

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

**IN THE MATTER OF THE PETITION TO AMEND 20.11.4 NMAC, *GENERAL CONFORMITY*, AND INCORPORATE SAID AMENDMENTS INTO THE NEW MEXICO STATE IMPLEMENTATION PLAN FOR AIR QUALITY(SIP)**

**AQCB Petition No. 2010-5**

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

**Petition to Amend 20.11.4 NMAC, *General Conformity*, and Incorporate an Amended 20.11.4 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 20.11.4 NMAC, *General 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 revised their General Conformity Rule, which became effective on July 6, 2010 [FR Vol. 75, No. 64, 17254-79, 4/5/10]. In response, the Air Quality Division (AQD) of the City of Albuquerque's Environmental Health Department, is proposing amendments to the current Air Quality Control Board regulation, 20.11.4 NMAC, *General Conformity* in order to conform to these recent federal rule changes.

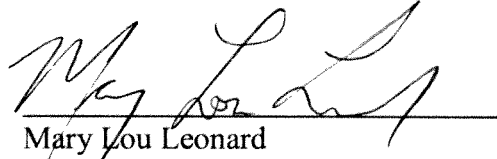
General conformity is an important provision of the Clean Air Act Amendments of 1990 (Act). Section 176(c) of the Act clearly illustrates the intent of Congress with respect to this program by explicitly requiring federal actions to conform to the applicable State Implementation Plan (SIP), and defines a conforming state action as one that does not: 1) cause or contribute to a new violation of any health-based air quality standard in any area; 2) increase the severity or frequency of an existing violation of any standard in any area; or 3) delay timely attainment of any standard, required interim emission reduction or other milestone in any area.

The intent of the Act's General Conformity provision is to encourage a process where federal agencies would work with their counterparts at the state and local levels to coordinate review of projects whose air quality impacts are real, but which do not fit neatly into the stationary source "box," where applicable processes and requirements are more well-defined. Examples of covered actions include airport construction or expansion.

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

4. The proposed Public Review Draft of 20.11.4 NMAC, *General Conformity* is attached as Exhibit #1a.

Respectfully submitted,




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Director, Environmental Health Department  
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**CERTIFICATION**

I hereby certify that a copy of this Petition to Amend 20.11.4 NMAC, *General Conformity*, and Incorporate said amendments into the New Mexico State Implementation Plan for Air Quality (SIP), was delivered to the following person on November 19, 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 4 GENERAL CONFORMITY**  
4  
5

6 **20.11.4.1 ISSUING AGENCY:** Albuquerque - Bernalillo County Air Quality Control Board, P.O. Box  
7 1293, Albuquerque, NM 87103. Telephone: (505) [768-2600] 768-2601.  
8 [12/16/94. . .12/1/95; 20.11.4.1 NMAC – Rn, 20 NMAC 11.04.I.1, 10/1/02]  
9

10 **20.11.4.2 SCOPE:**

11 ~~[A.]~~ The provisions of ~~[this Part]~~ 20.11.4 NMAC shall apply in all nonattainment and maintenance  
12 areas of and within Bernalillo county.

13 **A. Prohibition:** Pursuant to 40 CFR 93.150:

14 \_\_\_\_\_ (1) No department, agency or instrumentality of the federal government shall engage in, support in  
15 any way or provide financial assistance for, license or permit, or approve any activity that does not conform to an  
16 applicable implementation plan or maintenance plan.

17 \_\_\_\_\_ (2) A federal agency must make a determination that a federal action conforms to the applicable  
18 implementation plan or maintenance plan in accordance with the requirements of 20.11.4 NMAC before the action  
19 is taken.

20 \_\_\_\_\_ (3) Reserved.

21 \_\_\_\_\_ (4) Notwithstanding any provision of 20.11.4 NMAC, a determination that an action is in  
22 conformance with the applicable implementation plan or maintenance plan does not exempt the action from any  
23 other requirements of the applicable implementation plan or maintenance plan, the NEPA or the Clean Air Act  
24 (CAA). {20.11.4.6.A-D NMAC}

25 \_\_\_\_\_ (5) If an action would result in emissions originating in more than one nonattainment or maintenance  
26 area, the conformity must be evaluated for each area separately. {4/5/10 FR re: 40 CFR 93.150}

27 **B. Exempt:** ~~[This Part]~~ 20.11.4 NMAC does not apply to sources within Bernalillo county, which  
28 are located on Indian lands over which the Albuquerque - Bernalillo county air quality control board lacks  
29 jurisdiction.

30 [12/16/94. . .12/1/95; 20.11.4.2 NMAC – Rn, 20 NMAC 11.04.I.2, 10/1/02]  
31

32 **20.11.4.3 STATUTORY AUTHORITY:** ~~[This Part]~~ 20.11.4 NMAC is adopted pursuant to the authority  
33 provided in the New Mexico Air Quality Control Act, NMSA 1978 74-2-4, 74-2-5.C; the Joint Air Quality Control  
34 Board Ordinance, Bernalillo County Ordinance 94-5 4; and the Joint Air Quality Control Board Ordinance, Revised  
35 Ordinances of Albuquerque 1994 9-5-1-4.

36 [12/16/94. . .12/1/95; 20.11.4.3 NMAC – Rn, 20 NMAC 11.04.I.3, 10/1/02]  
37

38 **20.11.4.4 DURATION:** Permanent.

39 [12/1/95; 20.11.4.4 NMAC – Rn, 20 NMAC 11.04.I.4, 10/1/02]  
40

41 **20.11.4.5 EFFECTIVE DATE:** December 1, 1995, unless a later date is cited at the end of a section.

42 [12/1/95; 20.11.4.5 NMAC – Rn, 20 NMAC 11.04.I.5 & A, 10/1/02]  
43

44 **20.11.4.6 OBJECTIVE:** ~~[The objective of this Part is]~~ To implement Section 176(c) of the Clean Air Act  
45 (CAA), as amended (42 U.S.C. 7401 et seq.) and ~~[regulations under 40 CFR Part 51 Subpart W]~~ the related  
46 requirements of 23 U.S.C. 109(j), with respect to the conformity of ~~[general federal actions to the applicable~~  
47 ~~implementation plan]~~ transportation plans, programs, and projects which are developed, funded, or approved by the  
48 United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other  
49 recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This rule sets forth  
50 policy, criteria, and procedures for demonstrating and assuring conformity of ~~[general federal actions]~~ such activities  
51 to ~~[the]~~ an applicable implementation plan developed pursuant to Section 110 and Part D of the CAA. {40 CFR  
52 93.100}

53 [Under these authorities:

54 \_\_\_\_\_ **A.** No department, agency or instrumentality of the federal government shall engage in, support in  
55 any way or provide financial assistance for, license or permit, or approve any activity, which does not conform to an  
56 applicable implementation plan.

1 ~~\_\_\_\_\_ B. \_\_\_\_\_ A federal agency must make a determination that a federal action conforms to the applicable~~  
2 ~~implementation plan in accordance with the requirements of this subpart before the action is taken.~~

3 ~~\_\_\_\_\_ C. \_\_\_\_\_ Subsection B. of 20.11.4.6 NMAC does not include federal actions where either:~~

4 ~~\_\_\_\_\_ (1) \_\_\_\_\_ A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a:~~

5 ~~\_\_\_\_\_ (a) \_\_\_\_\_ Final environmental assessment (EA);~~

6 ~~\_\_\_\_\_ (b) \_\_\_\_\_ Environmental impact statement (EIS), or;~~

7 ~~\_\_\_\_\_ (c) \_\_\_\_\_ Finding of no significant impact (FONSI) that was prepared prior to January 31, 1994;~~

8 ~~\_\_\_\_\_ (2) \_\_\_\_\_ Or:~~

9 ~~\_\_\_\_\_ (a) \_\_\_\_\_ Prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the~~  
10 ~~specific environmental analysis;~~

11 ~~\_\_\_\_\_ (b) \_\_\_\_\_ Sufficient environmental analysis is completed by March 15, 1994 so that the federal~~  
12 ~~agency may determine that the federal action is in conformity with the specific requirements and the purposes of the~~  
13 ~~applicable state Implementation Plan (SIP) pursuant to the agency's affirmative obligation under section 176(c) of~~  
14 ~~the Clean Air Act; and~~

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

17 ~~\_\_\_\_\_ D. \_\_\_\_\_ Notwithstanding any provision of this Part, a determination that an action is in conformance with~~  
18 ~~the applicable implementation plan does not exempt the action from any other requirements of the applicable~~  
19 ~~implementation plan, the NEPA, or the CAA.] {moved to 20.11.4.2.A NMAC}~~  
20 ~~[12/16/94. . .12/1/95; 20.11.4.6 NMAC – Rn, 20 NMAC 11.04.I.6, 10/1/02]~~

21  
22 **20.11.4.7 DEFINITIONS:** Terms used but not defined in [~~this Part~~] 20.11.4 NMAC shall have the meaning  
23 given them by the CAA and EPA's regulations, (40 CFR Chapter I), in that order of priority. In addition to the  
24 definitions in 20.11.4.7 NMAC the definitions in 20.11.1.7 NMAC apply unless there is a conflict between  
25 definitions, in which case the definition in [~~this Part~~] 20.11.4 NMAC shall govern.

26 **A. "Affected federal land manager"** means the federal agency or the federal official charged with  
27 direct responsibility for management of an area designated as Class I under the CAA (42 U.S.C. 7472) that is  
28 located within 100 km of the proposed federal action.

29 **B. "Air agency"** means the [~~Air Pollution Control Division (APCD)]~~ Air Quality Division (AQD) of  
30 the city of Albuquerque environmental health department (EHD). The EHD, or its successor agency or authority, as  
31 represented by the department director or his/her designee, is the lead air quality planning agency for the  
32 Albuquerque - Bernalillo county nonattainment/maintenance area. The EHD serves as staff to the Albuquerque -  
33 Bernalillo county (ABC) air quality control board (AQCB), also referred to as the ABC/AQCB, and is responsible  
34 for implementing AQCB regulations.

