000 per day of non-compliance. In addition, the EPA may determine that  
20 implementing a nonconforming regionally significant project violates the applicable implementation plan, and the  
21 EPA may impose federal sanctions that would jeopardize the receipt of federal transportation funds to the affected  
22 area, including Title 23, U.S.C. or Federal Transit Act funds. In addition, the FHWA must periodically review the  
23 transportation planning process used by the MRCOG, and failure to follow federal requirements may adversely  
24 affect FHWA's certification of the MRCOG process.

25 (f) For the purposes of ~~[20.11.3.202]~~ 20.11.3.105 NMAC and ~~[20.11.3.218]~~ 20.11.3.121  
26 NMAC, the phrase "adopt or approve a regionally significant project" means the first time any action necessary to  
27 authorize a project occurs, such as any MTB action or other action by government decision making bodies necessary  
28 for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the  
29 execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing  
30 or directing employees to proceed with construction of the project, or any written decision or authorization from the  
31 MPO that the project may be adopted or approved.

32 (5) When there is insufficient information to model the projects described in Paragraph (4) of  
33 Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC, the MPO, in consultation with the lead agency for the project,  
34 shall make assumptions about the location, timing, design concept and scope for those projects that are disclosed to  
35 the MPO as required in Paragraph (4) of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC.

36 (6) The MPO or other consulting agencies shall provide copies of adopted documents and supporting  
37 information on the approved MTP or TIP conformity determination or adopted SIP revisions to all agencies listed in  
38 Paragraph (1) of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC.

39 **E. Resolving conflicts:**

40 (1) The air agency and the MPO (or state DOT when applicable) shall make a good-faith effort to  
41 address the major concerns of the other party and reach a resolution. Every reasonable effort shall be made to  
42 resolve differences. In the event that the parties cannot reach agreement, the conflict shall be escalated to the  
43 governor.

44 (2) In the event that the parties agree that every reasonable effort has been made to address major  
45 concerns but no further progress is possible, the MPO shall promptly notify the director of the air agency in writing  
46 of the inability to resolve concerns or agree upon the final decision or action. Notification shall be provided within  
47 30 days and shall be provided by registered mail. The MPO shall cite this paragraph in any such notification to the  
48 air agency.

49 (3) The air agency has 14 calendar days from the date of receipt of notification as required in  
50 Paragraph (2) of Subsection E of ~~[20.11.3.202]~~ 20.11.3.105 NMAC to appeal to the governor. Notification shall be  
51 provided by registered mail. The air agency shall cite this paragraph in any notification of a conflict that requires  
52 action by the governor or his designee. If the air agency appeals to the governor, the final conformity determination  
53 shall have the concurrence of the governor. The governor or his designee may issue a written decision on the appeal  
54 within 30 calendar days of receipt of the appeal. If the air agency does not appeal to the governor within 14 calendar  
55 days from receipt of written notification, the MPO may proceed with the final conformity determination. The  
56 governor may delegate his role in this process, but not to the members or staff of: the AQCB, director of the city or

1 county EHD, secretary of the environment department, chief of the state air quality bureau, manager of the city of  
2 Albuquerque's air quality division, the environmental improvement board, secretary of the DOT, state highway  
3 commission or an MPO.

4 **F. Public consultation procedures:** Affected agencies making conformity determinations on  
5 transportation plans, programs and projects shall establish a proactive public involvement process that provides  
6 opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and  
7 policy information considered by the agency at the beginning of the public comment period and prior to taking  
8 formal action on a conformity determination for the MTP and TIP, consistent with these requirements and those of  
9 23 CFR 450.316(b). Any charges imposed for public inspection and copying shall be consistent with the fee  
10 schedule contained in 49 CFR 7.43 and NMSA 14-2-9.B.3. In addition, these agencies shall specifically address in  
11 writing all public comments stating that known plans for a regionally significant project, which is not receiving  
12 FHWA or FTA funding or approval, have not been properly reflected in the emissions analysis that supports a  
13 proposed conformity finding for the MTP or TIP. These agencies shall also provide opportunity for public  
14 involvement in conformity determinations for projects where otherwise required by law.

15 [7/1/98; 20.11.3.202 NMAC - Rn, 20 NMAC 11.03.II.3, & A, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.105  
16 NMAC, 11/15/10]

17  
18 **[~~20.11.3.203~~] 20.11.3.106 CONTENT OF TRANSPORTATION PLANS AND TIMEFRAME OF**  
19 **CONFORMITY DETERMINATIONS:**

20 **A. Transportation plans adopted after January 1, 1997 in serious, severe or extreme ozone non-**  
21 **attainment areas and in serious CO nonattainment areas.** If the metropolitan planning area contains an  
22 urbanized area population greater than 200,000, the transportation plan shall specifically describe the transportation  
23 system envisioned for certain future years which shall be called horizon years.

24 (1) The MPO, in developing the transportation plan in consultation with the affected agencies  
25 identified in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC, may choose any years to be  
26 horizon years, subject to the following restrictions:

- 27 (a) horizon years may be no more than 10 years apart;  
28 (b) the first horizon year may be no more than 10 years from the base year used to validate the  
29 transportation demand planning model;  
30 (c) the attainment year must be a horizon year if it is in the timeframe of the transportation plan  
31 and conformity determination;  
32 (d) the last year of the transportation plan's forecast period shall be a horizon year; and  
33 (e) if the timeframe of the conformity determination has been shortened under Subsection D of  
34 20.11.3 NMAC, the last year of the timeframe of the conformity determination must be a horizon year.

35 (2) For these horizon years:

36 (a) the transportation plan shall quantify and document the demographic and employment  
37 factors influencing expected transportation demand, including land use forecasts, in accordance with implementation  
38 plan provisions and the consultation requirements specified by [~~20.11.3.202~~] 20.11.3.105 NMAC;

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

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

52 **B. Two-year grace period for transportation plan requirements in certain ozone and CO areas:**  
53 The requirements of Subsection A of [~~20.11.3.203~~] 20.11.3.106 NMAC apply to such areas or portions of such areas  
54 that have previously not been required to meet these requirements for any existing NAAQS two years from the  
55 following:

- 1 (1) the effective date of EPA's reclassification of an ozone or CO nonattainment area that has an  
2 urbanized area population greater than 200,000 to serious or above;  
3 (2) the official notice by the census bureau that determines the urbanized area population of a serious  
4 or above ozone or CO nonattainment area to be greater than 200,000; or,  
5 (3) the effective date of EPA's action that classifies a newly designated ozone or CO nonattainment  
6 area that has an urbanized area population greater than 200,000 as serious or above.

7 **C. Transportation plans for other areas:** Transportation plans for other areas shall meet the  
8 requirements of Subsection A of ~~[20.11.3.203]~~ 20.11.3.106 NMAC at least to the extent it has been the previous  
9 practice of the MPO to prepare plans which meet those requirements. Otherwise, the transportation system  
10 envisioned for the future shall be sufficiently described within the transportation plans so that a conformity  
11 determination can be made according to the criteria and procedures of ~~[20.11.3.206]~~ 20.11.3.109 NMAC through  
12 ~~[20.11.3.216]~~ 20.11.3.119 NMAC.

13 **D. Timeframe of conformity determination:**

14 (1) Unless an election is made under Paragraph (2) or (3) of Subsection D of ~~[20.11.3.203]~~  
15 20.11.3.106 NMAC, the timeframe of the conformity determination shall be through the last year of the  
16 transportation plan's forecast period.

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

21 (a) The shortened timeframe of the conformity determination must extend at least to the latest  
22 of the following years:

- 23 (i) the tenth year of the transportation plan;  
24 (ii) the latest year for which an adequate or approved motor vehicle emissions budget(s)  
25 is established in the submitted or applicable implementation plan; or  
26 (iii) the year after the completion date of a regionally significant project if the project is  
27 included in the TIP or the project requires approval before the subsequent conformity determination.

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

32 (3) For areas that have an adequate or approved CAA Section 175A(b) maintenance plan, the MPO  
33 may elect to shorten the timeframe of the conformity determination to extend through the last year of such  
34 maintenance plan after consultation with state and local air quality agencies, solicitation of public comments, and  
35 consideration of such comments.

36 (4) Any election made by an MPO under Paragraph (2) or (3) of Subsection D of ~~[20.11.3.203]~~  
37 20.11.3.106 NMAC shall continue in effect until the MPO elects otherwise, after consultation with state and local air  
38 quality agencies, solicitation of public comments, and consideration of such comments.

39 **E. Savings:** The requirements of ~~[20.11.3.203]~~ 20.11.3.106 NMAC supplement other requirements  
40 of applicable law or regulation governing the format or content of transportation plans.  
41 [7/1/98; 20.11.3.203 NMAC - Rn, 20 NMAC 11.03.II.4, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.106 NMAC,  
42 11/15/10]

43  
44 **~~[20.11.3.204]~~ 20.11.3.107 RELATIONSHIP OF TRANSPORTATION PLAN AND TIP CONFORMITY**  
45 **WITH THE NEPA PROCESS:** The degree of specificity required in the transportation plan and the specific travel  
46 network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or  
47 other project development studies. Should the NEPA process result in a project with design concept and scope  
48 significantly different from that in the transportation plan or TIP, the project shall meet the criteria in ~~[20.11.3.206]~~  
49 20.11.3.109 NMAC through ~~[20.11.3.216]~~20.11.3.119 NMAC for projects not from a TIP before NEPA process  
50 completion.  
51 [7/1/98; 20.11.3.204 NMAC - Rn, 20 NMAC 11.03.II.5, 6/1/02; A, 6/13/05; Rn, 20.11.3.107 NMAC, 11/15/10]

52  
53 **~~[20.11.3.205]~~ 20.11.3.108 FISCAL CONSTRAINTS FOR TRANSPORTATION PLANS AND TIPS:**  
54 Transportation plans and TIPs shall be fiscally constrained consistent with DOT's metropolitan planning regulations  
55 at 23 CFR Part 450 in order to be found in conformity. The determination that the MTP and TIP are fiscally

constrained is made through the MPO's transportation planning process, which includes the agencies represented in the consultation process described in Paragraph (1) of Subsection D of [20.11.3.202] 20.11.3.105 NMAC. [7/1/98; 20.11.3.205 NMAC - Rn, 20 NMAC 11.03.II.6, 6/1/02; A, 6/13/05; Rn, 20.11.3.108 NMAC, 11/15/10]

**[20.11.3.206] 20.11.3.109 CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS: GENERAL:**

**A.** In order for each transportation plan, program, and FHWA/FTA project to be found to conform, the MPO and DOT shall demonstrate that the applicable criteria and procedures in 20.11.3 NMAC are satisfied. The MPO and DOT shall comply with all applicable conformity requirements of implementation plans and court orders for the area which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs and FHWA/FTA projects), the relevant pollutant(s) and the status of the implementation plan.

**B.** Table 1 in Subsection B of [20.11.3.206] 20.11.3.109 NMAC indicates the criteria and procedures in [20.11.3.207] 20.11.3.110 NMAC through [20.11.3.216] 20.11.3.119 NMAC, which apply for transportation plans, TIPs and FHWA/FTA projects. Subsection C through Subsection [J]K of [20.11.3.206] 20.11.3.109 NMAC explains when the budget, interim emissions and hot-spot tests are required for each pollutant and NAAQS. Subsection [J]L of [20.11.3.206] 20.11.3.109 NMAC addresses conformity requirements for areas with approved or adequate limited maintenance plans. Subsection [K]M of [20.11.3.206] 20.11.3.109 NMAC addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Subsection [L]N of [20.11.3.206] 20.11.3.109 NMAC addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

**TABLE 1. CONFORMITY CRITERIA**

|   |       |   |
|---|-------|---|
| <b>All Actions at all times:</b>                            |       |   |
| [20.11.3.207] 20.11.3.110 NMAC                              |       | Latest planning assumptions                             |
| [20.11.3.208] 20.11.3.111 NMAC                              |       | Latest emissions model                                  |
| [20.11.3.209] 20.11.3.112 NMAC                              |       | Consultation  |
| <b>Transportation Plan:</b>                                 |       |   |
| Subsection B of [20.11.3.210] 20.11.3.113 NMAC              | TCMs. |   |
| [20.11.3.215] 20.11.3.118 or [20.11.3.216] 20.11.3.119 NMAC |       | Emissions budget or                                     |
| interim emissions   |       |   |
| <b>TIP:</b>   |       |   |
| Subsection C of [20.11.3.210] 20.11.3.113 NMAC              | TCMs. |   |
| [20.11.3.215] 20.11.3.118 or [20.11.3.216] 20.11.3.119 NMAC |       | Emissions budget or                                     |
| interim emissions   |       |   |
| <b>Project (from a conforming plan and TIP):</b>            |       |   |
| [20.11.3.211] 20.11.3.114 NMAC                              |       | Currently conforming plan and TIP                       |
| [20.11.3.212] 20.11.3.115 NMAC                              |       | Project from a conforming plan and TIP                  |
| [20.11.3.213] 20.11.3.116 NMAC                              |       | CO, PM <sub>10</sub> and PM <sub>2.5</sub> hot-spots    |
| [20.11.3.214] 20.11.3.117 NMAC                              |       | PM <sub>10</sub> and PM <sub>2.5</sub> control measures |
| <b>Project (Not From a Conforming Plan and TIP):</b>        |       |   |
| Subsection D of [20.11.3.210] 20.11.3.113 NMAC              | TCMs. |   |
| [20.11.3.211] 20.11.3.114 NMAC                              |       | Currently conforming plan and TIP                       |
| [20.11.3.213] 20.11.3.116 NMAC                              |       | CO, PM <sub>10</sub> and PM <sub>2.5</sub> hot-spots    |
| [20.11.3.214] 20.11.3.117 NMAC                              |       | PM <sub>10</sub> and PM <sub>2.5</sub> control measures |
| [20.11.3.215] 20.11.3.118 or [20.11.3.216] 20.11.3.119 NMAC |       | Emissions budget or                                     |
| interim emissions   |       |   |

**C. 1-hour ozone NAAQS nonattainment and maintenance areas:** Subsection C of [20.11.3.206] 20.11.3.109 NMAC applies when an area is nonattainment or maintenance for the 1-hour ozone NAAQS (i.e. until

1 the effective date of any revocation of the 1-hour ozone NAAQS for an area). In addition to the criteria listed in  
2 Table 1 in Subsection B of ~~[20.11.3.206]~~ 20.11.3.109 NMAC that are required to be satisfied at all times, in such  
3 ozone nonattainment and maintenance areas, conformity determinations shall include a demonstration that the  
4 budget or interim emissions tests are satisfied as described in the following.

