

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 11 ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**
3 **PART 3 TRANSPORTATION CONFORMITY**
4

5 **20.11.3.1 ISSUING AGENCY:** Albuquerque-Bernalillo County Air Quality Control Board, c/o
6 Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) [~~768-2600~~] 768-
7 2601.
8 [7/1/98; 20.11.3.1 NMAC - Rn, 20 NMAC 11.03.I.1, 6/1/02; A, 6/13/05]
9

10 **20.11.3.2 SCOPE:**

11 **A. Action applicability:**

12 (1) Except as provided for in Subsection C of 20.11.3.2 NMAC or 20.11.3.223 NMAC, conformity
13 determinations are required for:

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

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

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

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

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

30 (1) The provisions of 20.11.3 NMAC apply with respect to emissions of the following criteria
31 pollutants: ozone (O₃), carbon monoxide (CO), nitrogen dioxide (NO₂), particles with an aerodynamic diameter less
32 than or equal to a nominal 10 micrometers (PM₁₀), and particles with an aerodynamic diameter less than or equal to
33 a nominal 2.5 micrometers (PM_{2.5}).

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

36 (a) Volatile organic compounds (VOCs) and nitrogen oxides (NO_x) in ozone areas;

37 (b) NO_x in NO₂ areas; and

38 (c) VOC and/or NO_x in PM₁₀ areas if the environmental protection agency (EPA) regional
39 administrator or the director of the air agency has made a finding that transportation-related emissions of one or both
40 of these precursors within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem
41 and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan
42 submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further
43 progress, attainment or maintenance strategy.

44 (d) NO_x in PM_{2.5} areas, unless both the EPA Regional Administrator and the director of the
45 state air agency have made a finding that transportation-related emissions of NO_x within the nonattainment area are
46 not a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO and DOT, or the
47 applicable implementation plan (or implementation plan submission) does not establish an approved (or adequate)
48 budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy; and

49 (e) VOC, sulfur dioxide (SO₂) and/or ammonia (NH₃) in PM_{2.5} areas either if the EPA
50 Regional Administrator or the director of the state air agency has made a finding that transportation-related
51 emissions of any of these precursors within the nonattainment area are a significant contributor to the PM_{2.5}
52 nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or
53 implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the
54 reasonable further progress, attainment or maintenance strategy.

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

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

6 (4) The provisions of 20.11.3 NMAC apply to maintenance areas for ~~[20 years from the date the EPA~~
7 ~~approves the area's request under section 107(d) of the Clean Air Act (CAA) for redesignation to attainment,]~~
8 through the last year of a maintenance area's approved CAA Section 175A(b) maintenance plan, unless the
9 applicable implementation plan specifies that the provisions of 20.11.3 NMAC shall apply for more than 20 years.

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

14 **D. Grace period for new nonattainment areas:** For areas or portions of areas which have been
15 continuously designated attainment or not designated for any NAAQS for ozone, CO, PM₁₀, PM_{2.5} or NO₂ since
16 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of
17 these pollutants, the provisions of 20.11.3. NMAC shall not apply with respect to that NAAQS for 12 months
18 following the effective date of final designation to nonattainment for each NAAQS for such pollutant.
19 [7/1/98; 20.11.3.2 NMAC - Rn, 20 NMAC 11.03.I.2, 6/1/02; A, 6/13/05]

20
21 **20.11.3.3 STATUTORY AUTHORITY:** 20.11.3 NMAC is adopted pursuant to the authority provided in
22 the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control
23 Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance,
24 Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.
25 [7/1/98; 20.11.3.3 NMAC - Rn, 20 NMAC 11.03.I.3, 6/1/02]

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27 **20.11.3.4 DURATION:** Permanent.
28 [7/1/98; 20.11.3.4 NMAC - Rn, 20 NMAC 11.03.I.4, 6/1/02]

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30 **20.11.3.5 EFFECTIVE DATE:** July 1, 1998, unless a later date is cited at the end of a section.
31 [7/1/98; 20.11.3.5 NMAC - Rn, 20 NMAC 11.03.I.5, & A, 6/1/02]

32
33 **20.11.3.6 OBJECTIVE:** To implement section 176(c) of the CAA, as amended (42 U.S.C. 7401 et seq.),
34 and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs
35 and projects which are developed, funded or approved by the United States DOT, and by the MPO or other
36 recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53) to the Bernalillo
37 county portion of the SIP. 20.11.3 NMAC sets forth policy, criteria and procedures for demonstrating and assuring
38 conformity of such activities to an applicable implementation plan developed pursuant to Section 110 and Part D of
39 the CAA.
40 [7/1/98; 20.11.3.6 NMAC - Rn, 20 NMAC 11.03.I.6, 6/1/02; A, 6/13/05]

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

46 **A. "1-hour ozone NAAQS"** means the 1-hour ozone national ambient air quality standard codified at
47 40 CFR 50.9.

48 **B. "8-hour ozone NAAQS"** means the 8-hour ozone national ambient air quality standard codified at
49 40 CFR 50.10.

50 **C. "Air agency"** means the air quality division (AQD) of the city of Albuquerque environmental
51 health department (EHD). The EHD, or its successor agency or authority, as represented by the department director
52 or his designee, is the lead air quality planning agency for Albuquerque-Bernalillo county nonattainment/
53 maintenance areas. The EHD serves as staff to the AQCB and is responsible for administering and enforcing AQCB
54 regulations.

55 **D. "Air quality credit"** means an air pollution emissions reduction benefit specifically identified by
56 the transportation conformity technical committee (TCTC) that is attributable to a proposed transportation control

1 measure (TCM) or land use measure (LUM) described in the TIP, the MTP or both, for the purpose of reducing
2 motor vehicle air pollutants in order to achieve conformity. Air quality credits shall not have been used to establish
3 existing motor vehicle emission budgets (MVEBs).

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

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

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

13 **H. “Cause or contribute to a new violation”** for a project means:

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

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

19 **I. “Clean data”** means air quality monitoring data determined by EPA to meet the requirements of
20 40 CFR Part 58 that indicate attainment of the national ambient air quality standard.

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

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

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

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

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

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

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

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

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

53 **P. “Donut areas”** means geographic areas outside a metropolitan planning area boundary, but inside
54 the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas
55 are not isolated rural nonattainment and maintenance areas.

56 **Q. “DOT”** means the United States department of transportation.

1 **R.** **“EPA”** means the United States environmental protection agency.

2 **S.** **“FHWA”** means the federal highway administration of the DOT.

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

8 **U.** **“Fiscally constrained”** means, consistent with DOT’s metropolitan transportation planning
9 regulations at 23 CFR Part 450.

10 **V.** **“Forecast period”** means, with respect to a transportation plan, the time period covered by the
11 transportation plan pursuant to 23 CFR Part 450.

12 **W.** **“FTA”** means the federal transit administration of the DOT.

13 **X.** **“Highway project”** means an undertaking to implement or modify a highway facility or highway-
14 related program. Such an undertaking consists of all required phases necessary for implementation. For analytical
15 purposes, it shall be defined sufficiently to:
16 (1) connect logical termini and be of sufficient length to address environmental matters on a broad
17 scope;
18 (2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no
19 additional transportation improvements in the area are made; and
20 (3) not restrict consideration of alternatives for other reasonably foreseeable transportation
21 improvements.

22 **Y.** **“Horizon year”** means a year for which the transportation plan describes the envisioned
23 transportation system according to 20.11.3.203 NMAC.

24 **Z.** **“Hot-spot analysis”** means an estimation of likely future localized CO, and PM₁₀ pollutant
25 concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot
26 analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area including, for
27 example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion
28 model to determine the effects of emissions on air quality.

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

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

37 **CC.** **“Land use measure (LUM)”** means a land use action, set of land use actions or a land use plan
38 specifically identified in the TIP or the MTP or both and that the MPO uses as the basis for air quality credits used to
39 achieve air quality conformity. A LUM is an activity adopted as an ordinance by a municipal government, county
40 government or other entity empowered under the laws of the state of New Mexico to adopt land use actions and
41 which may include, but not be limited to, planning and platting actions, subdivisions of land, zoning actions or
42 annexation/zoning actions. A LUM may be incorporated into the applicable implementation plan. The interagency
43 consultation procedure shall be utilized to clarify any issues related to this definition.

44 **DD.** **“Lapse”** means that the conformity determination for a transportation plan or a TIP has expired,
45 and thus there is no currently conforming transportation plan and TIP.

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

51 **FF.** **“Local publicly-owned transit operator”** means the current transit operator, the city of
52 Albuquerque.

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

1 **HH.** “**Maintenance plan**” means an implementation plan under section 175A of the CAA, as
2 amended.

3 **II.** “**Metropolitan planning organization (MPO)**” means the policy board of an organization
4 [designated as being responsible, together with the state DOT, for conducting the continuing, cooperative and
5 comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative
6 transportation decision making.] created as a result of the designation process in 23 U.S.C. 134(d).

7 **JJ.** “**Mid-region council of governments (MRCOG)**” means the association of local governments
8 within New Mexico state planning and development district 3 (Bernalillo, Sandoval, Tarrant and Valencia
9 counties) that is designated by the governor of New Mexico, in consultation with the elected officials of the area, as
10 the MPO for the Albuquerque metropolitan planning area.

11 **KK.** “**Milestone**” has the meaning given in CAA Sections 182(g)(1) and 189(c) for serious and above
12 ozone nonattainment areas and PM10 nonattainment areas, respectively. For all other nonattainment areas, a
13 milestone consists of an emissions level and the date when that level shall be achieved as required by the applicable
14 CAA provision for reasonable further progress towards attainment.

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

20 **MM.** “**National ambient air quality standards (NAAQS)**” are those standards established pursuant to
21 section 109 of the CAA.

22 **NN.** “**NEPA**” means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et
23 seq.).

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

27 **PP.** “**Nonattainment area**” means any geographic region of the United States that has been
28 designated as nonattainment under Section 107 of the CAA for any pollutant for which a national ambient air quality
29 standard exists.

30 **QQ.** “**Project**” means a highway project or a transit project.

31 **RR.** “**Protective finding**” means a determination by EPA that a submitted control strategy
32 implementation plan revision contains adopted control measures or written commitments to adopt enforceable
33 control measures that fully satisfy the emissions reductions requirement relevant to the statutory provision for which
34 the implementation plan revision was submitted, such as reasonable further progress or attainment.

35 **SS.** “**Public involvement committee (PIC)**” means the permanent advisory committee established by
36 the MRCOG to provide proactive public input to the transportation planning process.

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

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

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

52 **WW.** “**Standard**” means a national ambient air quality standard.

53 **XX.** “**State implementation plan (SIP)**” (see applicable implementation plan).

54 **YY.** “**State DOT**” means the New Mexico department of transportation or its successor agency or
55 authority, as represented by the department secretary or his designee.

56 **ZZ.** “**Title 23 U.S.C.**” means Title 23 of the United States Code.

1 **AAA.** “**Transit**” is mass transportation by bus, rail or other conveyance that provides general or special
2 service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing
3 services.

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

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

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

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

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

20 **DDD.** “**Transportation control measure (TCM)**” means any measure that is specifically identified and
21 committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated
22 into the applicable SIP through the process established in CAA Section 176(c)(8), that is either one of the types
23 listed in Section 108 of the CAA, or any other measure ~~[used as the basis for air quality credits to achieve~~
24 ~~conformity and has]~~ for the purpose of reducing emissions or concentrations of air pollutants from transportation
25 sources by reducing vehicle use or changing traffic flow or congestion conditions. ~~[A proposed TCM shall be~~
26 ~~identified in the TIP or the MTP or both.]~~ Notwithstanding the first sentence of this definition, vehicle technology-
27 based, fuel-based and maintenance-based measures that control the emissions from vehicles under fixed traffic
28 conditions are not TCMs for the purposes of 20.11.3 NMAC.

29 **EEE.** “**Transportation improvement program (TIP)**” means a ~~[staged, multiyear, intermodal program~~
30 ~~of transportation projects covering the AMPA that is consistent with the metropolitan transportation plan (MTP) and~~
31 ~~developed pursuant to 23 CFR Part 450.]~~ transportation improvement program developed by a metropolitan
32 planning organization under 23 U.S.C. 134(j).

33 **FFF.** “**Transportation plan**” means the official 20-year fiscally constrained intermodal metropolitan
34 transportation plan (MTP) that is developed for the metropolitan planning area through the metropolitan planning
35 process, pursuant to 23 CFR Part 450.

36 **GGG.** “**Transportation project**” is a highway project or a transit project.