35 **C. "Applicability analysis"** [~~means the early quantification and evaluation during the conformity~~  
36 ~~process where yearly quantities of criteria pollutants are calculated to determine if the thresholds of 20.11.4.12~~  
37 ~~NMAC are met.] is the process of determining if a federal action must be supported by a conformity determination.~~

38 **D. "Applicable implementation plan" or "applicable state implementation plan" or "applicable**  
39 **SIP"** means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under  
40 Section [~~110~~] 110(k) of the CAA, [~~or~~] a federal implementation plan (FIP) promulgated under Section 110(c) of the  
41 CAA [~~(federal implementation plan)]~~, or a plan promulgated or approved pursuant to [~~regulations promulgated~~  
42 ~~under~~] Section 301(d) of the CAA (tribal implementation plan or TIP) and which implements the relevant  
43 requirements of the CAA.

44 **E. "Area-wide air quality [~~monitoring~~] modeling analysis"** means an assessment on a scale that  
45 includes the entire nonattainment or maintenance area [~~which uses~~] using an air quality dispersion model or  
46 photochemical grid model to determine the effects of emissions on air quality, for example, an assessment using  
47 EPA's community multiscale air quality (CMAQ) modeling system.

48 **F. "Cause or contribute to a new violation"** means a federal action that:

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

52 (2) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a  
53 NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or  
54 severity of the new violation.

55 **G. "Caused by"** as used in the terms "direct emissions", and "indirect emissions" means emissions  
56 that would not otherwise occur in the absence of the federal action.

1 **H. “Confidential business information” or “CBI” means information that has been determined by**  
2 a federal agency, in accordance with its applicable regulations, to be a trade secret, or commercial or financial  
3 information obtained from a person and privileged or confidential and it is exempt from required disclosure under  
4 the Freedom of Information Act (5 U.S.C.552(b)(4)).

5 **I. “Conformity determination” means the evaluation (made after an applicability analysis is**  
6 completed) that a federal action conforms to the applicable implementation plan or maintenance plan and meets the  
7 requirements of 20.11.4 NMAC.

8 **J. “Conformity evaluation” means the entire process from the applicability analysis through the**  
9 conformity determination that is used to demonstrate that the federal action conforms to the requirements of 20.11.4  
10 NMAC.

11 **K. “Continuing program responsibility” means a federal agency has responsibility for emissions**  
12 caused by:

13 (1) Actions it takes itself; or

14 (2) Actions of non-federal entities that the federal agency, in exercising its normal programs and  
15 authorities, approves, funds, licenses or permits, provided the agency can impose conditions on any portion of the  
16 action that could affect the emissions.

17 **L. “Continuous program to implement” means that the federal agency has started the action**  
18 identified in the plan and does not stop the actions for more than an 18-month period, unless it can demonstrate that  
19 such a stoppage was included in the original plan.

20 **[H.]M. “Criteria pollutant or standard” means any pollutant for which there is established a NAAQS at**  
21 40 CFR Part 50.

22 **[H.]N. “Direct emissions” means those emissions of a criteria pollutant or its precursors that are caused**  
23 or initiated by the federal action and originate in a nonattainment or maintenance area and occur at the same time  
24 and place as the action and are reasonably foreseeable.

25 **[J.]O. “Emergency” means a situation where extremely quick action on the part of the federal agencies**  
26 involved is needed and where the timing of such federal activities makes it impractical to meet the requirements of  
27 [this Part] 20.11.4 NMAC, such as natural disasters like hurricanes or earthquakes, civil disturbances such as  
28 terrorist acts, and military mobilizations such as assembling and organizing troops and matériel for the defense of a  
29 nation in time of war or national emergency.

30 **[K.]P. “Emissions budgets” are those portions of the applicable SIP’s projected emissions inventories**  
31 that describe the levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further  
32 progress milestones, attainment, [and/or] or maintenance for any criteria pollutant or its precursors.

33 **Q. “Emissions inventory” means a listing of information on the location, type of source, type and**  
34 quantity of pollutant emitted as well as other parameters of the emissions.

35 **[L.]R. “Emissions offsets” for purposes of [20.11.4.5] 20.11.4.158 NMAC are emissions reductions**  
36 which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress  
37 demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at  
38 both the state and federal levels, and permanent within the timeframe specified by the program.

39 **[M.]S. “Emissions that a federal agency has a continuing program responsibility for” means**  
40 emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that  
41 occur due to subsequent activities, unless such activities are required by the federal agency. Where an agency, in  
42 performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant  
43 emissions by a non-federal entity taking subsequent actions, such emissions are covered by the meaning of a  
44 continuing program responsibility.

45 **[N.]T. “Federal action” means any activity engaged in by a department, agency, or instrumentality of**  
46 the federal government, or any activity that a department, agency or instrumentality of the federal government  
47 supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to  
48 transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the federal  
49 Transit Act (49 U.S.C. 1601 *et seq.*). Where the federal action is a permit, license, or other approval for some aspect  
50 of a non-federal undertaking, the relevant activity is the part, portion, or phase or the non-federal undertaking that  
51 requires the federal permit, license, or approval.

52 **[O.]U. “Federal agency” means a federal department, agency, or instrumentality of the federal**  
53 government.

54 **[P.]V. “Increase the frequency or severity of any existing violation of any standard in any area”**  
55 means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater

1 concentration than previously existed [~~and/or~~] or would otherwise exist during the future period in question, if the  
2 project were not implemented.

3 **[Q.]W. “Indirect emissions”**

4 (1) means those emissions of a criteria pollutant or its precursors: [~~that:~~]

5 [~~(+) (a) that are caused or initiated by the federal action [but may occur later in time and/or may be~~  
6 ~~farther removed in distance from the action itself but] and originate in the same nonattainment or maintenance area~~  
7 ~~but occur at a different time or place as the action;~~

8 (b) ~~that are [still] reasonably foreseeable; [and]~~

9 [~~(2) (c) that the [federal] agency can practicably control; and~~  
10 ~~[will maintain control over due to a continuing program responsibility of the federal agency including, but not~~  
11 ~~limited to:~~

12 ~~\_\_\_\_\_ (a) traffic on or to, or stimulated by, a proposed facility which is related to increases or other~~  
13 ~~changes in the scale or timing of operations of such facility;~~

14 ~~\_\_\_\_\_ (b) emissions related to the activities of employees of contractors or federal employees such as~~  
15 ~~employee work trips;~~

16 ~~\_\_\_\_\_ (c) emissions related to employee commuting and similar programs to increase average~~  
17 ~~occupancy imposed on all employers of a certain size in the locality;~~

18 ~~\_\_\_\_\_ (d) emissions related to the use of federal facilities under lease or temporary permit;~~

19 ~~\_\_\_\_\_ (e) emissions related to the activities of contractors or leaseholders that may be addressed by~~  
20 ~~provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the~~  
21 ~~interests of the United States; and~~

22 ~~\_\_\_\_\_ (f) fugitive dust from dirt roads or disturbed soil.]~~

23 ~~\_\_\_\_\_ (d) for which the agency has continuing program responsibility.~~

24 (2) For the purposes of this definition, even if a federal licensing, rulemaking or other approving  
25 action is a required initial step for a subsequent activity that causes emissions, such initial steps do not mean that a  
26 federal agency can practically control any resulting emissions.

27 **[R.]X. “Local air quality modeling analysis”** means an assessment of localized impacts on a scale  
28 smaller than the entire nonattainment or maintenance area, including, for example, congested [~~roadway intersections~~  
29 ~~and highways or transit terminals] roadways on a federal facility, which uses an air quality dispersion model, (e.g.,  
30 industrial source complex model or emission and dispersion model system), to determine the effects of emissions on  
31 air quality.~~

32 **[S.]Y. “Maintenance area”** means an area that was designated as nonattainment and has been re-  
33 designated in 40 CFR Part 81 to attainment, meeting the provisions of Section 107(d)(3)(E) of the CAA and has  
34 [with] a maintenance plan approved under Section 175A of the CAA.

35 **[T.]Z. “Maintenance plan”** means a revision to the applicable SIP, meeting the requirements of Section  
36 175A of the CAA.

37 **[U.]AA. “Metropolitan planning organization” or “MPO”** [~~is that organization designated as being~~  
38 ~~responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process~~  
39 ~~under 23 U.S.C. 134 and 49 U.S.C. 1607] means the policy board of an organization created as a result of the  
40 designation process in 23 U.S.C. 134(d).~~

41 **[V.]BB. “Milestone”** has the meaning given in Sections 182(g)(1) and 189(c)(1) of the CAA. A milestone  
42 consists of an emissions level and date on which it is required to be achieved.

43 **CC. “Mitigation measure”** means any method of reducing emissions of the pollutant or its precursor  
44 taken at the location of the federal action and used to reduce the impact of the emissions of that pollutant caused by  
45 the action.

46 **[W.]DD. “National ambient air quality standards” or “NAAQS”** are those standards  
47 established pursuant to Section 109 of the CAA and include standards for carbon monoxide (CO), lead (Pb),  
48 nitrogen dioxide (NO<sub>2</sub>), ozone, particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), and sulfur dioxide (SO<sub>2</sub>).

49 **[X.]EE. “NEPA”** is the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

50 **[Y.]FF. “Nonattainment Area” or “NAA”** means an area designated as nonattainment under Section 107  
51 of the CAA and described in 40 CFR Part 81.

