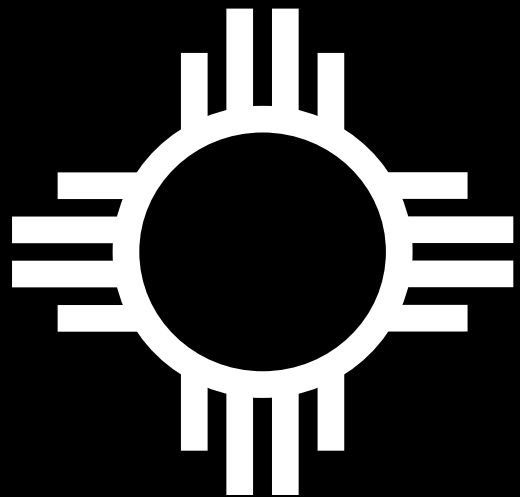


**NEW
MEXICO
REGISTER**

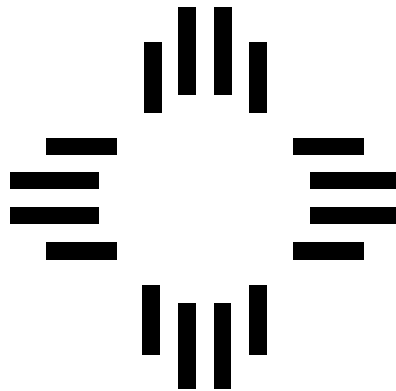


Volume XVI
Issue Number 10
May 31, 2005

New Mexico Register

Volume XVI, Issue Number 10

May 31, 2005



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2005

COPYRIGHT © 2005
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XVI, Number 10

May 31, 2005

Table of Contents

Notices of Rulemaking and Proposed Rules

DNA Identification System Oversight Committee and Administrative Center	
Notice of Public Hearing on Amendment of Rules	431
Finance and Administration, Department of	
Notice of Hearing and Proposed Amendments to Rule 2.40.2 NMAC, the Regulations Governing the Approval of Contracts for the Purchase of Professional Services	431
Higher Education Department	
Notice of Proposed Rulemaking	432
Livestock Board	
Notice of Rulemaking and Adoption of Rule Hearing and Regular Board Meeting	433
Oil Conservation Commission	
Notice of Rulemaking	433
Public Education Department	
Notice of Proposed Rulemaking	433
Cancellation of Notice of Proposed Rulemaking	434
Public Records, Commission of	
Notice of Public Hearing	435
Public Regulation Commission	
Pipeline Safety Bureau	
Notice of Proposed Rulemaking	435
Workforce Training and Development, Office of	
Notice of Public Hearing for Rulemaking	436

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Albuquerque - Bernalillo County Air Quality Control Board	
20.11.3 NMAC A Transportation Conformity	439
Energy, Minerals and Natural Resources Department	
Oil Conservation Division	
19.15.3 NMAC A Drilling	467
19.15.9 NMAC A Secondary or Other Enhanced Recovery, Pressure Maintenance, Salt Water Disposal, and Underground Storage	469
Pharmacy, Board of	
16.19.20 NMAC A Controlled Substances	470
Regulation and Licensing Department	
Construction Industries Division	
14.10.4 NMAC R 2002 New Mexico Electrical Code	475
14.10.4 NMAC N 2005 New Mexico Electrical Code	475
Manufactured Housing Division	
14.12.2 NMAC A Manufactured Housing Requirements	479

The New Mexico Register
Published by
The Commission of Public Records
Administrative Law Division
1205 Camino Carlos Rey
Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

Notices of Rulemaking and Proposed Rules

NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE AND ADMINISTRATIVE CENTER

NEW MEXICO DNA IDENTIFICATION
SYSTEM OVERSIGHT COMMITTEE &
ADMINISTRATIVE CENTER

NOTICE OF PUBLIC HEARING ON
AMENDMENT OF RULES

Friday June 10, 2005, 11:00 AM,
Criminalistics Conference Room,
Metropolitan Forensic Science Center, 5350
2nd Street NW, Albuquerque, NM 87107

To comment on, or for additional informa-
tion including a copy of the proposed
amendments, or if you have a disability and
you require special assistance to participate
in this meeting contact John Krebsbach,
Chairperson at (505) 823-4630 by Thursday
June 9, 2005.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

Notice of Hearing and Proposed Amendments to Rule 2.40.2 NMAC, the Regulations Governing the Approval of Contracts for the Purchase of Professional Services

New Mexico Department of Finance and
Administration

The Department of Finance and
Administration (DFA) hereby gives notice
that DFA will conduct a public hearing at
Mabry Hall, Department of Education
Building, 300 Don Gaspar Ave., Santa Fe,
New Mexico, 87501, on July 11, 2005 at
10:00 a.m. concerning the proposed amend-
ments to Rule 2.40.2 NMAC, the
Regulations Governing the Approval of
Contracts for the Purchase of Professional
Services. The amendments make changes
to comport with statutory amendments to
the New Mexico Procurement Code,
Section 13-1-125 NMSA 1978, that have
occurred since January 14, 2005 as follows:
amending 2.40.2.2 NMAC by raising the
limit from \$1500 to \$5000 for DFA review
and approval of all professional services
contracts or contract amendments and
amending 2.40.2.11 NMAC to reflect the
same as well as raising the limit from
\$20,000 to \$30,000 for what constitutes a
small purchase contract.

Interested individuals may testify at the
public hearing or submit written comments
no later than 5:00 p.m., July 8, 2005, to the
Office of the Secretary, DFA, Bataan
Memorial Building, Room 180, Santa Fe,
New Mexico, 87501. All written and oral
testimony will be considered prior to adop-
tion of the amendments. Copies of the text
of the proposed rules are available from Ms.
Barbara Serna, Room 180, Bataan
Memorial Building, Santa Fe, New Mexico,
87501 or at 505-827-4985 or from the DFA
internet website
<http://www.state.nm.us/clients/dfa/index.html>.

TITLE 2 PUBLIC FINANCE CHAPTER 40 EXPENDITURE OF PUBLIC FUNDS PART 2 GOVERNING THE APPROVAL OF CONTRACTS FOR THE PURCHASE OF PROFESSIONAL SERVICES

2.40.2.1 ISSUING AGENCY:
Department of Finance and Administration.
[5-15-97; 2.40.2.1 NMAC - Rn, 2 NMAC
40.2.1, 1-14-2005]

2.40.2.2 SCOPE:

A. The contracts review
bureau of the department of finance and
administration shall review and approve all
professional services contracts which result
in expenditures equal to or greater than [~~ff-
teen hundred dollars (\$1500)~~, ~~five thou-
sand (\$5,000)~~ excluding gross receipts tax,
and all amendments to those contracts for
all state agencies except as provided in
Subsections B and C of Section 2.40.2.2
NMAC of this rule. Contracts expending
public funds in accordance with the
Procurement Code, Sections 13-1-28 to 13-
1-199 NMSA 1978 as amended are includ-
ed within the scope of this rule.

B. The following state
agencies are currently exempt from submit-
ting professional services contracts and
amendments through the contracts review
bureau of the department of finance and
administration:

(1) state agencies within the
judicial branch of government as defined by
the New Mexico Constitution, Article VI;

(2) state agencies within the
legislative branch of government as defined
by the New Mexico Constitution, Article
IV;

(3) state educational institutions
as defined by the New Mexico Constitution,
Article XII, Section 11 and Chapter 21,
Articles 13, 14, 16 and 17 NMSA 1978;

(4) the state fair pursuant to
Section 16-6-8 NMSA 1978;

(5) the New Mexico public

school insurance authority pursuant to
Sections 22-29-6 (F) and 22-29-8 NMSA
1978 for contracts for procuring goods or
services and paying for insurance or insur-
ance-related services;

(6) the New Mexico mortgage
finance authority pursuant to Section 58-18-
20 NMSA 1978;

(7) the livestock board pursuant
to Section 77-2-10 NMSA 1978; and

(8) other state agencies exempt
by statute.

C. Pursuant to Section 6-
5-9 NMSA 1978, the secretary of the
department of finance and administration
may exempt a state agency's contracts from
contracts review bureau review and
approval when the secretary of the depart-
ment of finance and administration deter-
mines that efficiency or economy so
requires. A state agency seeking an exemp-
tion must:

(1) apply in writing to the sec-
retary of the department of finance and
administration; and

(2) meet all of the following
requirements:

(a) issue its own warrants;
(b) be exempt from prior sub-
mission of vouchers or purchase orders to
the financial control division of the depart-
ment of finance and administration;

(c) receive the majority of its
money from non-general fund sources;

(d) maintain pre-audit and post-
audit fiscal accounting controls;

(e) maintain and operate its
own administrative unit for procurement
and controls its own encumbrance of funds
available for professional service contracts;

(f) provide administrative con-
trol and review of professional services con-
tracts through its own administrative unit;
and

(g) employs in-house counsel to
prepare, review, and approve professional
services contracts for form and legal suffi-
ciency and to advise the state agency with
respect to all applicable laws and regula-
tions; provided, however, that the attorney
general shall also review and approve all
contracts subject to Paragraph (1) of
Subsection C of 2.40.2.10 NMAC of this
rule prior to approval and execution by the
state agency.

[7-1-76, 8-15-77, 7-1-78, 7-1-84, 7-10-85,
7-1-87, 12-20-89, 5-15-97, 7-1-01; 2.40.2.2
NMAC - Rn & A, 2 NMAC 40.2.2, 1-14-
2005]

**2.40.2.11 SMALL PURCHAS-
ES:** A contract for professional services
having a value over [~~\$1500~~] five thousand
(\$5000) but not exceeding [~~\$20,000~~] (thirty
thousand (\$30,000) excluding applicable

gross receipts taxes, except for the services of architects, landscape architects engineers, or surveyors for state public works projects, may be procured in accordance with the Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978 and Procurement Code Regulations, GSD Rule 1.4.1 NMAC or subsequent GSD regulations.