37 **HHH.** “**Written commitment**” means a written commitment that includes a description of the action to
38 be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the
39 action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment
40 is an enforceable obligation under the applicable implementation plan.

41 **III. Acronyms**

- 42 (1) **AMPA**-Albuquerque metropolitan planning area
- 43 (2) **AQCB**-Albuquerque-Bernalillo county air quality control board
- 44 (3) **CAA**-Clean Air Act, as amended
- 45 (4) **CFR**-code of federal regulations
- 46 (5) **CO**-carbon monoxide
- 47 (6) **DOT**-U.S. department of transportation
- 48 (7) **EHD**-Albuquerque environmental health department
- 49 (8) **EPA**-U.S. environmental protection agency
- 50 (9) **FHWA**-federal highway administration, DOT
- 51 (10) **FTA**-federal transit administration, DOT
- 52 (11) **MPO**-metropolitan planning organization
- 53 (12) **MRCOG**-mid-region council of governments
- 54 (13) **MTB**-metropolitan transportation board
- 55 (14) **MTP**-metropolitan transportation plan
- 56 (15) **MVEB**-motor vehicle emissions budget

- 1 (16) **NAAQS**-national ambient air quality standards
- 2 (17) **NEPA**-National Environmental Policy Act
- 3 (18) **NOx**-oxides of nitrogen
- 4 (19) **PIC**-public involvement committee
- 5 (20) **PM_{2.5}**-particulate matter less than or equal to 2.5 micrometers in diameter
- 6 (21) **PM₁₀**-particulate matter less than or equal to 10 micrometers in diameter
- 7 (22) **SIP**-state implementation plan (applicable implementation plan)
- 8 (23) **State DOT**-New Mexico department of transportation
- 9 (24) **STIP**-state transportation improvement program
- 10 (25) **TCC**-transportation coordinating committee
- 11 (26) **TCM**-transportation control measure
- 12 (27) **TCTC**-transportation conformity technical committee
- 13 (28) **TIP**-transportation improvement program
- 14 (29) **VOC**-volatile organic compound
- 15 (30) **VMT**-vehicle miles traveled

16 [7/1/98; 20.11.3.7 NMAC - Rn, 20 NMAC 11.03.I.7, & A, 6/1/02; A, 6/13/05]

17
18 **20.11.3.8 VARIANCES:** [Reserved]

19 [7/1/98; 20.11.3.8 NMAC - Rn, 20 NMAC 11.03.I.8, 6/1/02]

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21 **20.11.3.9 SAVINGS CLAUSE:** Any amendment to 20.11.3 NMAC that is filed with the state records
22 center shall not affect actions pending for violation of a city or county ordinance or board regulation. Prosecution
23 for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or
24 section in effect at the time the violation was committed.

25 [7/1/98; 20.11.3.9 NMAC - Rn, 20 NMAC 11.03.I.9, 6/1/02; A, 6/13/05]

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27 **20.11.3.10 SEVERABILITY:** If any section, paragraph, sentence, clause or word of 20.11.3 NMAC or any
28 federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court,
29 the decision shall not affect the validity of the remaining provisions of 20.11.3 NMAC.

30 [7/1/98; 20.11.3.10 NMAC - Rn, 20 NMAC 11.03.I.10, 6/1/02; A, 6/13/05]

31
32 **20.11.3.11 DOCUMENTS:** Documents incorporated and cited in 20.11.3 NMAC may be viewed at the
33 Albuquerque environmental health department, one civic plaza NW, room 3023, 400 Marquette NW, Albuquerque,
34 NM 87102.

35 [7/1/98; 20.11.3.11 NMAC - Rn, 20 NMAC 11.03.I.11, 6/1/02; A, 6/13/05]

36
37 **20.11.3.12** [Reserved]

38 [7/1/98; 20.11.3.12 NMAC - Rn, 20 NMAC 11.03.I.12, & A, 6/1/02; Repealed, 6/13/05]

39
40 **20.11.3.13 to 20.11.3.199** [Reserved]

41
42 **20.11.3.200 PRIORITY:** When assisting or approving any action with air quality-related consequences,
43 FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable
44 implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory
45 requirements for allocation of funds among states or other jurisdictions.

46 [7/1/98; 20.11.3.200 NMAC - Rn, 20 NMAC 11.03.II.1, 6/1/02]

47
48 **20.11.3.201 FREQUENCY OF CONFORMITY DETERMINATIONS:**

49 **A.** Conformity determinations and conformity redetermination for transportation plans, TIPs and
50 FHWA/FTA projects shall be made according to the requirements of 20.11.3.201 NMAC and the applicable
51 implementation plan.

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

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

55 (2) All transportation plan ~~revisions~~ amendments shall be found to conform before the
56 transportation plan ~~revisions~~ amendments are approved by the MPO or accepted by DOT, unless the ~~revision~~

1 amendment merely adds or deletes exempt projects listed in 20.11.3.223 NMAC or 20.11.3.224 NMAC. [~~and has~~
2 ~~been made in accordance with the notification provisions of Subparagraph (g) of Paragraph (1) of Subsection D of~~
3 ~~20.11.3.202 NMAC.~~] The conformity determination shall be based on the transportation plan and the [~~revision~~]
4 amendment taken as a whole.

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

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

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

13 (2) A TIP amendment requires a new conformity determination for the entire TIP before the
14 amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt
15 projects listed in 20.11.3.223 NMAC or 20.11.3.224 NMAC and has been made in accordance with the notification
16 provisions of Subparagraph (g) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

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

22 [~~After an MPO adopts a new or revised transportation plan, conformity of the TIP shall be re-~~
23 ~~determined by the MPO and DOT within six months from the date of DOT's conformity determination for the~~
24 ~~transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in 20.11.3.223~~
25 ~~NMAC and 20.11.3.224 NMAC and has been made in accordance with the notification provisions of Subparagraph~~
26 ~~(g) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC. Otherwise, the existing conformity determination for~~
27 ~~the TIP shall lapse.]~~

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

34 **E. Triggers for transportation plan and TIP conformity determinations:** Conformity of existing
35 transportation plans and TIPs shall be re-determined within ~~[18 months]~~ two years of the following, or after a 12-
36 month grace period (as described in Subsection F of 20.11.3.201 NMAC) the existing conformity determination
37 shall lapse, and no new project-level conformity determinations may be made until conformity of the transportation
38 plan and TIP has been determined by the MPO and DOT.

39 (1) The effective date of EPA's finding that motor vehicle emission budgets from an initially
40 submitted control strategy implementation plan or maintenance plan are adequate pursuant to Subsection E of
41 20.11.3.215 NMAC and can be used for transportation conformity purposes.

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

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

47 **F. Lapse grace period.** During the 12-month grace period referenced in Paragraph (3) of Subsection
48 B of 20.11.3.201 NMAC, Paragraph (3) of Subsection C of 20.11.3.210 NMAC, and Subsection E of 20.11.3.210
49 NMAC, a project may be found to conform according to the requirements of 20.11.3 NMAC:

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

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

54 [7/1/98; 20.11.3.201 NMAC - Rn, 20NMAC 11.03.II.2, & A, 6/1/02; A, 6/13/05]

55 **20.11.3.202 CONSULTATION:**

1 **A. General:** Transportation plans and programs shall be in conformity with the applicable
2 implementation plan (SIP) for the nonattainment/maintenance area of Bernalillo county. The MRCOG, as the MPO,
3 is responsible for conducting the air quality transportation conformity analyses for all of Bernalillo county. The
4 applicable plans and programs are the TIP and the MTP. The document serving to demonstrate conformity is the
5 transportation/air quality conformity finding. 20.11.3.202 NMAC provides procedures for interagency consultation
6 (federal, state and local) and resolution of conflicts. Such consultation procedures shall be undertaken by the MPO,
7 state DOT and DOT with the air agency and EPA before making conformity determinations and by the air agency
8 and EPA with the MPO, state DOT and DOT in developing applicable implementation plan revisions.

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

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

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

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

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

31 **(1) Development of transportation plans and programs and associated conformity**
32 **determinations.**

33 (a) The MPO, as the lead transportation planning agency, has the primary responsibility in the
34 AMPA for developing the MTP, TIP and technical analyses related to travel demand and other associated modeling,
35 data collection and coordination of consultation for these activities with the agencies specified in Paragraph (1) of
36 Subsection B of 20.11.3.202 NMAC, in accordance with 23 CFR Part 450, 500 and 626. The MPO shall be
37 responsible for regional emissions and travel demand analyses of the MTP and TIP in consultation with the EHD.
38 Corridor and project-level hot spot and emissions analyses, developed in consultation with the EHD, shall be the
39 responsibility of the project-implementing agency through the NEPA process or similar environmental evaluation
40 process.

41 (b) The committees and member agencies, identified in the most recent MPO document
42 regarding public involvement procedures for transportation plans and programs, shall participate in the MPO process
43 for the development, monitoring and revision of the MTP and the development of the TIP.

44 (i) The MPO shall forward a preliminary version of the MTP, the TIP and the draft
45 conformity finding to the AQCB for review with a minimum of 14 calendar days to provide comments. Upon
46 release of the final draft of the MTP and TIP for public review, the MPO shall submit the final drafts of the MTP,
47 TIP and accompanying conformity documents to the AQCB and agencies in Paragraph (1) of Subsection B of
48 20.11.3.202 NMAC for review and comment before adoption and final approval by the MTB. Following review of
49 the conformity determination, the AQCB shall state whether the TIP, the MTP or both are in compliance with the
50 applicable implementation plan. The MPO shall provide a review and comment period consistent with the
51 Metropolitan Planning Rule (23 CFR [~~Section 450.316(b)(1)~~] Section 450.316(a), 49 CFR Section 613). Briefings
52 to the AQCB shall be provided upon request.

53 (ii) The MPO shall provide information and appropriate advance notification of meeting
54 places, dates and times, agendas and supporting materials for all of its special and regularly scheduled meetings on
55 transportation and air quality to each of the agencies specified in Paragraph (1) of Subsection B of 20.11.3.202
56 NMAC in accordance with the public involvement process adopted by the MPO, consistent with the Metropolitan

1 Planning Rule (23 CFR ~~Section 450.316(b)(1)~~ Section 450.316(a), 49 CFR Section 613) and described in the
2 MRCOG's public involvement document. The MPO's compliance with the New Mexico Open Meetings Act is
3 documented annually. Resolution of conflicts shall follow the provisions of Subsection E of 20.11.3.202 NMAC.

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

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

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

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

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

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

51 (b) Any TCM in the applicable implementation plan may be substituted by another TCM
52 without an implementation plan revision if the proposed measure meets the following provisions of 20.11.3 NMAC:

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

1 (ii) a substitute TCM shall provide for equivalent or greater emissions reductions than
2 the TCM contained in the applicable implementation plan;

3 (iii) a substitute TCM shall be implemented in the time frame established for the TCM
4 contained in the applicable implementation plan; if the implementation date has already passed, a TCM selected
5 pursuant to 20.11.3 NMAC that requires funding shall be included in the first year of the next MTP and TIP adopted
6 by the MPO; however, the substituted TCM shall be implemented as soon as possible, but not later than one year
7 from the date of the original TCM;

8 (iv) in order for the AQCB to adopt substitute TCMs, there shall be evidence of adequate
9 personnel, funding and authority under state or local law to implement and enforce the measures; commitments to
10 implement the substitute TCMs shall be made by the agency with legal authority for implementation;

11 (v) the TCMs substituted under 20.11.3.202 NMAC for purposes of the applicable
12 implementation plan shall receive priority funding for implementation within the MPO's MTP and TIP funding
13 processes; and

14 (iv) no TCM shall be replaced until the substitute TCM has been adopted and the
15 existing TCM in the applicable implementation plan has been rescinded by the AQCB; adoption of a substitute TCM
16 by the AQCB formally rescinds the previously applicable TCM and adopts the substitute TCM.

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

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

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

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

27 (iv) a description of the TCM(s), analysis supporting the proposal, assumptions and
28 methodology are available to the public, the MPO and EPA for at least 30 days before the public hearing and at least
29 30 days prior to the close of the public comment period.

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

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

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

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

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

41 (e) **Technical Information:** The analysis of substitute TCMs shall be consistent with
42 methodology used for evaluating TCMs in the nonattainment or maintenance plan. Where emissions models or
43 transportation models have changed since those used for purposes of evaluating measures in the nonattainment or
44 maintenance plan, the TCM to be replaced and the substitute TCMs shall be evaluated using the latest modeling
45 techniques for purposes of demonstrating equivalency or greater emissions reductions. The key methodology and
46 assumptions shall be consistent with EPA approved regional and hot-spot emissions models (for CO, PM₁₀ and
47 PM_{2.5}), the area's transportation model, and population and employment growth projections.

