AQD EXHIBIT
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TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 4 GENERAL CONFORMITY

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

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

A. Prohibition: Pursuant to 40 CFR 93.150:

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

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

(3) Reserved.

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

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

B. Exempt: [~~This Part~~] 20.11.4 NMAC does not apply to sources within Bernalillo county, which are located on Indian lands over which the Albuquerque - Bernalillo county air quality control board lacks jurisdiction.
[12/16/94. . .12/1/95; 20.11.4.2 NMAC – Rn, 20 NMAC 11.04.I.2, 10/1/02]

20.11.4.3 STATUTORY AUTHORITY: [~~This Part~~] 20.11.4 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 9-5-1-4.
[12/16/94. . .12/1/95; 20.11.4.3 NMAC – Rn, 20 NMAC 11.04.I.3, 10/1/02]

20.11.4.4 DURATION: Permanent.
[12/1/95; 20.11.4.4 NMAC – Rn, 20 NMAC 11.04.I.4, 10/1/02]

20.11.4.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section.
[12/1/95; 20.11.4.5 NMAC – Rn, 20 NMAC 11.04.I.5 & A, 10/1/02]

20.11.4.6 OBJECTIVE: [~~The objective of this Part is~~] To implement Section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.) and [~~regulations under 40 CFR Part 51 Subpart W~~] the related requirements of 23 U.S.C. 109(j), with respect to the conformity of [~~general federal actions to the applicable implementation plan~~] transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of [~~general federal actions~~] such activities to [~~the~~] an applicable implementation plan developed pursuant to Section 110 and Part D of the CAA. {40 CFR 93.100}
[~~Under these authorities:~~
~~A. No department, agency or instrumentality of the federal government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity, which does not conform to an applicable implementation plan.~~

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

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

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

~~(a) Final environmental assessment (EA);~~

~~(b) Environmental impact statement (EIS), or;~~

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

~~(2) Or:~~

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

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

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

~~D. Notwithstanding any provision of this Part, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the NEPA, or the CAA.~~] {moved to 20.11.4.2.A NMAC}

[12/16/94. . .12/1/95; 20.11.4.6 NMAC – Rn, 20 NMAC 11.04.I.6, 10/1/02]

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

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

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

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

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

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

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

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

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

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

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

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

J. "Conformity evaluation" means the entire process from the applicability analysis through the conformity determination that is used to demonstrate that the federal action conforms to the requirements of 20.11.4 NMAC.

K. "Continuing program responsibility" means a federal agency has responsibility for emissions caused by:

(1) Actions it takes itself; or

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

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

[~~H.~~]M. "Criteria pollutant or standard" means any pollutant for which there is established a NAAQS at 40 CFR Part 50.

[~~I.~~]N. "Direct emissions" means those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and originate in a nonattainment or maintenance area and occur at the same time and place as the action and are reasonably foreseeable.

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

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

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

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

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

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

[~~O.~~]U. "Federal agency" means a federal department, agency, or instrumentality of the federal government.

[~~P.~~]V. "Increase the frequency or severity of any existing violation of any standard in any area" means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater

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

[~~Q.~~]**W. "Indirect emissions"**

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

[~~(1)~~] (a) that are caused or initiated by the federal action [~~but may occur later in time and/or may be farther removed in distance from the action itself but~~] and originate in the same nonattainment or maintenance area but occur at a different time or place as the action;

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

[~~(2)~~] (c) that the [~~federal~~] agency can practicably control; and

[~~will maintain control over due to a continuing program responsibility of the federal agency including, but not limited to:~~

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

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

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

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

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

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

(d) for which the agency has continuing program responsibility.

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

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

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

[~~T.~~]**Z. "Maintenance plan"** means a revision to the applicable SIP, meeting the requirements of Section 175A of the CAA.

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

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

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

[~~W.~~]**DD. "National ambient air quality standards" or "NAAQS"** are those standards established pursuant to Section 109 of the CAA and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM_{10} and $PM_{2.5}$), and sulfur dioxide (SO_2).

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

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

[~~Z.~~]**GG. "Precursors of a criteria pollutant"** are:

(1) for ozone, nitrogen oxides (NO_X), unless an area is exempted from NO_X requirements under Section 182(f) of the CAA, and volatile organic compounds (VOC); and

(2) for PM_{10}, those pollutants described in the PM_{10} nonattainment area applicable SIP as significant contributors to the PM_{10} levels.