[7-10-85, 7-1-87, 5-15-97, 6-15-98, 7-1-01; 2.40.2.11 NMAC - Rn & A, 2 NMAC 40.2.11, 1-14-2005]

NEW MEXICO HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

The New Mexico Higher Education Department will convene a public hearing on Friday, June 3, 2005 from 8:00 a.m. to 5:00 p.m. Final actions on the proposed rulemaking will be taken at that meeting, which will be held in Santa Fe, New Mexico, at the State Capitol Building in room 317. Information regarding the location of the meetings, the addition or change of meeting days, and the agenda for the meeting, will be available at least twenty-four hours prior to the meeting from the Higher Education Department staff at 505-476-6500 and on our website at <http://nmche.state.nm.us>. Please contact the Higher Education Department at 505-476-6500 for additional information. The Higher Education Department may consider the following items of rulemaking at the meeting:

Rule Number	Rule Name	Proposed Action
5.1.3 NMAC	POST SECONDARY EDUCATION, POST SECONDARY EDUCATION - GENERAL PROVISIONS, FEDERAL PROGRAM ADMINISTRATION	Amend rule
5.3.7 NMAC	POST SECONDARY EDUCATION, POST SECONDARY EDUCATION INSTITUTION FINANCES, BUILDING AND IMPROVEMENT BONDS	Amend rule
5.3.9 NMAC	POST SECONDARY EDUCATION, POST SECONDARY EDUCATION INSTITUTION FINANCES, CAPITAL BUDGETS – PLANNING AND FUNDING RECOMMENDATIONS	Amend rule
5.3.12 NMAC	POST SECONDARY EDUCATION, POST SECONDARY EDUCATION INSTITUTION FINANCES, INSTRUCTIONAL FUNDING	Amend rule
5.3.13 NMAC	POST SECONDARY EDUCATION, POST SECONDARY EDUCATION INSTITUTIONAL FINANCES, ALLOCATION AND DISTRIBUTION OF THE ADULT BASIC EDUCATION FUND	Amend rule
5.5.20 NMAC	POST SECONDARY EDUCATION, POST SECONDARY EDUCATIONAL PROGRAMS, EDUCATIONAL LOAN PURCHASE PROGRAM	Amend rules
5.6.2 NMAC	POST SECONDARY EDUCATION, POST SECONDARY ENROLLMENT AND DATA REPORTING, ENROLLMENT REPORTING	Amend rule
5.6.3 NMAC	POST SECONDARY EDUCATION, POST SECONDARY ENROLLMENT AND DATA REPORTING, VARIABLE SCHEDULING	Amend rule
5.6.4 NMAC	POST SECONDARY EDUCATION, POST SECONDARY ENROLLMENT AND DATA REPORTING, ENROLLMENT VERIFICATION	Amend rule
5.7.3 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, HEALTH PROFESSIONALS LOAN REPAYMENT	Amend rule
5.7.16 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, VIETNAM VETERANS' SCHOLARSHIP	Amend rule
5.7.19 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, REDUCED TUITION FOR SENIOR CITIZENS	Amend rule
5.7.24 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, EDUCATIONAL LOAN PURCHASE PROGRAM	Amend rule
5.7.25 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, TAX REFUND INTERCEPT PROGRAM	Amend rule
5.7.26 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, EDUCATIONAL LOAN PURCHASE PROGRAM	Amend rule
5.7.29 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, EDUCATIONAL LOAN PURCHASE PROGRAM	Amend rule
5.7.30 NMAC	POST SECONDARY EDUCATION, TUITION AND FINANCIAL AID, PROCEDURES, STANDARDS, AND ELIGIBILITY REQUIREMENTS FOR PARTICIPATION IN NM EDUCATION TRUST	Amend rule
5.100.2 NMAC	POST SECONDARY EDUCATION, PRIVATE INSTITUTIONS OF HIGHER EDUCATION, PRIVATE POST SECONDARY INSTITUTIONS OPERATING UNDER POST SECONDARY EDUCATIONAL INSTITUTION ACT	Amend rule
5.100.3 NMAC	POST SECONDARY EDUCATION, PRIVATE INSTITUTIONS OF HIGHER EDUCATION, PRIVATE POST SECONDARY INSTITUTIONS OPERATING UNDER THE OUT-OF-STATE PROPRIETARY SCHOOL ACT	Amend rule

Copies of the proposed rule changes may be obtained from the Higher Education Department. Written comments concerning the rules should be submitted to Ms. Katherine B. Cantrell, Interim Secretary, 1068 Cerrillos Road, Santa Fe, NM 87505, by facsimile at (505) 476-6511, or via electronic mail at kcantrell@che.state.nm.us. Comments will be accepted until 5 p.m. on June 1, 2005; however, submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting, please contact the Higher Education Department at (505) 476-6500 at least one week prior to the meeting, or as soon as possible.

Comments, questions, or requests for copies of the agenda should be directed to the Higher Education Department, 1068 Cerrillos Road, Santa Fe, NM 87505, 505-476-6500 or fax 505-476-6511.

NEW MEXICO LIVESTOCK BOARD

NEW MEXICO LIVESTOCK BOARD

NOTICE OF RULE MAKING AND ADOPTION OF RULE HEARING AND REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that a rules hearing and regular board meeting will be held on Friday, June 17, 2005, at the Inn of the Mountain Gods in Ruidoso, New Mexico, at 9:00 a.m. The Board will initiate rule changes regarding House Bill 1043, Horse Rescue and Retirement Facilities; Bovine Trichomoniasis and Chronic Waste Disease and discuss other matters of general business.

Copies of the agenda can be obtained by contacting Daniel Manzanares, Executive Director, New Mexico Livestock Board, 300 San Mateo NE Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs at least five days prior to the meeting.

NEW MEXICO OIL CONSERVATION COMMISSION

NOTICE OF RULE MAKING

STATE OF NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION SANTA FE, NEW MEXICO

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing at 9:00 A.M. on **July 7, 2005**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, concerning the repeal of 19.15.14 NMAC and adoption of a new rule to be codified as 19.15.14 NMAC. The proposed new rule will make changes to the procedural rules relating to rulemaking and adjudicatory hearings conducted by the Oil Conservation Division and the Oil Conservation Commission. Among other provisions, the proposed new rule will (a) provide for, and fix the time for submission of, written comments on proposed rule changes, (b) prescribe a procedure for the Oil Conservation Commission to initiate rule changes on its own motion, (c) require pre-filing of exhibits in advance of commission hearings, (d) require filing of a pre-hearing statement in advance of a rulemaking hearing by any person intending to present technical testimony, (e) provide procedures for disposition of pre-hearing matters, including issuance and quashing of subpoenas and motions for continuance, in advance of scheduled division or commission hearings, (f) provide who may make statements or otherwise participate in rulemaking and in adjudicatory hearings and under what circumstances such persons must be represented by counsel, and (h) authorize the director of the division to issue interim stays of commission orders. Copies of the text of the proposed new rule are available from Commission Secretary, Florene Davidson at (505)-476-3458 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd/what-snew.htm>. Written comments on the proposed amendments must be received no later than 5:00 P.M. on Thursday, June 30, 2005. Written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at 476-3462. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the

hearing, please contact Ms. Davidson at (505)-476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 13th day of May, 2005.

STATE OF NEW MEXICO OIL CONSERVATION DIVISION

**Mark E. Fesmire, P.E.
Director, Oil Conservation Division**

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

New Mexico Public Education Department NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") hereby gives notice that the Department will conduct public hearings at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on July 7, 2005, to obtain input on the following rules:

[Please see chart on page 434]

Rule Number	Rule Name	Proposed Action	Date and time of hearing
6.40.2 NMAC	NEW MEXICO SCHOOL BUS STANDARDS AND SCHOOL BUS PHASE-OUT	Amend rule	July 7, 2005 10:00 a.m. to noon
6.41.4 NMAC	STANDARDS FOR PROVIDING TRANSPORTATION FOR ELIGIBLE STUDENTS	Amend rule	July 7, 2005 10:00 a.m. to noon
Interested individuals may testify at the public hearing or submit written comments regarding the proposed amendments to 6.40.2 NMAC and 6.41.4 NMAC to Joe Mendez, Bureau Chief, Student Transportation Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501 - 2786 (Jmendez@ped.state.nm.us) (505) 827-6640)(telefax (505) 827-5802. Written comments must be received no later than 5:00 pm on July 7, 2005. In addition, the Student Transportation Bureau will hold an auxiliary hearing on July 6, 2005, in conjunction with the regional bus training offered by the Student Transportation Bureau. The auxiliary hearing will be held at San Juan College, 4601 College Blvd., Classroom #1908, Farmington, New Mexico 87402, on Wednesday July 6, 2005, from 10:30 a.m. - 11:30 a.m.			
6.10.3 NMAC	PUBLIC SCHOOL ADMINISTRATION - PROCEDURAL REQUIREMENTS: COMPLAINT PROCEDURE	Amend rule	July 7, 2005 1:00 p.m. to 2 p.m.
Interested individuals may testify at the public hearing or submit written comments regarding the proposed amendments to 6.10.3 NMAC to Mary Deets -Jimenez, Administrative Assistant, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501 -2786 (mdjimenez@ped.state.nm.us) (505) 827-6641)(telefax (505) 827-6681). Written comments must be received no later than 5:00 pm on July 7, 2005.			
6.32.2 NMAC	GUIDELINES FOR IMPLEMENTING BILINGUAL-MULTICULTURAL EDUCATION PROGRAMS	Amend rule	July 7, 2005 2:30 p.m. to 3:30 p.m.
Interested individuals may testify at the public hearing or submit written comments regarding the proposed amendments to 6.32.2 NMAC to Dr. Gladys Herrera -Gurule, Bilingual Multicultural Education Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501 -2786 (gherrera@ped.state.nm.us) (505) 827-6594)(telefax (505)827-6566). Written comments must be received no later than 5:00 pm on July 7, 2005.			