48 (f) **Record Keeping:** The AQCB shall maintain documentation of approved TCM
49 substitutions. The documentation shall provide a description of the substitute and replaced TCMs, including
50 requirements and schedules. The documentation shall also provide a description of the substitution process
51 including the public and agency participation and coordination with the TCTC, the public hearing and comment
52 process, EPA concurrence and AQCB adoption. The documentation shall be submitted to EPA following adoption
53 of the substitute TCMs by the AQCB, and made available to the public as an attachment to the applicable
54 implementation plan.

55 (6) **Adoption of land use measures (LUMs) into the applicable implementation plan:** The
56 AQCB shall incorporate all LUMs into the applicable implementation plan. EHD shall coordinate the necessary

1 efforts to achieve inclusion of the LUM into the applicable implementation plan. Prior to applying air quality credits
2 associated with the LUM to the air quality conformity determination for the TIP or the MTP or both, one of the
3 following shall occur: 1) the appropriate local jurisdictions shall have adopted the LUM, or 2) a written commitment
4 to adopt the LUM by a certain date from the appropriate local jurisdictions shall have been submitted to the AQCB.
5 The MPO shall submit the LUM or the written commitment to the AQCB, and the AQCB shall submit the LUM or
6 written commitment to the EPA for incorporation into the applicable implementation plan.

7 (a) In order to apply air quality credit to the air quality conformity determination, the MPO
8 shall quantify the air quality benefits of the LUM, identify and develop a monitoring and reporting program that
9 shall evaluate effectiveness of the LUM, and describe any enforcement mechanisms that shall ensure the success of
10 the LUM. Sufficient detail shall exist explaining the LUM so that relevant future land use decisions are clearly
11 guided by the LUM.

12 (b) No fewer than 60 days and no more than 120 days prior to submitting the preliminary
13 version of the MTP, TIP and the draft conformity finding to the AQCB as required in Subsection C of 20.11.3.202
14 NMAC, the MPO shall submit to the AQCB the results of the monitoring and reporting program for the LUM. The
15 MPO shall provide results of the monitoring and reporting program to the AQCB at least once every three years.
16 Within the jurisdiction of the AQCB, if a person or entity responsible for implementing provisions of the LUM fails
17 to take reasonable actions necessary to achieve the LUM, the AQCB may deem this a violation of the applicable
18 implementation plan. If the AQCB determines that the LUM is not making reasonable progress toward achieving
19 the expected air quality benefits or if the AQCB determines that circumstances have changed such that
20 implementation of the LUM has become infeasible, the AQCB and other responsible agencies shall follow the steps
21 outlined in Subparagraph (b) of Paragraph (7) of Subsection C of 20.11.3.202 NMAC to correct implementation
22 deficiencies.

23 **(7) General requirements for LUMs and TCMs:** Implementation plan rules that pertain to TCMs
24 that are included in the applicable implementation plan generally apply to LUMs. Procedures for substituting LUMs
25 shall be consistent with procedures identified for substituting TCMs.

26 (a) Specific performance criteria shall be included in the TIP, the MTP or both for each LUM
27 and TCM. The performance criteria shall include the timing for implementation, the quantification of anticipated air
28 quality benefits, the responsible or lead agency for implementation, the method to measure whether the air quality
29 benefits are being realized according to the timing and phasing of each LUM and TCM in the TIP, the MTP or both,
30 and any supporting policies or regulatory mechanisms needed to implement the LUM and TCM.

31 (b) If the AQCB determines that a LUM or TCM is not being implemented consistent with the
32 performance criteria and therefore is not successfully achieving the anticipated air quality benefits, the AQCB can
33 issue a declaration to the MTB and the agencies identified in Paragraph (1) of Subsection D of 20.11.3.202 NMAC
34 that the AQCB has identified noncompliance with the applicable implementation plan. The AQCB and other
35 responsible agencies shall take appropriate actions to correct the deficiencies identified by the AQCB. Within 120
36 days from the date of the AQCB's declaration, the responsible agencies shall submit a corrective action plan to the
37 AQCB to address the deficiencies. LUMs or TCMs in the approved corrective action plan shall comply with all
38 requirements of 20.11.3 NMAC pertaining to LUMs and TCMs. Failure to obtain AQCB approval of the action
39 plan within 120 days after submission to the AQCB is a violation of 20.11.3 NMAC.

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

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

48 (a) The TCTC shall evaluate and participate in establishing the circumstances for the
49 application of a transportation or air quality model (or models). Committee review shall include VMT forecasting
50 and associated methods and assumptions to be used in: 1) hot-spot and regional emissions analysis for establishing
51 motor vehicle emissions budgets; 2) developing the MTP and the TIP; 3) developing implementation plan revisions
52 directly applicable to transportation, and 4) making the conformity determinations and planning assumptions
53 identified in 20.11.3.207 NMAC. The TCTC shall also review assumptions, analyses and results of the conformity
54 and fiscal constraint determinations and other applicable implementation plan revisions or actions affecting the MTP
55 and transportation programs. The TCTC shall function as a cooperative interagency effort to share mobile source
56 modeling and transportation and air quality modeling information, and to evaluate modeling assumptions through

1 interagency consultation. Regional modeling shall be the responsibility of the MPO and the air agency as
2 appropriate. Hot-spot analysis shall be the responsibility of the lead agency of the project requiring the analysis.
3 Before new models used in hot-spot or regional emissions analyses are adopted for general use, the TCTC shall be
4 provided an opportunity to review and comment. This process also applies to consultation on the design, schedule
5 and funding of research and data collection efforts regarding regional transportation models developed by the MPO
6 (e.g. household travel transportation surveys) described in 20.11.3.207 NMAC. New modeling information shall be
7 presented by the air agency and the MPO in regularly scheduled meetings.

8 (b) The TCTC shall determine which minor arterials and other transportation projects shall be
9 considered regionally significant for the purposes of regional emissions analysis (in addition to those functionally
10 classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional
11 highway travel), and which projects shall be considered to have a significant change in design concept, timing and
12 scope from the MTP or TIP. When the TCTC determines that a significant change in design concept, timing and
13 scope has occurred, the MPO and lead agency shall, as part of the MTP and TIP process, consult with the
14 appropriate agencies identified in Paragraph (1) of Subsection D of 20.11.3.202 NMAC to assess the impact of this
15 project change on the conformity determination. The MPO shall redetermine transportation conformity for air
16 quality if a significant change occurs within the transportation network that is likely to lead to a meaningful increase
17 in a pollutant for which the nonattainment area exceeds the NAAQs, or for an area that is designated as attainment
18 and is subject to a maintenance plan.

19 (c) The TCTC shall evaluate whether projects otherwise exempt from meeting the regional or
20 hot-spot conformity analysis requirements shall be treated as non-exempt in cases where potential adverse emissions
21 impacts may exist for any reason. The MPO's conformity documents shall include a list of transportation projects
22 exempted from inclusion in a regional conformity determination. Exempt projects are identified in 20.11.3.223
23 NMAC and 20.11.3.224 NMAC. The process used to reach a determination of exemption shall include an
24 evaluation of whether or not the exempt project shall interfere with or impede the implementation of TCMs in the
25 applicable implementation plan. If no substantive comments related to air quality impacts are received as part of the
26 TIP review process, the lead agency for the project may proceed with implementation of the exempt project. If
27 substantive air quality impact comments are received which indicate that an exempt project may adversely affect air
28 quality, the lead agency for the project shall consult with the air agency and the MPO to determine the appropriate
29 action necessary to address the adverse air quality impacts.

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

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

42 (f) If Bernalillo county is designated nonattainment for PM₁₀ or PM_{2.5}, the consultative process
43 as specified in Subsection D of 20.11.3.202 NMAC shall be used to coordinate the identification of projects located
44 at sites that have vehicle and roadway emission and dispersion characteristics which are similar to those sites that
45 have violations verified by monitoring. A quantitative PM₁₀ hot-spot analysis shall be required for these projects in
46 accordance with Subsection B of 20.11.3.220 NMAC. The air agency, in consultation with the MPO, shall advise
47 the appropriate lead agency responsible for project development of the projects identified and the basis for their
48 identification.

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

52 (h) Requirements for conformity tests for isolated rural nonattainment and maintenance areas
53 shall be governed by Paragraph (2) of Subsection L of 20.11.3.206 NMAC.

54 (2) Interagency consultation procedures shall include the agencies specified in Paragraph (1) of
55 Subsection D of 20.11.3.202 NMAC. These agencies shall participate in the following processes.

1 (a) In addition to the triggers defined in 20.11.3.201 NMAC, the air agency may request a new
2 conformity determination when an emergency project involves substantial functional, location or capacity changes,
3 or when the project may otherwise adversely affect the transportation conformity determination.

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

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

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

15 (a) Any group, entity or individual planning to construct a regionally significant transportation
16 project that is not a FHWA/FTA project (including a project for which alternative locations, design concept and
17 scope, or the no-build option is still being considered), including projects planned by recipients of funds designated
18 under Title 23 U.S.C. or the Federal Transit Act, shall ensure that these plans are disclosed to the MPO on a regular
19 basis through the MTP and TIP development processes, or as soon as they are identified, and shall notify the MPO
20 immediately of any changes to an existing plan so that these transportation projects can be incorporated into the
21 regional emissions analysis and modeling for the nonattainment/maintenance area. Any member of the TCTC may
22 request that the TCTC make a determination regarding whether a project is regionally significant. Upon receipt of a
23 written request stating the reasons why the TCTC should make a determination, the EHD in coordination with the
24 MRCOG shall convene a meeting of the TCTC to make a determination regarding regional significance. If the
25 TCTC determines that the non-FHWA/FTA project is not regionally significant, no further actions by the TCTC are
26 required. If the TCTC determines that the non-FHWA/FTA project is regionally significant, the TCTC will follow
27 the requirements of 20.11.3 NMAC and the MPO will incorporate the project into the regional emissions analysis,
28 the TIP and the MTP.

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

42 (c) Procedures to address non-conforming regionally significant projects not in the TIP or MTP
43 or both. When a regionally significant project has not been included in the TIP or MTP or both, the TCTC shall
44 participate in the air quality evaluation of a non-conforming regionally significant project to ensure that the project
45 is integrated into the regional emissions analysis, the TIP and the MTP in a manner consistent with the MPO's
46 transportation planning process, the requirements of 20.11.3 NMAC and other applicable federal requirements.
47 Section 23 CFR 450.316 lists factors that shall be considered as part of the planning process. Among the factors that
48 shall be considered is an analysis of the effects of all transportation projects to be undertaken within the
49 metropolitan planning area, without regard to the funding source. Therefore, a regionally significant project funded
50 entirely with local funding is subject to the planning requirements of Section 23 CFR 450.316. The analysis shall
51 consider the effectiveness, cost effectiveness, and financing of alternative investments in meeting transportation
52 demand and supporting the overall efficiency and effectiveness of transportation system performance and related
53 impacts on community/central city goals regarding social and economic development, housing and employment.
54 Another factor that shall be considered is the overall social, economic, energy and environmental effects of
55 transportation decisions (including consideration of the effects and impacts of the transportation plan on the human,
56 natural and man-made environment and consultation with appropriate resource and permit agencies to ensure early

1 and continued coordination with environmental resource protection and management plans, and appropriate
2 emphasis on transportation-related air quality problems in support of 23 U.S.C. 109(h) and Section 14 of the Federal
3 Transit Act (49 U.S.C. 1610), Section 4(f) of the DOT Act (49 U.S.C. 303) and Section 174(b) of the Clean Air Act
4 (42 U.S.C. 7504(b)). All projects, including regionally significant projects not yet included in a TIP or MTP or
5 both, shall follow the requirement in 23 CFR 450.316 that calls for a proactive public involvement process that
6 provides complete information, timely public notice, full public access to key decisions, and supports early and
7 continuing involvement of the public in developing plans and TIPs and that provides for involvement of local, state
8 and federal environment resource (e.g., EPA, EHD) and permit agencies as appropriate.

9 (d) If a regionally significant project has not been disclosed in a timely manner to the MPO and
10 other agencies involved in the consultation process, then, for the purposes of 20.11.3.218 NMAC, the regionally
11 significant project shall not qualify as a conforming project until the project complies with the requirements of
12 20.11.3 NMAC. When a regionally significant project has not been included in the regional emissions analysis for
13 the current conforming TIP or MTP or both, proceeding toward implementing the project without complying with
14 20.11.3.202 NMAC and 20.11.3.218 NMAC may be inconsistent with federal and local laws including, but not
15 limited to the following.