5 (1) In all 1-hour ozone nonattainment and maintenance areas the budget test shall be satisfied as  
6 required by ~~[20.11.3.215]~~ 20.11.3.118 NMAC for conformity determinations made on or after:

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

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

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

13 (2) In ozone nonattainment areas that are required to submit a control strategy implementation plan  
14 revision for the 1-hour ozone NAAQS (usually moderate and above areas), the interim emissions tests shall be  
15 satisfied as required by ~~[20.11.3.216]~~ 20.11.3.119 NMAC for conformity determinations made when there is no  
16 approved motor vehicle emissions budget from an applicable implementation plan for the 1-hour ozone NAAQS and  
17 no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or  
18 maintenance plan for the 1-hour ozone NAAQS.

19 (3) An ozone nonattainment area shall satisfy the interim emissions test for NO<sub>x</sub>, as required by  
20 ~~[20.11.3.216]~~ 20.11.3.119 NMAC, if the implementation plan or plan submission that is applicable for the purposes  
21 of conformity determinations is a 15% plan or phase I attainment demonstration that does not include a motor  
22 vehicle emissions budget for NO<sub>x</sub>. The implementation plan for the 1-hour ozone NAAQS shall be considered to  
23 establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation plan or plan submission contains an  
24 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  
25 NO<sub>x</sub> motor vehicle emissions budget is a net reduction from NO<sub>x</sub> emissions levels in 1990.

26 (4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required  
27 to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually marginal and below  
28 areas) shall satisfy one of the following requirements:

29 (a) the interim emissions tests required by ~~[20.11.3.216]~~ 20.11.3.119 NMAC; or

30 (b) the state shall submit to EPA an implementation plan revision for the 1-hour ozone NAAQS  
31 that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and  
32 the budget test required by ~~[20.11.3.215]~~ 20.11.3.118 NMAC shall be satisfied using the adequate or approved  
33 motor vehicle emissions budget(s) (as described in Paragraph (1) of Subsection C of ~~[20.11.3.206]~~ 20.11.3.109  
34 NMAC).

35 (5) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection C of ~~[20.11.3.206]~~ 20.11.3.109  
36 NMAC, moderate and above ozone nonattainment areas with three years of clean data for the 1-hour ozone NAAQS  
37 that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act  
38 reasonable further progress and attainment demonstration requirements for the 1-hour ozone NAAQS shall satisfy  
39 one of the following requirements:

40 (a) the interim emissions tests as required by ~~[20.11.3.216]~~ 20.11.3.119 NMAC;

41 (b) the budget test as required by ~~[20.11.3.215]~~ 20.11.3.118 NMAC, using the adequate or  
42 approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for  
43 the 1-hour ozone NAAQS (subject to the timing requirements of Paragraph (1) of Subsection C of ~~[20.11.3.206]~~  
44 20.11.3.109 NMAC; or

45 (c) the budget test as required by ~~[20.11.3.215]~~ 20.11.3.118 NMAC, using the motor vehicle  
46 emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such  
47 budgets are established by the EPA rulemaking that determines that the area has clean data for the 1-hour ozone  
48 NAAQS.

49 **D. 8-hour ozone NAAQS nonattainment and maintenance areas without motor vehicle**  
50 **emissions budgets for the 1-hour ozone NAAQS for any portion of the 8-hour nonattainment area:** Subsection  
51 D of ~~[20.11.3.206]~~ 20.11.3.109 NMAC applies to areas that were never designated nonattainment for the 1-hour  
52 ozone NAAQS and areas that were designated nonattainment for the 1-hour ozone NAAQS but that never submitted  
53 a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. Subsection  
54 D of ~~[20.11.3.206]~~ 20.11.3.109 NMAC applies one year after the effective date of EPA's nonattainment designation  
55 for the 8-hour ozone NAAQS for an area, according to Subsection D of 20.11.3.2 NMAC. In addition to the criteria  
56 listed in Table 1 in Subsection B of ~~[20.11.3.206]~~ 20.11.3.109 NMAC that are required to be satisfied at all times, in

1 such 8-hour ozone nonattainment and maintenance areas conformity determinations shall include a demonstration  
2 that the budget or interim emissions tests are satisfied as described in the following.

3 (1) In such 8-hour ozone nonattainment and maintenance areas the budget test shall be satisfied as  
4 required by ~~[20.11.3.215]~~ 20.11.3.118 NMAC for conformity determinations made on or after:

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 for the 8-hour ozone NAAQS is adequate for  
7 transportation conformity 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 (2) In ozone nonattainment areas that are required to submit a control strategy implementation plan  
12 revision for the 8-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, Part D, Subpart 1  
13 areas), the interim emissions tests shall be satisfied as required by ~~[20.11.3.216]~~ 20.11.3.119 NMAC for conformity  
14 determinations made when there is no approved motor vehicle emissions budget from an applicable implementation  
15 plan for the 8-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control  
16 strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS.

17 (3) Such an 8-hour ozone nonattainment area shall satisfy the interim emissions test for NO<sub>x</sub>, as  
18 required by ~~[20.11.3.216]~~ 20.11.3.119 NMAC, if the implementation plan or plan submission that is applicable for  
19 the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable  
20 further progress that does not include a motor vehicle emissions budget for NO<sub>x</sub>. The implementation plan for the 8-  
21 hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation  
22 plan or plan submission contains an explicit NO<sub>x</sub> motor vehicle emissions budget that is intended to act as a ceiling  
23 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  
24 in 2002.

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

28 (a) the interim emissions tests required by ~~[20.11.3.216]~~ 20.11.3.119 NMAC; or

29 (b) the state shall submit to EPA an implementation plan revision for the 8-hour ozone NAAQS  
30 that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and  
31 the budget test required by ~~[20.11.3.215]~~ 20.11.3.118 NMAC shall be satisfied using the adequate or approved  
32 motor vehicle emissions budget(s) as described in Paragraph (1) of Subsection D of ~~[20.11.3.206]~~ 20.11.3.109  
33 NMAC.

34 (5) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection D of ~~[20.11.3.206]~~ 20.11.3.109  
35 NMAC, ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not  
36 submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further  
37 progress and attainment demonstration requirements for the 8-hour ozone NAAQS shall satisfy one of the following  
38 requirements:

39 (a) the interim emissions tests as required by ~~[20.11.3.216]~~ 20.11.3.119 NMAC;

40 (b) the budget test as required by ~~[20.11.3.215]~~ 20.11.3.118 NMAC, using the adequate or  
41 approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for  
42 the 8-hour ozone NAAQS subject to the timing requirements of Paragraph (1) of Subsection D of ~~[20.11.3.206]~~  
43 20.11.3.109 NMAC; or

44 (c) the budget test as required by ~~[20.11.3.215]~~ 20.11.3.118 NMAC, using the motor vehicle  
45 emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such  
46 budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone  
47 NAAQS.

48 **E. 8-hour ozone NAAQS nonattainment and maintenance areas with motor vehicle emissions  
49 budgets for the 1-hour ozone NAAQS that cover all or a portion of the 8-hour nonattainment area:**

50 Subsection E of ~~[20.11.3.206]~~ 20.11.3.109 NMAC applies one year after the effective date of EPA's nonattainment  
51 designation for the 8-hour ozone NAAQS for an area, according to Subsection D of 20.11.3.2 NMAC. In addition  
52 to the criteria listed in Table 1 in Subsection B of ~~[20.11.3.206]~~ 20.11.3.109 NMAC that are required to be satisfied  
53 at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations shall include a  
54 demonstration that the budget or interim emissions tests are satisfied as described in the following.

55 (1) In such 8-hour ozone nonattainment and maintenance areas the budget test shall be satisfied as  
56 required by ~~[20.11.3.215]~~ 20.11.3.118 NMAC for conformity determinations made on or after:



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 for the 8-hour ozone NAAQS is adequate for  
3 transportation conformity 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) Prior to Paragraph (1) of Subsection E of ~~[20.11.3.206]~~ 20.11.3.109 NMAC applying, the  
8 following test(s) shall be satisfied:

9 (a) if the 8-hour ozone nonattainment area covers the same geographic area as the 1-hour ozone  
10 nonattainment or maintenance area(s), the budget test as required by ~~[20.11.3.215]~~ 20.11.3.118 NMAC using the  
11 approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or  
12 implementation plan submission;

13 (b) if the 8-hour ozone nonattainment area covers a smaller geographic area within the 1-hour  
14 ozone nonattainment or maintenance area(s), the budget test as required by ~~[20.11.3.215]~~ 20.11.3.118 NMAC for  
15 either:

16 (i) the 8-hour nonattainment area using corresponding portion(s) of the approved or  
17 adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation  
18 plan submission where such portion(s) can reasonably be identified through the interagency consultation process  
19 required by ~~[20.11.3.202]~~ 20.11.3.105 NMAC; or

20 (ii) the 1-hour nonattainment area using the approved or adequate motor vehicle  
21 emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; if  
22 additional emissions reductions are necessary to meet the budget test for the 8-hour ozone NAAQS in such cases,  
23 these emissions reductions shall come from within the 8-hour nonattainment area;

24 (c) if the 8-hour ozone nonattainment area covers a larger geographic area and encompasses the  
25 entire 1-hour ozone nonattainment or maintenance area(s):

26 (i) the budget test as required by ~~[20.11.3.215]~~ 20.11.3.118 NMAC for the portion of the  
27 8-hour ozone nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1-  
28 hour ozone applicable implementation plan or implementation plan submission; and

29 (ii) the interim emissions tests as required by ~~[20.11.3.216]~~ 20.11.3.119 NMAC for  
30 either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-  
31 hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour  
32 ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established  
33 for each state of a multi-state 1-hour nonattainment or maintenance area;

34 (d) if the 8-hour ozone nonattainment area partially covers a 1-hour ozone nonattainment or  
35 maintenance area(s):

36 (i) the budget test as required by ~~[20.11.3.215]~~ 20.11.3.118 NMAC for the portion of the  
37 8-hour ozone nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle  
38 emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where  
39 they can be reasonably identified through the interagency consultation process required by ~~[20.11.3.202]~~  
40 20.11.3.105 NMAC; and

41 (ii) the interim emissions tests as required by ~~[20.11.3.216]~~ 20.11.3.119 NMAC, when  
42 applicable, for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate  
43 budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion  
44 of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are  
45 established for each state in a multi-state 1-hour nonattainment or maintenance area.

46 (3) Such an 8-hour ozone nonattainment area shall satisfy the interim emissions test for NO<sub>x</sub>, as  
47 required by ~~[20.11.3.216]~~ 20.11.3.119 NMAC, if the only implementation plan or plan submission that is applicable  
48 for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable  
49 further progress that does not include a motor vehicle emissions budget for NO<sub>x</sub>. The implementation plan for the 8-  
50 hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation  
51 plan or plan submission contains an explicit NO<sub>x</sub> motor vehicle emissions budget that is intended to act as a ceiling  
52 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  
53 in 2002. Prior to an adequate or approved NO<sub>x</sub> motor vehicle emissions budget in the implementation plan  
54 submission for the 8-hour ozone NAAQS, the implementation plan for the 1-hour ozone NAAQS will be considered  
55 to establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation plan contains an explicit NO<sub>x</sub> motor

1 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  
2 emissions budget is a net reduction from NO<sub>x</sub> emissions levels in 1990.

3 (4) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection E of [20.11.3.206] 20.11.3.109  
4 NMAC, ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not  
5 submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further  
6 progress and attainment demonstration requirements for the 8-hour ozone NAAQS shall satisfy one of the following  
7 requirements:

8 (a) the budget test or interim emissions tests as required by [20.11.3.215] 20.11.3.118 NMAC  
9 and [20.11.3.216] 20.11.3.119 NMAC and as described in Paragraph (2) of Subsection E of [20.11.3.206]  
10 20.11.3.109 NMAC;

11 (b) the budget test as required by [20.11.3.215]20.11.3.118 NMAC, using the adequate or  
12 approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for  
13 the 8-hour ozone NAAQS subject to the timing requirements of Paragraph (1) of Subsection E of [20.11.3.206]  
14 20.11.3.109 NMAC; or

15 (c) the budget test as required by [20.11.3.215] 20.11.3.118 NMAC, using the motor vehicle  
16 emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such  
17 budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone  
18 NAAQS.

19 **F. CO nonattainment and maintenance areas:** In addition to the criteria listed in Table 1 in  
20 Subsection B of [20.11.3.206] 20.11.3.109 NMAC that are required to be satisfied at all times, in CO nonattainment  
21 and maintenance areas conformity determinations shall include a demonstration that the hot-spot, budget or emission  
22 reduction tests are satisfied as described in the following:

23 (1) FHWA/FTA projects in CO nonattainment or maintenance areas shall satisfy the hot-spot test  
24 required by Subsection A of [20.11.3.213] 20.11.3.116 NMAC at all times; until a CO attainment demonstration or  
25 maintenance plan is approved by EPA, FHWA/FTA projects shall also satisfy the hot-spot test required by  
26 Subsection B of [20.11.3.213] 20.11.3.116 NMAC;

27 (2) in CO nonattainment and maintenance areas the budget test shall be satisfied as required by  
28 [20.11.3.215] 20.11.3.118 NMAC for conformity determinations made on or after:

29 (a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted  
30 control strategy implementation plan revision or maintenance plan is adequate for transportation conformity  
31 purposes;

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

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

35 (3) except as provided in Paragraph (4) of Subsection F of [20.11.3.206] 20.11.3.109 NMAC, in CO  
36 nonattainment areas the interim emissions tests shall be satisfied as required by [20.11.3.216] 20.11.3.119 NMAC  
37 for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable  
38 implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy  
39 implementation plan revision or maintenance plan;

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

43 (a) the interim emissions tests required by [20.11.3.216]20.11.3.119 NMAC; or

44 (b) the state shall submit to EPA an implementation plan revision that contains motor vehicle  
45 emissions budget(s) and an attainment demonstration, and the budget test required by [20.11.3.215]20.11.3.118  
46 NMAC shall be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in  
47 Paragraph (2) of Subsection F of [20.11.3.206] 20.11.3.109 NMAC).