52 **[Z.]GG. “Precursors of a criteria pollutant”** are:

53 (1) for ozone, nitrogen oxides (NO<sub>x</sub>), unless an area is exempted from NO<sub>x</sub> requirements under  
54 Section 182(f) of the CAA, and volatile organic compounds (VOC); and

55 (2) for PM<sub>10</sub>, those pollutants described in the PM<sub>10</sub> nonattainment area applicable SIP as significant  
56 contributors to the PM<sub>10</sub> levels.



- 1 (3) For PM<sub>2.5</sub>,  
2 (a) Sulfur dioxide (SO<sub>2</sub>) in all PM<sub>2.5</sub> nonattainment and maintenance areas,  
3 (b) nitrogen oxides in all PM<sub>2.5</sub> nonattainment and maintenance areas unless both the  
4 department and EPA determine that it is not a significant precursor, and  
5 (c) volatile organic compounds (VOC) and ammonia (NH<sub>3</sub>) only in PM<sub>2.5</sub> nonattainment or  
6 maintenance areas where either the department or EPA determines that they are significant precursors.

7 ~~[AA.]~~**III.** **“Reasonably foreseeable emissions”** are projected future direct and indirect emissions  
8 that are identified at the time the conformity determination is made; the location of such emissions is known and the  
9 emissions are quantifiable, as described and documented by the federal agency based on its own information and  
10 after reviewing any information presented to the federal agency.

11 ~~[BB.]~~**II.** **“Regional water [and/or] or wastewater projects”** include construction, operation, and  
12 maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage  
13 reservoirs, which affect a large portion of a nonattainment or maintenance area.

14 ~~[CC.]~~**JJ.** **“Regionally significant action”** means a federal action for which the direct and indirect  
15 emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emissions  
16 inventory for that pollutant.

17 **KK.** **“Restricted information”** means information that is privileged or that is otherwise protected from  
18 disclosure pursuant to applicable statutes, executive orders, or regulations. Such information includes, but is not  
19 limited to: Classified national security information, protected critical infrastructure information, sensitive security  
20 information, and proprietary business information.

21 **LL.** **“Smoke Management Program” or “SMP”** establishes a basic framework of procedures and  
22 requirements for managing smoke from fires that are managed for resource benefits. The purposes of SMPs are to  
23 mitigate the nuisance and public safety hazards (e.g., on roadways and at airports) posed by smoke intrusions into  
24 populated areas; to prevent deterioration of air quality and NAAQS violations; and to address visibility impacts in  
25 mandatory Class I Federal areas in accordance with the regional haze rules. {EPA's Interim Air Quality Policy on  
26 Wildland and Prescribed Fires}

27 **MM.** **“Take or start the federal action”** means the date that the federal agency signs or approves the  
28 permit, license, grant or contract or otherwise physically begins the federal action that requires a conformity  
29 evaluation under 20.11.4 NMAC.

30 ~~[DD.]~~**NN.** **“Total of direct and indirect emissions”** means the sum of direct and indirect emissions  
31 increases and decreases caused by the federal action (i.e., the “net” emissions considering all direct and indirect  
32 emissions). The portion of emissions which are exempt or presumed to conform under Subsections C, D, [or] E, or  
33 F of [20.11.4.12] 20.11.4.153 NMAC are not included in the “total of direct and indirect emissions.” The “total of  
34 direct and indirect emissions” includes emissions of criteria pollutants and emissions of precursors of criteria  
35 pollutants. [The segmentation of projects for conformity analyses when emissions are reasonably foreseeable is not  
36 permitted by this regulation. In many cases, the overall set of activities described within an environmental  
37 document (e.g. environmental assessment, environmental impact statement), a master plan, site plan, land or facility  
38 management plan, or similar planning document will constitute the action(s) to be evaluated. Where phasing is  
39 anticipated, analyses may need to evaluate key logical steps in the implementation of the project or proposal.] {40  
40 CFR 93.152}

41 **OO.** **“Tribal implementation plan” or “TIP”** means a plan to implement the national ambient air  
42 quality standards adopted and submitted by a federally recognized indian tribal government determined to be  
43 eligible under 40 CFR 49.9 and the plan has been approved by the EPA. {4/5/10 FR re: 40 CFR 93.152}  
44 [12/16/94. . .12/1/95; 20.11.4.7 NMAC – Rn, 20 NMAC 11.04.I.7, 10/1/02]

45  
46 **20.11.4.8 VARIANCES:** [Reserved]  
47 [12/1/95; 20.11.4.8 NMAC - Rn, 20 NMAC 11.04.I.8, 10/1/02]

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49 **20.11.4.9 SAVINGS CLAUSE:** Any amendment to 20.11.4 NMAC, which is filed, with the state records  
50 center shall not affect actions pending for violation of a city or county ordinance[, Air Quality Control Board  
51 Regulation 43, or Part 04] or 20.11.4 NMAC. Prosecution for a violation under prior regulation wording shall be  
52 governed and prosecuted under the statute, ordinance, part, or regulation section in effect at the time the violation  
53 was committed.  
54 [12/16/94. . .12/1/95; 20.11.4.9 NMAC – Rn, 20 NMAC 11.04.I.9, 10/1/02]  
55

1 **20.11.4.10 SEVERABILITY:** If any section, paragraph, sentence, clause, or word of ~~[this Part] 20.11.4~~  
2 ~~NMAC~~ is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect  
3 the validity of remaining provisions of ~~[this Part] 20.11.4 NMAC~~.  
4 [12/16/94; 12/1/95; 20.11.4.10 NMAC – Rn, 20 NMAC 11.04.I.10, 10/1/02]

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6 **20.11.4.11 DOCUMENTS:** Documents incorporated and cited in ~~[this Part] 20.11.4 NMAC~~ may be viewed  
7 at the Albuquerque Environmental Health Department, 400 Marquette Ave. NW, Albuquerque, NM.  
8 [12/1/95; 20.11.4.11 NMAC – Rn, 20 NMAC 11.04.I.11 & A, 10/1/02]

9  
10 **20.11.4.12 to 20.11.4.152** [Reserved]

11  
12 **20.11.4.12**~~20.11.4.153~~ **[DETERMINATIONS FOR CONFORMITY] APPLICABILITY ANALYSIS:**  
13 {4/5/10 FR re: 40 CFR 93.153(a)}

14 **A.** Conformity determinations for federal actions related to transportation plans, programs, and  
15 projects developed, funded, or approved under Title 23 U.S.C. or ~~[the federal Transit Act (49 U.S.C. 1601 et seq.)]~~  
16 ~~49 U.S.C. Chapter 53~~ {12/8/08 FR Proposed Rule re: 40 CFR 93.153(a)} must meet the procedures and criteria of  
17 ~~[20.11.3 NMAC Transportation Conformity]~~ 40 CFR Part 51, Subpart T, in lieu of the procedures set forth in ~~[this~~  
18 ~~Part] 20.11.4 NMAC~~. {40 CFR 93.153(a)}

19 **B.** For federal actions not covered by Subsection A, of ~~[20.11.4.12]~~ 20.11.4.153 NMAC, a  
20 conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect  
21 emissions in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates  
22 in Paragraph (1) or (2) of Subsection B, of ~~[20.11.4.12]~~ 20.11.4.153 NMAC. ~~[An applicability analysis shall be~~  
23 ~~used to determine if an action meets these thresholds for actions, which are not otherwise exempted. In the event the~~  
24 ~~requirements of in Paragraph (1) and (2), of Subsection B, of 20.11.4.12 NMAC are not met, a complete conformity~~  
25 ~~determination will not be necessary. Agencies are nevertheless encouraged to coordinate with the air agency during~~  
26 ~~the applicability analysis phase, especially when proposed actions are likely to produce meaningful levels of~~  
27 ~~pollution even though the amount calculated may be below the identified thresholds. Awareness by the air agency~~  
28 ~~of the many actions below the thresholds will assist the air agency in overall planning efforts (e.g. emission~~  
29 ~~inventories).]~~ {1/8/08 FR Proposed Rule re: 40 CFR 93.153(b)}

30 (1) For purposes of Subsection B, of ~~[20.11.4.12]~~ 20.11.4.153 NMAC, the following rates apply in  
31 **nonattainment areas:** {4/5/10 FR re: 40 CFR 93.153(b)(1)}

<u>Criteria Pollutant or Precursor</u>			<u>Rate (Tons/Year)</u>
<b>[NONATTAINMENT AREAS]</b>			
<b>Ozone (VOC's or NOx):</b>			
	Serious NAA's		50
	Severe NAA's		25
	Extreme NAA's		10
	Other ozone NAA's outside an ozone transport region		100
	[Marginal and moderate] Other ozone NAA's inside an ozone transport region:		
		VOC	50
		NO <sub>x</sub>	100
<b>Carbon monoxide:</b>			
	All NAA's		100
<b>SO<sub>2</sub> or NO<sub>2</sub>:</b>			
	All NAA's		100
<b>PM<sub>10</sub>:</b>			
	Moderate NAA's		100
	Serious NAA's		70
<b>PM 2.5:</b>			
	Direct emissions		100
	SO <sub>2</sub>		100
	NO <sub>x</sub> (unless determined not to be significant precursors)		100
	VOC or ammonia (if determined to be significant precursors)		100
<b>Pb:</b>			
	All NAA's		25

1  
2 (2) For the purposes of Subsection B, of [20.11.4.12] 20.11.4.153 NMAC, the following rates apply  
3 in **maintenance areas**: {40 CFR 93.153(b)(2)}

<b>Criteria Pollutant or Precursor</b>		<b>Rate (Tons/Year)</b>
<b>[MAINTENANCE AREAS]</b>		
<b>Ozone (NO<sub>x</sub>, SO<sub>2</sub> or NO<sub>2</sub>):</b>		
	All maintenance areas	100
<b>Ozone (VOC's):</b>		
	Maintenance areas inside an ozone transport region	50
	Maintenance areas outside an ozone transport region	100
<b>Carbon monoxide:</b>		
	All maintenance areas	100
<b>PM<sub>10</sub>:</b>		
	All maintenance areas	100
<b>PM 2.5:</b>		
	Direct emissions	100
	SO <sub>2</sub>	100
	NO <sub>x</sub> (unless determined not to be significant precursors)	100
	VOC or ammonia (if determined to be significant precursors)	100
<b>Pb:</b>		
	All maintenance areas	25

1  
2           **C.       The requirements of [this Part] 20.11.4 NMAC shall not apply to the following federal**  
3 **actions:**

4           (1) actions where the total of direct and indirect emissions are below the emissions levels specified in  
5 Subsection B, of [~~20.11.4.12~~] 20.11.4.153 NMAC.