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

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

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

28 (iv) **20.11.3 NMAC, transportation conformity.** This regulation requires that
29 regionally significant projects be included in the transportation plans and the regional emissions analysis. Failure to
30 include a regionally significant project in a transportation plan violates 20.11.3 NMAC and jeopardizes approval of
31 the regional MTP and the TIP.

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

40 (f) For the purposes of 20.11.3.202 NMAC and 20.11.3.218 NMAC, the phrase "adopt or
41 approve a regionally significant project" means the first time any action necessary to authorize a project occurs, such
42 as any MTB action or other action by government decision making bodies necessary for the project to proceed, the
43 issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to
44 construct the facility, any final action of a board, commission or administrator authorizing or directing employees to
45 proceed with construction of the project, or any written decision or authorization from the MPO that the project may
46 be adopted or approved.

47 (5) When there is insufficient information to model the projects described in Paragraph (4) of
48 Subsection D of 20.11.3.202 NMAC, the MPO, in consultation with the lead agency for the project, shall make
49 assumptions about the location, timing, design concept and scope for those projects that are disclosed to the MPO as
50 required in Paragraph (4) of Subsection D of 20.11.3.202 NMAC.

51 (6) The MPO or other consulting agencies shall provide copies of adopted documents and supporting
52 information on the approved MTP or TIP conformity determination or adopted SIP revisions to all agencies listed in
53 Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

54 **E. Resolving conflicts:**

55 (1) The air agency and the MPO (or state DOT when applicable) shall make a good-faith effort to
56 address the major concerns of the other party and reach a resolution. Every reasonable effort shall be made to

1 resolve differences. In the event that the parties cannot reach agreement, the conflict shall be escalated to the
2 governor.

3 (2) In the event that the parties agree that every reasonable effort has been made to address major
4 concerns but no further progress is possible, the MPO shall promptly notify the director of the air agency in writing
5 of the inability to resolve concerns or agree upon the final decision or action. Notification shall be provided within
6 30 days and shall be provided by registered mail. The MPO shall cite this paragraph in any such notification to the
7 air agency.

8 (3) The air agency has 14 calendar days from the date of receipt of notification as required in
9 Paragraph (2) of Subsection E of 20.11.3.202 NMAC to appeal to the governor. Notification shall be provided by
10 registered mail. The air agency shall cite this paragraph in any notification of a conflict that requires action by the
11 governor or his designee. If the air agency appeals to the governor, the final conformity determination shall have the
12 concurrence of the governor. The governor or his designee may issue a written decision on the appeal within 30
13 calendar days of receipt of the appeal. If the air agency does not appeal to the governor within 14 calendar days
14 from receipt of written notification, the MPO may proceed with the final conformity determination. The governor
15 may delegate his role in this process, but not to the members or staff of: the AQCB, director of the city or county
16 EHD, secretary of the environment department, chief of the state air quality bureau, manager of the city of
17 Albuquerque's air quality division, the environmental improvement board, secretary of the DOT, state highway
18 commission or an MPO.

19 **F. Public consultation procedures:** Affected agencies making conformity determinations on
20 transportation plans, programs and projects shall establish a proactive public involvement process that provides
21 opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and
22 policy information considered by the agency at the beginning of the public comment period and prior to taking
23 formal action on a conformity determination for the MTP and TIP, consistent with these requirements and those of
24 23 CFR 450.316(b). Any charges imposed for public inspection and copying shall be consistent with the fee
25 schedule contained in 49 CFR 7.43 and NMSA 14-2-9.B.3. In addition, these agencies shall specifically address in
26 writing all public comments stating that known plans for a regionally significant project, which is not receiving
27 FHWA or FTA funding or approval, have not been properly reflected in the emissions analysis that supports a
28 proposed conformity finding for the MTP or TIP. These agencies shall also provide opportunity for public
29 involvement in conformity determinations for projects where otherwise required by law.
30 [7/1/98; 20.11.3.202 NMAC - Rn, 20 NMAC 11.03.II.3, & A, 6/1/02; A, 6/13/05]

31
32 **20.11.3.203 CONTENT OF TRANSPORTATION PLANS AND TIMEFRAME OF CONFORMITY**
33 **DETERMINATIONS:**

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

38 (1) The MPO, in developing the transportation plan in consultation with the affected agencies
39 identified in Paragraph (1) of Subsection D of 20.11.3.202 NMAC, may choose any years to be horizon years,
40 subject to the following restrictions:

- 41 (a) horizon years may be no more than 10 years apart;
42 (b) the first horizon year may be no more than 10 years from the base year used to validate the
43 transportation demand planning model;
44 (c) ~~[if the attainment year is in the time span of the transportation plan, the attainment year~~
45 ~~shall be a horizon year; and] The attainment year must be a horizon year if it is in the timeframe of the transportation~~
46 ~~plan and conformity determination;~~
47 (d) ~~[the last horizon year shall be]~~ The last year of the transportation plan's forecast period
48 ~~shall be a horizon year; and~~
49 (e) If the timeframe of the conformity determination has been shortened under Subsection D of
50 20.11.3 NMAC, the last year of the timeframe of the conformity determination must be a horizon year.

51 (2) For these horizon years:
52 (a) the transportation plan shall quantify and document the demographic and employment
53 factors influencing expected transportation demand, including land use forecasts, in accordance with implementation
54 plan provisions and the consultation requirements specified by 20.11.3.202 NMAC;
55 (b) the highway and transit system shall be described in terms of the regionally significant
56 additions or modifications to the existing transportation network which the transportation plan envisions to be

1 operational in the horizon years; additions and modifications to the highway network shall be sufficiently identified
2 to indicate intersections with existing regionally significant facilities, and to determine their effect on route options
3 between transportation analysis zones; each added or modified highway segment shall also be sufficiently identified
4 in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes,
5 consistent with the modeling methods for area-wide transportation analysis in use by the MPO; transit facilities,
6 equipment and services envisioned for the future shall be identified in terms of design concept, design scope and
7 operating policies that are sufficient for modeling transit ridership; additions and modifications to the transportation
8 network shall be described sufficiently to demonstrate a reasonable relationship between expected land use and the
9 envisioned transportation system; and

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

12 **B. Two-year grace period for transportation plan requirements in certain ozone and CO areas:**

13 The requirements of Subsection A of 20.11.3.203 NMAC apply to such areas or portions of such areas that have
14 previously not been required to meet these requirements for any existing NAAQS two years from the following:

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

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

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

21 **C. Transportation plans for other areas:** Transportation plans for other areas shall meet the
22 requirements of Subsection A of 20.11.3.203 NMAC at least to the extent it has been the previous practice of the
23 MPO to prepare plans which meet those requirements. Otherwise, the transportation system envisioned for the
24 future shall be sufficiently described within the transportation plans so that a conformity determination can be made
25 according to the criteria and procedures of 20.11.3.206 NMAC through 20.11.3.216 NMAC.

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

27 (1) Unless an election is made under Paragraph (2) or (3) of Subsection D of 20.11.3.203 NMAC, the
28 timeframe of the conformity determination shall be through the last year of the transportation plan's forecast period.

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

33 (i) The shortened timeframe of the conformity determination must extend at least to the latest
34 of the following years: (A) The tenth year of the transportation plan; (B) The latest year for which an adequate or
35 approved motor vehicle emissions budget(s) is established in the submitted or applicable implementation plan; or
36 (C) The year after the completion date of a regionally significant project if the project is included in the TIP or the
37 project requires approval before the subsequent conformity determination.

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

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

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

49
50 **[D.] E. Savings:** The requirements of 20.11.3.203 NMAC supplement other requirements of applicable
51 law or regulation governing the format or content of transportation plans.
52 [7/1/98; 20.11.3.203 NMAC - Rn, 20 NMAC 11.03.II.4, 6/1/02; A, 6/13/05]

53
54 **20.11.3.204 RELATIONSHIP OF TRANSPORTATION PLAN AND TIP CONFORMITY WITH THE**
55 **NEPA PROCESS:** The degree of specificity required in the transportation plan and the specific travel network
56 assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other

1 project development studies. Should the NEPA process result in a project with design concept and scope
 2 significantly different from that in the transportation plan or TIP, the project shall meet the criteria in 20.11.3.206
 3 NMAC through 20.11.3.216 NMAC for projects not from a TIP before NEPA process completion.
 4 [7/1/98; 20.11.3.204 NMAC - Rn, 20 NMAC 11.03.II.5, 6/1/02; A, 6/13/05]

6 **20.11.3.205 FISCAL CONSTRAINTS FOR TRANSPORTATION PLANS AND TIPS:** Transportation
 7 plans and TIPs shall be fiscally constrained consistent with DOT’s metropolitan planning regulations at 23 CFR Part
 8 450 in order to be found in conformity. The determination that the MTP and TIP are fiscally constrained is made
 9 through the MPO’s transportation planning process, which includes the agencies represented in the consultation
 10 process described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC.
 11 [7/1/98; 20.11.3.205 NMAC - Rn, 20 NMAC 11.03.II.6, 6/1/02; A, 6/13/05]

13 **20.11.3.206 CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY OF**
 14 **TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS: GENERAL:**

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

21 **B.** Table 1 in Subsection B of 20.11.3.206 NMAC indicates the criteria and procedures in
 22 20.11.3.207 NMAC through 20.11.3.216 NMAC, which apply for transportation plans, TIPs and FHWA/FTA
 23 projects. Subsection C through Subsection I of 20.11.3.206 NMAC explains when the budget, interim emissions
 24 and hot-spot tests are required for each pollutant and NAAQS. Subsection J of 20.11.3.206 NMAC addresses
 25 conformity requirements for areas with approved or adequate limited maintenance plans. Subsection K of
 26 20.11.3.206 NMAC addresses nonattainment and maintenance areas which EPA has determined have insignificant
 27 motor vehicle emissions. Subsection L of 20.11.3.206 NMAC addresses isolated rural nonattainment and
 28 maintenance areas. Table 1 follows:
 29

30 **TABLE 1. CONFORMITY CRITERIA**

31 **All Actions at all times:**

32 20.11.3.207 NMAC	Latest planning assumptions
33 20.11.3.208 NMAC	Latest emissions model
34 20.11.3.209 NMAC	Consultation

35 **Transportation Plan:**

36 Subsection B of 20.11.3.210 NMAC	TCMs.
37 20.11.3.215 and/or 20.11.3.216 NMAC	Emissions budget and/or interim emissions.

38 **TIP:**

39 Subsection C of 20.11.3.210 NMAC	TCMs.
40 20.11.3.215 and/or 20.11.3.216 NMAC	Emissions budget and/or interim emissions

41 **Project (from a conforming plan and TIP):**

42 20.11.3.211 NMAC	Currently conforming plan and TIP
43 20.11.3.212 NMAC	Project from a conforming plan and TIP
44 20.11.3.213 NMAC	CO, [and] PM ₁₀ and PM _{2.5} hot-spots
45 20.11.3.214 NMAC	PM ₁₀ and PM _{2.5} control measures

46 **Project (Not From a Conforming Plan and TIP):**

47 Subsection D of 20.11.3.210 NMAC	TCMs.
48 20.11.3.211 NMAC	Currently conforming plan and TIP
49 20.11.3.213 NMAC	CO, [and] PM ₁₀ and PM _{2.5} hot-spots
50 20.11.3.214 NMAC	PM ₁₀ and PM _{2.5} control measures

C. 1-hour ozone NAAQS nonattainment and maintenance areas: Subsection C of 20.11.3.206 NMAC applies when an area is nonattainment or maintenance for the 1-hour ozone NAAQS (i.e. until the effective date of any revocation of the 1-hour ozone NAAQS for an area). In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in such ozone nonattainment and maintenance areas, conformity determinations shall include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following.

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

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

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

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

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

(3) An ozone nonattainment area shall satisfy the interim emissions test for NO_x , as required by 20.11.3.216 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or phase I attainment demonstration that does not include a motor vehicle emissions budget for NO_x . The implementation plan for the 1-hour ozone NAAQS shall be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 1990.