48 **G. PM<sub>10</sub> nonattainment and maintenance areas:** In addition to the criteria listed in Table 1 in  
49 Subsection B of [20.11.3.206] 20.11.3.109 NMAC that are required to be satisfied at all times, in PM<sub>10</sub>  
50 nonattainment and maintenance areas conformity determinations shall include a demonstration that the hot-spot,  
51 budget or interim emissions tests are satisfied as described in the following.

52 (1) FHWA/FTA projects in PM<sub>10</sub> non-attainment or maintenance areas shall satisfy the hot-spot test  
53 required by Subsection A of [20.11.3.213] 20.11.3.116 NMAC.

54 (2) In PM<sub>10</sub> nonattainment and maintenance areas where a budget is submitted for the 24-hour PM<sub>10</sub>  
55 NAAQS, the budget test shall be satisfied as required by [20.11.3.215] 20.11.3.118 NMAC for conformity  
56 determinations made on or after:

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 (3) Prior to Paragraph (2) of Subsection G of 20.11.3.109 NMAC applying, the budget test must be  
8 satisfied as required by 20.11.3.118 NMAC using the approved or adequate motor vehicle emissions budget  
9 established for the revoked annual PM<sub>10</sub> NAAQS, if such a budget exists.

10 ~~[(3)]~~(4) In PM<sub>10</sub> nonattainment areas the interim emissions tests shall be satisfied as required by  
11 ~~[20.11.3.216]~~ 20.11.3.119 NMAC for conformity determinations made:

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

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

17 **H. NO<sub>2</sub> nonattainment and maintenance areas:** In addition to the criteria listed in Table 1 in  
18 Subsection B of ~~[20.11.3.206]~~ 20.11.3.109 NMAC that are required to be satisfied at all times, in NO<sub>2</sub>  
19 nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or  
20 interim emissions tests are satisfied as described in the following.

21 (1) In NO<sub>2</sub> nonattainment and maintenance areas the budget test shall be satisfied as required by  
22 ~~[20.11.3.215]~~ 20.11.3.118 NMAC for conformity determinations made on or after:

23 (a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted  
24 control strategy implementation plan revision or maintenance plan is adequate for transportation conformity  
25 purposes;

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

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

29 (2) In NO<sub>2</sub> nonattainment areas the interim emissions tests shall be satisfied as required by  
30 ~~[20.11.3.216]~~ 20.11.3.119 NMAC for conformity determinations made when there is no approved motor vehicle  
31 emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a  
32 submitted control strategy implementation plan revision or maintenance plan.

33 **I. 1997 PM<sub>2.5</sub> nonattainment and maintenance areas:** In addition to the criteria listed in Table 1  
34 of Subsection B of ~~[20.11.3.206]~~ 20.11.3.109 NMAC that are required to be satisfied at all times, in PM<sub>2.5</sub>  
35 nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or  
36 interim emissions tests are satisfied as described in the following:

37 (1) FHWA/FTA projects in such 1997 PM<sub>2.5</sub> nonattainment or maintenance areas must satisfy the  
38 appropriate hot-spot test required by Subsection A of ~~[20.11.3.213]~~ 20.11.3.116 NMAC;

39 (2) in such 1997 PM<sub>2.5</sub> nonattainment and maintenance areas the budget test shall be satisfied as  
40 required by ~~[20.11.3.215]~~ 20.11.3.118 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 is adequate for transportation conformity  
43 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 (3) in PM<sub>2.5</sub> nonattainment areas the interim emissions tests shall be satisfied as required by  
48 ~~[20.11.3.216]~~ 20.11.3.119 NMAC for conformity determinations made if there is no approved motor vehicle  
49 emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a  
50 submitted control strategy implementation plan revision or maintenance plan.

51 **J. 2006 PM<sub>2.5</sub> NAAQS nonattainment and maintenance areas without 1997 PM<sub>2.5</sub> NAAQS**  
52 **motor vehicle emissions budgets for any portion of the 2006 PM<sub>2.5</sub> NAAQS area:** In addition to the criteria  
53 listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in such 2006  
54 PM<sub>2.5</sub> nonattainment and maintenance areas conformity determinations must include a demonstration that the budget  
55 or interim emissions tests are satisfied as described in the following:

1 (1) FHWA/FTA projects in such PM<sub>2.5</sub> nonattainment and maintenance areas shall satisfy the  
2 appropriate hot-spot test required by Subsection A of 20.11.3.116 NMAC.

3 (2) In such PM<sub>2.5</sub> nonattainment and maintenance areas the budget test must be satisfied as required  
4 by 20.11.3.118 NMAC for conformity determinations made on or after:

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 for the 2006 PM<sub>2.5</sub> NAAQS is adequate for  
7 transportation conformity 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) In such PM<sub>2.5</sub> nonattainment areas the interim emissions tests shall be satisfied as required by  
12 20.11.3.119 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget  
13 from an applicable implementation plan for the 2006 PM<sub>2.5</sub> NAAQS and no adequate motor vehicle emissions  
14 budget from a submitted control strategy implementation plan revision or maintenance plan for the 2006 PM<sub>2.5</sub>  
15 NAAQS.

16 **K. 2006 PM<sub>2.5</sub> NAAQS nonattainment and maintenance areas with motor vehicle emissions**  
17 **budgets 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  
18 addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all  
19 times, in such 2006 PM<sub>2.5</sub> nonattainment and maintenance areas conformity determinations shall include a  
20 demonstration that the budget or interim emissions tests are satisfied as described in the following:

21 (1) FHWA/FTA projects in such PM<sub>2.5</sub> nonattainment and maintenance areas must satisfy the  
22 appropriate hot-spot test required by Subsection A of 20.11.3.116 NMAC.

23 (2) In such PM<sub>2.5</sub> nonattainment and maintenance areas the budget test shall be satisfied as required  
24 by 20.11.3.118 NMAC for conformity determinations made on or after:

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

28 (b) The publication date of EPA's approval of such a budget in the Federal Register; or

29 (c) The effective date of EPA's approval of such a budget in the Federal Register, if such  
30 approval is completed through direct final rulemaking.

31 (3) Prior to Paragraph (2) of Subsection K of 20.11.3.109 NMAC applying, the following test(s) must  
32 be satisfied:

33 (a) If the 2006 PM<sub>2.5</sub> nonattainment area covers the same geographic area as the 1997 PM<sub>2.5</sub>  
34 nonattainment or maintenance area(s), the budget test as required by 20.11.3.118 NMAC using the approved or  
35 adequate motor vehicle emissions budgets in the 1997 PM<sub>2.5</sub> applicable implementation plan or implementation plan  
36 submission;

37 (b) If the 2006 PM<sub>2.5</sub> nonattainment area covers a smaller geographic area within the 1997  
38 PM<sub>2.5</sub> nonattainment or maintenance area(s), the budget test as required by 20.11.3.118 NMAC for either:

39 (i) The 2006 PM<sub>2.5</sub> nonattainment area using corresponding portion(s) of the approved or  
40 adequate motor vehicle emissions budgets in the 1997 PM<sub>2.5</sub> applicable implementation plan or implementation plan  
41 submission where such portion(s) can reasonably be identified through the interagency consultation process required  
42 by 20.11.3.105 NMAC; or

43 (ii) The 1997 PM<sub>2.5</sub> nonattainment area using the approved or adequate motor vehicle  
44 emissions budgets in the 1997 PM<sub>2.5</sub> applicable implementation plan or implementation plan submission. If  
45 additional emissions reductions are necessary to meet the budget test for the 2006 PM<sub>2.5</sub> NAAQS in such cases,  
46 these emissions reductions must come from within the 2006 PM<sub>2.5</sub> nonattainment area;

47 (c) If the 2006 PM<sub>2.5</sub> nonattainment area covers a larger geographic area and encompasses the  
48 entire 1997 PM<sub>2.5</sub> nonattainment or maintenance area(s):

49 (i) The budget test as required by 20.11.3.118 NMAC for the portion of the 2006 PM<sub>2.5</sub>  
50 nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1997 PM<sub>2.5</sub>  
51 applicable implementation plan or implementation plan submission; and the interim emissions tests as required by  
52 20.11.3.119 NMAC for either: the portion of the 2006 PM<sub>2.5</sub> nonattainment area not covered by the approved or  
53 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  
54 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  
55 budgets are established for each state of a multi-state 1997 PM<sub>2.5</sub> nonattainment or maintenance area; or

1 (ii) The budget test as required by 20.11.3.118 NMAC for the entire 2006 PM<sub>2.5</sub>  
2 nonattainment area using the approved or adequate motor vehicle emissions budgets in the applicable 1997 PM<sub>2.5</sub>  
3 implementation plan or implementation plan submission.

4 (d) If the 2006 PM<sub>2.5</sub> nonattainment area partially covers a 1997 PM<sub>2.5</sub> nonattainment or  
5 maintenance area(s):

6 (i) The budget test as required by 20.11.3.118 NMAC for the portion of the 2006 PM<sub>2.5</sub>  
7 nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions  
8 budgets in the 1997 PM<sub>2.5</sub> applicable implementation plan or implementation plan submission where they can be  
9 reasonably identified through the interagency consultation process required by 20.11.3.105 NMAC; and

10 (ii) The interim emissions tests as required by 20.11.3.119 NMAC, when applicable, for  
11 either: the portion of the 2006 PM<sub>2.5</sub> nonattainment area not covered by the approved or adequate budgets in the  
12 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>  
13 nonattainment area within an individual state, in the case where separate 1997 PM<sub>2.5</sub> SIP budgets are established for  
14 each state in a multi-state 1997 PM<sub>2.5</sub> nonattainment or maintenance area.

15 **[J.] L. Areas with limited maintenance plans:** Notwithstanding the other subsections of [20.11.3.206]  
16 20.11.3.109 NMAC, an area is not required to satisfy the regional emissions analysis for [20.11.3.215] 20.11.3.118  
17 NMAC or [20.11.3.216] 20.11.3.119 NMAC for a given pollutant and NAAQS if the area has an adequate or  
18 approved limited maintenance plan for such pollutant and NAAQS. A limited maintenance plan would have to  
19 demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle  
20 emissions growth for a NAAQS violation to occur. A conformity determination that meets other applicable criteria  
21 in Table 1 of Subsection B of [20.11.3.206] 20.11.3.109 NMAC is still required, including the hot-spot requirements  
22 for projects in CO PM<sub>10</sub> and PM<sub>2.5</sub> areas.

23 **[K.] M. Areas with insignificant motor vehicle emissions:** Notwithstanding the other subsections of  
24 [20.11.3.206] 20.11.3.109 NMAC, an area is not required to satisfy a regional emissions analysis for [20.11.3.215]  
25 20.11.3.118 NMAC or [20.11.3.216] 20.11.3.119 NMAC for a given pollutant/precursor and NAAQS, if EPA finds  
26 through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an  
27 insignificant contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to  
28 demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle  
29 emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a  
30 number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the  
31 current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle  
32 control measures and historical trends and future projections of the growth of motor vehicle emissions. A  
33 conformity determination that meets other applicable criteria in Table 1 in Subsection B of [20.11.3.206]  
34 20.11.3.109 NMAC is still required, including regional emissions analyses for [20.11.3.215] 20.11.3.118 NMAC or  
35 [20.11.3.216] 20.11.3.119 NMAC for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for  
36 projects in CO, PM<sub>10</sub> and PM<sub>2.5</sub> areas in [20.11.3.213] 20.11.3.116 NMAC shall also be satisfied, unless EPA  
37 determines that the SIP also demonstrates that projects will not create new localized violations or increase the  
38 severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions  
39 of a given pollutant/precursor are significant, this subsection would no longer apply for future conformity  
40 determinations for that pollutant/precursor and NAAQS.

41 **[L.] N. Isolated rural non-attainment and maintenance areas:** This subsection applies to any  
42 nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or  
43 TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP.  
44 This paragraph does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the  
45 nonattainment/maintenance area boundary.

46 (1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the  
47 requirements of [20.11.3.207] 20.11.3.110 NMAC, [20.11.3.208] 20.11.3.111 NMAC, [20.11.3.209] 20.11.3.112  
48 NMAC, [20.11.3.213] 20.11.3.116 NMAC, [20.11.3.214] 20.11.3.117 NMAC and Subsection D of  
49 [20.11.3.210] 20.11.3.113 NMAC. Until EPA approves the control strategy implementation plan or maintenance  
50 plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects shall also satisfy the requirements of  
51 Subsection B of [20.11.3.213] 20.11.3.116 NMAC.

52 (2) Isolated rural nonattainment and maintenance areas are subject to the budget or interim emissions  
53 tests as described in Subsections C through K of [20.11.3.206] 20.11.3.109 NMAC, with the following  
54 modifications.

55 (a) When the requirements of Subsection D of [20.11.3.203] 20.11.3.106 NMAC, [20.11.3.213]  
56 20.11.3.116 NMAC, [20.11.3.215] 20.11.3.118 NMAC and [20.11.3.216] 20.11.3.119 NMAC apply to isolated rural

1 nonattainment and maintenance areas, references to “transportation plan” or “TIP” shall be taken to mean those  
2 projects in the statewide transportation plan or statewide TIP that are in the rural nonattainment or maintenance area.  
3 When the requirements of Subsection D of ~~[20.11.3.203]~~ 20.11.3.106 NMAC apply to isolated rural nonattainment  
4 and maintenance areas, references to “MPO” shall be taken to mean the state department of transportation.