6           (2) the following actions which would result in no emissions increase or an increase in emissions that  
7 is clearly de minimis:

- 8                   (a) Judicial and legislative proceedings.  
9                   (b) Continuing and recurring activities such as permit renewals where activities conducted will  
10 be similar in scope and operation to activities currently being conducted.  
11                   (c) Rulemaking and policy development and issuance.  
12                   (d) Routine maintenance and repair activities including repair and maintenance of  
13 administrative sites, roads, trails, and facilities.  
14                   (e) Civil and criminal enforcement activities, such as investigations, audits, inspections,  
15 examinations, prosecutions, and the training of law enforcement personnel.  
16                   (f) Administrative actions such as personnel actions, organizational changes, debt management  
17 or collection, cash management, internal agency audits, program budget proposals, and matters relating to the  
18 administration and collection of taxes, duties and fees.  
19                   (g) The routine, recurring transportation of [~~material~~] materiel and personnel.  
20                   (h) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments  
21 and stations (when no new support facilities or personnel are required) to perform as operational groups [~~and/or~~] or  
22 for repair or overhaul.  
23                   (i) Maintenance dredging and debris disposal where no new depths are required, applicable  
24 permits are secured, and disposal will be at an approved disposal site.  
25                   (j) Actions, such as the following, with respect to existing structures, properties, facilities and  
26 lands where future activities conducted will be similar in scope and operation to activities currently being conducted  
27 at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of  
28 federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost  
29 subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the  
30 production of coins and currency.

1 (k) The granting of leases, licenses such as for exports and trade, permits, and easements where  
2 activities conducted will be similar in scope and operation to activities currently being conducted.

3 (l) Planning, studies, and provision of technical assistance.

4 (m) Routine operation of facilities, mobile assets and equipment.

5 (n) Transfers of ownership, interests, and titles in land, facilities, and real and personal  
6 properties, regardless of the form or method of the transfer.

7 (o) The designation of empowerment zones, enterprise communities, or viticultural areas.

8 (p) Actions by any of the federal banking agencies or the federal Reserve Banks, including  
9 actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions  
10 or depository institution holding companies, access to the discount window, or the provision of financial services to  
11 banking organizations or to any department, agency or instrumentality of the United States.

12 (q) Actions by the board of governors of the federal reserve system or any federal reserve bank  
13 to effect monetary or exchange rate policy.

14 (r) Actions that implement a foreign affairs function of the United States.

15 (s) Actions (or portions thereof) associated with transfers of land, facilities, title, and real  
16 properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur  
17 promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the  
18 requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and  
19 where the federal agency does not retain continuing authority to control emissions associated with the lands,  
20 facilities, title, or real properties.

21 (t) Transfers of real property, including land, facilities, and related personal property from a  
22 federal entity to another federal entity and assignments of real property, including land, facilities, and related  
23 personal property from a federal entity, to another federal entity for subsequent deeding to eligible applicants.

24 (u) Actions by the department of the treasury to effect fiscal policy and to exercise the  
25 borrowing authority of the United States.

26 (v) Air traffic control activities and adopting approach, departure and enroute procedures for  
27 aircraft operations above the mixing height specified in the applicable SIP or TIP. Where the applicable SIP or TIP  
28 does not specify a mixing height, the federal agency can use the 3,000 feet above ground level as a default mixing  
29 height, unless the agency demonstrates that use of a different mixing height is appropriate because the change in  
30 emissions at and above that height caused by the federal action is *de minimis*. {4/5/10 FR re: 40 CFR 93.153}

31 (3) Actions where the emissions are not reasonably foreseeable, such as the following:

32 (a) Initial outer continental shelf lease sales which are made on a broad scale and are followed  
33 by exploration and development plans on a project level.

34 (b) Electric power marketing activities that involve the acquisition, sale and transmission of  
35 electric energy.

36 (4) Actions which implement a decision to conduct or carry out a conforming program such as  
37 prescribed burning actions which are consistent with a conforming land management plan.

38 **D.** Notwithstanding the other requirements of ~~[this Part]~~ 20.11.4 NMAC, a conformity determination  
39 is not required for the following federal actions (or portion thereof):

40 (1) The portion of an action that includes major or minor new or modified stationary sources that  
41 require a permit under the new source review (NSR) program (Section 110(a)(2)(c) and Section 173 of the CAA) or  
42 the prevention of significant deterioration (PSD) program (Title I, Part C of the CAA).

43 (2) Actions in response to emergencies [~~or natural disasters such as hurricanes, earthquakes, etc.,~~]  
44 which are typically commenced on the order of hours or days after the emergency [~~or disaster~~] and, if applicable,  
45 which meet the requirements of Subsection E, of [~~20.11.4.12~~] 20.11.4.153 NMAC.

46 (3) Research, investigations, studies, demonstrations, or training (other than those exempted under  
47 Paragraph (2), of Subsection C of [~~20.11.4.12~~] 20.11.4.153 NMAC), where no environmental detriment is incurred  
48 [~~and/or~~] or, the particular action furthers air quality research, as determined by the air agency primarily responsible  
49 for the applicable SIP.

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

53 (5) Direct emissions from remedial and removal actions carried out under the Comprehensive  
54 Environmental Response, Compensation and Liability Act (CERCLA) and associated regulations to the extent such  
55 emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted

1 from other environmental regulation under the provisions of CERCLA and applicable regulations issued under  
2 CERCLA. {4/5/10 FR re: 40 CFR 93.153(d)(1)}

3 E. Federal actions which are part of a continuing response to an emergency or disaster under  
4 Paragraph (2), of Subsection D. of [20.11.4.12] 20.11.4.153 NMAC and which are to be taken more than [6] six  
5 months after the commencement of the response to the emergency or disaster under Paragraph (2), of Subsection D.  
6 of [20.11.4.12] 20.11.4.153 NMAC are exempt from the requirements of this regulation only if:

7 (1) the federal agency taking the actions makes a written determination that, for a specified period not  
8 to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be  
9 required and the actions cannot be delayed due to overriding concerns for public health and welfare, national  
10 security interests and foreign policy commitments, or

11 (2) for actions which are to be taken after those actions covered by Paragraph (1), of Subsection E. of  
12 [20.11.4.12] 20.11.4.153 NMAC, the federal agency makes a new determination as provided in Paragraph (1), of  
13 Subsection E. of [20.11.4.12] 20.11.4.153 NMAC and:

14 (i) Provides a draft copy of the written determinations required to affected EPA regional  
15 office(s), the affected state(s) or air pollution control agencies, and any federal recognized indian tribal government  
16 in the nonattainment or maintenance area. Those organizations must be allowed 15 days from the beginning of the  
17 extension period to comment on the draft determination; and

18 (ii) Within 30 days after making the determination, publish a notice of the determination by  
19 placing a prominent advertisement in a daily newspaper of general circulation in the area affected by the action.

20 (3) If additional actions are necessary in response to an emergency or disaster under Paragraph (2), of  
21 Subsection D of 20.11.4.153 NMAC beyond the specified time period in Paragraph (2), of Subsection E of  
22 20.11.4.153 NMAC, a federal agency can make a new written determination as described in Paragraph (2), of  
23 Subsection E of 20.11.4.153 NMAC for as many 6-month periods as needed, but in no case shall this exemption  
24 extend beyond three 6-month periods except where an agency:

25 (i) provides information to EPA and the state or tribe stating that the conditions that gave rise  
26 to the emergency exemption continue to exist and how such conditions effectively prevent the agency from  
27 conducting a conformity evaluation.

28 (ii) Reserved. {4/5/10 FR re: 40 CFR 93.153(e)(2)}

29 F. Notwithstanding other requirements of [this Part] 20.11.4 NMAC, actions specified by individual  
30 federal agencies that have met the criteria set forth in either [Paragraph (1) or (2),] Paragraphs (1) (2) or (3) of  
31 Subsection G. of [20.11.4.12] 20.11.4.153 NMAC and the procedures set forth in Subsection H of [20.11.4.12]  
32 20.11.4.153 NMAC are “presumed to conform”, except as provided in Subsection J of [20.11.4.12] 20.11.4.153  
33 NMAC. Actions specified by individual federal agencies as “presumed to conform” may not be used in  
34 combination with one another when the total direct and indirect emissions from the combination of actions would  
35 equal or exceed any of the rates specified in Paragraphs (1) or (2) of Subsection B of 20.11.4.153 NMAC. {4/5/10  
36 FR re: 40 CFR 93.153(f)}

37 G. The federal agency must meet the criteria for establishing activities that are “presumed to  
38 conform” by fulfilling the requirements set forth in either [Paragraph (1) or (2), of Subsection A, of 20.11.4.12  
39 NMAC] Paragraphs (1), (2), or (3) of Subsection G of 20.11.4.153 NMAC:

40 (1) The federal agency must clearly demonstrate using methods consistent with 20.11.4 NMAC that  
41 the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

- 42 (a) cause or contribute to any new violation of any standard in any area;  
43 (b) interfere with provisions in the applicable SIP for maintenance of any standard;  
44 (c) increase the frequency or severity of any existing violation of any standard in any area; or  
45 (d) delay timely attainment of any standard or any required interim emission reductions or

46 other milestones in any area including, where applicable, emission levels specified in the applicable SIP for  
47 purposes of:

- 48 (i) a demonstration of reasonable further progress;  
49 (ii) a demonstration of attainment; or  
50 (iii) a maintenance plan; or

51 (2) The federal agency must provide documentation that the total of direct and indirect emissions  
52 from such future actions would be below the emission rates for a conformity determination that are established in  
53 Subsection B, of [20.11.4.12] 20.11.4.153 NMAC, based, for example, on similar actions taken over recent years.