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from the individuals listed above.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Mary Deets-Jimenez, Administrative Assistant, Office of General Counsel at (505) 827-6641 as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

CANCELLATION OF NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") published a Notice of Proposed Rulemaking in the New Mexico Register Volume XVI, Issue Number 8 (April 29, 2005) and in the Albuquerque Journal (April 25, 2005) informing of a

public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on Monday June 6, 2005, from 10:00 AM to Noon. The purpose of the public hearing was to obtain input on the following rules: 6.10.7 NMAC, Statewide Standardized Testing Security Issues and Irregularities (Amend rule); 6.19.1 NMAC, Public School Accountability: General Provisions (Repeal rule); 6.19.2 NMAC Public School Accountability: Public School Accountability System for Schools Rated Probationary (Repeal rule).

THE DEPARTMENT HEREBY CANCELS ITS NOTICE OF PROPOSED

RULEMAKING REGARDING THE RULES LISTED. At a later date, the Department intends to initiate the rulemaking process, at which time a notice of proposed rulemaking will be published and a public hearing scheduled. Questions regarding this cancellation may be referred to Dr. William Blair, Deputy Director, Assessment and Accountability Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (bblair@ped.state.nm.us) (telephone (505) 827-6570) (telefax (505) 827-6689).

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

Notice of Public Hearing

The New Mexico Commission of Public Records will hold a public hearing at 9:00 a.m. on June 8, 2005 at the State Records Center and Archives building, Room 2012, 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507. The public hearing will be held to solicit comments on the following:

Amendment

1.13.2 NMAC, Fees
1.13.5 NMAC, New Mexico Historical Records Grant Program
1.13.30 NMAC, Destruction of Public Records

Repeal

1.13.10 NMAC, Access to Public Records, Records Custody and Access
1.13.20 NMAC, Storage of Public Records, Storage of Electronic Media at the State Records Center and Archives

New

1.13.7 NMAC, Office of the State Historian Scholars Program Guidelines
1.13.10 NMAC, Records Storage, Custody, Access and Disposition
1.13.20 NMAC, Storage of Disaster Recovery Backup Files at the State Records Center and Archives

Renumber

1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems
1.14.3 NMAC, Microphotography Equipment: Inventory and Transfer

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Darlene A. Torres at 476-7902 by June 3, 2005. Proposed rules can be viewed at <http://www.nmcpr.state.nm.us> and can also be provided in various accessible formats. For additional assistance please contact Darlene A. Torres at 476-7902 or by e-mail at dtorres@rain.state.nm.us

**NEW MEXICO PUBLIC REGULATION COMMISSION
PIPELINE SAFETY BUREAU**

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION
OF PROPOSED NEW PIPELINE SAFETY
RULES, 18.60.1 AND 18.60.4 NMAC, AND
AMENDMENTS TO 18.60.2 NMAC

Docket No. 05-00191-PL

PIPELINE SAFETY BUREAU STAFF OF
THE PUBLIC REGULATION
COMMISSION,

Petitioner.

NOTICE OF PROPOSED RULEMAKING

NOTICE IS GIVEN that the New Mexico Public Regulation Commission ("Commission") proposes to adopt two new pipeline safety rules, 18.60.1 NMAC, General Provisions, and 18.60.4 NMAC, Excavation Damage Prevention, and various amendments to 18.60.2 NMAC, Enforcement Procedures. This matter comes before the Commission on Staff's Motion to Initiate Rulemaking ("Motion") filed on April 28, 2005, by the Commission's Pipeline Safety Bureau Staff ("Staff"). Staff asks the Commission to commence a proceeding to adopt the two proposed new rules and the proposed amendments to 18.60.2 NMAC. Staff attached proposed rules to its Motion. Having considered Staff's Motion and the proposed rules attached to it, and being fully advised,

THE COMMISSION FINDS AND CONCLUDES:

1. The Public Regulation Commission Act authorizes the Commission to "adopt such reasonable regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties." NMSA 1978, Section 8-8-4(B)(10) (1998). Additionally, the Pipeline Safety Act authorizes the Commission to "promulgate, amend, enforce and repeal reasonable regulations establishing minimum safety standards" for pipelines. NMSA 1978, Section 70-3-13(A) (2001).

2. Staff's Motion proposes moving the general provisions from 18.60.2 NMAC to a new rule 18.60.1 NMAC and adding provisions of a generally applicable nature; moving the existing provisions regarding excavation damage from 18.60.2 NMAC to a new rule 18.60.4 NMAC and adding provisions setting forth the responsibilities of all persons involved in excavation activities; and amending 18.60.2 NMAC to add enforcement procedures for excavation damage cases.

3. Staff states that it has formatted the proposed rules consistent with the requirements for compilation into the New Mexico Administrative Code and Staff states that, if the proposed rules were adopted, they would be contained in Title 18, Chapter 60 of the New Mexico Administrative Code.

4. Staff's Motion is well taken and should be granted as provided by this Notice of Proposed Rulemaking. The Commission has made changes to 10.60.2.12 and 10.60.2.14 NMAC to modify the procedure to be followed when a stipulation is reached.

5. The Commission will accept written comments on the rules proposed in this Notice of Proposed Rulemaking from any interested person. Interested persons shall file their written comments on the proposed rule no later than June 10, 2005. Any response comments shall be filed no later than June 24, 2005. Comments suggesting changes to the proposed rules shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rules shall be in legislative format. A copy of the proposed rules in electronic format may be obtained from the Commission to facilitate this requirement. Any proposed changes to the proposed rules shall be submitted in hard copy, and the Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (compact disc in Microsoft 2000 Word format). The label on the compact disc shall state the name of the person submitting the proposed changes and the docket number of this proceeding (Docket No.

05-00191-PL). All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this Notice.

6. Comments on the proposed rules and amendments shall be sent to: Bettie Cordova, Room 406
ATTN: Docket No. 05-00191-PL
New Mexico Public Regulation Commission
P.O. Box 1269
Santa Fe, NM 87504-1269

7. Additional copies of the proposed rules can be obtained from: Bruno Carrara
ATTN: Docket No. 05-00191-PL
Pipeline Safety Bureau
New Mexico Public Regulation Commission
142 W. Palace Avenue
Santa Fe, NM 87501
Telephone: (505) 827-3772

Copies of the proposed rules may also be downloaded from the Commission’s web site, www.nmprc.state.nm.us, under “Pipeline Safety,” then “Pipeline,” then “Proposed Pipeline Safety Rules.”

8. The Commission will review all timely submitted written comments and will hold a public hearing on the following date: Thursday, June 30, 2005 at 9:30 a.m., Fourth Floor Hearing Room, P.E.R.A. Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

9. Interested persons should contact the Commission to confirm the date, time and place of any public hearing because hearings are occasionally rescheduled.

10. Any person with a disability requiring special assistance in order to participate in a hearing should contact Cecilia Rios at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

11. Copies of this Notice of Proposed Rulemaking should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. The pipeline safety rules attached to this Notice of Proposed Rulemaking as Exhibit A are proposed for adoption as permanent rules.

B. Interested persons shall file their written comments on the proposed rules.

C. A public hearing shall be held as provided in this Notice of Proposed Rulemaking.

D. A copy of this Notice of Proposed Rulemaking shall be mailed to all persons listed on the attached Certificate of Service, and shall be published in two newspapers of general circulation in the state and in the New Mexico Register. The Commission shall provide the Notice of Proposed Rulemaking by e-mail or facsimile transmission to any persons who so request and shall post a copy of the proposed rules on the Commission’s web site.

E. This Notice of Proposed Rulemaking is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 10th day of May, 2005.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEN R. LUJAN, CHAIRMAN

JASON A. MARKS, VICE-CHAIRMAN

DAVID W. KING, COMMISSIONER

LYNDA M. LOVEJOY, COMMISSIONER

E. SHIRLEY BACA, COMMISSIONER

**NEW MEXICO OFFICE OF
WORKFORCE TRAINING
AND DEVELOPMENT**

**NEW MEXICO OFFICE OF
WORKFORCE TRAINING AND
DEVELOPMENT**

**NOTICE OF PUBLIC HEARING FOR
RULE MAKING**

The New Mexico Office of Workforce Training and Development (OWTD) State Administrative Entity (SAE) for the delivery of Workforce Investment Act (WIA) programs, will hold a public hearing for rule making and consider public comment regarding adoption of new rules, and repeal and replacement of existing rules

1. The following new rules are proposed:

11.2.19 Workforce Investment Act (WIA) On-The-Job Training (OJT)

11.2.20 Workforce Investment Act (WIA) Customized Training

11.2.21 Workforce Investment Act (WIA) Technical Assistance and Corrective Action Policy - Local Workforce Development Boards Failure to Meet Performance

11.2.22 Workforce Investment Act (WIA) Programs of Demonstrated Effectiveness

11.2.23 Workforce Investment Act (WIA) Priority of Service

11.2.24 Workforce Investment Act (WIA) Audits, Disallowed Cost Resolution, Sanctions For Delinquent Audits

11.2.25 Workforce Investment Act (WIA) Eligible Training Programs and Providers

2. The following rules (Issuances) are being repealed and replaced:

* Issuance 11.2.8 NMAC “Workforce Investment Act (WIA) Individual Training Accounts (ITAs)” and Amendment to 11.2.8 NMAC [8] filed 6/16/2000 are being repealed and replaced with 11.2.8 NMAC Workforce Investment Act (WIA) Individual Training Accounts (WIA).

* Issuance 11.2.4 NMAC “Workforce Investment Act (WIA) Program

Policies and State Technical Assistance Guide [STAG] System” filed 6/13/2003 is being repealed and replaced 11.2.4 NMAC “Rule Making Procedures.”