5 (b) In isolated rural nonattainment and maintenance areas that are subject to ~~[20.11.3.215]~~  
6 20.11.3.118 NMAC, FHWA/FTA projects shall be consistent with motor vehicle emissions budget(s) for the years  
7 in the timeframe of the attainment demonstration or maintenance plan. For years after the attainment year (if a  
8 maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects shall  
9 satisfy one of the following requirements:

10 (i) ~~[20.11.3.215]~~ 20.11.3.118 NMAC;  
11 (ii) ~~[20.11.3.216]~~ 20.11.3.119 NMAC (including regional emissions analysis for NO<sub>x</sub> in  
12 all ozone nonattainment and maintenance areas, notwithstanding Paragraph (2) of Subsection F of ~~[20.11.3.216]~~  
13 20.11.3.119 NMAC);

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

20 (c) The choice of requirements in Subparagraph (b) of Paragraph (2) of Subsection ~~[L]N~~ of  
21 ~~[20.11.3.206]~~ 20.11.3.109 NMAC and the methodology used to meet the requirements of Item (iii) of Subparagraph  
22 (b) of Paragraph (2) of Subsection ~~[L]N~~ of ~~[20.11.3.206]~~ 20.11.3.109 NMAC shall be determined through the  
23 interagency consultation process required in Subparagraph (h) of Paragraph (1) of Subsection D of ~~[20.11.3.202]~~  
24 20.11.3.105 NMAC through which the relevant recipients of Title 23 U.S.C. or Federal Transit Laws funds, the local  
25 air quality agency, the state air quality agency and the state DOT shall reach consensus about the option and  
26 methodology selected. EPA and DOT shall be consulted through this process as well. In the event of unresolved  
27 disputes, conflicts may be escalated to the governor consistent with the procedure in Subsection E of ~~[20.11.3.202]~~  
28 20.11.3.105 NMAC, which applies for any state air agency comments on a conformity determination.  
29 ~~[7/1/98; 20.11.3.206 NMAC - Rn, 20 NMAC 11.03.II.7, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.109 NMAC,~~  
30 ~~11/15/10]~~

31  
32 ~~[20.11.3.207]~~ 20.11.3.110 **CRITERIA AND PROCEDURES: LATEST PLANNING ASSUMPTIONS:**

33 **A.** Except as provided in Subsection A of ~~[20.11.3.207]~~ 20.11.3.110 NMAC, the conformity  
34 determination, with respect to all other applicable criteria in ~~[20.11.3.208]~~ 20.11.3.111 NMAC through  
35 ~~[20.11.3.216]~~ 20.11.3.119 NMAC, shall be based upon the most recent planning assumptions in force at the time the  
36 conformity analysis begins. The conformity determination shall satisfy the requirements of Subsections B through F  
37 of ~~[20.11.3.207]~~ 20.11.3.110 NMAC using the planning assumptions available at the time the conformity analysis  
38 begins as determined through the interagency consultation process required in Subparagraph (a) of Paragraph (1) of  
39 Subsection D of 20.11.202 NMAC. The “time the conformity analysis begins” for a transportation plan or TIP  
40 determination is the point at which the MPO or other designated agency begins to model the impact of the proposed  
41 transportation plan or TIP on travel or emissions. New data that becomes available after an analysis begins is  
42 required to be used in the conformity determination only if a significant delay in the analysis has occurred, as  
43 determined through the interagency consultation procedures described in ~~[20.11.3.202]~~ 20.11.3.105 NMAC.

44 **B.** Assumptions shall be derived from the estimates of current and future population, employment,  
45 travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and  
46 approved by the MPO. These assumptions shall be presented to and discussed by the TCTC as part of the  
47 interagency consultation procedures described in Paragraph (1) of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105  
48 NMAC. The conformity determination shall also be based on the latest assumptions about current and future  
49 background concentrations.

50 **C.** The conformity determination for each transportation plan and TIP shall discuss how transit  
51 operating policies (including fares and service levels) and assumed transit ridership have changed since the previous  
52 conformity determination. These assumptions shall be presented to and discussed by the TCTC as part of the  
53 interagency consultation procedures described in Paragraph (1) of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105  
54 NMAC.

55 **D.** The conformity determination shall include reasonable assumptions about transit service and  
56 increases in transit fares and road and bridge tolls over time. These assumptions shall be presented to and discussed

1 by the TCTC as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of  
2 ~~[20.11.3.202]~~ 20.11.3.105 NMAC.

3 **E.** The conformity determination shall use the latest existing information regarding the effectiveness  
4 of the TCMs and other implementation plan measures that have already been implemented. This information shall  
5 be made as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of  
6 ~~[20.11.3.202]~~ 20.11.3.105 NMAC.

7 **F.** Key assumptions shall be specified and included in the draft documents and supporting materials  
8 used for the interagency and public consultation required by ~~[20.11.3.202]~~ 20.11.3.105 NMAC.  
9 [7/1/98; 20.11.3.207 NMAC - Rn, 20 NMAC 11.03.II.8, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.110 NMAC,  
10 11/15/10]

11  
12 ~~[20.11.3.208]~~ 20.11.3.111 **CRITERIA AND PROCEDURES: LATEST EMISSIONS MODEL:**

13 **A.** The conformity determination shall be based on the latest emission estimation model available.  
14 This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use  
15 in the preparation or revision of implementation plans for Bernalillo county is used for the conformity analysis.  
16 When options are allowed by EPA, the TCTC, as part of the interagency consultation described in Paragraph (1) of  
17 Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC, shall be responsible for determining the most appropriate  
18 emission estimation model to be used.

19 **B.** EPA shall consult with DOT to establish a grace period following the specification of any new  
20 model.

21 (1) The grace period shall be no less than three months and no more than 24 months after notice of  
22 availability is published in the federal register.

23 (2) The length of the grace period shall depend on the degree of change in the model and the scope of  
24 re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period shall be longer than  
25 three months, EPA shall announce the appropriate grace period in the federal register.

26 **C.** Transportation plan and TIP conformity analyses for which the emissions analysis was begun  
27 during the grace period or before the federal register notice of availability of the latest emission model may continue  
28 to use the previous version of the model. Conformity determinations for projects may also be based on the previous  
29 model if the analyses were begun during the grace period or before the federal register notice of availability, and if  
30 the final environmental document for the project is issued no more than three years after the issuance of the draft  
31 environmental document.

32 [7/1/98; 20.11.3.208 NMAC - Rn, 20 NMAC 11.03.II.9, 6/1/02; A, 6/13/05; Rn, 20.11.3.111 NMAC, 11/15/10]

33  
34 ~~[20.11.3.209]~~20.11.3.112 **CRITERIA AND PROCEDURES: CONSULTATION:** Conformity shall be  
35 determined according to the consultation procedures in 20.11.3 NMAC and in the applicable implementation plan,  
36 and according to the public involvement procedures established in compliance with 23 CFR Part 450. Until the  
37 implementation plan revision required by 40 CFR 51.390 is fully approved by EPA, the conformity determination  
38 shall be made according to Subsection A and Subsection F of ~~[20.11.3.202]~~ 20.11.3.105 NMAC and the  
39 requirements of 23 CFR Part 450.

40 [7/1/98; 20.11.3.209NMAC - Rn, 20 NMAC 11.03.II.10, 6/1/02; A, 6/13/05; Rn, 20.11.3.112 NMAC, 11/15/10]

41  
42 ~~[20.11.3.210]~~ 20.11.3.113 **CRITERIA AND PROCEDURES: TIMELY IMPLEMENTATIONS OF TCMs:**

43 **A.** The transportation plan, TIP or any FHWA/FTA project, which is not from a conforming plan and  
44 TIP, shall provide for the timely implementation of TCMs from the applicable implementation plan.

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

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

50 (2) Nothing in the transportation plan interferes with the implementation of any TCM in the  
51 applicable implementation plan.

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

53 (1) An examination of the specific steps and funding source(s) needed to fully implement each TCM  
54 indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws are on or ahead  
55 of the schedule established in the applicable implementation plan or, if such TCMs are behind the schedule  
56 established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to

1 implementation of the TCMs have been identified and have been or are being overcome, and that all and local  
2 agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of  
3 TCMs over other projects within their control, including projects in locations outside the nonattainment or  
4 maintenance area.

5 (2) If TCMs in the applicable implementation plan have previously been programmed for federal  
6 funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan,  
7 then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP  
8 other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other  
9 than projects which are eligible for federal funding intended for air quality improvement projects, e.g., the  
10 congestion mitigation and air quality improvement program.

11 (3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable  
12 implementation plan.

13 **D.** For FHWA/FTA projects that are not from a conforming transportation plan and TIP, this criterion  
14 is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation  
15 plan.

16 [7/1/98; 20.11.3.210 NMAC - Rn, 20 NMAC 11.03.II.11, 6/1/02; A, 6/13/05; Rn, 20.11.3.113 NMAC, 11/15/10]

17  
18 ~~[20.11.3.211]~~ **20.11.3.114 CRITERIA AND PROCEDURES: CURRENTLY CONFORMING**

19 **TRANSPORTATION PLAN AND TIP:** There shall be a currently conforming transportation plan and currently  
20 conforming TIP at the time of project approval, or a project must meet the requirements in Subsection F of  
21 ~~[20.11.3.201]~~ **20.11.3.104** NMAC during the 12-month lapse grace period.

22 **A.** Only one conforming transportation plan or TIP may exist in an area at any time; conformity  
23 determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by  
24 DOT. The conformity determination on a transportation plan or TIP shall also lapse if conformity is not determined  
25 according to the frequency requirements specified in ~~[20.11.3.201]~~ **20.11.3.104** NMAC.

26 **B.** This criterion is not required to be satisfied at the time of project approval for a TCM specifically  
27 included in the applicable implementation plan, provided that all other relevant criteria of 20.11.3 NMAC are  
28 satisfied.

29 [7/1/98; 20.11.3.211 NMAC - Rn, 20 NMAC 11.03.II.12, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.114 NMAC,  
30 11/15/10]

31  
32 ~~[20.11.3.212]~~ **20.11.3.115 CRITERIA AND PROCEDURES: PROJECTS FROM A TRANSPORTATION**  
33 **PLAN AND TIP:**

34 **A. The project shall come from a conforming plan and program:** If this criterion is not satisfied,  
35 the project must satisfy all criteria in Table 1 of Subsection B of ~~[20.11.3.206]~~ **20.11.3.109** NMAC for a project not  
36 from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan  
37 if it meets the requirements of Subsection B of ~~[20.11.3.212]~~ **20.11.3.115** NMAC and from a conforming program if  
38 it meets the requirements of Subsection C of ~~[20.11.3.212]~~ **20.11.3.115** NMAC. Special provisions for TCMs in an  
39 applicable implementation plan are provided in Subsection D of ~~[20.11.3.212]~~ **20.11.3.115** NMAC.

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

42 (1) for projects that are required to be identified in the transportation plan in order to satisfy  
43 ~~[20.11.3.203]~~ **20.11.3.106** NMAC (content of transportation plans), the project is specifically included in the  
44 conforming transportation plan and the project's design concept and scope have not changed significantly from  
45 those which were described in the transportation plan, or in a manner which would significantly impact use of the  
46 facility; or

47 (2) for projects that are not required to be specifically identified in the transportation plan, the project  
48 is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation  
49 plan and shall not interfere with other projects specifically included in the transportation plan.

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

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

55 (2) if the TIP describes a project design concept and scope which includes project-level emissions  
56 mitigation or control measures, written commitments to implement such measures shall be obtained from the project



1 sponsor or operator as required by Subsection A of ~~[20.11.3.222]~~ 20.11.3.125 NMAC in order for the project to be  
2 considered from a conforming program; any change in these mitigation or control measures that would significantly  
3 reduce their effectiveness constitutes a change in the design concept and scope of the project.

4 **D. TCMs:** This criterion is not required to be satisfied for TCMs specifically included in an  
5 applicable implementation plan.

6 **E.** Notwithstanding the requirements of Subsections A, B and C of ~~[20.11.3.212]~~ 20.11.3.115  
7 NMAC, a project shall meet the requirements of Subsection F of ~~[20.11.3.201]~~ 20.11.3.104 during the 12-month  
8 lapse grace period.  
9 [7/1/98; 20.11.3.212 NMAC - Rn, 20 NMAC 11.03.II.13, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.115 NMAC,  
10 11/15/10]

11  
12 ~~[20.11.3.213]~~ **20.11.3.116 CRITERIA AND PROCEDURES: LOCALIZED CO, PM<sub>10</sub> AND PM<sub>2.5</sub>**  
13 **VIOLATIONS (hot-spots):**

14 **A. Subsection A of ~~[20.11.3.213]~~ 20.11.3.116 NMAC applies at all times.** The FHWA/FTA project  
15 shall not cause or contribute to any new localized CO, PM<sub>10</sub> or PM<sub>2.5</sub> violations or increase the frequency or severity  
16 of any existing CO, PM<sub>10</sub> or PM<sub>2.5</sub> violations, or delay timely attainment of any NAAQS or any required interim  
17 emission reductions or other milestones in CO, PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment and maintenance areas. This criterion  
18 is satisfied without a hot-spot analysis in PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment and maintenance areas for FHWA/FTA  
19 projects that are not identified in Paragraph (1) of Subsection B of ~~[20.11.3.220]~~ 20.11.3.123 NMAC. This criterion  
20 is satisfied for all other FHWA/FTA projects in CO, PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment and maintenance areas if it is  
21 demonstrated that during the time frame of the transportation plan no new local violations ~~[shall]~~ will be created and  
22 the severity or number of existing violations ~~[shall]~~ will not be increased as a result of the project, and the project  
23 has been included in a regional emissions analysis that meets applicable 20.11.3.118 NMAC or 20.11.3.119 NMAC  
24 requirements. The demonstration shall be performed according to the consultation requirements of Paragraph (1) of  
25 Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC and the methodology requirements of ~~[20.11.3.220]~~ 20.11.3.123  
26 NMAC.