54 (3) The federal agency must clearly demonstrate that the emissions from the type or category of  
55 actions and the amount of emissions from the action are included in the applicable SIP or maintenance plan, and the  
56 state, local or tribal air quality agencies responsible for the SIP(s) or TIP(s) provide written concurrence that the

1 emissions from the actions along with all other expected emissions in the area will not exceed the emission budget in  
2 the SIP. {4/5/10 FR re: 40 CFR 93.153(g)}

3 **H.** In addition to meeting the criteria for establishing exemptions set forth in Paragraphs (1) ~~or~~ (2)  
4 or (3), of Subsection G, of [20.11.4.12] 20.11.4.153 NMAC, the following procedures must also be complied with to  
5 presume that activities will conform:

6 (1) the federal agency must identify through publication in the federal register its list of proposed  
7 activities that are “presumed to conform” and the basis for the presumptions; the notice must clearly identify the  
8 type and size of the action that would be “presumed to conform” and provide criteria for determining if the type and  
9 size action qualifies it for the presumption;

10 (2) the federal agency must notify the EPA region VI office, [the air agency] state, local and tribal air  
11 agencies, and, where applicable, the agency designated under Section 174 of the CAA and the MPO and provide at  
12 least 30 days for the public to comment on the list of proposed activities “presumed to conform”; If the “presumed  
13 to conform” action has regional or national application (e.g., the action will cause emission increases in excess of the  
14 de minimis levels identified in Subsection B of 20.11.4.153 NMAC in more than one of EPA’s Regions), the federal  
15 agency, as an alternative to sending it to the EPA Region VI Office, can send the draft conformity determination to  
16 U.S. EPA, Office of Air Quality Planning and Standards (OAQPS);

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

19 (4) the federal agency must publish the final list of such activities in the federal register. {4/5/10 FR  
20 re: 40 CFR 93.153(h)}

21 **I.** ~~[Notwithstanding the other requirements of 20.1.4 NMAC, when the total of direct and indirect~~  
22 ~~emissions of any pollutant from a federal action does not equal or exceed the rates specified in Subsection B, of~~  
23 ~~20.11.4.12 NMAC, but represents 10 percent or more of a nonattainment or maintenance area’s total emissions of~~  
24 ~~that pollutant, the action is defined as a regionally significant action and the requirements of 20.11.4.6 NMAC and~~  
25 ~~Sections 20.11.4.14 through 20.11.4.19 NMAC shall apply for the federal action.] Emissions from the following~~  
26 ~~actions are “presumed to conform”:~~

27 (1) Actions at installations with facility-wide emission budgets meeting the requirements in § 93.161  
28 provided that the state or tribe has included the emission budget in the EPA-approved SIP or maintenance plan and  
29 the emissions from the action along with all other emissions from the installation will not exceed the facility-wide  
30 emission budget.

31 (2) Prescribed fires conducted in accordance with a smoke management program (SMP) which meets  
32 the requirements of EPA’s Interim Air Quality Policy on Wildland and Prescribed Fires or, an equivalent  
33 replacement EPA policy.

34 (3) Emissions for actions that the state or tribe identifies in the EPA approved SIP or TIP as  
35 “presumed to conform”. {4/5/10 FR re: 40 CFR 93.153(i)}

36 **J.** ~~[Where an action otherwise presumed to conform under Subsection F of 20.11.4.12 NMAC is a~~  
37 ~~regionally significant action or does not in fact meet one of the criteria in Paragraph (1), of Subsection G, of~~  
38 ~~20.11.4.12 NMAC, that action shall not be presumed to conform and the requirements of 20.11.4.6 NMAC and~~  
39 ~~Sections 20.11.4.14 through 20.11.4.19 NMAC shall apply for the federal action.] Even though an action would otherwise be “presumed to conform” under Subsection F or I, of 20.11.4.153 NMAC,~~  
40 an action shall not be “presumed to conform” and the requirements of § 40 CFR 93.151, Subsection A of 20.11.4.2  
41 NMAC, Sections 13 through 19 and Sections 21 through 23 of 20.11.4 NMAC shall apply to the action if EPA or a  
42 third party shows that the action would:

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

44 (2) interfere with provisions in the applicable SIP or TIP for maintenance of any standard;

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

46 (4) delay timely attainment of any standard or any required interim emissions reductions or other  
47 milestones in any area including, where applicable, emission levels specified in the applicable SIP or TIP for  
48 purposes of:

49 (i) a demonstration of reasonable further progress;

50 (ii) a demonstration of attainment; or

51 (iii) a maintenance plan. {4/5/10 FR re: 40 CFR 93.153(j)}

52 **K.** The provisions of 20.11.4 NMAC shall apply in all nonattainment and maintenance areas except  
53 conformity requirements for newly designated nonattainment areas are not applicable until one year after the  
54 effective date of the final nonattainment designation for each NAAQS and pollutant in accordance with Section  
55 176(c)(6) of the Act. {4/5/10 FR re: 40 CFR 93.153(k)}

1 [12/16/94. . .12/1/95; 20.11.4.12 NMAC – Rn, 20 NMAC 11.04.I.12 & Repealed, 10/1/02; Rn, 20 NMAC  
2 11.04.II.1, 10/1/02]

3  
4 **[20.11.4.13]20.11.4.154 [CONFORMITY ANALYSIS] FEDERAL AGENCY CONFORMITY**

5 **RESPONSIBILITY:** Any [federal] department, agency, or instrumentality of the federal government taking an  
6 action subject to [this regulation] 20.11.4 NMAC must make its own conformity determination consistent with the  
7 requirements of [this regulation] 20.11.4 NMAC. In making its conformity determination, a federal agency must  
8 follow the requirements in Sections 14 through 19 and 21 through 24 of 20.11.4 NMAC and must consider  
9 comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a  
10 project, a federal agency may choose to adopt the analysis of another federal agency (to the extent the proposed  
11 action and impacts analyzed are the same as the project for which a conformity determination is required) or develop  
12 its own analysis in order to make its conformity determination. {4/5/10 FR re: 40 CFR 93.154}

13 [12/16/94, 20.11.4.13 NMAC – Rn, 20 NMAC 11.04.II.2, 10/1/02]

14  
15 **[20.11.4.14]20.11.4.155 REPORTING REQUIREMENTS:**

16 **A.** A federal agency making a conformity determination under [20.11.4.17 NMAC] Sections 13  
17 through 19 and 21 through 23 of 20.11.4 NMAC must provide to the EPA Region VI Office, [the air agency] state  
18 and local air agencies, any federally-recognized indian tribal government in the nonattainment or maintenance area,  
19 and, where applicable, affected federal land managers, the agency designated under Section 174 of the CAA and the  
20 MPO a 30-day notice which describes the proposed action and the federal agency's draft conformity determination  
21 on the action. [~~Draft conformity determinations shall describe the magnitude of the increase for relevant pollutants~~  
22 and the sources (including locations) for those pollutants as they relate to the proposed action.] If the action has  
23 multi-regional or national impacts (e.g., the action will cause emission increases in excess of the *de minimis* levels  
24 identified in Subsection B of 20.11.4.153 NMAC in three or more of EPA's regions), the federal agency, as an  
25 alternative to sending it to EPA regional offices, can provide the notice to EPA's Office of Air Quality Planning and  
26 Standards.

27 **B.** A federal agency must notify the EPA Region VI office, state and local air agencies, any federally-  
28 recognized indian tribal government in the nonattainment or maintenance area, and, where applicable, affected  
29 federal land managers, the agency designated under Section 174 of the CAA and the MPO, within 30 days after  
30 making a final conformity determination under 20.11.4 NMAC.

31 **C.** The draft and final conformity determination shall exclude any restricted information or  
32 confidential business information. The disclosure of restricted information and confidential business information  
33 shall be controlled by the applicable laws, regulations, security manuals, or executive orders concerning the use,  
34 access, and release of such materials. Subject to applicable procedures to protect restricted information from public  
35 disclosure, any information or materials excluded from the draft or final conformity determination or supporting  
36 materials may be made available in a restricted information annex to the determination for review by federal and  
37 state representatives who have received appropriate clearances to review the information. {4/5/10 FR re: 40 CFR  
38 93.155}

39 [12/16/94. . .12/1/95; 20.11.4.14 NMAC – Rn, 20 NMAC 11.04.II.3, 10/1/02]

40  
41 **[20.11.4.15]20.11.4.156 PUBLIC PARTICIPATION:**

42 **A.** Upon request by any person regarding a specific federal action, a federal agency must make  
43 available, subject to the limitation in Subsection E of 20.11.4.156 NMAC, for review its draft conformity  
44 determination under [20.11.4.17 NMAC] 20.11.4.154 NMAC with supporting materials which describe the  
45 analytical methods and conclusions relied upon in making the applicability analysis and draft conformity  
46 determination. [It is advisable for agencies to maintain sufficiently detailed records of the actual assumptions,  
47 technical data, and analyses which lead to the conformity determination in order for interested parties to clearly  
48 understand the basis for the conformity determination. These shall be made available for review by the air agency  
49 and other interested parties where appropriate.]