* Issuance 11.2.15 NMAC “Workforce Investment Act (WIA) Grievance Procedure” is being repealed and replaced with 11.2.26 NMAC “WIA Program Complaint Resolution Procedure and Procedure for Reporting Criminal Fraud and Abuse” and 11.2.27 NMAC “WIA Equal Opportunity Requirements and Discrimination Complaint Resolution Procedures.”

The Public Hearing will be held at 9:00 a.m., on Friday, July 1, 2005 at the State Capitol Building, House Judiciary Committee Room 309, Santa Fe, New Mexico. Interested persons who have a disability and require some accommodation in attending the public hearing or have the rules communicated to them, should submit a written request or e-mail identifying the disability and the type of accommodation needed to the: Office of Workforce Training and Development (OWTD), Ms. Veronica Moya (Veronica.Moya@state.nm.us), 1596 Pacheco Street-Suite 201, Santa Fe, New Mexico 87505. If such request is not made in advance, the availability of accommodation on-site cannot be guaranteed.

Inquiries or requests for copies of the policies referred to above may be addressed to the OWTD by calling Ms. Moya at (505) 827-0433 in Santa Fe.

**End of Notices and
Proposed Rules Section**

This page intentionally left blank.

Adopted Rules

ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.3 NMAC, Sections 1, 2, 6, 7, 9-12, and 201-227. These regulatory changes to 20.11.3 NMAC were made in response to EPA's publication of a final, amended federal transportation conformity rule on July 1, 2004. The local changes include incorporation of federal language regarding:

* The criteria and procedures for transportation conformity under the new 8-hour ozone standard and the PM_{2.5} standard.

* The conformity impacts of revoking the 1-hour ozone standard one year after the effective date of the 8-hour ozone nonattainment designations and when conformity will or will not apply in areas with an early action compact (EAC).

* The references to "emissions reductions tests", which have been changed to references to "interim emissions tests", the establishment of 2002 as the baseline year for interim emissions tests and the use of a "build no greater than no build" test in certain areas.

* An explanation of regional conformity tests in PM_{2.5} areas and various types of 8-hour ozone areas.

* Consideration of directly emitted PM_{2.5} from motor vehicles and PM_{2.5} precursors in regional emissions analyses.

* Re-entrained road dust and construction-related fugitive dust in PM_{2.5} regional emissions analyses and compliance with PM_{2.5} SIP control measures.

* The March 2, 1999 ruling by the US Court of Appeals which affected five aspects of the rule, including approval of federal projects during a conformity lapse, the use of motor vehicle emission budgets in conformity determinations, regionally-significant non-federal projects, the timing of conformity consequences following an EPA disapproval and the use of safety margins in areas with SIPs submitted prior to November 24, 1993.

* The provision of a one year grace period for newly designated nonattainment areas and the requirement that conformity be determined within 18 months of EPA's finding that a motor vehicle emissions budget is adequate.

* The streamlining of the frequency of conformity determinations.

* The addition of definitions for "1-hour ozone NAAQS", "8-hour ozone

NAAQS", "donut areas", "isolated rural nonattainment and maintenance areas" and "limited maintenance plan".

* An amended definition of "control strategy implementation plan revision" and "milestone".

* Allowing a conformity determination for a transportation plan or a transportation improvement program (TIP) to be based on the latest planning assumptions at the time the conformity analysis begins.

Local changes to the regulation also include:

* An amended local interagency consultation process which includes emission models for PM_{2.5} in the evaluation of substitute transportation control measures (TCMs).

* Expanded details and clarifications pertaining to the interagency consultation process for examining air quality as it relates to transportation plans.

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

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

20.11.3.2 SCOPE:

A. Action applicability:

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

(a) the adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by the metropolitan planning organization (MPO) or ~~[U.S.]~~ the United States department of transportation (DOT);

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

(c) the approval, funding or implementation of ~~[FHWA/FTA]~~ federal highway administration/federal transit administration (FHWA/FTA) projects.

(2) Conformity determinations

are not required under 20.11.3 NMAC for individual projects that are not FHWA/FTA projects. However, 20.11.3.218 NMAC applies to such projects if they are regionally significant.

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

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

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

(a) volatile organic compounds (VOCs) and nitrogen oxides (NOx) in ozone areas;

(b) NOx in NO₂ areas; and

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

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

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

~~(3)~~ (4) The provisions of 20.11.3 NMAC apply to maintenance areas for 20 years from the date the EPA approves the ~~area's~~ area's request under section 107(d) of the Clean Air Act (CAA) for ~~redesignation~~ redesignation to attainment, unless the applicable implementation plan specifies that the provisions of 20.11.3 NMAC shall apply for more than 20 years.

C. Limitations:

~~(1) Projects subject to 20.11.3 NMAC for which the NEPA process and a conformity determination have been completed by DOT, may proceed toward implementation without further conformity determinations unless more than three years have elapsed since the most recent major step occurred (NEPA process completion; start of final design; acquisition of a significant portion of the right of way; or approval of the plans, specifications and estimates). All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding final design, right of way acquisition, construction, or any combination of these phases.~~

(2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if three years have elapsed since the most recent major step to advance the project occurred. In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to 20.11.3. NMAC, a currently conforming transportation plan and TIP shall be in place at the time of project approval as described in 20.11.3.211 NMAC, except as provided by Subsection B of 20.11.3.211 NMAC.

D. Grace period for new nonattainment areas: For areas or portions of areas which have been continuously designated attainment or not designated for any NAAQS for ozone, CO, PM_{10} , $PM_{2.5}$ or NO_2 since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of these pollutants, the provisions of 20.11.3. NMAC shall not apply with respect to that NAAQS for 12 months following the effective date of final designation to nonattain-

ment for each NAAQS for such pollutant. [7/1/98; 20.11.3.2 NMAC - Rn, 20 NMAC 11.03.1.2, 6/1/02; A, 6/13/05]

20.11.3.6 OBJECTIVE: ~~[The objective of 20.11.3 NMAC is]~~ To implement section 176(c) of the CAA, as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs and projects which are developed, funded or approved by the United States DOT, and by the MPO or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53) to the Bernalillo county portion of the SIP. 20.11.3 NMAC sets forth policy, criteria and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to Section 110 and Part D of the CAA.

[7/1/98; 20.11.3.6 NMAC - Rn, 20 NMAC 11.03.1.6, 6/1/02; A, 6/13/05]

20.11.3.7 DEFINITIONS:

Terms used but not defined in 20.11.3 NMAC shall have the meaning given to them by the CAA, titles 23 and 49 U.S.C., other ~~Environmental Protection Agency (EPA)] EPA~~ EPA regulations, or other DOT regulations, in that order of priority. In addition to the definitions in this section, 20.11.3.7 NMAC, the definitions in 20.11.1 NMAC shall apply unless there is a conflict between definitions, in which case the definition in 20.11.3 NMAC shall govern.

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

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

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

~~B.] D.~~ **"Air quality credit"** means an air pollution emissions reduction benefit specifically identified by the ~~TCTC] transportation conformity technical committee (TCTC)~~ that is attributable to a proposed ~~TCM] transportation control measure (TCM)~~ or ~~LUM] land use measure (LUM)~~ described in the ~~TIP and/or MTP] TIP, the MTP or both,~~ for the purpose of reducing motor vehicle air pollutants in

order to achieve conformity. Air quality credits ~~must~~ shall not have been used to establish existing ~~MVEBs] motor vehicle emissions budgets (MVEBs).~~

~~C.] E.~~ **"Albuquerque metropolitan planning area (AMPA)"** means ~~that~~ the portion of New Mexico state planning and development district 3 ~~which~~ that comprises the area for which federal transportation funding allocated for areas of a 200,000 or greater population is expended. The AMPA is described in the MPO's most recent transportation planning documents ~~of the MPO].~~

~~D.] E.~~ **"Applicable implementation plan"** is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

~~E.] G.~~ **"CAA"** means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

~~F.] H.~~ **"Cause or contribute to a new violation"** for a project means:

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

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

~~G.] I.~~ **"Clean data"** means air quality monitoring data determined by EPA to meet the requirements of 40 CFR Part 58 that indicate attainment of the national ambient air quality standard.

~~H.] J.~~ **"Conformity analysis"** means any regional emissions analysis or localized hot-spot computer modeling assessments or any other analyses, which serve as the basis for the conformity determination.

~~I.] K.~~ **"Conformity determination"** means the demonstration of consistency with motor vehicle emissions budgets or with the appropriate interim emissions test identified at 20.11.3.215 NMAC for each pollutant and precursor identified in the applicable SIP. The conformity determination is the affirmative written documentation declaring conformity with the applicable implementation plan, which is submitted to FHWA and FTA for approval with EPA consultation. An affirmative conformity determination means conformity to the plan's purpose of eliminating or reducing the severity and number of violations of

the national ambient air quality standards and achieving expeditious attainment of such standards; and that such activities ~~[will]~~ shall not:

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

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

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

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

~~[K.]~~ **M.** “**Control strategy implementation plan revision**” ~~[is the]~~ means a revision to the implementation plan ~~[which]~~ that contains specific strategies for controlling ~~[the]~~ emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment ~~[(CAA sections 182(b)(1), 182(e)(2)(A), 182(e)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide.)]~~ (including implementation plan revisions submitted to satisfy CAA sections 172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 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 other applicable CAA provision requiring a demonstration of reasonable further progress or attainment).

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

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

P. “**Donut areas**” means

geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

~~[N.]~~ **Q.** “**DOT**” means the United States department of transportation.

~~[O.]~~ **R.** “**EPA**” means the United States environmental protection agency.

~~[P.]~~ **S.** “**FHWA**” means the federal highway administration of the DOT.