27 **B. Subsection B of ~~[20.11.3.213]~~ 20.11.3.116 NMAC applies for CO nonattainment areas as**  
28 **described in Paragraph (1) of Subsection F of ~~[20.11.3.206]~~ 20.11.3.109 NMAC.** Each FHWA/FTA project shall  
29 eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the  
30 project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it  
31 is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing  
32 localized CO violations shall be eliminated or reduced in severity and number as a result of the project. The  
33 demonstration shall be performed according to the consultation requirements of Subparagraph (a) of Paragraph (1)  
34 of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC and the methodology requirements of ~~[20.11.3.220]~~  
35 20.11.3.123 NMAC.  
36 [7/1/98; 20.11.3.213 NMAC - Rn, 20 NMAC 11.03.II.14, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.116 NMAC,  
37 11/15/10]

38  
39 ~~[20.11.3.214]~~ **20.11.3.117 CRITERIA AND PROCEDURES: COMPLIANCE WITH PM<sub>10</sub> and PM<sub>2.5</sub>**  
40 **CONTROL MEASURES:** The FHWA/FTA project shall comply with any PM<sub>10</sub> and PM<sub>2.5</sub> control measures in the  
41 applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a  
42 written commitment from the project sponsor to include in the final plans, specifications and estimates for the  
43 project those control measures (for the purpose of limiting PM<sub>10</sub> and PM<sub>2.5</sub> emissions from the construction activities  
44 or normal use and operation associated with the project) that are contained in the applicable implementation plan.  
45 [7/1/98; 20.11.3.214 NMAC - Rn, 20 NMAC 11.03.II.15, 6/1/02; A, 6/13/05; Rn, 20.11.3.117 NMAC, 11/15/10]

46  
47 ~~[20.11.3.215]~~ **20.11.3.118 CRITERIA AND PROCEDURES: MOTOR VEHICLE EMISSIONS BUDGET:**

48 **A.** The transportation plan, TIP and project not from a conforming transportation plan and TIP shall  
49 be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation  
50 plan submission). This criterion applies as described in Subsections C through ~~[L]~~ N of ~~[20.11.3.206]~~ 20.11.3.109  
51 NMAC. This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors  
52 described in Subsection C of ~~[20.11.3.215]~~ 20.11.3.118 NMAC are less than or equal to the motor vehicle emissions  
53 budget(s) established in the applicable implementation plan or implementation plan submission.

54 **B.** Consistency with the motor vehicle emissions budget(s) shall be demonstrated for each year for  
55 which the applicable (or submitted) implementation plan specifically establishes motor vehicle emissions budget(s),  
56 for the attainment year (if it is within the timeframe of the transportation plan and conformity determination), for the

1 last year of the timeframe of the conformity determination (as described under Subsection D of [20.11.3.203]  
2 20.11.3.106 NMAC), and for any intermediate years within the timeframe of the conformity determination as  
3 necessary so that the years for which consistency is demonstrated are no more than 10 years apart, as follows.

4 **(1) Until a maintenance plan is submitted:**

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

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

12 **(2) When a maintenance plan has been submitted:**

13 (a) emissions shall be less than or equal to the motor vehicle emissions budget(s) established  
14 for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor  
15 vehicle emissions budgets; if the maintenance plan does not establish motor vehicle emissions budgets for any years  
16 other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emission  
17 budget(s) shall be accompanied by a qualitative finding that there are no factors which would cause or contribute to  
18 a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan; the  
19 interagency consultation process required by [20.11.3.202] 20.11.3.105 NMAC shall determine what shall be  
20 considered in order to make such a finding;

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

23 (c) if an approved or submitted control strategy implementation plan has established motor  
24 vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years shall be  
25 less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years;  
26 and

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

29 **C.** Consistency with the motor vehicle emissions budget(s) shall be demonstrated for each pollutant  
30 or pollutant precursor in Subsection B of 20.11.3.2 NMAC for which the area is in nonattainment or maintenance  
31 and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle  
32 emissions budget.

33 **D.** Consistency with the motor vehicle emissions budget(s) shall be demonstrated by including  
34 emissions from the entire transportation system, including all regionally significant projects contained in the  
35 transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or  
36 maintenance area in the time frame of the transportation plan.

37 (1) Consistency with the motor vehicle emissions budget(s) shall be demonstrated with a regional  
38 emissions analysis that meets the requirements of [20.11.3.219] 20.11.3.122 NMAC and Subparagraph (a) of  
39 Paragraph (1) of Subsection D of [20.11.3.202] 20.11.3.105 NMAC.

40 (2) The regional emissions analysis may be performed for any years in the timeframe of the  
41 conformity determination (as described under Subsection D of [20.11.3.203] 20.11.3.106 NMAC) provided they are  
42 not more than 10 years apart and provided the analysis is performed for the attainment year (if it is in the timeframe  
43 of the transportation plan and conformity determination) and the last year of the timeframe of the conformity  
44 determination. Emissions in years for which consistency with motor vehicle emissions budgets shall be  
45 demonstrated, as required in Subsection B of [20.11.3.215] 20.11.3.118 NMAC, may be determined by interpolating  
46 between the years for which the regional emissions analysis is performed.

47 (3) When the timeframe of the conformity determination is shortened under Paragraph (2) of  
48 Subsection D of [20.11.3.203] 20.11.3.106 NMAC, the conformity determination shall be accompanied by a  
49 regional emissions analysis (for informational purposes only) for the last year of the transportation plan, and for any  
50 year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis (if such a year extends  
51 beyond the timeframe of the conformity determination).

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

54 (1) Consistency with the motor vehicle emissions budgets in submitted control strategy  
55 implementation plan revisions or maintenance plans shall be demonstrated if EPA has declared the motor vehicle  
56 emissions budget(s) adequate for transportation conformity purposes and the adequacy finding is effective.

1 However, motor vehicle emission budgets in submitted implementation plans do not supersede the motor vehicle  
2 emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years  
3 addressed by the previously approved implementation plan, unless EPA specifies otherwise in its approval of a SIP.

4 (2) If EPA has not declared an implementation plan submission's motor vehicle emissions budget(s)  
5 adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of  
6 ~~[20.11.3.215]~~ 20.11.3.118 NMAC. Consistency with the previously established motor vehicle emissions budget(s)  
7 shall be demonstrated. If there are no previously approved implementation plans or implementation plan  
8 submissions with adequate motor vehicle emissions budgets, the interim emission tests required by ~~[20.11.3.216]~~  
9 20.11.3.119 NMAC shall be satisfied.

10 (3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s)  
11 inadequate for transportation conformity purposes after EPA had previously found the budget(s) adequate, and  
12 conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity  
13 determination shall remain valid. Projects included in that transportation plan or TIP could still satisfy ~~[20.11.3.211]~~  
14 20.11.3.114 NMAC and ~~[20.11.3.212]~~ 20.11.3.115 NMAC, which require a currently conforming transportation  
15 plan and TIP to be in place at the time of a project's conformity determination and that projects come from a  
16 conforming transportation plan and TIP.

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

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

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

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

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

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

32 (f) revisions to previously submitted control strategy implementation plans or maintenance  
33 plans explain and document any changes to previously submitted budgets and control measures; impacts on point  
34 and area source emissions; any changes to established safety margins (see 20.11.3.7 NMAC for definition); and  
35 reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles  
36 traveled).

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

41 (6) When the motor vehicle emissions budget(s) used to satisfy the requirements of ~~[20.11.3.215]~~  
42 20.11.3.118 NMAC are established by an implementation plan submittal that has not yet been approved or  
43 disapproved by EPA, the MPO and DOT's conformity determinations shall be deemed to be a statement that the  
44 MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor  
45 vehicle emissions budget shall cause or contribute to any new violation of any standard; increase the frequency or  
46 severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim  
47 emission reductions or other milestones.

48 **F. Adequacy review process for implementation plan submissions:** EPA will use the procedure  
49 listed in Paragraph (1) or Paragraph (2) of Subsection F of ~~[20.11.3.215]~~ 20.11.3.118 NMAC to review the adequacy  
50 of an implementation plan submission.

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

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

55 (b) the public will have a minimum of 30 days to comment on the adequacy of the  
56 implementation plan submission; if the complete implementation plan is not accessible electronically through the

1 internet and a copy is requested within 15 days of the date of the website notice, the comment period will be  
2 extended for 30 days from the date that a copy of the implementation plan is mailed;

3 (c) after the public comment period closes, EPA will inform the state in writing whether EPA  
4 has found the submission adequate or inadequate for use in transportation conformity, including response to any  
5 comments submitted directly and review of comments submitted through the state process, or EPA will include the  
6 determination of adequacy or inadequacy in a proposed or final action approving or disapproving the  
7 implementation plan under Subparagraph (c) of Paragraph (2) of Subsection F of [20.11.3.215] 20.11.3.118 NMAC;

8 (d) EPA will publish a federal register notice to inform the public of EPA's finding; if EPA  
9 finds the submission adequate, the effective date of this finding will be 15 days from the date the notice is published  
10 as established in the federal register notice, unless EPA is taking a final approval action on the SIP as described in  
11 Subparagraph (c) of Paragraph (2) of Subsection F of [20.11.3.215] 20.11.3.118 NMAC;

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

15 (f) if after EPA has found a submission adequate, EPA has cause to reconsider this finding,  
16 EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) or Paragraph (2) of Subsection  
17 F of [20.11.3.215] 20.11.3.118 NMAC unless EPA determines that there is no need for additional public comment  
18 given the deficiencies of the implementation plan submission; in all cases where EPA reverses its previous finding  
19 to a finding of inadequacy under Paragraph 1 of Subsection F of [20.11.3.215] 20.11.3.118 NMAC, such a finding  
20 will become effective immediately upon the date of EPA's letter to the state;

21 (g) if after EPA has found a submission inadequate, EPA has cause to reconsider the adequacy  
22 of that budget, EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) or Paragraph (2)  
23 of Subsection F of [20.11.3.215] 20.11.3.118 NMAC.

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

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

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

30 (c) EPA will indicate whether the implementation plan submission is adequate and thus can be  
31 used for conformity either in EPA's final rulemaking or through the process described in Subparagraphs (c) through  
32 (e) of Paragraphs (1) of Subsection F of [20.11.3.215] 20.11.3.118 NMAC; if EPA makes an adequacy finding  
33 through a final rulemaking that approves the implementation plan submission, such a finding will become effective  
34 upon the publication date of EPA's approval in the federal register, or upon the effective date of EPA's approval if  
35 such action is conducted through direct final rulemaking; EPA will respond to comments received directly and  
36 review comments submitted through the state process and include the response to comments in the applicable  
37 docket.

38 [7/1/98; 20.11.3.215 NMAC - Rn, 20 NMAC 11.03.II.16, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.118 NMAC,  
39 11/15/10]

40  
41 **[20.11.3.216] 20.11.3.119 CRITERIA AND PROCEDURES: INTERIM EMISSIONS IN AREAS WITHOUT**  
42 **MOTOR VEHICLE EMISSIONS BUDGETS:**

43 **A.** The transportation plan, TIP and project not from a conforming transportation plan and TIP shall  
44 satisfy the interim emissions test(s) as described in Subsections C through [L] N of [20.11.3.206] 20.11.3.109  
45 NMAC. This criterion applies to the net effect of the action (transportation plan, TIP or project not from a  
46 conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

47 **B. Ozone areas:** The requirements of Subsection B of [20.11.3.216] 20.11.3.119 NMAC apply to all  
48 1-hour ozone and 8-hour ozone NAAQS areas, except for certain requirements as indicated. This criterion may be  
49 met:

50 (1) in moderate and above ozone nonattainment areas that are subject to the reasonable further  
51 progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of  
52 [20.11.3.219] 20.11.3.122 NMAC and Subsections G through J of [20.11.3.216] 20.11.3.119 NMAC demonstrates  
53 that for each analysis year and for each of the pollutants described in Subsection F of [20.11.3.216] 20.11.3.119  
54 NMAC:

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

1 (b) the emissions predicted in the “action” scenario are lower than:  
2 (i) 1990 emissions by any nonzero amount, in areas for the 1-hour ozone NAAQS as  
3 described in Subsection C of ~~[20.11.3.206]~~ 20.11.3.109 NMAC; or  
4 (ii) 2002 emissions by any nonzero amount, in areas for the 8-hour ozone NAAQS as  
5 described in Subsection D and Subsection E of ~~[20.11.3.206]~~ 20.11.3.109 NMAC;  
6 (2) in marginal and below ozone nonattainment areas and other ozone nonattainment areas that are  
7 not subject to the reasonable further progress requirements of CAA Section 182(b)(1) if a regional emissions  
8 analysis that satisfies the requirements of ~~[20.11.3.219]~~ 20.11.3.122 NMAC and Subsections G through J of  
9 ~~[20.11.3.216]~~ 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described  
10 in Subsection F of ~~[20.11.3.216]~~ 20.11.3.119 NMAC:

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

14 (b) the emissions predicted in the “action” scenario are not greater than:  
15 (i) 1990 emissions, in areas for the 1-hour ozone NAAQS as described in Subsection C  
16 of ~~[20.11.3.206]~~ 20.11.3.109 NMAC; or  
17 (ii) 2002 emissions, in areas for the 8-hour ozone NAAQS as described in Subsection D  
18 and Subsection E of ~~[20.11.3.206]~~ 20.11.3.109 NMAC.

19 **C. CO areas:** This criterion may be met:

20 (1) in moderate areas with design value greater than 12.7 ppm and serious CO nonattainment areas  
21 that are subject to CAA Section 187(a)(7) if a regional emissions analysis that satisfies the requirements of  
22 ~~[20.11.3.219]~~ 20.11.3.122 NMAC and Subsections G through J of ~~[20.11.3.216]~~ 20.11.3.119 NMAC demonstrates  
23 that for each analysis year and for each of the pollutants described in Subsection F of ~~[20.11.3.216]~~ 20.11.3.119  
24 NMAC:

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

27 (b) the emissions predicted in the “action” scenario are lower than 1990 emissions by any  
28 nonzero amount;

29 (2) in moderate areas with design value less than 12.7 ppm and not classified CO nonattainment areas  
30 if a regional emissions analysis that satisfies the requirements of ~~[20.11.3.219]~~ 20.11.3.122 NMAC and Subsections  
31 G through J of ~~[20.11.3.216]~~ 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the  
32 pollutants described in Subsection F of ~~[20.11.3.216]~~ 20.11.3.119 NMAC:

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

36 (b) the emissions predicted in the “action” scenario are not greater than 1990 emissions.

37 **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  
38 regional emissions analysis that satisfies the requirements of ~~[20.11.3.219]~~ 20.11.3.122 NMAC and Subsections G  
39 through J of ~~[20.11.3.216]~~ 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the  
40 pollutants described in Subsection F of ~~[20.11.3.216]~~ 20.11.3.119 NMAC, one of the following requirements is met:

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

43 (2) the emissions predicted in the “action” scenario are not greater than baseline emissions; baseline  
44 emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation  
45 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  
46 different calendar year for which a baseline emissions inventory was developed for the purpose of developing a  
47 control strategy implementation plan.