50 **B.** A federal agency must make public its draft conformity determination under [20.11.4.17 NMAC]  
51 20.11.4.154 NMAC by placing a notice by prominent advertisement in a daily newspaper of general circulation in  
52 the area affected by the action and by providing 30 days for written public comment prior to taking any formal  
53 action on the draft determination. This comment period may be concurrent with any other public involvement, such  
54 as occurs in the NEPA process. If the action has multi-regional or national impacts (e.g., the action will cause  
55 emission increases in excess of the *de minimis* levels identified in Subsection B of 20.11.4.153 NMAC in three or



1 more of EPA's Regions), the federal agency, as an alternative to publishing separate notices, can publish a notice in  
2 the federal register.

3 **C.** A federal agency must document its response to all the comments received on its draft conformity  
4 determination under ~~[20.11.4.17 NMAC]~~ 20.11.4.154 NMAC and make the comments and responses available,  
5 subject to the limitation in Subsection E of 20.11.4.156 NMAC, upon request by any person regarding a specific  
6 federal action, within 30 days of the final conformity determination.

7 **D.** A federal agency must make public its final conformity determination under ~~[20.11.4.17 NMAC]~~  
8 20.11.4.154 NMAC for a federal action by placing a notice by prominent advertisement in a daily newspaper of  
9 general circulation in the area affected by the action within 30 days of the final conformity determination. If the  
10 action would have multi-regional or national impacts, the federal agency, as an alternative, can publish the notice in  
11 the federal register.

12 **E.** The draft and final conformity determination shall exclude any restricted information or  
13 confidential business information. The disclosure of restricted information and confidential business information  
14 shall be controlled by the applicable laws, regulations or executive orders concerning the release of such materials.  
15 {4/5/10 FR re: 40 CFR 93.156}  
16 [12/16/94. . .12/1/95; 20.11.4.15 NMAC – Rn, 20 NMAC 11.04.II.4, 10/1/02]

17  
18 **[20.11.4.16]20.11.4.157 [FREQUENCY OF CONFORMITY DETERMINATIONS] REEVALUATION OF**  
19 **CONFORMITY:**

20 **A.** Once a conformity evaluation is completed by a federal agency, that determination is not required  
21 to be reevaluated if the agency has maintained a continuous program to implement the action; the determination has  
22 not lapsed as specified in Subsection B of 20.11.4.157 NMAC; or any modification to the action does not result in  
23 an increase in emissions above the levels specified in Subsection B of 20.11.4.153 NMAC. If a conformity  
24 determination is not required for the action at the time NEPA analysis is completed, the date of the finding of no  
25 significant impact (FONSI) for an Environmental Assessment, a record of decision (ROD) for an Environmental  
26 Impact Statement, or a categorical exclusion determination can be used as a substitute date for the conformity  
27 determination date.

28 ~~[A.]~~**B.** The conformity status of a federal action automatically lapses [5] five years from the date a final  
29 conformity determination is reported under [20.11.4.14] 20.11.4.155 NMAC, unless the federal action has been  
30 completed or a continuous program [has been commenced] to implement [that] the federal action [within a  
31 reasonable time] has been commenced.

32 ~~[B.]~~**C.** Ongoing federal activities at a given site showing continuous progress are not new actions and do  
33 not require periodic re-determination so long as such activities are within the scope of the final conformity  
34 determination reported under [20.11.4.14] 20.11.4.155 NMAC.

35 ~~[C.]~~ If, after the conformity determination is made, the federal action is changed so that there is an  
36 increase in the total of direct and indirect emissions above the levels in Subsection B. of 20.11.4.12 NMAC, a new  
37 conformity determination is required.]

38 **D.** If the federal agency originally determined through the applicability analysis that a conformity  
39 determination was not necessary because the emissions for the action were below the limits in Subsection B of  
40 20.11.4.153 NMAC and changes to the action would result in the total emissions from the action being above the  
41 limits in Subsection B of 20.11.4.153 NMAC, then the federal agency must make a conformity determination.

42 {4/5/10 FR re: 40 CFR 93.157}  
43 [12/16/94. . .12/1/95; 20.11.4.16 NMAC – Rn, 20 NMAC 11.04.II.5, 10/1/02]

44  
45 **[20.11.4.17]20.11.4.158 CRITERIA FOR DETERMINING CONFORMITY OF GENERAL FEDERAL**  
46 **ACTIONS:**

47 **A.** An action required under [20.11.4.12] 20.11.4.153 NMAC to have a conformity determination for  
48 a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates  
49 in Subsection B, of [20.11.4.12] 20.11.4.153 NMAC, or otherwise requires a conformity determination due to the  
50 total of direct and indirect emissions from the action, the action meets the requirements of Subsection C, of  
51 [20.11.4.17] 20.11.4.158 NMAC, and meets any of the following requirements:

52 (1) for any criteria pollutant or precursor, the total of direct and indirect emissions from the action are  
53 specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration or  
54 reasonable further progress milestone or in a facility-wide emission budget included in a SIP accordance with  
55 20.11.4.161 NMAC;

1 (2) for precursors of ozone, or nitrogen dioxide, or PM, the total of direct and indirect emissions from  
2 the action are fully offset within the same nonattainment or maintenance area (or nearby area of equal or higher  
3 classification provided the emissions from that area contribute to the violations, or have contributed to violations in  
4 the past, in the area with the federal action) through a revision to the applicable SIP or a similarly enforceable  
5 measure that effects emission reductions so that there is no net increase in emissions of that pollutant;

6 (3) for any directly-emitted criteria pollutant, ~~[except ozone and nitrogen dioxide,]~~ the total of direct  
7 and indirect emissions from the action meet the requirements:

8 (a) specified in Subsection B of ~~[20.11.4.17]~~ 20.11.4.158 NMAC, based on area-wide air  
9 quality modeling analysis and local air quality modeling analysis; or

10 (b) meet the requirements of Paragraph (5), of Subsection A, of ~~[20.11.4.17]~~ 20.11.4.158  
11 NMAC and, for local air quality modeling analysis, the requirement of Subsection B, of ~~[20.11.4.17]~~ 20.11.4.158  
12 NMAC.

13 (4) For CO or ~~[PM<sub>10</sub>]~~ directly emitted PM:

14 (a) where the air agency primarily responsible for the applicable SIP determines that an area-  
15 wide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the  
16 requirements specified in Subsection B, of ~~[20.11.4.17]~~ 20.11.4.158 NMAC, based on local air quality modeling  
17 analysis; or

18 (b) where the air agency primarily responsible for the applicable SIP determines that an area-  
19 wide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the  
20 total of direct and indirect emissions from the action meet the requirements specified in Subsection B of ~~[20.11.4.17]~~  
21 20.11.4.158 NMAC, based on area-wide modeling, or meet the requirements of Paragraph (5), of Subsection A, of  
22 ~~[20.11.4.17]~~ 20.11.4.158 NMAC or

23 (5) For ozone or nitrogen dioxide, and for purposes of Subparagraph (b), of Paragraph (3), of  
24 Subsection A, of ~~[20.11.4.17]~~ 20.11.4.158 NMAC and Subparagraph (b), of Paragraph (4), of Subsection A, of  
25 ~~[20.11.4.12]~~ 20.11.4.158 NMAC, each portion of the action or the action as a whole meets any of the following  
26 requirements:

27 (a) Where EPA has approved a revision to ~~[an area's attainment or maintenance demonstration~~  
28 ~~after 1990] the applicable implementation plan after the area was designated as nonattainment and the state or tribe~~  
29 ~~makes a determination as provided in Item (i) of Subparagraph (a), of Paragraph (5), of Subsection A of [20.11.4.17]~~  
30 ~~20.11.4.158 NMAC or where the state or tribe makes a commitment as provided in Item (ii) of Subparagraph [(b)]~~  
31 ~~(a), of Paragraph (5), of Subsection A of [20.11.4.17]~~ 20.11.4.158 NMAC:

32 (i) the total of direct and indirect emissions from the action (or portion thereof) is  
33 determined and documented by the air agency primarily responsible for the applicable SIP to result in a level of  
34 emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the  
35 emissions budgets specified in the applicable SIP;

36 (ii) the total of direct and indirect emissions from the action (or portion thereof) is  
37 determined by the air agency responsible for the applicable SIP to result in a level of emissions which, together with  
38 all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the  
39 applicable SIP and the state governor or the governor's designee for SIP actions makes a written commitment to  
40 EPA which includes the following: 1. A specific schedule for adoption and submittal of a revision to the SIP which  
41 would achieve the needed emission reductions prior to the time emissions from the federal action would occur; 2.  
42 Identification of specific measures for incorporation into the SIP which would result in a level of emissions which,  
43 together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget  
44 specified in the applicable SIP; 3. A demonstration that all existing applicable SIP requirements are being  
45 implemented in the area for the pollutants affected by the federal action, and that local authority to implement  
46 additional requirements has been fully pursued; 4. A determination that the responsible federal agencies have  
47 required all reasonable mitigation measures associated with their action; and 5. Written documentation including all  
48 air quality analyses supporting the conformity determination;

49 (iii) Where a federal agency made a conformity determination based on a ~~[state]~~ state's  
50 ~~or tribe's~~ commitment under Item (i), of Subparagraph (a), of Paragraph (5), of Subsection A of ~~[20.11.4.17]~~  
51 20.11.4.158 NMAC, and the state has submitted a SIP or TIP to EPA covering the time period during which the  
52 emissions will occur or is scheduled to submit such a SIP or TIP within 18 months of the conformity determination,  
53 [such a] the state commitment is automatically deemed a call for a SIP or TIP revision by EPA under Section  
54 110(k)(5) of the CAA, effective on the date of the federal conformity determination and requiring response within  
55 18 months or any shorter time within which [a commitment is made] the state or tribe commits to revise the  
56 applicable SIP;

1 (iv) Where a federal agency made a conformity determination based on a state or tribal  
2 commitment under Item (ii) of Subparagraph (a) of Paragraph (5) of Subsection A of 20.11.4.158 NMAC and the  
3 state or tribe has not submitted a SIP covering the time period when the emissions will occur or is not scheduled to  
4 submit such a SIP within 18 months of the conformity determination, the state or tribe must, within 18 months,  
5 submit to EPA a revision to the existing SIP committing to include the emissions in the future SIP revision.