~~[Q.]~~ **T.** “**FHWA/FTA project**” ~~[for the purpose of 20.11.3 NMAC, is]~~ means any highway or transit project ~~[which]~~ that is proposed to receive funding assistance and approval through the federal-aid highway program or the federal mass transit program, or requires federal highway administration (FHWA) or federal transit administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

~~[R.]~~ **U.** “**Fiscally constrained**” ~~[is as defined in 23 CFR Part 450]~~ means, consistent with DOT’s metropolitan transportation planning regulations at 23 CFR Part 450.

~~[S.]~~ **V.** “**Forecast period**” means, with respect to a transportation plan, ~~[is]~~ the time period covered by the transportation plan pursuant to 23 CFR Part 450.

~~[T.]~~ **W.** “**FTA**” means the federal transit administration of the DOT.

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

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

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

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

~~[V.]~~ **Y.** “**Horizon year**” ~~[is]~~ means a year for which the transportation plan describes the envisioned transportation system according to 20.11.3.203 NMAC.

~~[W.]~~ **Z.** “**Hot-spot analysis**” means an estimation of likely future localized CO, and PM₁₀ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment

or maintenance area including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

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

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

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

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

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

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

GG. “**Maintenance area**” means any geographic region of the United

States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently ~~re-designated~~ redesignated to attainment subject to the requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

[CC] HH. "Maintenance plan" means an implementation plan under section 175A of the CAA, as amended.

[DD] IL. "Metropolitan planning organization (MPO)" ~~is that~~ means the organization designated as being responsible, together with the state DOT, for conducting the continuing, cooperative and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making.

[EE] JJ. ~~[Middle Rio Grande Council of Governments (MRGCOG)] "Mid-region council of governments (MRCOG)"~~ means the association of local governments within New Mexico state planning and development district 3 (Bernalillo, Sandoval, Torrance and Valencia counties) ~~which~~ that is designated by the governor of New Mexico, in consultation with the elected officials of the area, as the MPO for the Albuquerque metropolitan planning area.

[FF] KK. "Milestone" has the meaning given in CAA Sections 182(g)(1) and 189(c) ~~of the CAA~~ for serious and above ozone nonattainment areas and PM10 nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date ~~on which it is required to~~ when that level shall be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.

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

[HH] MM. "National ambient air quality standards (NAAQS)" are those standards established pursuant to section 109 of the CAA.

[H] NN. "NEPA" means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

[JJ] OO. "NEPA process completion" ~~for the purposes of 20.11.3 NMAC,~~ means, with respect to the FHWA and the FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a finding of no significant

impact or to issue a record of decision on a final environmental impact statement under NEPA.

[KK] PP. "Nonattainment area" means any geographic region of the United States ~~which~~ that has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

[LL] OO. "Project" means a highway project or a transit project.

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

[NN] SS. "Public involvement committee (PIC)" means the permanent advisory committee established by the ~~MRGCOG~~ MRCOG to provide proactive public input to the transportation planning process.

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

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

[QQ] VV. "Safety margin" means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment or maintenance.

[RR] WW. "Standard" means a

national ambient air quality standard.

[SS] XX. "State implementation plan (SIP)" (see applicable implementation plan).

[TT] YY. "State DOT" means the New Mexico ~~state highway and transportation department~~ department of transportation or its successor agency or authority, as represented by the department secretary or his ~~her~~ designee.

[UU] ZZ. "Title 23 U.S.C." means Title 23 of the United States Code.

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

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

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

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

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

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

[YY] DDD. "Transportation control measure (TCM)" ~~is~~ means any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in Section 108 of the CAA, or any other measure used as the basis for air quality credits to achieve conformity and has the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. A proposed TCM shall be identified in the ~~TIP and/or MTP~~ TIP or the MTP or both.

Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based and maintenance-based measures ~~[which]~~ that control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of 20.11.3 NMAC.

~~[ZZ]~~ **EEE.** "Transportation improvement program (TIP)" means a staged, multiyear, intermodal program of transportation projects covering the AMPA ~~[which]~~ that is consistent with the metropolitan transportation plan (MTP) and developed pursuant to 23 CFR Part 450.

~~[AA]~~ **FFF.** "Transportation plan" means the official 20-year fiscally constrained intermodal metropolitan transportation plan (MTP) that is developed for the metropolitan planning area through the metropolitan planning process ~~[for the metropolitan planning area]~~, ~~[developed]~~ pursuant to 23 CFR Part 450 ~~[(Long Range Transportation Plan, or most current successor document)]~~.

~~[BB]~~ **GGG.** "Transportation project" is a highway project or a transit project.

~~[CC]~~ **HHH.** "Written commitment" ~~[for the purposes of 20.11.3 NMAC]~~ means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

~~[DD]~~ **II.** Acronyms

- (1) AMPA-Albuquerque metropolitan planning area
- (2) AQCB-Albuquerque-Bernalillo county air quality control board
- (3) CAA-Clean Air Act, as amended
- (4) CFR-code of federal regulations
- (5) CO-carbon monoxide
- (6) DOT-U.S. department of transportation
- (7) EHD-Albuquerque environmental health department
- (8) EPA-U.S. environmental protection agency
- (9) FHWA-federal highway administration, DOT
- (10) FTA-federal transit administration, DOT
- ~~[(11) ISTEIA Intermodal Surface Transportation Efficiency Act of 1991]~~
- ~~[(12)]~~ (11) MPO-metropolitan planning organization
- ~~[(13)]~~ (12) ~~[MRGCOG Middle Rio Grande Council of Governments]~~ MRGCOG-mid-region council of governments
- (13) MTB-metropolitan trans-

portation board

- (14) MTP-metropolitan transportation plan
- (15) MVEB-motor vehicle emissions budget
- (16) NAAQS-national ambient air quality standards
- (17) NEPA-National Environmental Policy Act
- (18) NOx-oxides of nitrogen
- (19) PIC-public involvement committee
- (20) PM_{2.5}-particulate matter less than or equal to 2.5 micrometers in diameter
- ~~[(20)]~~ (21) PM₁₀-particulate matter less than or equal to 10 micrometers in diameter
- ~~[(21)]~~ (22) SIP-state implementation plan (applicable implementation plan)
- ~~[(22)]~~ (23) State DOT-New Mexico department of transportation
- ~~[(23)]~~ (24) STIP-state transportation improvement program
- ~~[(24)]~~ (25) TCC-transportation coordinating committee
- ~~[(25)]~~ (26) TCM-transportation control measure
- ~~[(26)]~~ (27) TCTC-transportation conformity technical committee
- ~~[(27)]~~ (28) TIP-transportation improvement program
- ~~[(28)]~~ [UTPPB Urban Transportation Planning Policy Board]
- (29) VOC-volatile organic compound
- (30) VMT-vehicle miles traveled [7/1/98; 20.11.3.7 NMAC - Rn, 20 NMAC 11.03.I.7, & A, 6/1/02; A, 6/13/05]

20.11.3.9 SAVINGS CLAUSE:

Any amendment to 20.11.3 NMAC ~~[which]~~ that is filed with the state records center shall not affect actions pending for violation of a city or county ordinance or board regulation. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or ~~[regulation]~~ section in effect at the time the violation was committed. [7/1/98; 20.11.3.9 NMAC - Rn, 20 NMAC 11.03.I.9, 6/1/02; A, 6/13/05]

20.11.3.10 SEVERABILITY:

If any section, paragraph, sentence, clause or word of 20.11.3 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of the remaining provisions of 20.11.3 NMAC. [7/1/98; 20.11.3.10 NMAC - Rn, 20 NMAC 11.03.I.10, 6/1/02; A, 6/13/05]

20.11.3.11 DOCUMENTS :
Documents incorporated and cited in ~~[this~~

~~part]~~ 20.11.3 NMAC may be viewed at the Albuquerque environmental health department, one civic plaza NW, room 3023, ~~[500]~~ 400 Marquette NW, Albuquerque, NM 87102.

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

20.11.3.12 [AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS:

~~This part rennumbers and amends 20 NMAC 11.03, transportation conformity, which was filed with the state records center and archives on June 1, 1998 with an effective date of July 1, 1998. All references to this regulation shall be understood as a reference to this part.] [Reserved]~~

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

20.11.3.201 FREQUENCY OF CONFORMITY DETERMINATIONS:

A. Conformity determinations and conformity redetermination for transportation plans, TIPs and FHWA/FTA projects ~~[must]~~ shall be made according to the requirements of 20.11.3.201 NMAC and the applicable implementation plan.

B. Frequency of conformity determinations for transportation plans:

(1) Each new transportation plan ~~[must]~~ shall be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan revisions ~~[must]~~ shall be found to conform before the transportation plan revisions are approved by the MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in 20.11.3.223 NMAC or 20.11.3.224 NMAC and has been made in accordance with the notification provisions of Subparagraph (g) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC. The conformity determination ~~[must]~~ shall be based on the transportation plan and the revision taken as a whole.

(3) The MPO and DOT ~~[must]~~ shall determine the conformity of the transportation plan ~~(including a new regional emissions analysis)~~ no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, the existing conformity determination ~~[will]~~ shall lapse.

C. Frequency of conformity determinations for transportation improvement programs:

(1) A new TIP ~~[must]~~ shall be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire

TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in 20.11.3.223 NMAC or 20.11.3.224 NMAC and has been made in accordance with the notification provisions of Subparagraph (g) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

(3) The MPO and DOT ~~[must]~~ shall determine the conformity of the TIP ~~(including a new regional emissions analysis)~~ no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, the existing conformity determination ~~[will]~~ shall lapse.

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

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

E. Triggers for transportation plan and TIP conformity determinations: Conformity of existing transportation plans and TIPs ~~[must]~~ shall be re-determined within 18 months of the following, or the existing conformity determination ~~[will]~~ shall lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT.