48 **E. PM<sub>2.5</sub> areas:** This criterion may be met in PM<sub>2.5</sub> nonattainment areas if a regional emissions  
49 analysis that satisfies the requirements of ~~[20.11.3.219]~~ 20.11.3.122 NMAC and Subsections G through J of  
50 ~~[20.11.3.216]~~ 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described  
51 in Subsection F of ~~[20.11.3.216]~~ 20.11.3.119 NMAC, one of the following requirements is met:

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

54 (2) the emissions predicted in the “action” scenario are not greater than:

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

1 (b) emissions in the most recent year for which EPA's Air Emissions Reporting Requirements  
2 (40 CFR Part 51, Subpart A) requires submission of on-road mobile source emissions inventories, as of the effective  
3 date of nonattainment designations for any PM<sub>2.5</sub> NAAQS other than the 1997 PM<sub>2.5</sub> NAAQS.

4 **F. Pollutants:** The regional emissions analysis shall be performed for the following pollutants:

- 5 (1) VOC in ozone areas;
- 6 (2) NO<sub>x</sub> in ozone areas, unless the EPA administrator determines that additional reductions of NO<sub>x</sub>  
7 would not contribute to attainment;
- 8 (3) CO in CO areas;
- 9 (4) PM<sub>10</sub> in PM<sub>10</sub> areas;
- 10 (5) VOC and NO<sub>x</sub> in PM<sub>10</sub> areas if the EPA regional administrator or the director of the air agency  
11 has made a finding that one or both of such precursor emissions from within the area are a significant contributor to  
12 the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT;
- 13 (6) NO<sub>x</sub> in NO<sub>2</sub> areas;
- 14 (7) PM<sub>2.5</sub> in PM<sub>2.5</sub> areas;
- 15 (8) re-entrained road dust in PM<sub>2.5</sub> areas only if the EPA regional administrator or the director of the  
16 air agency has made a finding that emissions from re-entrained road dust within the area are a significant contributor  
17 to the PM<sub>2.5</sub> nonattainment problem and has so notified the MPO and DOT;
- 18 (9) NO<sub>x</sub> in PM<sub>2.5</sub> areas, unless the EPA regional administrator and the director of the state air agency  
19 have made a finding that emissions of NO<sub>x</sub> from within the area are not a significant contributor to the PM<sub>2.5</sub>  
20 nonattainment problem and has so notified the MPO and DOT; and
- 21 (10) VOC, SO<sub>2</sub> and ammonia in PM<sub>2.5</sub> areas if the EPA regional administrator or the director of the  
22 state air agency has made a finding that any of such precursor emissions from within the area are a significant  
23 contributor to the PM<sub>2.5</sub> nonattainment problem and has so notified the MPO and DOT.

24 **G. Analysis Years:**

- 25 (1) The regional emissions analysis shall be performed for analysis years that are no more than 10  
26 years apart. The first analysis year shall be no more than five years beyond the year in which the conformity  
27 determination is being made. The last year of the timeframe of the conformity determination (as described under  
28 Subsection D of [~~20.11.3.203~~] 20.11.3.106 NMAC) shall also be an analysis year.
- 29 (2) For areas using Subparagraph (a) of Paragraph (2) of Subsection B, Subparagraph (a) of  
30 Paragraph (2) of Subsection C, Paragraph (1) of Subsection D and Paragraph (1) of Subsection E of [~~20.11.3.216~~]  
31 20.11.3.119 NMAC, a regional emissions analysis that satisfies the requirements of [~~20.11.3.219~~] 20.11.3.122  
32 NMAC and Subsections G through J of [~~20.11.3.216~~] 20.11.3.119 NMAC would not be required for analysis years  
33 in which the transportation projects and planning assumptions in the action and "baseline" scenarios are exactly the  
34 same. In such a case, Subsection A of [~~20.11.3.216~~] 20.11.3.119 NMAC can be satisfied by documenting that the  
35 transportation projects and planning assumptions in both scenarios are exactly the same, and consequently, the  
36 emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario  
37 for such analysis years.

38 (3) When the timeframe of the conformity determination is shortened under Paragraph (2) of  
39 Subsection D of [~~20.11.3.203~~] 20.11.3.106 NMAC, the conformity determination must be accompanied by a  
40 regional emissions analysis (for informational purposes only) for the last year of the transportation plan.

41 **H. "Baseline" scenario:** The regional emissions analysis required by Subsections B through E of  
42 [~~20.11.3.216~~] 20.11.3.119 NMAC shall estimate the emissions that would result from the "baseline" scenario in each  
43 analysis year. The "baseline" scenario shall be defined for each of the analysis years. The "baseline" scenario is the  
44 future transportation system that shall result from current programs; including the following (except that exempt  
45 projects list in [~~20.11.3.223~~] 20.11.3.126 NMAC and projects exempt from regional emissions analysis as listed in  
46 [~~20.11.3.224~~] 20.11.3.127 NMAC need not be explicitly considered):

- 47 (1) all in-place regionally significant highway and transit facilities, services and activities;
- 48 (2) all ongoing travel demand management or transportation system management activities; and
- 49 (3) completion of all regionally significant projects, regardless of funding source, which are currently  
50 under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective  
51 buying); come from the first year of the previously conforming transportation plan or TIP; or have completed the  
52 NEPA process.

53 **I. "Action" scenario:** The regional emissions analysis required by Subsections B through E of  
54 [~~20.11.3.216~~] 20.11.3.119 NMAC shall estimate the emissions that would result from the "action" scenario in each  
55 analysis year. The "action" scenario shall be defined for each of the analysis years. The "action" scenario is the  
56 transportation system that would result from the implementation of the proposed action (MTP, TIP or project not

1 from a conforming transportation plan and TIP) and all other expected regionally significant projects in the  
2 nonattainment area. The “action” scenario shall include the following (except that exempt projects listed in  
3 ~~[20.11.3.223]~~ 20.11.3.126 NMAC and projects exempt from regional emissions analysis as listed in ~~[20.11.3.224]~~  
4 ~~20.11.3.127~~ NMAC need not be explicitly considered):

- 5 (1) all facilities, services and activities in the “baseline” scenario;
- 6 (2) completion of all TCMs and regionally significant projects (including facilities, services, and  
7 activities) specifically identified in the proposed transportation plan which shall be operational or in effect in the  
8 analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is  
9 already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;
- 10 (3) all travel demand management programs and transportation system management activities known  
11 to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval,  
12 which have been fully adopted or funded by the enforcing jurisdiction or sponsoring agency since the last  
13 conformity determination;
- 14 (4) the incremental effects of any travel demand management programs and transportation system  
15 management activities known to the MPO, but not included in the applicable implementation plan or utilizing any  
16 federal funding or approval, which were adopted or funded prior to the date of the last conformity determination, but  
17 which have been modified since then to be more stringent or effective;
- 18 (5) completion of all expected regionally significant highway and transit projects which are not from  
19 a conforming transportation plan and TIP; and
- 20 (6) completion of all expected regionally significant non-FHWA/FTA highway and transit projects  
21 that have clear funding sources and commitments leading toward their implementation and completion by the  
22 analysis year.

23 **J. Projects not from a conforming transportation plan and TIP:** For the regional emissions  
24 analysis required by Subsections B through E of ~~[20.11.3.216]~~ 20.11.3.119 NMAC, if the project which is not from  
25 a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the “baseline”  
26 scenario shall include the project with its original design concept and scope, and the “action” scenario shall include  
27 the project with its new design concept and scope.  
28 [7/1/98; 20.11.3.216 NMAC - Rn, 20 NMAC 11.03.II.17, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.119 NMAC,  
29 11/15/10]

30  
31 ~~[20.11.3.217]~~ 20.11.3.120 **CONSEQUENCES OF CONTROL STRATEGY IMPLEMENTATION PLAN**  
32 **FAILURES:**

33 **A. Disapprovals:**

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

39 (2) If EPA disapproves a submitted control strategy implementation plan revision without making a  
40 protective finding, only projects in the first four years of the currently conforming transportation plan and TIP or  
41 that meet the requirements of Subsection F of ~~[20.11.3.201]~~ 20.11.3.104 NMAC during the 12-month lapse grace  
42 period may be found to conform. This means that beginning on the effective date of a disapproval without a  
43 protective finding, no transportation plan, TIP or project not in the first four years of the currently conforming  
44 transportation plan and TIP or that meets the requirements of Subsection F of ~~[20.11.3.201]~~ 20.11.3.104 NMAC  
45 during the 12-month lapse grace period may be found to conform until another control strategy implementation plan  
46 revision fulfilling the same CAA requirements is submitted, EPA finds its motor vehicle emissions budget(s)  
47 adequate pursuant to ~~[20.11.3.215]~~ 20.11.3.118 NMAC or approves the submission, and conformity to the  
48 implementation plan revision is determined.

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

53 **B. Failure to submit and incompleteness:** In areas where EPA notifies the state, MPO and DOT of  
54 the state’s failure to submit a control strategy implementation plan or submission of an incomplete control strategy  
55 implementation plan revision (either of which initiates the sanction process under CAA Sections 179 or 110(m)), the  
56 conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on

1 the nonattainment area for such failure under Section 179(b)(1) of the CAA, unless the failure has been remedied  
2 and acknowledged by a letter from the EPA regional administrator.

3 **C. Federal implementation plans:** If EPA promulgates a federal implementation plan that contains  
4 motor vehicle emissions budget(s) as a result of a state failure, the conformity lapse imposed by [20.11.3.217]  
5 20.11.3.120 NMAC because of that failure is removed.  
6 [7/1/98; 20.11.3.217 NMAC - Rn, 20 NMAC 11.03.II.18, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.120 NMAC,  
7 11/15/10]

8  
9 ~~[20.11.3.218]~~ 20.11.3.121 **REQUIREMENTS FOR ADOPTION OR APPROVAL OF PROJECTS BY**  
10 **OTHER RECIPIENTS OF FUNDS DESIGNATED UNDER TITLE 23 U.S.C. OR THE FEDERAL**  
11 **TRANSIT LAWS.**

12 **A.** Except as provided in Subsection B of [20.11.3.218] 20.11.3.121 NMAC, no recipient of federal  
13 funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant  
14 highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the  
15 following are met:

16 (1) the project comes from the currently conforming transportation plan and TIP (or meets the  
17 requirements of Subsection F of [20.11.3.201] 20.11.3.104 NMAC during the 12-month lapse grace period), and the  
18 project's design concept and scope have not changed significantly from those which were included in the regional  
19 emissions analysis for that transportation plan and TIP;

20 (2) the project is included in the regional emissions analysis for the currently conforming  
21 transportation plan and TIP conformity determination (or meets the requirements of Subsection F of [20.11.3.201]  
22 20.11.3.104 NMAC during the 12-month lapse grace period), even if the project is not strictly included in the  
23 transportation plan or TIP for the purpose of MPO project selection or endorsement, and the project's design  
24 concept and scope have not changed significantly from those which were included in the regional emissions  
25 analysis; or

26 (3) a new regional emissions analysis including the project and the currently conforming  
27 transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were  
28 implemented (consistent with the requirements of [20.11.3.215] 20.11.3.118 NMAC or [20.11.3.216] 20.11.3.119  
29 NMAC for a project not from a conforming transportation plan and TIP).

30 **B.** In isolated rural nonattainment and maintenance areas subject to Subsection [L] N of [20.11.3.206]  
31 20.11.3.109 NMAC, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall  
32 adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the  
33 recipient finds that the requirements of one of the following are met:

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

37 (2) a new regional emissions analysis including the project and all other regionally significant  
38 projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide  
39 transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the  
40 project were implemented (consistent with the requirements [20.11.3.215] 20.11.3.118 NMAC or [20.11.3.216]  
41 20.11.3.119 NMAC for projects not from a conforming transportation plan and TIP).

42 **C.** Notwithstanding Subsection A and Subsection B of [20.11.3.218] 20.11.3.121 NMAC, in  
43 nonattainment and maintenance areas subject to Subsection [J] L or Subsection [K] M of [20.11.3.206] 20.11.3.109  
44 NMAC for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under Title 23 U.S.C.  
45 or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of  
46 funding source, unless the recipient finds that the requirements of one of the following are met for that  
47 pollutant/precursor and NAAQS:

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

50 (2) the project was included in the most recent conformity determination that reflects the portion of  
51 the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the  
52 project's design concept and scope have not changed significantly.

53 [7/1/98; 20.11.3.218 NMAC - Rn, 20 NMAC 11.03.II.19, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.121 NMAC,  
54 11/15/10]



1 ~~[20.11.3.219]~~ 20.11.3.122 **PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-**  
2 **RELATED EMISSIONS:**

3 **A. General requirements:**

4 (1) The regional emissions analysis required by ~~[20.11.3.215]~~ 20.11.3.118 NMAC and ~~[20.11.3.216]~~  
5 20.11.3.119 NMAC for the transportation plan, TIP or project not from a conforming plan and TIP shall include all  
6 regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include  
7 FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which  
8 are disclosed to the MPO as required by ~~[20.11.3.202]~~ 20.11.3.105 NMAC. Projects which are not regionally  
9 significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects shall be  
10 estimated in accordance with reasonable professional practice and shall be reviewed by the TCTC as part of the  
11 interagency consultation described in Paragraph (1) of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC. The  
12 effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with  
13 reasonable professional practice and shall be reviewed by the TCTC as part of the interagency consultation  
14 described in Paragraph (1) of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC.

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

20 (3) Emissions reduction credit from projects, programs or activities which require a regulatory action  
21 in order to be implemented may not be included in the emissions analysis unless:

22 (a) the regulatory action is already adopted by the enforcing jurisdiction;  
23 (b) the project, program or activity is included in the applicable implementation plan;  
24 (c) the control strategy implementation plan submission or maintenance plan submission that  
25 establishes the motor vehicle emissions budget(s) for the purposes of ~~[20.11.3.215]~~ 20.11.3.118 NMAC contains a  
26 written commitment to the project, program or activity by the agency with authority to implement it; or

27 (d) EPA has approved an opt-in to a federally enforced program, EPA has promulgated the  
28 program (if the control program is a federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act  
29 requires the program without need for individual state action and without any discretionary authority for EPA to set  
30 its stringency, delay its effective date or not implement the program.