(3) For $PM_{2.5}$:

(a) Sulfur dioxide (SO_2) in all $PM_{2.5}$ nonattainment and maintenance areas,

(b) nitrogen oxides in all $PM_{2.5}$ nonattainment and maintenance areas unless both the department and EPA determine that it is not a significant precursor, and

(c) volatile organic compounds (VOC) and ammonia (NH_3) only in $PM_{2.5}$ nonattainment or maintenance areas where either the department or EPA determines that they are significant precursors.

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

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

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

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

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

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

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

OO. **"Tribal implementation plan" or "TIP"** means a plan to implement the national ambient air quality standards adopted and submitted by a federally recognized indian tribal government determined to be eligible under 40 CFR 49.9 and the plan has been approved by the EPA. {4/5/10 FR re: 40 CFR 93.152}

[12/16/94. . .12/1/95; 20.11.4.7 NMAC – Rn, 20 NMAC 11.04.I.7, 10/1/02]

20.11.4.8 **VARIANCES:** [Reserved]

[12/1/95; 20.11.4.8 NMAC - Rn, 20 NMAC 11.04.I.8, 10/1/02]

20.11.4.9 **SAVINGS CLAUSE:** Any amendment to 20.11.4 NMAC, which is filed, with the state records center shall not affect actions pending for violation of a city or county ordinance[~~, Air Quality Control Board Regulation 43, or Part 04~~] or 20.11.4 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part, or regulation section in effect at the time the violation was committed.

[12/16/94. . .12/1/95; 20.11.4.9 NMAC – Rn, 20 NMAC 11.04.I.9, 10/1/02]

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

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

20.11.4.12 to 20.11.4.152 [Reserved]

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

A. Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or [~~the federal Transit Act (49 U.S.C. 1601 et seq.)~~] 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 [~~20.11.3 NMAC *Transportation Conformity*~~] 40 CFR Part 51, Subpart T, in lieu of the procedures set forth in [~~this Part~~] 20.11.4 NMAC. {40 CFR 93.153(a)}

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

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

Criteria Pollutant or Precursor			**Rate (Tons/Year)**
[~~NONATTAINMENT AREAS~~]			
Ozone (VOC's or NOx):			
	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_x	100
Carbon monoxide:			
	All NAA's		100
SO_2 or NO_2:			
	All NAA's		100
PM_{10}:			
	Moderate NAA's		100
	Serious NAA's		70
PM 2.5:			
	Direct emissions		100
	SO_2		100
	NO_x (unless determined not to be significant precursors)		100
	VOC or ammonia (if determined to be significant precursors)		100
Pb:			
	All NAA's		25

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

Criteria Pollutant or Precursor			Rate (Tons/Year)
[~~MAINTENANCE AREAS~~]			
Ozone (NO_x, SO_2 or NO_2):			
	All maintenance areas		100
Ozone (VOC's):			
	Maintenance areas inside an ozone transport region		50
	Maintenance areas outside an ozone transport region		100
Carbon monoxide:			
	All maintenance areas		100
PM_{10}:			
	All maintenance areas		100
PM 2.5:			
	Direct emissions		100
	SO_2		100
	NO_x (unless determined not to be significant precursors)		100
	VOC or ammonia (if determined to be significant precursors)		100
Pb:			
	All maintenance areas		25

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

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

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

(a) Judicial and legislative proceedings.

(b) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.

(c) Rulemaking and policy development and issuance.

(d) Routine maintenance and repair activities including repair and maintenance of administrative sites, roads, trails, and facilities.

(e) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.

(f) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.

(g) The routine, recurring transportation of [~~material~~] materiel and personnel.

(h) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups [~~and/or~~] or for repair or overhaul.

(i) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(j) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Federal actions which are part of a continuing response to an emergency or disaster under 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 months after the commencement of the response to the emergency or disaster under Paragraph (2), of Subsection D. of [~~20.11.4.12~~] 20.11.4.153 NMAC are exempt from the requirements of this regulation only if:

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

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

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

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

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

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

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

F. Notwithstanding other requirements of [~~this Part~~] 20.11.4 NMAC, actions specified by individual federal agencies that have met the criteria set forth in either [~~Paragraph (1) or (2)~~,] Paragraphs (1) (2) or (3) of 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~~] 20.11.4.153 NMAC are "presumed to conform", except as provided in Subsection J of [~~20.11.4.12~~] 20.11.4.153 NMAC. Actions specified by individual federal agencies as "presumed to conform" may not be used in combination with one another when the total direct and indirect emissions from the combination of actions would 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 FR re: 40 CFR 93.153(f)}

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

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

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

(b) interfere with provisions in the applicable SIP for maintenance of any standard;

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

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

(i) a demonstration of reasonable further progress;