~~(1) November 24, 1993;~~

~~(2) The date of the state's initial~~

~~submission to EPA of each control strategy implementation plan or maintenance plan establishing a motor vehicle emissions budget;~~

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

~~(3) (2) The effective date of EPA approval of a control strategy implementation plan revision or maintenance plan [which] that establishes or revises a motor vehicle emissions budget if that budget has not yet been used in a conformity determination prior to approval;~~

~~(4) EPA approval of an implementation plan revision that adds, deletes or changes TCMs; and~~

~~(5) (3) The effective date of EPA promulgation of an implementation plan [which] that establishes or revises a motor vehicle emissions budget or adds, deletes or changes TCMs.~~

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

20.11.3.202 CONSULTATION:

A. General : Transportation plans and programs ~~[must]~~ shall be in conformity with the applicable implementation plan (SIP) for the nonattainment/maintenance area of Bernalillo county. The ~~[MRGCOG] MRCOG~~, as the MPO, is responsible for conducting the air quality transportation conformity analyses for all of Bernalillo county. The applicable plans and programs are the TIP ~~[-, which is included in the short term transportation program for the AMPA,]~~ and the MTP. ~~[Projects in Bernalillo county but outside the AMPA, which are included in the regional transportation improvement program for district 3, are also subject to conformity requirements.]~~ The document serving to demonstrate conformity is the transportation/air quality conformity finding. ~~[20.11.3 NMAC] 20.11.3.202 NMAC~~ provides procedures for interagency consultation (federal, state and local) and resolution of conflicts. Such consultation procedures shall be undertaken by the MPO, state DOT and DOT with the air agency and EPA before making conformity determinations and by the air agency and EPA with the MPO, state DOT and DOT in developing applicable implementation plan revisions. ~~[This transportation conformity regulation is an AQCB regulation for Bernalillo county and is included in the state implementation plan revision pertaining to transportation conformity for Bernalillo county.]~~

B. [Interagency Consultation] Interagency consultation

procedures: General factors: The affected agencies shall participate in an interagency consultation process ~~[for the purpose of assuring]~~ to assure that proposed transportation investments conform with the applicable implementation plan developed pursuant to the CAA. The affected agencies shall participate in a consultation process during the development of the transportation-related elements in the applicable SIP (i.e. ~~[transportation control measures (TCMs)] TCMs~~, the MTP, the TIP under 23 CFR Section 450.314 and 49 CFR Section 613.100), any significant revisions to the preceding documents and all conformity determinations required by 20.11.3 NMAC.

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

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

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

C. Interagency consultation procedures roles and responsibilities:

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

(a) The MPO, as the lead transportation planning agency, has the primary responsibility in the AMPA for developing the MTP, TIP and technical analyses related to travel demand and other associated modeling, data collection and coordination of consultation for these activities with the agencies specified in Paragraph (1) of

Subsection B of 20.11.3.202 NMAC, in accordance with 23 CFR Part 450, 500 and 626. The MPO ~~with~~ shall be responsible for regional emissions and travel demand analyses of the MTP and TIP in consultation with the EHD. Corridor and project-level hot spot and emissions analyses, developed in ~~coordination~~ consultation with the EHD, ~~will~~ shall be the responsibility of the project-implementing agency through the NEPA process or similar environmental evaluation process.

(b) The committees and member agencies, identified in the most recent MPO document regarding public involvement procedures for transportation plans and programs, shall participate in the MPO process for the development, monitoring and revision of the MTP and the development of the TIP. ~~The development and maintenance processes for the TIP and MTP, including associated conformity determinations, are explained in the MRGCOG's public involvement document.]~~

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

(ii) The MPO shall provide information and appropriate advance notification ~~on~~ of meeting places, dates and times, agendas and supporting materials for all of its special and regularly scheduled meetings on transportation and air quality to each of the agencies specified in Paragraph (1) of Subsection B of 20.11.3.202 NMAC in accordance with the public involvement process adopted by the MPO, consistent with the Metropolitan Planning Rule (23 CFR Section 450.316(b)(1), 49 CFR Section 613) and described in the ~~MRGCOG's~~ MRCOG's public involvement document. The MPO's compliance with the New Mexico Open Meetings Act is documented annually. Resolution of conflicts shall follow the provisions of Subsection E of 20.11.3.202 NMAC.

(2) Development of applicable

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

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

~~(+)~~(a) EPA: regional administrator or designee;

~~(+)~~(b) FHWA: division administrator or designee;

~~(+)~~(c) FTA: regional administrator or designee;

~~(+)~~(d) State DOT: secretary of transportation or designee;

~~(+)~~(e) MPO: ~~MRGCOG~~ MRCOG executive director or designee;

~~(+)~~(f) EHD: director or designee;

~~(+)~~(g) local publicly-owned transit operator: chief administrative officer or designee;

~~(+)~~(h) local governments within the nonattainment/maintenance area: chief administrative officer or equivalent or designee.

(4) The MPO shall respond in writing to substantive written comments from the affected consultation agencies described in Paragraph (1) of Subsection B of 20.11.3.202 NMAC regarding the MTP, TIP and related conformity determinations ~~[in accordance with the provisions of this part.]~~ The project implementing agencies shall respond in writing to substantive written comments regarding projects in accordance with the provisions of ~~this regulation~~ 20.11.3 NMAC. The ~~air agency (EHD)~~ EHD shall respond in writing to substantive written comments from the affected consultation agencies described in Paragraph (1) of Subsection B of

20.11.3.202 NMAC regarding the transportation components of the applicable implementation plan for the nonattainment/maintenance area, in accordance with the provisions of ~~this part~~ 20.11.3 NMAC. All formal comments (e.g. those received during the public comment period) and responses to those comments shall be included within final documents before they are forwarded for review and final approval by the FHWA/FTA ~~and~~ or EPA, as appropriate.

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

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

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

(i) upon request by the MPO, ~~will~~ the EHD shall convene the

TCTC to identify and evaluate possible substitute measures; consultation with EPA may be accomplished by sending copies of all draft and final documents, agendas and reports to EPA Region 6;

(ii) a substitute TCM ~~[must]~~ shall provide for equivalent or greater emissions reductions than the TCM contained in the applicable implementation plan;

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

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

(v) the TCMs substituted under ~~[this section]~~ 20.11.3.202 NMAC for purposes of the applicable implementation plan ~~[(as defined in Subsection C and Subsection J of 20.11.3.7 NMAC)]~~ shall receive priority funding for implementation within the MPO's MTP and TIP funding processes; and

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

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

(i) ~~[A notice given to the public]~~ the public is notified by prominent advertising in the area affected announcing the time, date and place of the hearing;

(ii) each proposed plan or revision is available for public inspection

in at least one location in the applicable area;

(iii) ~~[Notification has been made to]~~ the MPO, EPA, affected local agencies and other interested parties are notified; and

(iv) a description of the TCM(s), analysis supporting the proposal, assumptions and methodology are available to the public, the MPO and EPA ~~[within a reasonable time]~~ for at least 30 days before the public hearing and at least ~~[thirty]~~ 30 days prior to the close of the public comment period.

(d) Concurrence process for substitute TCMs:

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

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

(iii) the EPA shall notify the AQCB within ~~[fourteen]~~ 14 days if EPA's concurrence with the substitution TCM has changed as a result of ~~[the]~~ public ~~[comments]~~ comment~~[- Should the EPA fail to notify the AQCB within fourteen days, EPA is deemed to concur];~~

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

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

(f) Record Keeping: The AQCB ~~[will]~~ shall maintain documentation of approved TCM substitutions. The documentation ~~[will]~~ shall provide a description of the substitute and replaced TCMs,

including ~~[the]~~ requirements and schedules. The documentation ~~[will]~~ shall also provide a description of the substitution process including the public and agency participation and coordination with the TCTC, the public hearing and ~~[comments]~~ comment process, EPA concurrence and AQCB adoption. The documentation ~~[will]~~ shall be submitted to EPA following adoption of the substitute ~~[measure(s)]~~ TCMs by the AQCB, and made available to the public as an attachment to the applicable implementation plan.

(6) Adoption of land use measures (LUMs) into the applicable implementation plan: The AQCB shall incorporate all LUMs ~~[shall be incorporated]~~ into the applicable implementation plan ~~[by the AQCB]~~. EHD ~~[will]~~ shall coordinate the necessary efforts to achieve inclusion of the LUM into the applicable implementation plan. Prior to applying air quality credits associated with the LUM ~~[being applied]~~ to the air quality conformity determination for the ~~[TIP and/or MTP]~~ TIP or the MTP or both, one of the following ~~[must]~~ shall occur: 1) the appropriate local jurisdictions ~~[must]~~ shall have adopted the LUM, or 2) a written commitment to adopt the LUM by a certain date from the appropriate local jurisdictions shall have been submitted to the AQCB. The MPO shall submit the LUM or the written commitment to the AQCB, and the AQCB shall submit the LUM or written commitment to the EPA for incorporation into the applicable implementation plan.

(a) In order to apply air quality credit to the air quality conformity determination, the MPO shall quantify the air quality benefits of the LUM, identify and ~~[or]~~ develop a monitoring and reporting program ~~[which will]~~ that shall evaluate effectiveness of the LUM, and describe any enforcement mechanisms that ~~[will]~~ shall ensure the success of the LUM. Sufficient detail ~~[must]~~ shall exist ~~[for]~~ explaining the LUM so that relevant future land use decisions are clearly guided by the LUM.