6 (b) The action (or portion thereof), as determined by the MPO, is specifically included in a  
7 current transportation plan and transportation improvement program which have been found to conform to the  
8 applicable SIP under ~~[20.11.3 NMAC, *Transportation Conformity*]~~ 40 CFR Part 51, Subpart T, or 40 CFR Part 93,  
9 Subpart A;

10 (c) The action (or portion thereof) fully offsets its emissions within the same nonattainment or  
11 maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute  
12 to the violations, or have contributed to violation in the past, in the area with the federal action) through a revision to  
13 the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the  
14 total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

15 (d) Where EPA has not approved a revision to the relevant SIP since the area was designated or  
16 reclassified, [attainment or maintenance demonstration since 1990,] the total of direct and indirect emissions from  
17 the action for the future years (described in Subsection D, of ~~[20.11.4.18]~~ 20.11.4.159 NMAC) do not increase  
18 emissions with respect to the baseline emissions:

19 (i) the baseline emissions reflect the historical activity levels that occurred in the  
20 geographic area affected by the proposed federal action during: 1. ~~[Calendar year 1990]~~ The most current calendar  
21 year with a complete emission inventory available before an area is designated unless EPA sets another year, or; 2.  
22 [The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the  
23 most representative year), if a classification is promulgated in 40 CFR Part 81] The emission budget in the  
24 applicable SIP; or 3. The year of the baseline inventory in the PM<sub>10</sub> applicable SIP;

25 (ii) the baseline emissions are the total of direct and indirect emissions calculated for the  
26 future years (described in Subsection D of ~~[20.11.4.18]~~ 20.11.4.159 NMAC) using the historic activity levels  
27 (described in Item (i) of Subparagraph (d), of Paragraph (5), of Subsection A of [20.11.4.17] 20.11.4.158 NMAC)  
28 and appropriate emission factors for the future years; or

29 (e) Where the action involves regional water ~~[and/or]~~ or wastewater projects, such projects are  
30 sized to meet only the needs of population projections that are in the applicable SIP.

31 **B.** The area-wide ~~[and/or]~~ or local air quality modeling analyses must:

- 32 (1) meet the requirements in ~~[20.11.4.18]~~ 20.11.4.159 NMAC; and  
33 (2) show that the action does not:

- 34 (a) cause or contribute to any new violation of any standard in any area, or  
35 (b) increase the frequency or severity of any existing violation of any standard in any area.

36 **C.** Notwithstanding any other requirements of ~~[this section]~~ 20.11.4.158 NMAC, an action subject to  
37 this regulation may not be determined to conform to the applicable SIP unless the total of direct and indirect  
38 emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in  
39 the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions  
40 specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice  
41 requirements.

42 **D.** Any analyses required under ~~[this section]~~ 20.11.4.158 NMAC must be completed, and any  
43 mitigation requirements necessary for a finding of conformity must be identified before the determination of  
44 conformity is made. {4/5/10 FR re: 40 CFR 93.158}  
45 [12/16/94. . .12/1/95; 20.11.4.17 NMAC – Rn, 20 NMAC 11.04.II.6, 10/1/02]

46  
47 **[20.11.4.18]20.11.4.159 PROCEDURES FOR CONFORMITY [DETERMINATIONS] DETERMINATION**  
48 **OF FEDERAL ACTIONS:**

49 **A.** The analyses required under ~~[this regulation]~~ 20.11.4 NMAC must be based on the latest planning  
50 assumptions.

51 (1) All planning assumptions (such as per capita water and sewer use, vehicle miles traveled per  
52 capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle  
53 ownership, woodstoves per household, and the geographic distribution of population growth) must be derived from  
54 the estimates of population, employment, travel, and congestion most recently approved by the MPO, or other  
55 agency authorized to make such estimates, where available.

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

4 **B.** The analyses required under ~~[this Part]~~ 20.11.4 NMAC must be based on the latest and most  
5 accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If  
6 such techniques are inappropriate, ~~the federal agency may obtain~~ [and] written approval ~~[of] from~~ the [EPA]  
7 regional administrator ~~for EPA region VI [is obtained]~~ for ~~[any] a~~ modification or substitution, ~~[they may be~~  
8 ~~modified or]~~ of another technique ~~[substituted]~~ on a case-by-case basis or, where appropriate, on a generic basis for  
9 a specific federal agency program.

10 (1) For motor vehicle emissions, the most current version of the motor vehicle emissions model  
11 specified by EPA and available for use in the preparation or revision of the applicable SIP must be used for the  
12 conformity analysis as specified in Subparagraph (a) and (b), of Paragraph (1), of Subsection B, of ~~[20.11.4.18]~~  
13 20.11.4.159 NMAC:

14 (a) the EPA must publish in the federal Register a notice of availability of any new motor  
15 vehicle emissions model; and

16 (b) a grace period of three months shall apply during which the motor vehicle emissions model  
17 previously specified by EPA as the most current version may be used unless EPA announces a longer grace period  
18 in the federal register. Conformity analyses for which the analysis was begun during the grace period or no more  
19 than ~~[3-years]~~ three months before the federal register notice of availability of the latest emission model may  
20 continue to use the previous version of the model specified by EPA.

21 (2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission  
22 factors specified by EPA in the *Compilation of Air Pollutant Emission Factors* (AP-42,  
23 <http://www.epa.gov/ttn/chiefs/efpac> ) must be used for the conformity analysis unless more accurate emission data  
24 are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

25 **C.** The air quality modeling analyses required under ~~[this regulation]~~ 20.11.4 NMAC must be based  
26 on the applicable air quality models, data bases, and other requirements specified in the most recent version of the  
27 *Guideline on Air Quality Models* (~~(Revised)"~~ (1986)) (Appendix W to 40 CFR Part 51), ~~[including supplements~~  
28 ~~(EPA publication no. 450/2-78-027R)]~~, unless:

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

32 (2) written approval of the EPA regional administrator is obtained for any modification or  
33 substitution.

34 **D.** The analyses required under ~~[this regulation except Paragraph (1), of Subsection A, of 20.11.4.17~~  
35 NMAC,] 20.11.4 NMAC, must be based on the total of direct and indirect emissions from the action and must  
36 reflect emission scenarios that are expected to occur under each of the following cases:

37 (1) ~~[the CAA mandated attainment year or, if applicable, the farthest year for which emissions are~~  
38 ~~projected in the maintenance plan]~~ The attainment year specified in the SIP, or if the SIP does not specify an  
39 attainment year, the latest attainment year possible under the Act; or

40 (2) The last year for which emissions are projected in the maintenance plan;

41 ~~[(2)]~~(3) the year during which the total of direct and indirect emissions from the action is expected to  
42 be the greatest on an annual basis; and

43 ~~[(3)]~~(4) any year for which the applicable SIP specifies an emissions budget. {40 CFR 93.159}  
44 [12/16/94. . .12/1/95; 20.11.4.18 NMAC – Rn, 20 NMAC 11.04.II.7, 10/1/02]

#### 45 ~~[20.11.4.19]~~20.11.4.160 MITIGATION OF AIR QUALITY IMPACTS:

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

50 **B.** Prior to determining that a federal action is in conformity, the federal agency making the  
51 conformity determination must obtain written commitments from the appropriate persons or agencies to implement  
52 any mitigation measures, which are identified as conditions for making conformity determinations. ~~[Written~~  
53 ~~commitments shall describe such mitigation measures and the nature of the commitments, in a manner consistent~~  
54 ~~with Subsection A of 20.11.4.20 NMAC.]~~ {40 CFR 93.160}

- 1 C. Persons or agencies voluntarily committing to mitigation measures to facilitate positive  
2 conformity determinations must comply with the obligations of such commitments.
- 3 D. In instances where the federal agency is licensing, permitting or otherwise approving the action of  
4 another governmental or private entity, approval by the federal agency must be conditioned on the other entity  
5 meeting the mitigation measures set forth in the conformity determination.
- 6 E. When necessary because of changed circumstances, mitigation measures may be modified so long  
7 as the new mitigation measures continue to support the conformity determination. Any proposed change in the  
8 mitigation measures is subject to the reporting requirements of ~~[20.11.4.14]~~ 20.11.4.155 NMAC and the public  
9 participation requirements of ~~[20.11.4.15]~~ 20.11.4.157 NMAC.
- 10 F. Written commitments to mitigation measures must be obtained prior to a positive conformity  
11 determination and such commitments must be fulfilled.
- 12 G. After a state or tribe revises its SIP or TIP and EPA approves that SIP revision, any agreements,  
13 including mitigation measures, necessary for a conformity determination will be both state or tribal and federally  
14 enforceable. Enforceability through the applicable SIP or TIP will apply to all persons who agree to mitigate direct  
15 and indirect emissions associated with a federal action for a conformity determination. {40 CFR 93.160}  
16 [12/16/94. . .12/1/95; 20.11.4.19 NMAC – Rn, 20 NMAC 11.04.II.8, 10/1/02]