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

(a) the interim emissions tests required by 20.11.3.216 NMAC; or

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

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

(a) the interim emissions tests as required by 20.11.3.216 NMAC;

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

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

D. 8-hour ozone NAAQS nonattainment and maintenance areas without motor vehicle emissions budgets for the 1-hour ozone NAAQS for any portion of the 8-hour nonattainment area: Subsection D of 20.11.3.206 NMAC applies to areas that were never designated nonattainment for the 1-hour ozone NAAQS and areas that were designated nonattainment for the 1-hour ozone NAAQS but that never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. Subsection D of 20.11.3.206 NMAC applies one year after the effective date of EPA's nonattainment designation for the 8-hour

1 ozone NAAQS for an area, according to Subsection D of 20.11.3.2 NMAC. In addition to the criteria listed in Table
2 1 in Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in such 8-hour ozone
3 nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget
4 and/or interim emissions tests are satisfied as described in the following.

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

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

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

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

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

19 (3) Such an 8-hour ozone nonattainment area shall satisfy the interim emissions test for NO_x, as
20 required by 20.11.3.216 NMAC, if the implementation plan or plan submission that is applicable for the purposes of
21 conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress
22 that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 8-hour ozone
23 NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or
24 plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on
25 future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in
26 2002.

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

30 (a) the interim emissions tests required by 20.11.3.216 NMAC; or

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

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

40 (a) the interim emissions tests as required by 20.11.3.216 NMAC;

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

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

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

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

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

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

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

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

7 (2) Prior to Paragraph (1) of Subsection E of 20.11.3.206 NMAC applying, the following test(s) shall
8 be satisfied [subject to the exception in Subparagraph (e) of Paragraph (2) of Subsection E of 20.11.3.206 NMAC]:

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

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

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

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

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

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

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

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

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

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

44 [~~_____ (e) notwithstanding Subparagraphs (a), (b), (c) and (d) of Paragraph (2) of Subsection E of
45 20.11.3.206 NMAC, the interim emissions tests as required by 20.11.3.216 NMAC, where the budget test using the
46 approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan(s) or
47 implementation plan submission(s) for the relevant area or portion thereof is not the appropriate test and the interim
48 emissions tests are more appropriate to ensure that the transportation plan, TIP or project not from a conforming
49 plan and TIP will not create new violations, worsen existing violations or delay timely attainment of the 8-hour
50 ozone standard, as determined through the interagency consultation process required by 20.11.3.202 NMAC.]~~

51 (3) Such an 8-hour ozone nonattainment area shall satisfy the interim emissions test for NO_x, as
52 required by 20.11.3.216 NMAC, if the only implementation plan or plan submission that is applicable for the
53 purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further
54 progress that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 8-hour
55 ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan
56 or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on

1 future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in
2 2002. Prior to an adequate or approved NO_x motor vehicle emissions budget in the implementation plan submission
3 for the 8-hour ozone NAAQS, the implementation plan for the 1-hour ozone NAAQS will be considered to establish
4 a motor vehicle emissions budget for NO_x if the implementation plan contains an explicit NO_x motor vehicle
5 emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions
6 budget is a net reduction from NO_x emissions levels in 1990.

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

12 (a) the budget test and/or interim emissions tests as required by 20.11.3.215 NMAC and
13 20.11.3.216 NMAC and as described in Paragraph (2) of Subsection E of 20.11.3.206 NMAC;

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

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

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

24 (1) FHWA/FTA projects in CO nonattainment or maintenance areas shall satisfy the hot-spot test
25 required by Subsection A of 20.11.3.213 NMAC at all times; until a CO attainment demonstration or maintenance
26 plan is approved by EPA, FHWA/FTA projects shall also satisfy the hot-spot test required by Subsection B of
27 20.11.3.213 NMAC;

28 (2) in CO nonattainment and maintenance areas the budget test shall be satisfied as required by
29 20.11.3.215 NMAC for conformity determinations made on or after:

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

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

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

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

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

44 (a) the interim emissions tests required by 20.11.3.216 NMAC; or

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

49 **G. PM₁₀ nonattainment and maintenance areas:** In addition to the criteria listed in Table 1 in
50 Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in PM₁₀ nonattainment and
51 maintenance areas conformity determinations shall include a demonstration that the hot-spot, budget and/or interim
52 emissions tests are satisfied as described in the following:

53 (1) FHWA/FTA projects in PM_{2.5} nonattainment or maintenance areas must satisfy the appropriate
54 hot-spot test required by Subsection A of 20.11.3.213 NMAC

55 ~~(1)~~(2) FHWA/FTA projects in PM₁₀ non-attainment or maintenance areas shall satisfy the hot-spot
56 test required by Subsection A of 20.11.3.213 NMAC.

1 ~~(2)~~(3) In PM₁₀ nonattainment and maintenance areas the budget test shall be satisfied as required by
2 20.11.3.215 NMAC for conformity determinations made on or after:

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

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

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

9 (3) In PM₁₀ nonattainment areas the interim emissions tests shall be satisfied as required by
10 20.11.3.216 NMAC for conformity determinations made:

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

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

16 **H. NO₂ nonattainment and maintenance areas:** In addition to the criteria listed in Table 1 in
17 Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in NO₂ nonattainment and
18 maintenance areas conformity determinations shall include a demonstration that the budget and/or interim emissions
19 tests are satisfied as described in the following:

20 (1) In NO₂ nonattainment and maintenance areas the budget test shall be satisfied as required by
21 20.11.3.215 NMAC for conformity determinations made on or after:

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

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

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

28 (2) In NO₂ nonattainment areas the interim emissions tests shall be satisfied as required by
29 20.11.3.216 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget
30 from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control
31 strategy implementation plan revision or maintenance plan.

32 **I. PM_{2.5} nonattainment and maintenance areas:** In addition to the criteria listed in Table 1 of
33 Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in PM_{2.5} nonattainment and
34 maintenance areas conformity determinations shall include a demonstration that the budget and/or interim emissions
35 tests are satisfied as described in the following:

36 (1) in PM_{2.5} nonattainment and maintenance areas the budget test shall be satisfied as required by
37 20.11.3.215 NMAC for conformity determinations made on or after:

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

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

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

44 (2) in PM_{2.5} nonattainment areas the interim emissions tests shall be satisfied as required by
45 20.11.3.216 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget
46 from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control
47 strategy implementation plan revision or maintenance plan.

48 **J. Areas with limited maintenance plans:** Notwithstanding the other subsections of 20.11.3.206
49 NMAC, an area is not required to satisfy the regional emissions analysis for 20.11.3.215 NMAC and/or 20.11.3.216
50 NMAC for a given pollutant and NAAQS if the area has an adequate or approved limited maintenance plan for such
51 pollutant and NAAQS. A limited maintenance plan would have to demonstrate that it would be unreasonable to
52 expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur.
53 A conformity determination that meets other applicable criteria in Table 1 of Subsection B of 20.11.3.206 NMAC is
54 still required, including the hot-spot requirements for projects in CO and PM₁₀ areas.

55 **K. Areas with insignificant motor vehicle emissions:** Notwithstanding the other subsections of
56 20.11.3.206 NMAC, an area is not required to satisfy a regional emissions analysis for 20.11.3.215 NMAC and/or

1 20.11.3.216 NMAC for a given pollutant/precursor and NAAQS, if EPA finds through the adequacy or approval
2 process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air
3 quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate that it would be
4 unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that
5 pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors,
6 including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air
7 quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures and
8 historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that
9 meets other applicable criteria in Table 1 in Subsection B of 20.11.3.206 NMAC is still required, including regional
10 emissions analyses for 20.11.3.215 NMAC and/or 20.11.3.216 NMAC for other pollutants/precursors and NAAQS
11 that apply. Hot-spot requirements for projects in CO and PM₁₀ areas in 20.11.3.213 NMAC shall also be satisfied,
12 unless EPA determines that the SIP also demonstrates that projects will not create new localized violations and/or
13 increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor
14 vehicle emissions of a given pollutant/precursor are significant, this subsection would no longer apply for future
15 conformity determinations for that pollutant/precursor and NAAQS.

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

21 (1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the
22 requirements of 20.11.3.207 NMAC, 20.11.3.208 NMAC, 20.11.3.209 NMAC, 20.11.3.213 NMAC, 20.11.3.214
23 NMAC and Subsection D of 20.11.3.210 NMAC. Until EPA approves the control strategy implementation plan or
24 maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects shall also satisfy the
25 requirements of Subsection B of 20.11.3.213 NMAC ("Localized CO and PM₁₀ violations (hot-spots)").

26 (2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or interim
27 emissions tests as described in Subsections C through K of 20.11.3.206 NMAC, with the following modifications.

28 (a) When the requirements of Subsection D of 20.11.3.203 NMAC, 20.11.3.213 NMAC,
29 20.11.3.215 NMAC and 20.11.3.216 NMAC apply to isolated rural nonattainment and maintenance areas,
30 references to "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan
31 or statewide TIP that are in the rural nonattainment or maintenance area. When the requirements of Subsection D of
32 20.11.3.203 NMAC apply to isolated rural nonattainment and maintenance areas, references to "MPO" shall be
33 taken to mean the state department of transportation.

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

39 (i) 20.11.3.215 NMAC;
40 (ii) 20.11.3.216 NMAC (including regional emissions analysis for NO_x in all ozone
41 nonattainment and maintenance areas, notwithstanding Paragraph (2) of Subsection F of 20.11.3.216 NMAC);
42 (iii) as demonstrated by the air quality dispersion model or other air quality modeling
43 technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with
44 all other regionally significant projects expected in the area in the timeframe of the statewide transportation plan,
45 shall not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of
46 any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim
47 emission reductions or other milestones in any area; control measures assumed in the analysis shall be enforceable.

48 (c) The choice of requirements in Subparagraph (b) of Paragraph (2) of Subsection L of
49 20.11.3.206 NMAC and the methodology used to meet the requirements of Item iii of Subparagraph (b) of
50 Paragraph (2) of Subsection L of 20.11.3.206 NMAC shall be determined through the interagency consultation
51 process required in Subparagraph (h) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC through which the
52 relevant recipients of title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the state air quality
53 agency and the state DOT shall reach consensus about the option and methodology selected. EPA and DOT shall be
54 consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the
55 governor consistent with the procedure in Subsection E of 20.11.3.202 NMAC, which applies for any state air
56 agency comments on a conformity determination.

1 [7/1/98; 20.11.3.206 NMAC - Rn, 20 NMAC 11.03.II.7, 6/1/02; A, 6/13/05]
2

3 **20.11.3.207 CRITERIA AND PROCEDURES: LATEST PLANNING ASSUMPTIONS:**

4 **A.** Except as provided in Subsection A of 20.11.3.207 NMAC, the conformity determination, with
5 respect to all other applicable criteria in 20.11.3.208 NMAC through 20.11.3.216 NMAC, shall be based upon the
6 most recent planning assumptions in force at the time the conformity analysis begins. The conformity determination
7 shall satisfy the requirements of Subsections B through F of 20.11.3.207 NMAC using the planning assumptions
8 available at the time the conformity analysis begins as determined through the interagency consultation process
9 required in Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.202 NMAC. The “time the conformity
10 analysis begins” for a transportation plan or TIP determination is the point at which the MPO or other designated
11 agency begins to model the impact of the proposed transportation plan or TIP on travel and/or emissions. New data
12 that becomes available after an analysis begins is required to be used in the conformity determination only if a
13 significant delay in the analysis has occurred, as determined through the interagency consultation procedures
14 described in 20.11.3.202 NMAC.

15 **B.** Assumptions shall be derived from the estimates of current and future population, employment,
16 travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and
17 approved by the MPO. These assumptions shall be presented to and discussed by the TCTC as part of the
18 interagency consultation procedures described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC. The
19 conformity determination shall also be based on the latest assumptions about current and future background
20 concentrations.

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

25 **D.** The conformity determination shall include reasonable assumptions about transit service and
26 increases in transit fares and road and bridge tolls over time. These assumptions shall be presented to and discussed
27 by the TCTC as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of
28 20.11.3.202 NMAC.

29 **E.** The conformity determination shall use the latest existing information regarding the effectiveness
30 of the TCMs and other implementation plan measures that have already been implemented. This information shall
31 be made as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of
32 20.11.3.202 NMAC.

33 **F.** Key assumptions shall be specified and included in the draft documents and supporting materials
34 used for the interagency and public consultation required by 20.11.3.202 NMAC.