(b) No fewer than 60 days and no more than 120 days prior to submitting the preliminary version of the MTP, TIP and the draft conformity finding to the AQCB as required in Subsection C of 20.11.3.202 NMAC, the MPO shall submit to the AQCB the results of the monitoring and reporting program for the LUM. The MPO shall provide results of the monitoring and reporting program to the AQCB at least once every ~~[3]~~ three years. Within the jurisdiction of the AQCB, if a person or entity responsible for implementing provisions of the LUM fails to take reasonable actions necessary to achieve the LUM, ~~[this may be deemed by the AQCB]~~ the AQCB may deem this a violation of the applicable implementation plan. If the AQCB determines that the LUM is not making reasonable progress

toward achieving the expected air quality benefits or if the AQCB determines that circumstances have changed such that implementation of the LUM has become infeasible, the AQCB and other responsible ~~[agency(ies)]~~ agencies shall follow the steps outlined in Subparagraph (b) of Paragraph (7) of Subsection C of 20.11.3.202 NMAC to correct implementation deficiencies.

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

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

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

D. Interagency consultation procedures: Specific processes.

(1) Interagency consultation procedures for the Bernalillo county nonattainment/maintenance area, in accordance with Subsection C of 20.11.3.202 NMAC, shall involve the MPO (transportation, land use and transit members from within the AMPA), state DOT, EPA, FHWA, ~~[and]~~ FTA and the air agency. The ~~[TCTC will~~

~~serve as the agency for providing]~~ TCTC's role in interagency consultation for the specific processes is described below. The TCTC ~~[will]~~ shall include representatives as described in Paragraph (1) of Subsection B of 20.11.3.202 NMAC. The TCTC shall be established by the air agency in cooperation with the MPO. The TCTC ~~[will]~~ shall meet ~~[at least quarterly and]~~ on an as-needed basis. The air agency, in consultation with the MPO, ~~[will]~~ shall be responsible for convening meetings and establishing meeting agendas.

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

(b) The TCTC ~~[will]~~ shall determine which minor arterials and other transportation projects ~~[should]~~ shall be considered regionally significant for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems

or extensions that offer an alternative to regional highway travel), and which projects ~~[should]~~ shall be considered to have a significant change in design concept, timing and scope from the MTP or TIP. When the TCTC determines that a significant change in design concept, timing and scope has occurred, the MPO and lead agency shall, as part of the MTP and TIP process, consult with the appropriate agencies identified in Paragraph (1) of Subsection D of 20.11.3.202 NMAC to assess the impact of this project change on the conformity determination. The MPO shall redetermine transportation conformity for air quality if a significant change occurs within the transportation network ~~[which]~~ that is likely to lead to a meaningful increase in a ~~[particular]~~ pollutant for which the nonattainment area exceeds the NAAQs, or for an area ~~[which]~~ that is designated as ~~[a maintenance area]~~ attainment and is subject to a maintenance plan.

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

(d) If TCMs are included in the SIP, the MPO shall give maximum priority to approval or funding of those TCMs, report to the AQCB annually whether those TCMs are on schedule and, if not, what delays have been encountered, what obstacles to ~~[their]~~ implementation have been identified and whether or not these obstacles are likely to be overcome. The AQCB shall also consider whether delays in TCM implementation necessitate a SIP revision to remove, substitute, or modify TCMs or identify other reduction measures. If substitute TCMs or other reduction measures

beyond those already in the SIP are deemed necessary through the consultation process ~~[of this regulation]~~ specified in 20.11.3.202 NMAC, the MPO shall work with the members of the TCTC to identify and coordinate appropriate modifications to the MTP, TIP and conformity determination. All revisions to the MTP, TIP and conformity determination ~~[will]~~ shall be made as part of the MPO's transportation ~~[policy]~~ planning process.

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

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

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

(h) Requirements for conformity tests for isolated rural nonattainment and maintenance areas shall be governed by ~~[Subparagraph (e), of]~~ Paragraph (2) of Subsection ~~[G]~~ L of 20.11.3.206 NMAC.

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

(a) In addition to the triggers defined in 20.11.3.201 NMAC, the air agency may request a new conformity determination when an emergency ~~[projects involve]~~ project involves substantial functional, ~~[locational, and]~~ location or capacity changes, or ~~[that]~~ when the project may otherwise adversely affect the transportation conformity determination.

(b) If an adjacent area is designated nonattainment and the area includes

another MPO, the agencies involved shall cooperatively share the responsibility for conducting conformity determinations ~~[on]~~ for transportation activities ~~[which]~~ that cross borders of the MPOs or nonattainment areas ~~[will be shared cooperatively by the agencies involved]~~. An agreement shall be developed between the MPOs and other appropriate ~~[agencies of]~~ local and state government agencies to address the responsibilities of each for regional emissions analysis.

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

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

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

(b) The sponsor of any ~~[such]~~

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

(c) ~~[In the case of any such regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant projects shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan for the purpose of 20.11.3.218 NMAC.]~~ Procedures to address non-conforming regionally significant projects not in the TIP or MTP or both. When an regionally significant project has not been included in the TIP or MTP or both, the TCTC shall participate in the air quality evaluation of a non-conforming regionally significant project to ensure that the project is integrated into the regional emissions analysis, the TIP and the MTP in a manner consistent with the MPO's transportation planning process, the requirements of 20.11.3 NMAC and other applicable federal requirements. Section 23 CFR 450.316 lists factors that shall be considered as part of the planning process. Among the factors that shall be considered is an analysis of the effects of all transportation projects to be undertaken within the metropolitan planning area, without regard to the funding

source. Therefore, a regionally significant project funded entirely with local funding is subject to the planning requirements of Section 23 CFR 450.316. The analysis shall consider the effectiveness, cost effectiveness, and financing of alternative investments in meeting transportation demand and supporting the overall efficiency and effectiveness of transportation system performance and related impacts on community/central city goals regarding social and economic development, housing and employment. Another factor that shall be considered is the overall social, economic, energy and environmental effects of transportation decisions (including consideration of the effects and impacts of the transportation plan on the human, natural and man-made environment and consultation with appropriate resource and permit agencies to ensure early and continued coordination with environmental resource protection and management plans, and appropriate emphasis on transportation-related air quality problems in support of 23 U.S.C. 109(h) and section 14 of the Federal Transit Act (49 U.S.C. 1610), section 4(f) of the DOT Act (49 U.S.C. 303) and section 174(b) of the Clean Air Act (42 U.S.C. 7504(b)). All projects, including regionally significant projects not yet included in a TIP or MTP or both, shall follow the requirement in 23 CFR 450.316 that calls for a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing involvement of the public in developing plans and TIPs and that provides for involvement of local, state and federal environment resource (e.g., EPA, EHD) and permit agencies as appropriate.

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

(i) 23 U.S.C. Section 109(i). This requires that the secretary of transportation for the DOT consult with the administrator for the EPA to develop and promulgate guidelines to assure that highways constructed pursuant to Title 23 of the U.S. Code are consistent with the applicable implementation plan pertaining to a nonat-

tainment area or an attainment area subject to a maintenance plan. 20.11.3 NMAC is part of the applicable implementation plan.

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

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

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

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

(d)(f) For the purposes of [this section] 20.11.3.202 NMAC and 20.11.3.218 NMAC, the phrase "adopt or approve a regionally significant project" means the first time any action necessary to [authorizing] authorize a project occurs, such as any [UTPPB] MTB action or other action by government decision making bodies necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written deci-

sion or authorization from the MPO that the project may be adopted or approved.

(5) When there is [not sufficient] insufficient information to model the projects described in Paragraph (4) of Subsection D of 20.11.3.202 NMAC, the MPO, in consultation with the lead agency for the project, shall make assumptions about the location, timing, [and] design concept and scope for those projects that are disclosed to the MPO as required in Paragraph (4) of Subsection D of 20.11.3.202 NMAC.

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

E. Resolving conflicts:

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

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

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

the AQCB, director of the city or county EHD, secretary of the environment department, ~~[chiefs] chief of the state air quality [or Air Pollution Control bureaus] bureau, manager of the city of Albuquerque's air quality division, the environmental improvement board, secretary of the [state highway and transportation department] DOT, state highway commission or an MPO.~~

F. Public consultation procedures: Affected agencies making conformity determinations on transportation plans, programs and projects shall establish a proactive public involvement process ~~[which] that~~ provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for the MTP and TIP, consistent with these requirements and those of 23 CFR 450.316(b). Any charges imposed for public inspection and copying ~~[should] shall~~ be consistent with the fee schedule contained in ~~[49 CFR 7.95] 49 CFR 7.43 and NMSA 14-2-9.B.3.~~ In addition, these agencies ~~[must] shall~~ specifically address in writing all public comments stating that known plans for a regionally significant project, which is not receiving FHWA or FTA funding or approval, have not been properly reflected in the emissions analysis ~~[supporting] that supports~~ a proposed conformity finding for the MTP or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

[7/1/98; 20.11.3.202 NMAC - Rn, 20 NMAC 11.03.II.3, & A, 6/1/02; A, 6/13/05]

20.11.3.203 CONTENT OF TRANSPORTATION PLANS:

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

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

(a) horizon years may be no more than 10 years apart;

(b) the first horizon year may be no more than 10 years from the base year

used to validate the transportation demand planning model;

(c) if the attainment year is in the time span of the transportation plan, the attainment year ~~[must] shall~~ be a horizon year; and

(d) the last horizon year ~~[must] shall~~ be the last year of the transportation plan's forecast period.

(2) For these horizon years:

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

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

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

B. ~~[Moderate] Areas Reclassified to Serious:~~ Ozone or CO nonattainment areas which are reclassified from moderate to serious and have an urbanized population greater than 200,000 must meet the requirements of Subsection A of 20.11.3.203 NMAC within two years from the date of reclassification.]

Two-year grace period for transportation plan requirements in certain ozone and CO areas: The requirements of Subsection A of 20.11.3.203 NMAC apply to such areas or portions of such areas that have previously not been required to meet these requirements for any existing NAAQS two years from the following:

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

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

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

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

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

20.11.3.204 RELATIONSHIP OF TRANSPORTATION PLAN AND TIP CONFORMITY WITH THE NEPA PROCESS:

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project ~~[must] shall~~ meet the criteria in ~~[of] 20.11.3.206 NMAC~~ through 20.11.3.216 NMAC for projects not from a TIP before NEPA process completion.