17  
18 **20.11.4.161 CONFORMITY EVALUATION FOR FEDERAL INSTALLATIONS WITH**  
19 **FACILITY-WIDE EMISSION BUDGETS:**

- 20 A. The state, local or tribal agency responsible for implementing and enforcing the SIP or TIP can in  
21 cooperation with federal agencies or third parties authorized by the agency that operate installations subject to  
22 federal oversight develop and adopt a facility-wide emission budget to be used for demonstrating conformity under  
23 Paragraph (1) of Subsection A of 20.11.4.158 NMAC. The facility-wide budget must meet the following criteria.
- 24 (1) Be for a set time period.
- 25 (2) Cover the pollutants or precursors of the pollutants for which the area is designated nonattainment  
26 or maintenance.
- 27 (3) Include specific quantities allowed to be emitted on an annual or seasonal basis.
- 28 (4) The emissions from the facility along with all other emissions in the area will not exceed the  
29 emission budget for the area.
- 30 (5) Include specific measures to ensure compliance with the budget, such as periodic reporting  
31 requirements or compliance demonstration, when the federal agency is taking an action that would otherwise require  
32 a conformity determination.
- 33 (6) Be submitted to EPA as a SIP revision.
- 34 (7) The SIP revision must be approved by EPA.
- 35 B. The facility-wide budget developed and adopted in accordance with Subsection A of 20.11.4.161  
36 NMAC can be revised by following the requirements in Subsection A of 20.11.4.161 NMAC.
- 37 C. Total direct and indirect emissions from federal actions in conjunction with all other emissions  
38 subject to general conformity from the facility that do not exceed the facility budget adopted pursuant to Subsection  
39 A of 20.11.4.161 NMAC are “presumed to conform” to the SIP and do not require a conformity analysis.
- 40 D. If the total direct and indirect emissions from the federal actions in conjunction with the other  
41 emissions subject to general conformity from the facility exceed the budget adopted pursuant to Subsection A of  
42 20.11.4.161 NMAC, the action must be evaluated for conformity. A federal agency can use the compliance with the  
43 facility-wide emissions budget as part of the demonstration of conformity, i.e., the agency would have to mitigate or  
44 offset the emissions that exceed the emission budget.
- 45 E. If the SIP for the area includes a category for construction emissions, the negotiated budget can  
46 exempt construction emissions from further conformity analysis. {4/5/10 FR re: 40 CFR 93.161}  
47 [20.11.4.20 NMAC, N, XX/XX/XX]

48  
49 **20.11.4.162 EMISSIONS BEYOND THE TIME PERIOD COVERED BY THE SIP:**

- 50 If a federal action would result in total direct and indirect emissions above the applicable thresholds which would be  
51 emitted beyond the time period covered by the SIP, the Federal agency can:
- 52 A. demonstrate conformity with the last emission budget in the SIP; or
- 53 B. request the state or tribe to adopt an emissions budget for the action for inclusion in the SIP. The  
54 state or tribe must submit a SIP or TIP revision to EPA within 18 months either including the emissions in the  
55 existing SIP or establishing an enforceable commitment to include the emissions in future SIP revisions based on the  
56 latest planning assumptions at the time of the SIP revision; no such commitment by a state or tribe shall restrict a

1 state's or tribe's ability to require RACT, RACM or any other control measures within the state's or tribe's authority  
2 to ensure timely attainment of the NAAQS. {4/5/10 FR, re: 40 CFR 93.162}  
3 [20.11.4.21 NMAC, N, XX/XX/XX]  
4

5 **20.11.4.163 TIMING OF OFFSETS AND MITIGATION MEASURES:**

6 **A.** The emissions reductions from an offset or mitigation measure used to demonstrate conformity  
7 must occur during the same calendar year as the emission increases from the action except, as provided in  
8 Subsection B of 20.11.4.163 NMAC.

9 **B.** The State or tribe may approve emissions reductions in other years provided:

10 (1) The reductions are greater than the emission increases by the following ratios:

11 (a) extreme nonattainment areas: 1.5:1

12 (b) severe nonattainment areas: 1.3:1

13 (c) serious nonattainment areas: 1.2:1

14 (d) moderate nonattainment areas: 1.15:1

15 (e) all other areas: 1.1:1.

16 (2) The time period for completing the emissions reductions must not exceed twice the period of the  
17 emissions.

18 (3) The offset or mitigation measure with emissions reductions in another year will not:

19 (a) cause or contribute to a new violation of any air quality standard,

20 (b) increase the frequency or severity of any existing violation of any air quality standard; or

21 (c) delay the timely attainment of any standard or any interim emissions reductions or other  
22 milestones in any area.

23 **C.** The approval by the state or tribe of an offset or mitigation measure with emissions reductions in  
24 another year does not relieve the state or tribe of any obligation to meet any SIP or CAA milestone or deadline. The  
25 approval of an alternate schedule for mitigation measures is at the discretion of the State or Tribe, and they are not  
26 required to approve an alternate schedule. {4/5/10 FR, re: 40 CFR 993.163}  
27 [20.11.4.22 NMAC, N, XX/XX/XX]  
28

29 **20.11.4.164 INTER-PRECURSOR MITIGATION MEASURES AND OFFSETS:**

30 Federal agencies must reduce the same type pollutant as being increased by the federal action except the state or  
31 tribe may approve offsets or mitigation measures of different precursors of the same criteria pollutant, if such trades  
32 are allowed by a state or tribe in a SIP or TIP approved new source review regulation, is technically justified, and  
33 has a demonstrated environmental benefit. {4/5/10 FR, re: 40 CFR 93.164}  
34 [20.11.4.23 NMAC, N, XX/XX/XX]  
35

36 **20.11.4.165 EARLY EMISSION REDUCTION CREDIT PROGRAMS AT FEDERAL FACILITIES**  
37 **AND INSTALLATION SUBJECT TO FEDERAL OVERSIGHT:**

38 **A.** Federal facilities and installations subject to federal oversight can, with the approval of the state or  
39 tribal agency responsible for the SIP or TIP in that area, create an early emissions reductions credit program. The  
40 federal agency can create the emission reduction credits in accordance with the requirements in Subsection B of  
41 20.11.4.165 NMAC and can used them in accordance with Subsection C of 20.11.4.165 NMAC.

42 **B. Creation of emission reduction credits.**

43 (1) Emissions reductions must be quantifiable through the use of standard emission factors or  
44 measurement techniques. If non-standard factors or techniques to quantify the emissions reductions are used, the  
45 federal agency must receive approval from the state or tribal agency responsible for the implementation of the SIP or  
46 TIP and from EPA's Region VI Office. The emission reduction credits do not have to be quantified before the  
47 reduction strategy is implemented, but must be quantified before the credits are used in the general conformity  
48 evaluation.

49 (2) The emission reduction methods must be consistent with the applicable SIP or TIP attainment and  
50 reasonable further progress demonstrations.

51 (3) The emissions reductions cannot be required by or credited to other applicable SIP or TIP  
52 provisions.

53 (4) Both the state or tribe and federal air quality agencies must be able to take legal action to ensure  
54 continued implementation of the emission reduction strategy. In addition, private citizens must also be able to  
55 initiate action to ensure compliance with the control requirement.

1 (5) The emissions reductions must be permanent or the timeframe for the reductions must be  
2 specified.

3 (6) The federal agency must document the emissions reductions and provide a copy of the document  
4 to the state or tribal air quality agency and the EPA region VI office for review. The documentation must include a  
5 detailed description of the emission reduction strategy and a discussion of how it meets the requirements of  
6 Paragraphs (1) through (5) of Subsection B of 20.11.4.165 NMAC.

7 **C. Use of emission reduction credits.** The emission reduction credits created in accordance with  
8 Subsection B of 20.11.4.165 NMAC can be used, subject to the following limitations, to reduce the emissions  
9 increase from a federal action at the facility for the conformity evaluation.

10 (1) If the technique used to create the emission reduction is implemented at the same facility as the  
11 federal action and could have occurred in conjunction with the federal action, then the credits can be used to reduce  
12 the total direct and indirect emissions used to determine the applicability of the regulation as required in 20.11.4.153  
13 NMAC and as offsets or mitigation measures required by 20.11.4.158 NMAC.

14 (2) If the technique used to create the emission reduction is not implemented at the same facility as  
15 the federal action or could not have occurred in conjunction with the federal action, then the credits cannot be used  
16 to reduce the total direct and indirect emissions used to determine the applicability of the regulation as required in  
17 20.11.4.153 NMAC, but can be used to offset or mitigate the emissions as required by 20.11.4.158 NMAC.

18 (3) Emissions reductions credits must be used in the same year in which they are generated.

19 (4) Once the emission reduction credits are used, they cannot be used as credits for another  
20 conformity evaluation. However, unused credits from a strategy used for one conformity evaluation can be used for  
21 another conformity evaluation as long as the reduction credits are not double counted.

22 (5) Federal agencies must notify the state or tribal air quality agency responsible for the  
23 implementation of the SIP or TIP and the EPA region VI office when the emission reduction credits are being used.  
24 {4/5/10 FR, re: 40 CFR 93.165}  
25 [20.11.4.24 NMAC, N, XX/XX/XX]

26  
27 **HISTORY OF 20.11.4 NMAC:**

28 **Pre-NMAC History:** The material in [~~this part~~] 20.11.4 NMAC was derived from that previously filed with the  
29 commission of public records – state records center and archives.  
30 Regulation No. 43, General Conformity, 12/16/94.

31  
32 **History of Repealed Material:** [Reserved]

33  
34 **Other History:** Regulation No. 43, General Conformity, filed 12/16/94 was **renumbered** and **reformatted** into  
35 first version of the New Mexico Administrative Code as 20 NMAC 11.04, General Conformity, filed 10-27-95.  
36 20 NMAC 11.04, General Conformity, filed 10-27-95 was **renumbered, reformatted, amended and replaced** by  
37 20.11.4 NMAC, effective 10/1/02.