35 [7/1/98; 20.11.3.207 NMAC - Rn, 20 NMAC 11.03.II.8, 6/1/02; A, 6/13/05]
36

37 **20.11.3.208 CRITERIA AND PROCEDURES: LATEST EMISSIONS MODEL:**

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

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

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

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

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

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

2
3 **20.11.3.209 CRITERIA AND PROCEDURES: CONSULTATION:** Conformity shall be determined
4 according to the consultation procedures in 20.11.3 NMAC and in the applicable implementation plan, and
5 according to the public involvement procedures established in compliance with 23 CFR Part 450. Until the
6 implementation plan revision required by 40 CFR 51.390 is fully approved by EPA, the conformity determination
7 shall be made according to Subsection A and Subsection F of 20.11.3.202 NMAC and the requirements of 23 CFR
8 Part 450.

9 [7/1/98; 20.11.3.209NMAC - Rn, 20 NMAC 11.03.II.10, 6/1/02; A, 6/13/05]

10
11 **20.11.3.210 CRITERIA AND PROCEDURES: TIMELY IMPLEMENTATIONS OF TCMs:**

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

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

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

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

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

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

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

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

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

41 [7/1/98; 20.11.3.210 NMAC - Rn, 20 NMAC 11.03.II.11, 6/1/02; A, 6/13/05]

42
43 **20.11.3.211 CRITERIA AND PROCEDURES: CURRENTLY CONFORMING TRANSPORTATION**
44 **PLAN AND TIP:** There shall be a currently conforming transportation plan and currently conforming TIP at the
45 time of project approval, or a project must meet the requirements in Subsection F of 20.11.3.201 NMAC during the
46 12-month lapse grace period.

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

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

54 [7/1/98; 20.11.3.211 NMAC - Rn, 20 NMAC 11.03.II.12, 6/1/02; A, 6/13/05]

1 **20.11.3.212 CRITERIA AND PROCEDURES: PROJECTS FROM A TRANSPORTATION PLAN**
2 **AND TIP:**

3 **A. The project shall come from a conforming plan and program:** If this criterion is not satisfied,
4 the project must satisfy all criteria in Table 1 of Subsection B of 20.11.3.206 NMAC for a project not from a
5 conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it
6 meets the requirements of Subsection B of 20.11.3.212 NMAC and from a conforming program if it meets the
7 requirements of Subsection C of 20.11.3.212 NMAC. Special provisions for TCMs in an applicable implementation
8 plan are provided in Subsection D of 20.11.3.212 NMAC.

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

11 (1) for projects that are required to be identified in the transportation plan in order to satisfy
12 20.11.3.203 NMAC (content of transportation plans), the project is specifically included in the conforming
13 transportation plan and the project's design concept and scope have not changed significantly from those which
14 were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

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

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

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

23 (2) if the TIP describes a project design concept and scope which includes project-level emissions
24 mitigation or control measures, written commitments to implement such measures shall be obtained from the project
25 sponsor or operator as required by Subsection A of 20.11.3.222 NMAC in order for the project to be considered
26 from a conforming program; any change in these mitigation or control measures that would significantly reduce
27 their effectiveness constitutes a change in the design concept and scope of the project.

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

30 **E.** Notwithstanding the requirements of Subsections A, B and C of 20.11.3.212 NMAC, a project
31 shall meet the requirements of Subsection F of 20.11.3.201 during the 12-month lapse grace period.
32 [7/1/98; 20.11.3.212 NMAC - Rn, 20 NMAC 11.03.II.13, 6/1/02; A, 6/13/05]

34 **20.11.3.213 CRITERIA AND PROCEDURES: LOCALIZED CO, ~~AND~~ PM₁₀ AND PM_{2.5}**
35 **VIOLATIONS (hot-spots):**

36 **A. Subsection A of 20.11.3.213 NMAC applies at all times.** The FHWA/FTA project shall not
37 cause or contribute to any new localized CO, ~~or~~ PM₁₀ and/or PM_{2.5} violations or increase the frequency or severity
38 of any existing CO, ~~or~~ PM₁₀ and/or PM_{2.5} violations in CO, ~~and~~ PM₁₀ and PM_{2.5} nonattainment and maintenance
39 areas. This criterion is satisfied if it is demonstrated that during the time frame of the transportation plan (~~or~~
40 ~~regional emissions analysis~~) no new local violations shall be created and the severity or number of existing
41 violations shall not be increased as a result of the project. The demonstration shall be performed according to the
42 consultation requirements of Paragraph (1) of Subsection D of 20.11.3.202 NMAC and the methodology
43 requirements of 20.11.3.220 NMAC.

44 **B. Subsection B of 20.11.3.213 NMAC applies for CO nonattainment areas as described in**
45 **Paragraph (1) of Subsection F of 20.11.3.206 NMAC.** Each FHWA/FTA project shall eliminate or reduce the
46 severity and number of localized CO violations in the area substantially affected by the project (in CO
47 nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated
48 that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO
49 violations shall be eliminated or reduced in severity and number as a result of the project. The demonstration shall
50 be performed according to the consultation requirements of Subparagraph (a) of Paragraph (1) of Subsection D of
51 20.11.3.202 NMAC and the methodology requirements of 20.11.3.220 NMAC.
52 [7/1/98; 20.11.3.213 NMAC - Rn, 20 NMAC 11.03.II.14, 6/1/02; A, 6/13/05]

54 **20.11.3.214 CRITERIA AND PROCEDURES: COMPLIANCE WITH PM₁₀ and PM_{2.5} CONTROL**
55 **MEASURES:** The FHWA/FTA project shall comply with any PM₁₀ and PM_{2.5} control measures in the applicable
56 implementation plan. This criterion is satisfied if the project-level conformity determination contains a written

1 commitment from the project sponsor to include in the final plans, specifications and estimates for the project those
2 control measures (for the purpose of limiting PM₁₀ and PM_{2.5} emissions from the construction activities or normal
3 use and operation associated with the project) that are contained in the applicable implementation plan.
4 [7/1/98; 20.11.3.214 NMAC - Rn, 20 NMAC 11.03.II.15, 6/1/02; A, 6/13/05]

5
6 **20.11.3.215 CRITERIA AND PROCEDURES: MOTOR VEHICLE EMISSIONS BUDGET:**

7 **A.** The transportation plan, TIP and project not from a conforming transportation plan and TIP shall
8 be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation
9 plan submission). This criterion applies as described in Subsections C through L of 20.11.3.206 NMAC. This
10 criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in
11 Subsection C of 20.11.3.215 NMAC are less than or equal to the motor vehicle emissions budget(s) established in
12 the applicable implementation plan or implementation plan submission.

13 **B.** Consistency with the motor vehicle emissions budget(s) shall be demonstrated for each year for
14 which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions
15 budget(s), for the attainment year (if it is within the timeframe of the transportation plan and conformity
16 determination), for the last year of the [~~transportation plan's forecast period~~] timeframe of the conformity
17 determination (as described under Subsection D of 20.11.3.203 NMAC), and for any intermediate years within the
18 timeframe of the conformity determination as necessary so that the years for which consistency is demonstrated are
19 no more than 10 years apart, as follows:

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

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

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

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

29 (a) emissions shall be less than or equal to the motor vehicle emissions budget(s) established
30 for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor
31 vehicle emissions budgets; if the maintenance plan does not establish motor vehicle emissions budgets for any years
32 other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emission
33 budget(s) shall be accompanied by a qualitative finding that there are no factors which would cause or contribute to
34 a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan; the
35 interagency consultation process required by 20.11.3.202 NMAC shall determine what shall be considered in order
36 to make such a finding;

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

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

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

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

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

53 (1) Consistency with the motor vehicle emissions budget(s) shall be demonstrated with a regional
54 emissions analysis that meets the requirements of 20.11.3.219 NMAC and Subparagraph (a) of Paragraph (1) of
55 Subsection D of 20.11.3.202 NMAC.

1 (2) The regional emissions analysis may be performed for any years in the timeframe of the
2 [transportation plan] conformity determination (as described under Subsection D of 20.11.3.203 NMAC) provided
3 they are not more than 10 years apart and provided the analysis is performed for the attainment year (if it is in the
4 timeframe of the transportation plan and conformity determination) and the last year of the [plan's forecast period]
5 timeframe of the conformity determination. Emissions in years for which consistency with motor vehicle emissions
6 budgets shall be demonstrated, as required in Subsection B of 20.11.3.215 NMAC, may be determined by
7 interpolating between the years for which the regional emissions analysis is performed.

8 (3) When the timeframe of the conformity determination is shortened under Paragraph (2) of
9 Subsection D of 20.11.3.203 NMAC, the conformity determination shall be accompanied by a regional emissions
10 analysis (for informational purposes only) for the last year of the transportation plan, and for any year shown to
11 exceed motor vehicle emissions budgets in a prior regional emissions analysis (if such a year extends beyond the
12 timeframe of the conformity determination).

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

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

21 (2) If EPA has not declared an implementation plan submission's motor vehicle emissions budget(s)
22 adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of
23 20.11.3.215 NMAC. Consistency with the previously established motor vehicle emissions budget(s) shall be
24 demonstrated. If there are no previously approved implementation plans or implementation plan submissions with
25 adequate motor vehicle emissions budgets, the interim emission tests required by 20.11.3.216 NMAC shall be
26 satisfied.

27 (3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s)
28 inadequate for transportation conformity purposes after EPA had previously found the budget(s) adequate, and
29 conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity
30 determination shall remain valid. Projects included in that transportation plan or TIP could still satisfy 20.11.3.211
31 NMAC and 20.11.3.212 NMAC, which require a currently conforming transportation plan and TIP to be in place at
32 the time of a project's conformity determination and that projects come from a conforming transportation plan and
33 TIP.

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

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

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

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

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

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

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

54 (5) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA shall
55 review the state's compilation of public comments and response to comments that are required to be submitted with

1 any implementation plan. EPA shall document its consideration of such comments and responses in a letter to the
2 state indicating the adequacy of the submitted motor vehicle emissions budget.

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

10 **F. Adequacy review process for implementation plan submissions:** EPA will use the procedure
11 listed in Paragraph (1) or Paragraph (2) of Subsection F of 20.11.3.215 NMAC to review the adequacy of an
12 implementation plan submission.

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

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

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

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

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

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

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

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

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

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

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

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

55 [7/1/98; 20.11.3.215 NMAC - Rn, 20 NMAC 11.03.II.16, 6/1/02; A, 6/13/05]

56

1 **20.11.3.216 CRITERIA AND PROCEDURES: INTERIM EMISSIONS IN AREAS WITHOUT**
2 **MOTOR VEHICLE EMISSIONS BUDGETS:**

3 **A.** The transportation plan, TIP and project not from a conforming transportation plan and TIP shall
4 satisfy the interim emissions test(s) as described in Subsections C through L of 20.11.3.206 NMAC. This criterion
5 applies to the net effect of the action (transportation plan, TIP or project not from a conforming transportation plan
6 and TIP) on motor vehicle emissions from the entire transportation system.

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

9 (1) in moderate and above ozone nonattainment areas that are subject to the reasonable further
10 progress requirements of CAA section 182(b)(1) if a regional emissions analysis that satisfies the requirements of
11 20.11.3.219 NMAC and Subsections G through J of 20.11.3.216 NMAC demonstrates that for each analysis year
12 and for each of the pollutants described in Subsection F of 20.11.3.216 NMAC:

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

15 (b) the emissions predicted in the “action” scenario are lower than:

16 (i) 1990 emissions by any nonzero amount, in areas for the 1-hour ozone NAAQS as
17 described in Subsection C of 20.11.3.206 NMAC; or

18 (ii) 2002 emissions by any nonzero amount, in areas for the 8-hour ozone NAAQS as
19 described in Subsection D and Subsection E of 20.11.3.206 NMAC;

20 (2) in marginal and below ozone nonattainment areas and other ozone nonattainment areas that are
21 not subject to the reasonable further progress requirements of CAA section 182(b)(1) if a regional emissions
22 analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections G through J of 20.11.3.216 NMAC
23 demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.216
24 NMAC:

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

28 (b) the emissions predicted in the “action” scenario are not greater than:

29 (i) 1990 emissions, in areas for the 1-hour ozone NAAQS as described in Subsection C
30 of 20.11.3.206 NMAC; or

31 (ii) 2002 emissions, in areas for the 8-hour ozone NAAQS as described in Subsection D
32 and Subsection E of 20.11.3.206 NMAC.