(ii) a demonstration of attainment; or

(iii) a maintenance plan; or

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

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

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

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

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

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

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

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

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

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

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

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

J. [~~Where an action otherwise presumed to conform under Subsection F of 20.11.4.12 NMAC is a regionally significant action or does not in fact meet one of the criteria in Paragraph (1), of Subsection G. of 20.11.4.12 NMAC, that action shall not be presumed to conform and the requirements of 20.11.4.6 NMAC and 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, an action shall not be "presumed to conform" and the requirements of § 40 CFR 93.151, Subsection A of 20.11.4.2 NMAC, Sections 13 through 19 and Sections 21 through 23 of 20.11.4 NMAC shall apply to the action if EPA or a third party shows that the action would:

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

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

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

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

(i) a demonstration of reasonable further progress;

(ii) a demonstration of attainment; or

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

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

[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 11.04.II.1, 10/1/02]

[~~20.11.4.13~~]20.11.4.154 [~~CONFORMITY ANALYSIS~~] FEDERAL AGENCY CONFORMITY RESPONSIBILITY: Any [~~federal~~] department, agency, or instrumentality of the federal government taking an action subject to [~~this regulation~~] 20.11.4 NMAC must make its own conformity determination consistent with the requirements of [~~this regulation~~] 20.11.4 NMAC. In making its conformity determination, a federal agency must follow the requirements in Sections 14 through 19 and 21 through 24 of 20.11.4 NMAC and must consider comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency (to the extent the proposed action and impacts analyzed are the same as the project for which a conformity determination is required) or develop its own analysis in order to make its conformity determination. {4/5/10 FR re: 40 CFR 93.154}
[12/16/94, 20.11.4.13 NMAC – Rn, 20 NMAC 11.04.II.2, 10/1/02]

[~~20.11.4.14~~]20.11.4.155 REPORTING REQUIREMENTS:

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

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

C. The draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations, security manuals, or executive orders concerning the use, access, and release of such materials. Subject to applicable procedures to protect restricted information from public disclosure, any information or materials excluded from the draft or final conformity determination or supporting materials may be made available in a restricted information annex to the determination for review by federal and state representatives who have received appropriate clearances to review the information. {4/5/10 FR re: 40 CFR 93.155}
[12/16/94. . .12/1/95; 20.11.4.14 NMAC – Rn, 20 NMAC 11.04.II.3, 10/1/02]

[~~20.11.4.15~~]20.11.4.156 PUBLIC PARTICIPATION:

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

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

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

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

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

E. The draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations or executive orders concerning the release of such materials.

{4/5/10 FR re: 40 CFR 93.156}

[12/16/94. . .12/1/95; 20.11.4.15 NMAC – Rn, 20 NMAC 11.04.II.4, 10/1/02]

[~~20.11.4.16~~]20.11.4.157 [~~FREQUENCY OF CONFORMITY DETERMINATIONS~~] REEVALUATION OF CONFORMITY:

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

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

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

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

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

{4/5/10 FR re: 40 CFR 93.157}

[12/16/94. . .12/1/95; 20.11.4.16 NMAC – Rn, 20 NMAC 11.04.II.5, 10/1/02]

[~~20.11.4.17~~]20.11.4.158 CRITERIA FOR DETERMINING CONFORMITY OF GENERAL FEDERAL ACTIONS:

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

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

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

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

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

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

(4) For CO or [~~PM_{10}~~] directly emitted PM:

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

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

(5) For ozone or nitrogen dioxide, and for purposes of Subparagraph (b), of Paragraph (3), of Subsection A, of [~~20.11.4.17~~] 20.11.4.158 NMAC and Subparagraph (b), of Paragraph (4), of Subsection A, of [~~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 requirements:

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

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

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

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

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

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

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

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

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

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

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

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

(1) meet the requirements in [~~20.11.4.18~~] 20.11.4.159 NMAC; and

(2) show that the action does not:

(a) cause or contribute to any new violation of any standard in any area, or

(b) increase the frequency or severity of any existing violation of any standard in any area.

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

D. Any analyses required under [~~this section~~] 20.11.4.158 NMAC must be completed, and any mitigation requirements necessary for a finding of conformity must be identified before the determination of conformity is made. {4/5/10 FR re: 40 CFR 93.158}

[12/16/94. . .12/1/95; 20.11.4.17 NMAC – Rn, 20 NMAC 11.04.II.6, 10/1/02]

[~~20.11.4.18~~]20.11.4.159 PROCEDURES FOR CONFORMITY [~~DETERMINATIONS~~] DETERMINATION OF FEDERAL ACTIONS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[~~(3)~~](4) any year for which the applicable SIP specifies an emissions budget. {40 CFR 93.159}

[12/16/94. . .12/1/95; 20.11.4.18 NMAC – Rn, 20 NMAC 11.04.II.7, 10/1/02]

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

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

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

C. Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

D. In instances where the federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

E. When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of [~~20.11.4.14~~] 20.11.4.155 NMAC and the public participation requirements of [~~20.11.4.15~~] 20.11.4.157 NMAC.

F. Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled.

G. After a state or tribe revises its SIP or TIP and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both state or tribal and federally enforceable. Enforceability through the applicable SIP or TIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination. {40 CFR 93.160}

[12/16/94. . .12/1/95; 20.11.4.19 NMAC – Rn, 20 NMAC 11.04.II.8, 10/1/02]

20.11.4.161 CONFORMITY EVALUATION FOR FEDERAL INSTALLATIONS WITH FACILITY-WIDE EMISSION BUDGETS:

A. The state, local or tribal agency responsible for implementing and enforcing the SIP or TIP can in cooperation with federal agencies or third parties authorized by the agency that operate installations subject to federal oversight develop and adopt a facility-wide emission budget to be used for demonstrating conformity under Paragraph (1) of Subsection A of 20.11.4.158 NMAC. The facility-wide budget must meet the following criteria.

(1) Be for a set time period.

(2) Cover the pollutants or precursors of the pollutants for which the area is designated nonattainment or maintenance.

(3) Include specific quantities allowed to be emitted on an annual or seasonal basis.

(4) The emissions from the facility along with all other emissions in the area will not exceed the emission budget for the area.

(5) Include specific measures to ensure compliance with the budget, such as periodic reporting requirements or compliance demonstration, when the federal agency is taking an action that would otherwise require a conformity determination.

(6) Be submitted to EPA as a SIP revision.

(7) The SIP revision must be approved by EPA.

B. The facility-wide budget developed and adopted in accordance with Subsection A of 20.11.4.161 NMAC can be revised by following the requirements in Subsection A of 20.11.4.161 NMAC.

C. Total direct and indirect emissions from federal actions in conjunction with all other emissions subject to general conformity from the facility that do not exceed the facility budget adopted pursuant to Subsection A of 20.11.4.161 NMAC are "presumed to conform" to the SIP and do not require a conformity analysis.

D. If the total direct and indirect emissions from the federal actions in conjunction with the other emissions subject to general conformity from the facility exceed the budget adopted pursuant to Subsection A of 20.11.4.161 NMAC, the action must be evaluated for conformity. A federal agency can use the compliance with the facility-wide emissions budget as part of the demonstration of conformity, i.e., the agency would have to mitigate or offset the emissions that exceed the emission budget.

E. If the SIP for the area includes a category for construction emissions, the negotiated budget can exempt construction emissions from further conformity analysis. {4/5/10 FR re: 40 CFR 93.161}

[20.11.4.20 NMAC, N, XX/XX/XX]

20.11.4.162 EMISSIONS BEYOND THE TIME PERIOD COVERED BY THE SIP:

If a federal action would result in total direct and indirect emissions above the applicable thresholds which would be emitted beyond the time period covered by the SIP, the Federal agency can:

A. demonstrate conformity with the last emission budget in the SIP; or

B. request the state or tribe to adopt an emissions budget for the action for inclusion in the SIP. The state or tribe must submit a SIP or TIP revision to EPA within 18 months either including the emissions in the existing SIP or establishing an enforceable commitment to include the emissions in future SIP revisions based on the latest planning assumptions at the time of the SIP revision; no such commitment by a state or tribe shall restrict a

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

20.11.4.163 TIMING OF OFFSETS AND MITIGATION MEASURES:

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

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

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

(a) extreme nonattainment areas: 1.5:1

(b) severe nonattainment areas: 1.3:1

(c) serious nonattainment areas: 1.2:1

(d) moderate nonattainment areas: 1.15:1

(e) all other areas: 1.1:1.

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

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

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

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

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

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

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

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

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

B. Creation of emission reduction credits.

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

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

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

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

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

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

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

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

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

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

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

(5) Federal agencies must notify the state or tribal air quality agency responsible for the implementation of the SIP or TIP and the EPA region VI office when the emission reduction credits are being used.

{4/5/10 FR, re: 40 CFR 93.165}

[20.11.4.24 NMAC, N, XX/XX/XX]

HISTORY OF 20.11.4 NMAC:

Pre-NMAC History: The material in [~~this part~~] 20.11.4 NMAC was derived from that previously filed with the commission of public records – state records center and archives.

Regulation No. 43, General Conformity, 12/16/94.

History of Repealed Material: [Reserved]

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