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

35 (a) Persons or entities voluntarily committing to control measures shall comply with the  
36 obligations of such commitments.

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

40 (5) A regional emissions analysis for the purpose of satisfying the requirements of ~~[20.11.3.216]~~  
41 20.11.3.119 NMAC shall make the same assumptions in both the baseline and "action" scenarios regarding control  
42 measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission  
43 standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or  
44 reformulated gasoline or diesel fuel.

45 (6) The ambient temperatures used for the regional emissions analysis shall be consistent with those  
46 used to establish the emissions budget in the applicable implementation plan. All other factors, for example the  
47 fraction of travel in a hot stabilized engine mode, shall be consistent with the applicable implementation plan, unless  
48 modified after interagency consultation according to Subparagraph (a) of Paragraph (1) of Subsection D of  
49 ~~[20.11.3.202]~~ 20.11.3.105 NMAC to incorporate additional or more geographically specific information or represent  
50 a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

51 (7) Reasonable methods shall be used to estimate nonattainment or maintenance area VMT on off-  
52 network roadways within the urban transportation planning area, and on roadways outside the urban transportation  
53 planning area.

54 **B.** Regional emissions analysis in serious, severe and extreme ozone nonattainment areas and serious  
55 CO nonattainment areas shall meet the requirements of Paragraphs (1) through (3) of Subsection B of ~~[20.11.3.219]~~  
56 20.11.3.122 NMAC if their metropolitan planning area contains an urbanized area population over 200,000.

1 (1) By January 1, 1997, estimates of regional transportation-related emissions used to support  
2 conformity determinations shall be made at a minimum using network-based travel models according to procedures  
3 and methods that are available and in practice and supported by current and available documentation. These  
4 procedures, methods and practices are available from DOT and shall be updated periodically. Agencies shall  
5 discuss these modeling procedures and practices through the interagency consultation process as required by  
6 Subparagraph (a) of Paragraph (1) of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC. Network-based travel  
7 models shall at a minimum satisfy the following requirements:

8 (a) network-based travel models shall be validated against observed counts (peak and off-peak,  
9 if possible) for a base year that is not more than 10 years prior to the date of the conformity determination; model  
10 forecasts shall be analyzed for reasonableness and compared to historical trends and other factors, and the results  
11 shall be documented;

12 (b) land use, population, employment and other network-based travel model assumptions shall  
13 be documented and based on the best available information; future speeds shall be determined through interagency  
14 consultation as described in Paragraph (1) of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC;

15 (c) scenarios of land development and use shall be consistent with the future transportation  
16 system alternatives for which emissions are being estimated; the distribution of employment and residences for  
17 different transportation options shall be reasonable;

18 (d) a capacity-sensitive assignment methodology shall be used, and emissions estimates shall  
19 be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses  
20 speeds based on final assigned volumes;

21 (e) zone-to-zone travel impedances used to distribute trips between origin and destination pairs  
22 shall be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes and  
23 shall be determined through interagency consultation described in Paragraph (1) of Subsection D of ~~[20.11.3.202]~~  
24 20.11.3.105 NMAC; where use of transit currently is anticipated to be a significant factor in satisfying transportation  
25 demand, these times shall also be used for modeling mode splits; and

26 (f) network-based travel models shall be reasonably sensitive to changes in the time(s), cost(s)  
27 and other factors affecting travel choices.

28 (2) Reasonable methods in accordance with good practice shall 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 (3) 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 travel model estimates of VMT in the base year of its validation to the HPMS estimates  
36 for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process,  
37 consideration shall 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  
40 Subparagraph (a) of Paragraph (1) of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC.

41 **C. Two-year grace period for regional emissions analysis requirements in certain ozone and CO**  
42 **areas:** The requirements of Subsection B of ~~[20.11.3.219]~~ 20.11.3.122 NMAC apply to such areas or portions of  
43 such areas that have not previously been required to meet these requirements for any existing NAAQS two years  
44 from the following:

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

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

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

51 **D.** In all areas not otherwise subject to Subsection B of ~~[20.11.3.219]~~ 20.11.3.122 NMAC, regional  
52 emissions analyses shall use those procedures described in Subsection B of ~~[20.11.3.219]~~ 20.11.3.122 NMAC if the  
53 use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to Subsection B of  
54 ~~[20.11.3.219]~~ 20.11.3.122 NMAC may estimate regional emissions using any appropriate methods that account for  
55 VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in

1 population and historical growth trends for VMT per person. These methods shall also consider future economic  
2 activity, transit alternatives and transportation system policies.

3 **E. PM<sub>10</sub> from construction-related fugitive dust:**

4 (1) For areas in which the implementation plan does not identify construction-related fugitive PM<sub>10</sub>  
5 as a contributor to the nonattainment problem, the fugitive PM<sub>10</sub> emissions associated with highway and transit  
6 project construction are not required to be considered in the regional emissions analysis.

7 (2) In PM<sub>10</sub> nonattainment and maintenance areas with implementation plans that identify  
8 construction-related fugitive PM<sub>10</sub> as a contributor to the nonattainment problem, the regional PM<sub>10</sub> emissions  
9 analysis shall consider construction-related fugitive PM<sub>10</sub> and shall account for the level of construction activity, the  
10 fugitive PM<sub>10</sub> control measures in the applicable implementation plan and the dust-producing capacity of the  
11 proposed activities.

12 **F. PM<sub>2.5</sub> from construction-related fugitive dust:**

13 (1) For PM<sub>2.5</sub> areas in which the implementation plan does not identify construction-related fugitive  
14 PM<sub>2.5</sub> as a significant contributor to the nonattainment problem, the fugitive PM<sub>2.5</sub> emissions associated with  
15 highway and transit project construction are not required to be considered in the regional emissions analysis.

16 (2) In PM<sub>2.5</sub> nonattainment and maintenance areas with implementation plans that identify  
17 construction-related fugitive PM<sub>2.5</sub> as a significant contributor to the nonattainment problem, the regional PM<sub>2.5</sub>  
18 emissions analysis shall consider construction-related fugitive PM<sub>2.5</sub> and shall account for the level of construction  
19 activity, the fugitive PM<sub>2.5</sub> control measures in the applicable implementation plan, and the dust-producing capacity  
20 of the proposed activities.

21 **G. Reliance on previous regional emissions analysis:**

22 (1) Conformity determinations for a new transportation plan or TIP may be demonstrated to satisfy  
23 the requirements of ~~[20.11.3.215]~~ 20.11.3.118 NMAC (motor vehicle emissions budget) or ~~[20.11.3.216]~~  
24 20.11.3.119 NMAC (interim emissions in areas without motor vehicle emissions budgets) without new regional  
25 emissions analysis if the previous regional emissions analysis also applies to the new plan or TIP. This requires a  
26 demonstration that:

27 (a) the new plan or TIP contains all projects that shall be started in the TIP's timeframe in order  
28 to achieve the highway and transit system envisioned by the transportation plan;

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

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

34 (d) the previous regional emissions analysis is consistent with the requirements of  
35 ~~[20.11.3.215]~~ 20.11.3.118 NMAC (including that conformity to all currently applicable budgets is demonstrated) or  
36 ~~[20.11.3.216]~~ 20.11.3.119 NMAC, as applicable.

37 (2) A project which is not from a conforming transportation plan and a conforming TIP may be  
38 demonstrated to satisfy the requirements of ~~[20.11.3.215]~~ 20.11.3.118 NMAC or ~~[20.11.3.216]~~ 20.11.3.119 NMAC  
39 without additional regional emissions analysis if allocating funds to the project shall not delay the implementation of  
40 projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned  
41 by the transportation plan the previous regional emissions analysis is still consistent with the requirements of  
42 ~~[20.11.3.215]~~ 20.11.3.118 NMAC (including that conformity to all currently applicable budgets is demonstrated) or  
43 ~~[20.11.3.216]~~ 20.11.3.119 NMAC, as applicable, and if the project is either:

44 (a) not regionally significant; or

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

49 (3) A conformity determination that relies on Subsection G of ~~[20.11.3.219]~~ 20.11.3.122 NMAC does  
50 not satisfy the frequency requirements of Subsection B or Subsection C of ~~[20.11.3.201]~~ 20.11.3.104 NMAC.  
51 [7/1/98; 20.11.3.219 NMAC - Rn, 20 NMAC 11.03.II.20, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.122 NMAC,  
52 11/15/10]

53  
54 ~~[20.11.3.220]~~ 20.11.3.123 **PROCEDURES FOR DETERMINING LOCALIZED CO, PM<sub>10</sub> AND PM<sub>2.5</sub>**  
55 **CONCENTRATIONS (Hot-Spot Analysis):**

56 **A. CO hot spot analysis:**

1 (1) The demonstrations required by [20.11.3.213] 20.11.3.116 NMAC (Criteria and Procedures:  
2 Localized CO, PM<sub>10</sub> and PM<sub>2.5</sub> Violations) shall be based on quantitative analysis using the applicable air quality  
3 models, data bases and other requirements specified in 40 CFR Part 51, Appendix W (guideline on air quality  
4 models). These procedures shall be used in the following cases, unless different procedures developed through the  
5 interagency consultation process required in [20.11.3.202] 20.11.3.105 NMAC and approved by the EPA regional  
6 administrator are used for:

7 (a) projects in or affecting locations, areas or categories of sites which are identified in the  
8 applicable implementation plan as sites of violation or possible violation;

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

11 (c) any project affecting one or more of the top three intersections in the nonattainment or  
12 maintenance area with highest traffic volumes, as identified in the applicable implementation plan or which are  
13 identified through the interagency consultation process as described in Paragraph (1) of Subsection D of  
14 [20.11.3.202] 20.11.3.105 NMAC; and

15 (d) any project affecting one or more of the top three intersections in the nonattainment or  
16 maintenance area with the worst level of service, as identified in the applicable implementation plan or which are  
17 identified through the interagency consultation process as described in Paragraph (1) of Subsection D of  
18 [20.11.3.202] 20.11.3.105 NMAC.

19 (2) In cases other than those described in Paragraph (1) of Subsection A of [20.11.3.220] 20.11.3.123  
20 NMAC, the demonstrations required by [20.11.3.213] 20.11.3.116 NMAC may be based on either:

21 (a) quantitative methods that represent reasonable and common professional practice as  
22 determined through the interagency consultation process, described in Paragraph (1) of Subsection D of  
23 [20.11.3.202] 20.11.3.105 NMAC; or

24 (b) a qualitative consideration of local factors, if this can provide a clear demonstration that the  
25 requirements of [20.11.3.213] 20.11.3.116 NMAC are met.

26 (3) DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that  
27 Subsection A of [20.11.3.213] 20.11.3.116 NMAC is met without further hot-spot analysis for any project described  
28 in Paragraphs (1) and (2) of Subsection A of [20.11.3.220] 20.11.3.123 NMAC based on appropriate modeling.  
29 DOT, in consultation with EPA, may also consider the current air quality circumstances of a given CO  
30 nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

31 **B. PM<sub>10</sub> and PM<sub>2.5</sub> hot-spot analyses:**

32 (1) The hot-spot demonstration required by [20.11.3.213] 20.11.3.116 NMAC shall be based on  
33 quantitative analysis methods for the following types of projects:

34 (a) new highway projects that have a significant number of diesel vehicles, and expanded  
35 highway projects that have a significant increase in the number of diesel vehicles;

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

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

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

43 (e) projects in or affecting locations, areas, or categories of sites which are identified in the  
44 PM<sub>10</sub> or PM<sub>2.5</sub> applicable implementation plan or implementation plan submission, as appropriate, as sites of  
45 violation or possible violation.

46 (2) Where quantitative analysis methods are not available, the demonstration required by  
47 [20.11.3.213] 20.11.3.116 NMAC for projects described in Paragraph (1) of Subsection B of [20.11.3.220]  
48 20.11.3.123 NMAC shall be based on a qualitative consideration of local factors.

49 (3) DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that  
50 [20.11.3.213] 20.11.3.116 NMAC is met without further hot-spot analysis for any project described in Paragraph (1)  
51 of Subsection B of [20.11.3.220] 20.11.3.123 NMAC based on appropriate modeling. DOT, in consultation with  
52 EPA, may also consider the current air quality circumstances of a given PM<sub>2.5</sub> or PM<sub>10</sub> nonattainment or  
53 maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

54 (4) The requirements for quantitative analysis contained in Subsection B of [20.11.3.220] 20.11.3.123  
55 NMAC shall not take effect until EPA releases modeling guidance on this subject and announces in the federal  
56 register that these requirements are in effect.

1           **C.       General requirements:**

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

6           (2) Hot-spot analyses shall include the entire project, and may be performed only after the major  
7 design features that shall significantly impact concentrations have been identified. The future background  
8 concentration shall be estimated by multiplying current background by the ratio of future to current traffic and the  
9 ratio of future to current emission factors as determined through the interagency consultation process described in  
10 Paragraph (1) of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC.

11           (3) Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for  
12 those inputs which are required for both analyses as determined through the interagency consultation process  
13 described in Paragraph (1) of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC.

14           (4) CO, PM<sub>10</sub> or PM<sub>2.5</sub> mitigation or control measures shall be assumed in the hot-spot analysis only  
15 where there are written commitments from the project sponsor or operator to implement such measures, as required  
16 by Subsection A of ~~[20.11.3.222]~~ 20.11.3.125 NMAC.