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

34 (1) in moderate areas with design value greater than 12.7 ppm and serious CO nonattainment areas
35 that are subject to CAA section 187(a)(7) if a regional emissions analysis that satisfies the requirements of
36 20.11.3.219 NMAC and Subsections G through J of 20.11.3.216 NMAC demonstrates that for each analysis year
37 and for each of the pollutants described in Subsection F of 20.11.3.216 NMAC:

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

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

42 (2) in moderate areas with design value less than 12.7 ppm and not classified CO nonattainment areas
43 if a regional emissions analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections G through J of
44 20.11.3.216 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F
45 of 20.11.3.216 NMAC:

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

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

50 **D. PM₁₀ and NO₂ areas:** This criterion may be met in PM₁₀ and NO₂ nonattainment areas if a
51 regional emissions analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections G through J of
52 20.11.3.216 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F
53 of 20.11.3.216 NMAC, one of the following requirements is met:

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

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

6 **E. PM_{2.5} areas:** This criterion may be met in PM_{2.5} nonattainment areas if a regional emissions
7 analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections G through J of 20.11.3.216 NMAC
8 demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.216
9 NMAC, one of the following requirements is met:

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

12 (2) the emissions predicted in the “action” scenario are not greater than 2002 emissions.

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

14 (1) VOC in ozone areas;

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

17 (3) CO in CO areas;

18 (4) PM₁₀ in PM₁₀ areas;

19 (5) VOC and/or NO_x in PM₁₀ areas if the EPA regional administrator or the director of the air agency
20 has made a finding that one or both of such precursor emissions from within the area are a significant contributor to
21 the PM₁₀ nonattainment problem and has so notified the MPO and DOT;

22 (6) NO_x in NO₂ areas;

23 (7) PM_{2.5} in PM_{2.5} areas; ~~and~~ }

24 (8) re-entrained road dust in PM_{2.5} areas only if the EPA regional administrator or the director of the
25 air agency has made a finding that emissions from re-entrained road dust within the area are a significant contributor
26 to the PM_{2.5} nonattainment problem and has so notified the MPO and DOT;

27 (9) NO_x in PM_{2.5} areas, unless the EPA regional administrator and the director of the state air agency
28 have made a finding that emissions of NO_x from within the area are not a significant contributor to the PM_{2.5}
29 nonattainment problem and has so notified the MPO and DOT; and

30 (10) VOC, SO₂ and / or ammonia in PM_{2.5} areas if the EPA regional administrator or the director of
31 the state air agency has made a finding that any of such precursor emissions from within the area are a significant
32 contributor to the PM 2.5 nonattainment problem and has so notified the MPO and DOT.

33 **G. Analysis Years:**

34 (1) The regional emissions analysis shall be performed for analysis years that are no more than 10
35 years apart. The first analysis year shall be no more than five years beyond the year in which the conformity
36 determination is being made. The last year of the ~~[transportation plan’s forecast period]~~ timeframe of the
37 conformity determination (as described under Subsection D of 20.11.3.203 NMAC) shall also be an analysis year.

38 (2) For areas using Subparagraph (a) of Paragraph (2) of Subsection B, Subparagraph (a) of
39 Paragraph (2) of Subsection C, Paragraph (1) of Subsection D and Paragraph (1) of Subsection E of 20.11.3.216
40 NMAC, a regional emissions analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections G
41 through J of 20.11.3.216 NMAC would not be required for analysis years in which the transportation projects and
42 planning assumptions in the action and “baseline” scenarios are exactly the same. In such a case, Subsection A of
43 20.11.3.216 NMAC can be satisfied by documenting that the transportation projects and planning assumptions in
44 both scenarios are exactly the same, and consequently, the emissions predicted in the “action” scenario are not
45 greater than the emissions predicted in the “baseline” scenario for such analysis years.

46 (3) When the timeframe of the conformity determination is shortened under Paragraph (2) of
47 Subsection D of 20.11.3.203 NMAC, the conformity determination must be accompanied by a regional emissions
48 analysis (for informational purposes only) for the last year of the transportation plan.

49 **H. “Baseline” scenario:** The regional emissions analysis required by Subsections B through E of
50 20.11.3.216 NMAC shall estimate the emissions that would result from the “baseline” scenario in each analysis
51 year. The “baseline” scenario shall be defined for each of the analysis years. The “baseline” scenario is the future
52 transportation system that shall result from current programs; including the following (except that exempt projects
53 list in 20.11.3.223 NMAC and projects exempt from regional emissions analysis as listed in 20.11.3.224 NMAC
54 need not be explicitly considered):

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

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

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

5 **I. “Action” scenario:** The regional emissions analysis required by Subsections B through E of
6 20.11.3.216 NMAC shall estimate the emissions that would result from the “action” scenario in each analysis year.
7 The “action” scenario shall be defined for each of the analysis years. The “action” scenario is the transportation
8 system that would result from the implementation of the proposed action (MTP, TIP or project not from a
9 conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment
10 area. The “action” scenario shall include the following (except that exempt projects listed in 20.11.3.223 NMAC
11 and projects exempt from regional emissions analysis as listed in 20.11.3.224 NMAC need not be explicitly
12 considered):

13 (1) all facilities, services and activities in the “baseline” scenario;

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

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

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

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

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

31 **J. Projects not from a conforming transportation plan and TIP:** For the regional emissions
32 analysis required by Subsections B through E of 20.11.3.216 NMAC, if the project which is not from a conforming
33 transportation plan and TIP is a modification of a project currently in the plan or TIP, the “baseline” scenario shall
34 include the project with its original design concept and scope, and the “action” scenario shall include the project
35 with its new design concept and scope.

36 [7/1/98; 20.11.3.216 NMAC - Rn, 20 NMAC 11.03.II.17, 6/1/02; A, 6/13/05]

37 38 **20.11.3.217 CONSEQUENCES OF CONTROL STRATEGY IMPLEMENTATION PLAN FAILURES:**

39 **A. Disapprovals:**

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

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

55 (3) In disapproving a control strategy implementation plan revision, EPA would give a protective
56 finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable

1 control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for
2 which the implementation plan revision was submitted, such as reasonable further progress or attainment.

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

9 **C. Federal implementation plans:** If EPA promulgates a federal implementation plan that contains
10 motor vehicle emissions budget(s) as a result of a state failure, the conformity lapse imposed by 20.11.3.217 NMAC
11 because of that failure is removed.

12 [7/1/98; 20.11.3.217 NMAC - Rn, 20 NMAC 11.03.II.18, 6/1/02; A, 6/13/05]

13
14 **20.11.3.218 REQUIREMENTS FOR ADOPTION OR APPROVAL OF PROJECTS BY OTHER**
15 **RECIPIENTS OF FUNDS DESIGNATED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT**
16 **LAWS.**

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

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

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

30 (3) a new regional emissions analysis including the project and the currently conforming
31 transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were
32 implemented (consistent with the requirements of 20.11.3.215 NMAC and/or 20.11.3.216 NMAC for a project not
33 from a conforming transportation plan and TIP).

34 **B.** In isolated rural nonattainment and maintenance areas subject to Subsection L of 20.11.3.206
35 NMAC, no recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or
36 approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds
37 that the requirements of one of the following are met:

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

41 (2) a new regional emissions analysis including the project and all other regionally significant
42 projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide
43 transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the
44 project were implemented (consistent with the requirements 20.11.3.215 NMAC and/or 20.11.3.216 NMAC for
45 projects not from a conforming transportation plan and TIP).

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

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

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

56 [7/1/98; 20.11.3.218 NMAC - Rn, 20 NMAC 11.03.II.19, 6/1/02; A, 6/13/05]

1
2 **20.11.3.219 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED**
3 **EMISSIONS:**

4 **A. General requirements:**

5 (1) The regional emissions analysis required by 20.11.3.215 NMAC and 20.11.3.216 NMAC for the
6 transportation plan, TIP or project not from a conforming plan and TIP shall include all regionally significant
7 projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects
8 proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the
9 MPO as required by 20.11.3.202 NMAC. Projects which are not regionally significant are not required to be
10 explicitly modeled, but vehicle miles traveled (VMT) from such projects shall be estimated in accordance with
11 reasonable professional practice and shall be reviewed by the TCTC as part of the interagency consultation
12 described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC. The effects of TCMs and similar projects that
13 are not regionally significant may also be estimated in accordance with reasonable professional practice and shall be
14 reviewed by the TCTC as part of the interagency consultation described in Paragraph (1) of Subsection D of
15 20.11.3.202 NMAC.

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

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

- 23 (a) the regulatory action is already adopted by the enforcing jurisdiction;
24 (b) the project, program or activity is included in the applicable implementation plan;
25 (c) the control strategy implementation plan submission or maintenance plan submission that
26 establishes the motor vehicle emissions budget(s) for the purposes of 20.11.3.215 NMAC contains a written
27 commitment to the project, program or activity by the agency with authority to implement it; or
28 (d) EPA has approved an opt-in to a federally enforced program, EPA has promulgated the
29 program (if the control program is a federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act
30 requires the program without need for individual state action and without any discretionary authority for EPA to set
31 its stringency, delay its effective date or not implement the program.

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

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

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

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

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

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

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

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

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

15 (b) Land use, population, employment and other network-based travel model assumptions shall
16 be documented and based on the best available information. Future speeds shall be determined through interagency
17 consultation as described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC;

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

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

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

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

31 (2) Reasonable methods in accordance with good practice shall be used to estimate traffic speeds and
32 delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the
33 network-based travel model.

34 (3) Highway performance monitoring system (HPMS) estimates of vehicle miles traveled (VMT)
35 shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and
36 for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban
37 area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and
38 calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates
39 for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process,
40 consideration shall be given to differences between HPMS and network-based travel models, such as differences in
41 the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs
42 and other departures from these procedures are permitted subject to the interagency consultation procedures
43 Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

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

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

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

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

54 **D.** In all areas not otherwise subject to Subsection B of 20.11.3.219 NMAC, regional emissions
55 analyses shall use those procedures described in Subsection B of 20.11.3.219 NMAC if the use of those procedures
56 has been the previous practice of the MPO. Otherwise, areas not subject to Subsection B of 20.11.3.219 NMAC

1 may estimate regional emissions using any appropriate methods that account for VMT growth by, for example,
2 extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth
3 trends for VMT per person. These methods shall also consider future economic activity, transit alternatives and
4 transportation system policies.

5 **E. PM₁₀ from construction-related fugitive dust:**

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

9 (2) In PM₁₀ nonattainment and maintenance areas with implementation plans that identify
10 construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the regional PM₁₀ emissions
11 analysis shall consider construction-related fugitive PM₁₀ and shall account for the level of construction activity, the
12 fugitive PM₁₀ control measures in the applicable implementation plan and the dust-producing capacity of the
13 proposed activities.

14 **F. PM_{2.5} from construction-related fugitive dust:**

15 (1) For PM_{2.5} areas in which the implementation plan does not identify construction-related fugitive
16 PM_{2.5} as a significant contributor to the nonattainment problem, the fugitive PM_{2.5} emissions associated with
17 highway and transit project construction are not required to be considered in the regional emissions analysis.

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

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

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

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

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

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

35 (d) the previous regional emissions analysis is consistent with the requirements of 20.11.3.215
36 NMAC (including that conformity to all currently applicable budgets is demonstrated) and/or 20.11.3.216 NMAC,
37 as applicable.

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

45 (a) not regionally significant; or

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

50 (3) A conformity determination that relies on Subsection G of 20.11.3.219 NMAC does not satisfy
51 the frequency requirements of Subsection B or Subsection C of 20.11.3.201 NMAC.

52 [7/1/98; 20.11.3.219 NMAC - Rn, 20 NMAC 11.03.II.20, 6/1/02; A, 6/13/05]

53
54 **20.11.3.220 PROCEDURES FOR DETERMINING LOCALIZED CO, [~~AND~~] PM₁₀ AND PM_{2.5}**
55 **CONCENTRATIONS (Hot-Spot Analysis):**

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

1 (1) The demonstrations required by 20.11.3.213 NMAC (localized CO, ~~and~~ PM₁₀ and PM_{2.5}
2 violations) shall be based on quantitative analysis using the applicable air quality models, data bases and other
3 requirements specified in 40 CFR Part 51, Appendix W (guideline on air quality models). These procedures shall be
4 used in the following cases, unless different procedures developed through the interagency consultation process
5 required in 20.11.3.202 NMAC and approved by the EPA regional administrator are used for:

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

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

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

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

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

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

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

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

30 **B. PM₁₀ hot-spot analysis:**

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

33 ~~_____ (a) projects located at sites at which violations have been verified by monitoring;~~

34 ~~_____ (b) projects located at sites which have vehicle and roadway emission and dispersion~~
35 ~~characteristics that are essentially identical to those of sites with verified violations (including sites near one at~~
36 ~~which a violation has been monitored); and~~

37 ~~_____ (c) new or expanded bus and rail terminals and transfer points that increase the number of~~
38 ~~diesel vehicles congregating at a single location.]~~

39 (a) New highway projects that have a significant number of diesel vehicles, and expanded
40 highway projects that have a significant increase in the number of diesel vehicles;

41 (b) Projects affecting intersections that are at Level-of-Service D, E, or F with a significant
42 number of diesel vehicles, or those that will change to Level-of-Service D, E, or F because of increased traffic
43 volumes from a significant number of diesel vehicles related to the project;

44 (c) New bus and rail terminals and transfer points that have a significant number of diesel
45 vehicles congregating at a single location;

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

48 (e) Projects in or affecting locations, areas, or categories of sites which are identified in the
49 PM₁₀ or PM_{2.5} applicable implementation plan or implementation plan submission, as appropriate, as sites of
50 violation or possible violation.