17           (5) CO, PM<sub>10</sub> and PM<sub>2.5</sub> hot-spot analyses are not required to consider construction-related activities  
18 which cause temporary increases in emissions. Each site that is affected by construction-related activities shall be  
19 considered separately through the interagency consultation process described in Paragraph (1) of Subsection B of  
20 ~~[20.11.3.202]~~ 20.11.3.105 NMAC, using established guideline methods. Temporary increases are defined as those  
21 which occur only during the construction phase and last five years or less at any individual site.  
22 [7/1/98; 20.11.3.220 NMAC - Rn, 20 NMAC 11.03.II.21, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.123 NMAC,  
23 11/15/10]

24  
25 ~~[20.11.3.221]~~ 20.11.3.124 **USING THE MOTOR VEHICLE EMISSIONS BUDGET IN THE APPLICABLE**  
26 **IMPLEMENTATION PLAN (OR IMPLEMENTATION PLAN SUBMISSION):**

27           **A.** In interpreting an applicable implementation plan (or implementation plan submission) with  
28 respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are  
29 not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly  
30 quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of  
31 compliance with the milestone, attainment or maintenance requirement and explicitly states an intent that some or all  
32 of this additional amount shall be available to the MPO and DOT in the emissions budget for conformity purposes,  
33 the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions.  
34 This applies in particular to applicable implementation plans (or submissions) which demonstrate that after  
35 implementation of control measures in the implementation plan:

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

38           (2) emissions from all sources shall result in achieving attainment prior to the attainment deadline or  
39 ambient concentrations in the attainment deadline year shall be lower than needed to demonstrate attainment; or

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

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

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

49           **D.** If a nonattainment area includes more than one MPO, the implementation plan may establish  
50 motor vehicle emissions budgets for each MPO, or else the MPOs shall collectively make a conformity  
51 determination for the entire nonattainment area.

52 [7/1/98; 20.11.3.221 NMAC - Rn, 20 NMAC 11.03.II.22, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.124 NMAC,  
53 11/15/10]

54  
55 ~~[20.11.3.222]~~ 20.11.3.125 **ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-**  
56 **LEVEL MITIGATION AND CONTROL MEASURES:**

1 A. Prior to determining that a transportation project is in conformity, the MPO, other recipient of  
2 funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA or FTA shall obtain from the project  
3 sponsor or operator written commitments to implement in the construction of the project and operation of the  
4 resulting facility or service any project-level mitigation or control measures that are identified as conditions for  
5 NEPA process completion with respect to local PM<sub>10</sub>, PM<sub>2.5</sub> or CO impacts. Before a conformity determination is  
6 made, written commitments shall also be obtained for project-level mitigation or control measures that are  
7 conditions for making conformity determinations for a transportation plan or TIP and are included in the project  
8 design concept and scope which is used in the regional emissions analysis required by ~~[20.11.3.215]~~ 20.11.3.118  
9 NMAC (motor vehicle emissions budget) and ~~[20.11.3.216]~~ 20.11.3.119 NMAC (interim emissions in areas without  
10 motor vehicle emissions budgets) or used in the project-level hot-spot analysis required by ~~[20.11.3.213]~~  
11 20.11.3.116 NMAC.

12 B. Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity  
13 determinations shall comply with the obligations of such commitments.

14 C. The implementation plan revision required in 40 CFR 51.390 shall provide that written  
15 commitments to mitigation measures shall be obtained prior to a positive conformity determination, and that project  
16 sponsors must comply with such commitments.

17 D. If the MPO or project sponsor believes the mitigation or control measure is no longer necessary  
18 for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or  
19 control measure if it can demonstrate that the applicable hot-spot requirements of ~~[20.11.3.213]~~ 20.11.3.116 NMAC,  
20 emission budget requirements of ~~[20.11.3.215]~~ 20.11.3.118 NMAC, and interim emissions requirements of  
21 ~~[20.11.3.216]~~ 20.11.3.119 NMAC are satisfied without the mitigation or control measure, and so notifies the  
22 agencies involved in the interagency consultation process required under ~~[20.11.3.202]~~ 20.11.3.105 NMAC. The  
23 MPO and DOT shall find that the transportation plan and TIP still satisfy the applicable requirements of  
24 ~~[20.11.3.215]~~ 20.11.3.118 NMAC or ~~[20.11.3.216]~~ 20.11.3.119 NMAC and that the project still satisfies the  
25 requirements of ~~[20.11.3.213]~~ 20.11.3.116 NMAC, and therefore that the conformity determinations for the  
26 transportation plan, TIP and project are still valid. This finding is subject to the applicable public consultation  
27 requirements in Subsection F of ~~[20.11.3.202]~~ 20.11.3.105 NMAC for conformity determinations for projects.  
28 [7/1/98; 20.11.3.222 NMAC - Rn, 20 NMAC 11.03.II.23, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.125 NMAC,  
29 11/15/10]

30  
31 ~~[20.11.3.223]~~ 20.11.3.126 **EXEMPT PROJECTS:** Notwithstanding the other requirements of 20.11.3 NMAC,  
32 highway and transit projects of the types listed in Table 2 of ~~[20.11.3.223]~~ 20.11.3.126 NMAC are exempt from the  
33 requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a  
34 conforming transportation plan and TIP. A particular action of the type listed in Table 2 of ~~[20.11.3.223]~~  
35 20.11.3.126 NMAC is not exempt if the MPO in consultation with other agencies (see Subparagraph (c) of  
36 Paragraph (1) of Subsection D of ~~[20.11.3.202]~~ 20.11.3.105 NMAC), the EPA and the FHWA (in the case of a  
37 highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts  
38 for any reason. States and MPOs shall ensure that exempt projects do not interfere with TCM implementation.  
39 Table 2 follows:

40  
41 **TABLE 2. EXEMPT PROJECTS**

42 **SAFETY**

43 Railroad/highway crossing  
44 Projects that correct, improve or eliminate a hazardous location or feature  
45 Safer non-federal-aid system roads  
46 Shoulder improvements  
47 Increasing sight distance  
48 Highway safety improvement program implementation  
49 Traffic control devices and operating assistance other than signalization projects  
50 Railroad/highway crossing warning devices  
51 Guardrails, median barriers, crash cushions  
52 Pavement resurfacing or rehabilitation  
53 Pavement marking  
54 Emergency relief (23 U.S.C. 125)  
55 Fencing  
56 Skid treatments

- 1 Safety roadside rest areas
- 2 Adding medians
- 3 Truck climbing lanes outside the urbanized area
- 4 Lighting improvements
- 5 Widening narrow pavements or reconstructing bridges (no additional travel lanes)
- 6 Emergency truck pullovers
- 7 **MASS TRANSIT**
- 8 Operating assistance to transit agencies
- 9 Purchase of support vehicles
- 10 Rehabilitation of transit vehicles<sup>1</sup>
- 11 Purchase of office, shop and operating equipment for existing facilities
- 12 Purchase of operating equipment for vehicles (e.g., radios, fare boxes, lifts, etc.)
- 13 Construction or renovation of power, signal and communications systems
- 14 Construction of small passenger shelters and information kiosks
- 15 Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance
- 16 facilities, stations, terminals and ancillary structures)
- 17 Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
- 18 Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet<sup>1</sup>
- 19 Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR Part 771

20 **AIR QUALITY**

- 21 Continuation of ride-sharing and van-pooling promotion activities at current levels
- 22 Bicycle and pedestrian facilities

23 **OTHER**

- 24 Specific activities which do not involve or lead directly to construction, such as:
- 25 Planning and technical studies
- 26 Grants for training and research programs
- 27 Planning activities conducted pursuant to Titles 23 and 49 U.S.C.
- 28 Federal-aid systems revisions
- 29 Engineering to assess social, economic and environmental effects of the proposed action or alternatives to that action
- 30 Noise attenuation
- 31 Emergency or hardship advance land acquisitions 23 CFR Part 710.503
- 32 Acquisition of scenic easements
- 33 Plantings, landscaping, etc.
- 34 Sign removal
- 35 Directional and informational signs
- 36 Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings,
- 37 structures or facilities)
- 38 Repair of damage caused by natural disasters, civil unrest or terrorist acts, except projects involving substantial
- 39 functional, locational or capacity changes

40 **Note:** <sup>1</sup>In PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment or maintenance areas, such projects are exempt only if they are in  
 41 compliance with control measures in the applicable implementation plan.  
 42 [7/1/98; 20.11.3.223 NMAC - Rn, 20 NMAC 11.03.II.24, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.126 NMAC,  
 43 11/15/10]

44  
 45 **[20.11.3.224] 20.11.3.127 PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES:**  
 46 Notwithstanding the other requirements of 20.11.3 NMAC, highway and transit projects of the types listed in Table  
 47 3 of [20.11.3.224] 20.11.3.127 NMAC are exempt from regional emissions analysis requirements. The local effects  
 48 of these projects with respect to CO, PM<sub>2.5</sub> or PM<sub>10</sub> concentrations shall be considered to determine if a hot-spot  
 49 analysis is required prior to making a project-level conformity determination. These projects may then proceed to  
 50 the project development process even in the absence of a conforming transportation plan and TIP. A particular  
 51 action of the type listed in Table 3 of [20.11.3.224] 20.11.3.127 NMAC is not exempt from regional emissions  
 52 analysis if the MPO in consultation with other agencies (see Subparagraph (c) Paragraph (1) of Subsection D of  
 53 [20.11.3.202] 20.11.3.105 NMAC), the EPA and the FHWA (in the case of a highway project) or the FTA (in the  
 54 case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows:  
 55

56 **TABLE 3. PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES**

1 Intersection channelization projects  
2 Intersection signalization projects at individual intersections  
3 Interchange reconfiguration projects  
4 Changes in vertical and horizontal alignment  
5 Truck size and weight inspection stations  
6 Bus terminals and transfer points  
7 [7/1/98; 20.11.3.224 NMAC - Rn, 20 NMAC 11.03.II.25, 6/1/02; A, 6/13/05; A, 12/17/08; Rn, 20.11.3.127 NMAC,  
8 11/15/10]

9  
10 ~~[20.11.3.225]~~ **20.11.3.128 TRAFFIC SIGNAL SYNCHRONIZATION PROJECTS:** Traffic signal  
11 synchronization projects may be approved, funded and implemented without satisfying the requirements of 20.11.3  
12 NMAC. However, all subsequent regional emissions analyses required by ~~[20.11.3.215]~~ **20.11.3.118** NMAC and  
13 ~~[20.11.3.216]~~ **20.11.3.119** NMAC for transportation plans, TIPs or projects not from a conforming plan and TIP  
14 shall include such regionally significant traffic signal synchronization projects.  
15 [7/1/98; 20.11.3.225 NMAC - Rn, 20 NMAC 11.03.II.26, 6/1/02; A, 6/13/05; Rn, 20.11.3.128 NMAC, 11/15/10]

16  
17 ~~[20.11.3.226 — APPLICABLE LAW: The federal conformity rules under 40 CFR Part 93 Subpart A, in addition~~  
18 ~~to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the~~  
19 ~~requirements of CAA Section 176(c) until such time as this conformity implementation plan revision is approved by~~  
20 ~~EPA. Following EPA approval of this revision to the applicable implementation plan (or a portion thereof), the~~  
21 ~~approved (or approved portion of the) criteria and procedures in 20.11.3 NMAC shall govern conformity~~  
22 ~~determinations and the federal conformity regulations contained in 40 CFR Part 93 shall apply only for the portion,~~  
23 ~~if any, of 20.11.3 NMAC conformity provisions that is not approved by EPA. In addition, any previously applicable~~  
24 ~~implementation plan requirements relating to conformity remain enforceable until 20.11.3 NMAC is adopted.]~~  
25 [7/1/98; 20.11.3.226 NMAC - Rn, 20 NMAC 11.03.II.1-27, 6/1/02; A, 6/13/05; Rp, 11/15/10]

26  
27 ~~[20.11.3.227]~~ **20.11.3.129 SPECIAL EXEMPTIONS FROM CONFORMITY REQUIREMENTS FOR**  
28 **PILOT PROGRAM AREAS:** EPA and DOT may exempt no more than six areas for no more than three years  
29 from certain requirements of 20.11.3 NMAC if these areas are selected to participate in a conformity pilot program  
30 and have developed alternative requirements that have been approved by EPA as an implementation plan revision in  
31 accordance with 40 CFR 51.390. For the duration of the pilot program, areas selected to participate in the pilot  
32 program shall comply with the conformity requirements of the pilot area's implementation plan revision for 40 CFR  
33 51.390 and all other requirements in 40 CFR parts 51 and 93 that are not covered by the pilot area's implementation  
34 plan revision for 40 CFR 51.390. The alternative conformity requirements in conjunction with any applicable state  
35 or federal conformity requirements shall be proposed to fulfill all of the requirements of and achieve results  
36 equivalent to or better than Section 176(c) of the Clean Air Act. After the three-year duration of the pilot program  
37 has expired, areas will again be subject to all of the requirements of 20.11.3 NMAC and 40 CFR Part 51, Subpart T,  
38 or to the requirements of any implementation plan revision that was previously approved by EPA in accordance with  
39 40 CFR 51.390.

40 [20.11.3.227 NMAC - N, 6/13/05; A, 12/17/08; Rn, 20.11.3.129 NMAC, 11/15/10]

41  
42 20.11.3.130 to 20.11.3.389 [Reserved]

43  
44 20.11.3.390 **APPLICABLE LAW:** The federal conformity rules under 40 CFR Part 93 Subpart A, in addition  
45 to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the  
46 requirements of CAA Section 176(c) until such time as this conformity implementation plan revision is approved by  
47 EPA. Following EPA approval of this revision to the applicable implementation plan (or a portion thereof), the  
48 approved (or approved portion of the) criteria and procedures in 20.11.3 NMAC shall govern conformity  
49 determinations and the federal conformity regulations contained in 40 CFR Part 93 shall apply only for the portion,  
50 if any, of 20.11.3 NMAC conformity provisions that is not approved by EPA. In addition, any previously applicable  
51 implementation plan requirements relating to conformity remain enforceable until 20.11.3 NMAC is adopted.

52 {moved from **20.11.3.226** NMAC}

53 [20.11.3.390 NMAC - N, 11/15/10]

54  
55  
56 **HISTORY OF 20.11.3 NMAC:**



1 **Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of  
2 public records - state records center and archives.  
3 Regulation No. 42, Transportation Conformity, 12/16/94.  
4  
5 **History of Repealed Material:** 20 NMAC 11.03, Transportation Conformity, filed 10/27/95 repealed and replaced  
6 by 20 NMAC 11.03, Transportation Conformity, filed 06/01/98.  
7  
8 **Other History:** Regulation No. 42, Transportation Conformity, filed 12/16/94 was reformatted, renumbered and  
9 replaced by 20 NMAC 11.03, Transportation Conformity, filed 10/27/95.  
10 20 NMAC 11.03, Transportation Conformity, filed 06/01/98 renumbered, reformatted, amended, and replaced by  
11 20.11.3 NMAC, effective 6/01/02.