51 (2) Where quantitative analysis methods are not required, the demonstration required by 20.11.3.213
52 NMAC may be based on a qualitative consideration of local factors.

53 (3) ~~[The identification of the sites described in Subparagraph (a) and Subparagraph (b) of Paragraph~~
54 ~~(1) of Subsection B of 20.11.3.220 NMAC, and other cases where quantitative methods are appropriate, shall be~~
55 ~~determined through the interagency consultation process required in 20.11.3.202 NMAC. DOT may choose to make~~

1 a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of
2 various terminal sizes, configurations and activity levels.]

3 DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that 20.11.3.213 NMAC is
4 met without further hot-spot analysis for any project described in Paragraph (1) of Subsection B of 20.11.3.220
5 NMAC based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality
6 circumstances of a given PM_{2.5} or PM₁₀ nonattainment or maintenance area in categorical hot-spot findings for
7 applicable FHWA or FTA projects.

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

11 **C. General requirements:**

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

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

21 (3) Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for
22 those inputs which are required for both analyses as determined through the interagency consultation process
23 described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

24 (4) ~~CO~~, PM₁₀ or ~~[CO]~~ PM_{2.5} mitigation or control measures shall be assumed in the hot-spot analysis
25 only where there are written commitments from the project sponsor and/or operator to implement such measures, as
26 required by Subsection A of 20.11.3.222 NMAC.

27 (5) CO, ~~and~~ PM₁₀ and PM_{2.5} hot-spot analyses are not required to consider construction-related
28 activities which cause temporary increases in emissions. Each site that is affected by construction-related activities
29 shall be considered separately through the interagency consultation process described in Paragraph (1) of Subsection
30 B of 20.11.3.202 NMAC, using established guideline methods. Temporary increases are defined as those which
31 occur only during the construction phase and last five years or less at any individual site.

32 [7/1/98; 20.11.3.220 NMAC - Rn, 20 NMAC 11.03.II.21, 6/1/02; A, 6/13/05]

33
34 **20.11.3.221 USING THE MOTOR VEHICLE EMISSIONS BUDGET IN THE APPLICABLE**
35 **IMPLEMENTATION PLAN (OR IMPLEMENTATION PLAN SUBMISSION):**

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

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

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

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

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

55 **C.** If the applicable implementation plan (or implementation plan submission) estimates future
56 emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to

1 establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly
2 indicates an intent to create such subarea budgets for the purposes of conformity.

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

6 [7/1/98; 20.11.3.221 NMAC - Rn, 20 NMAC 11.03.II.22, 6/1/02; A, 6/13/05]

7
8 **20.11.3.222 ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL**
9 **MITIGATION AND CONTROL MEASURES:**

10 **A.** Prior to determining that a transportation project is in conformity, the MPO, other recipient of
11 funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA or FTA shall obtain from the project
12 sponsor and/or operator written commitments to implement in the construction of the project and operation of the
13 resulting facility or service any project-level mitigation or control measures that are identified as conditions for
14 NEPA process completion with respect to local PM₁₀ or CO impacts. Before a conformity determination is made,
15 written commitments shall also be obtained for project-level mitigation or control measures that are conditions for
16 making conformity determinations for a transportation plan or TIP and are included in the project design concept
17 and scope which is used in the regional emissions analysis required by 20.11.3.215 NMAC (motor vehicle emissions
18 budget) and 20.11.3.216 NMAC (interim emissions in areas without motor vehicle emissions budgets) or used in the
19 project-level hot-spot analysis required by 20.11.3.213 NMAC.

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

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

25 **D.** If the MPO or project sponsor believes the mitigation or control measure is no longer necessary
26 for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or
27 control measure if it can demonstrate that the applicable hot-spot requirements of 20.11.3.213 NMAC, emission
28 budget requirements of 20.11.3.215 NMAC, and interim emissions requirements of 20.11.3.216 NMAC are satisfied
29 without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation
30 process required under 20.11.3.202 NMAC. The MPO and DOT shall find that the transportation plan and TIP still
31 satisfy the applicable requirements of 20.11.3.215 NMAC and/or 20.11.3.216 NMAC and that the project still
32 satisfies the requirements of 20.11.3.213 NMAC, and therefore that the conformity determinations for the
33 transportation plan, TIP and project are still valid. This finding is subject to the applicable public consultation
34 requirements in Subsection F of 20.11.3.202 NMAC for conformity determinations for projects.

35 [7/1/98; 20.11.3.222 NMAC - Rn, 20 NMAC 11.03.II.23, 6/1/02; A, 6/13/05]

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

45
46 **TABLE 2. EXEMPT PROJECTS**

47 **SAFETY**

48 Railroad/highway crossing

49 ~~[Hazard elimination program]~~ Projects that correct, improve or eliminate a hazardous location or feature

50 Safer non-federal-aid system roads

51 Shoulder improvements

52 Increasing sight distance

53 Highway safety improvement program implementation

54 Traffic control devices and operating assistance other than signalization projects

55 Railroad/highway crossing warning devices

56 Guardrails, median barriers, crash cushions

- 1 Pavement resurfacing and/or rehabilitation
- 2 Pavement marking [demonstration]
- 3 Emergency relief (23 U.S.C. 125)
- 4 Fencing
- 5 Skid treatments
- 6 Safety roadside rest areas
- 7 Adding medians
- 8 Truck climbing lanes outside the urbanized area
- 9 Lighting improvements
- 10 Widening narrow pavements or reconstructing bridges (no additional travel lanes)
- 11 Emergency truck pullovers
- 12 **MASS TRANSIT**
- 13 Operating assistance to transit agencies
- 14 Purchase of support vehicles
- 15 Rehabilitation of transit vehicles¹
- 16 Purchase of office, shop and operating equipment for existing facilities
- 17 Purchase of operating equipment for vehicles (e.g., radios, fare boxes, lifts, etc.)
- 18 Construction or renovation of power, signal and communications systems
- 19 Construction of small passenger shelters and information kiosks
- 20 Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance
- 21 facilities, stations, terminals and ancillary structures)
- 22 Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
- 23 Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet¹
- 24 Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR Part 771
- 25 **AIR QUALITY**
- 26 Continuation of ride-sharing and van-pooling promotion activities at current levels
- 27 Bicycle and pedestrian facilities
- 28 **OTHER**
- 29 Specific activities which do not involve or lead directly to construction, such as:
- 30 Planning and technical studies
- 31 Grants for training and research programs
- 32 Planning activities conducted pursuant to Titles 23 and 49 U.S.C.
- 33 Federal-aid systems revisions
- 34 Engineering to assess social, economic and environmental effects of the proposed action or alternatives to that action
- 35 Noise attenuation
- 36 Emergency or hardship advance land acquisitions 23 CFR Part 710.503
- 37 Acquisition of scenic easements
- 38 Plantings, landscaping, etc.
- 39 Sign removal
- 40 Directional and informational signs
- 41 Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings,
- 42 structures or facilities)
- 43 Repair of damage caused by natural disasters, civil unrest or terrorist acts, except projects involving substantial
- 44 functional, locational or capacity changes
- 45 **Note:** ¹In PM₁₀ and PM_{2.5} nonattainment or maintenance areas, such projects are exempt only if they are in
- 46 compliance with control measures in the applicable implementation plan.
- 47 [7/1/98; 20.11.3.223 NMAC - Rn, 20 NMAC 11.03.II.24, 6/1/02; A, 6/13/05]
- 48
- 49 **20.11.3.224 PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES:** Notwithstanding the
- 50 other requirements of 20.11.3 NMAC, highway and transit projects of the types listed in Table 3 of 20.11.3.224
- 51 NMAC are exempt from regional emissions analysis requirements. The local effects of these projects with respect
- 52 to CO or PM₁₀ concentrations shall be considered to determine if a hot-spot analysis is required prior to making a
- 53 project-level conformity determination. These projects may then proceed to the project development process even
- 54 in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 of
- 55 20.11.3.224 NMAC is not exempt from regional emissions analysis if the MPO in consultation with other agencies
- 56 (see Subparagraph (c) Paragraph (1) of Subsection D of 20.11.3.202 NMAC), the EPA and the FHWA (in the case

1 of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for
2 any reason. Table 3 follows:

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

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

12
13 **20.11.3.225 TRAFFIC SIGNAL SYNCHRONIZATION PROJECTS:** Traffic signal synchronization
14 projects may be approved, funded and implemented without satisfying the requirements of 20.11.3 NMAC.
15 However, all subsequent regional emissions analyses required by 20.11.3.215 NMAC and 20.11.3.216 NMAC for
16 transportation plans, TIPs or projects not from a conforming plan and TIP shall include such regionally significant
17 traffic signal synchronization projects.
18 [7/1/98; 20.11.3.225 NMAC - Rn, 20 NMAC 11.03.II.26, 6/1/02; A, 6/13/05]

19
20 **20.11.3.226 APPLICABLE LAW:** The federal conformity rules under 40 CFR Part 93 subpart A, in addition
21 to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the
22 requirements of CAA section 176(c) until such time as this conformity implementation plan revision is approved by
23 EPA. Following EPA approval of this revision to the applicable implementation plan (or a portion thereof), the
24 approved (or approved portion of the) criteria and procedures in 20.11.3 NMAC shall govern conformity
25 determinations and the federal conformity regulations contained in 40 CFR Part 93 shall apply only for the portion,
26 if any, of 20.11.3 NMAC conformity provisions that is not approved by EPA. In addition, any previously applicable
27 implementation plan requirements relating to conformity remain enforceable until 20.11.3 NMAC is adopted.
28 [7/1/98; 20.11.3.226 NMAC - Rn, 20 NMAC 11.03.II.1-27, 6/1/02; A, 6/13/05]

29
30 **20.11.3.227 SPECIAL EXEMPTIONS FROM CONFORMITY REQUIREMENTS FOR PILOT**
31 **PROGRAM AREAS:** EPA and DOT may exempt no more than six areas for no more than three years from certain
32 requirements of 20.11.3 NMAC if these areas are selected to participate in a conformity pilot program and have
33 developed alternative requirements that have been approved by EPA as an implementation plan revision in
34 accordance with 40 CFR 51.390. For the duration of the pilot program, areas selected to participate in the pilot
35 program shall comply with the conformity requirements of the pilot area's implementation plan revision for 40 CFR
36 51.390 and all other requirements in 40 CFR parts 51 and 93 that are not covered by the pilot area's implementation
37 plan revision for 40 CFR 51.390. The alternative conformity requirements in conjunction with any applicable state
38 and/or federal conformity requirements shall be proposed to fulfill all of the requirements of and achieve results
39 equivalent to or better than section 176(c) of the Clean Air Act. After the three-year duration of the pilot program
40 has expired, areas will again be subject to all of the requirements of 20.11.3 NMAC and 40 CFR Part 51, Subpart T,
41 and/or to the requirements of any implementation plan revision that was previously approved by EPA in accordance
42 with 40 CFR 51.390.
43 [20.11.3.227 NMAC - N, 6/13/05]

44
45 **HISTORY OF 20.11.3 NMAC:**

46 **Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of
47 public records - state records center and archives.
48 Regulation No. 42, Transportation Conformity, 12/16/94.

49
50 **History of Repealed Material:** 20 NMAC 11.03, Transportation Conformity, filed 10/27/95 repealed and replaced
51 by 20 NMAC 11.03, Transportation Conformity, filed 06/01/98.

52
53 **Other History:** Regulation No. 42, Transportation Conformity, filed 12/16/94 was reformatted, renumbered and
54 replaced by 20 NMAC 11.03, Transportation Conformity, filed 10/27/95.
55 20 NMAC 11.03, Transportation Conformity, filed 06/01/98 renumbered, reformatted, amended, and replaced by
56 20.11.3 NMAC, effective 6/01/02.