[7/1/98; 20.11.3.204 NMAC - Rn, 20 NMAC 11.03.II.5, 6/1/02; A, 6/13/05]

20.11.3.205 FISCAL CONSTRAINTS FOR TRANSPORTATION PLANS AND TIPS:

Transportation plans and TIPs ~~[must] shall~~ be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR Part 450 in order to be found in conformity. The determination that the MTP and TIP are fiscally constrained is made through the MPO's transportation planning process,

which includes the agencies represented in the consultation process described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC. [7/1/98; 20.11.3.205 NMAC - Rn, 20 NMAC 11.03.II.6, 6/1/02; A, 6/13/05]

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

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

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

TABLE 1. CONFORMITY CRITERIA

All Actions at all times:	
20.11.3.207 NMAC	Latest planning assumptions
20.11.3.208 NMAC	Latest emissions model
20.11.3.209 NMAC	Consultation
Transportation Plan:	
Subsection B of 20.11.3.210 NMAC	TCMs.
20.11.3.215 and/or 20.11.3.216 NMAC	Emissions budget [or emission reduction] and/or
interim emissions.	
TIP:	
Subsection C of 20.11.3.210 NMAC	TCMs.
20.11.3.215 and/or 20.11.3.216 NMAC	Emissions budget [or emission reduction] and/or
interim emissions	
Project (from a con forming plan and TIP):	
20.11.3.211 NMAC	Currently conforming plan and TIP
20.11.3.212 NMAC	Project from a conforming plan and TIP
20.11.3.213 NMAC	CO and PM ₁₀ hot-spots
20.11.3.214 NMAC	PM ₁₀ and PM _{2.5} control measures
Project (Not From a Co nforming Plan and TI P):	
Subsection D of 20.11.3.210 NMAC	TCMs.
20.11.3.211 NMAC	Currently conforming plan and TIP
20.11.3.213 NMAC	CO and PM ₁₀ hot-spots
20.11.3.214 NMAC	PM ₁₀ and PM _{2.5} control measures
20.11.3.215 and/ or 20.11.3.216 NMAC	Emissions budget [or emission reduction] and/or
interim emissions	

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 ~~[determination must]~~ determinations shall include a demonstration that the budget and/or ~~[emission reduction]~~ interim emissions tests are satisfied as described in the following.

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

~~[(a) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or~~

~~(b) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.]~~

(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 ~~[emission reduction] interim emissions tests [must] shall be satisfied as required by 20.11.3.216 NMAC for conformity determinations made~~

~~[(a) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or~~

~~(b) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan,] 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 ~~[must] shall satisfy the [emission reduction] 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 [will] 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) ~~[must] shall satisfy one of the following requirements:~~

~~(a) the [emission reduction] 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 [an] a reasonable further progress or attainment~~

demonstration, and the budget test required by ~~[Subsection P of 20.11.3.200 NMAC] 20.11.3.215 NMAC [must] shall be satisfied using the [submitted] 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 [must] for the 1-hour ozone NAAQS shall satisfy one of the following requirements:~~

~~(a) the [emission reduction] 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 ozone NAAQS for an area, according to Subsection D of 20.11.3.2 NMAC. 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 8-hour 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 such 8-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 8-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 8-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, part D, subpart 1 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 8-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS.

(3) Such an 8-hour 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 other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 8-hour ozone NAAQS will 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 2002.

(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 8-hour ozone NAAQS (usually marginal and certain Clean Air Act, part D, subpart 1 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 8-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 D of 20.11.3.206 NMAC.

(5) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection D of 20.11.3.206 NMAC, ozone nonattainment areas with three years of clean data for the 8-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 8-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 8-hour ozone NAAQS subject to the timing requirements of Paragraph (1) of Subsection D 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 8-hour ozone NAAQS.

E. 8-hour ozone NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1-hour ozone NAAQS that cover all or a portion of the 8-hour nonattainment area: Subsection E of 20.11.3.206 NMAC applies one year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of 20.11.3.2 NMAC. 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 8-hour 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 such 8-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 8-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) Prior to Paragraph (1) of Subsection E of 20.11.3.206 NMAC applying, the following test(s) shall be satisfied, subject to the exception in Subparagraph (e) of Paragraph (2) of Subsection E of 20.11.3.206 NMAC:

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

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

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

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

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

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

(ii) the interim emissions tests as required by 20.11.3.216 NMAC for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets

are established for each state of a multi-state 1-hour nonattainment or maintenance area;

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

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

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

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

(3) Such an 8-hour ozone nonattainment area shall satisfy the interim emissions test for NO_x as required by 20.11.3.216 NMAC, if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 8-hour ozone NAAQS will 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 2002. Prior to an adequate or approved NO_x motor vehicle emissions budget in the implementation plan submission for the 8-hour ozone NAAQS, the implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan 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) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection E of 20.11.3.206 NMAC, ozone nonattainment areas with three years of clean data for the 8-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 8-hour ozone NAAQS shall satisfy one of the following requirements:

(a) the budget test and/or interim emissions tests as required by 20.11.3.215 NMAC and 20.11.3.216 NMAC and as described in Paragraph (2) of Subsection E of 20.11.3.206 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 8-hour ozone NAAQS subject to the timing requirements of Paragraph (1) of Subsection E 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 8-hour ozone NAAQS.

[D.] F. CO nonattainment and maintenance areas: 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 CO nonattainment and maintenance areas conformity determinations ~~[must]~~ shall include a demonstration that the hot-spot, budget and/or emission reduction tests are satisfied as described in the following:

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

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

~~[(a) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or~~

~~(b) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.]~~

(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 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;

(3) except as provided in Paragraph (4) of Subsection [D.] F of 20.11.3.206 NMAC, in CO nonattainment areas the ~~[emission reduction]~~ interim emissions tests ~~[must]~~ shall be satisfied as required by 20.11.3.216 NMAC for conformity determinations made

~~[(a) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or~~

~~(b) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.] when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan;~~

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

(a) the ~~[emission reduction]~~ inter-

im emissions tests required by ~~[Subsection Q of 20.11.3.200 NMAC]~~ 20.11.3.216 NMAC; or

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

[E.] G. PM₁₀ nonattainment and maintenance areas: 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 PM₁₀ nonattainment and maintenance areas conformity determinations ~~[must]~~ shall include a demonstration that the hot-spot, budget and/or ~~[emission reduction]~~ interim emissions tests are satisfied as described in the following:

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

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

~~[(a) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or~~

~~(b) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.]~~

(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 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.

(3) In PM₁₀ nonattainment areas the ~~[emission reduction]~~ interim emissions tests ~~[must]~~ shall be satisfied as required by 20.11.3.216 NMAC for conformity determinations made:

~~[(a) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submit-~~

ted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes;

~~(b) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan; or]~~

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

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

[F.] H. NO₂ nonattainment and maintenance areas: 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 NO₂ nonattainment and maintenance areas conformity determinations ~~[must]~~ shall include a demonstration that the budget and/or ~~[emission reduction]~~ interim emissions tests are satisfied as described in the following:

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

~~(a) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or~~

~~(b) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.]~~

(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 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 NO₂ nonattainment areas the ~~[emission reduction]~~ interim emissions

tests ~~[must]~~ 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 and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

~~[(a) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or~~

~~(b) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.]~~

I. PM_{2.5} nonattainment and maintenance areas: In addition to the criteria listed in Table 1 of Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in PM_{2.5} 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 PM_{2.5} 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 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 PM_{2.5} nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.216 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

J. Areas with limited maintenance plans: Notwithstanding the other subsections of 20.11.3.206 NMAC, an area is not required to satisfy the regional

emissions analysis for 20.11.3.215 NMAC and/or 20.11.3.216 NMAC for a given pollutant and NAAQS if the area has an adequate or approved limited maintenance plan for such pollutant and NAAQS. A limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. A conformity determination that meets other applicable criteria in Table 1 of Subsection B of 20.11.3.206 NMAC is still required, including the hot-spot requirements for projects in CO and PM₁₀ areas.

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

[G.] L. Isolated rural non-attainment and maintenance areas: This ~~[paragraph]~~ subsection applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions

analysis of any MPO's metropolitan transportation plan or TIP. This paragraph does not apply to ["~~doughnut~~"] "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of [~~Sections: 207; 208; 209; 213; 214 and Subsection D, of Section 210 of 20.11.3 NMAC;~~] 20.11.3.207 NMAC, 20.11.3.208 NMAC, 20.11.3.209 NMAC, 20.11.3.213 NMAC, 20.11.3.214 NMAC and Subsection D of 20.11.3.210 NMAC. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects [~~must~~] shall also satisfy the requirements of Subsection B of 20.11.3.213 NMAC ("Localized CO and PM₁₀ violations (hot-spots)").

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or [~~emission reduction~~] interim emissions tests as described in Subsections C through [~~F;~~] K of 20.11.3.206 NMAC, with the following modifications.

(a) When the requirements of 20.11.3.215 NMAC and 20.11.3.216 NMAC apply to isolated rural nonattainment and maintenance areas, references to transportation plan or TIP [~~should~~] shall be taken to mean those projects in the statewide transportation plan or statewide TIP [~~which~~] that are in the rural nonattainment or maintenance area.

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

(i) 20.11.3.215 NMAC;

(ii) 20.11.3.216 NMAC (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding Paragraph (2) of Subsection [~~D~~] E of 20.11.3.216 NMAC);

(iii) as demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the timeframe of the statewide transportation plan, [~~must~~] shall not cause or contribute to any new violation of any standard in any areas;

increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; control measures assumed in the analysis [~~must~~] shall be enforceable.

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

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

20.11.3.207 CRITERIA AND PROCEDURES: LATEST PLANNING ASSUMPTIONS:

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

B. Assumptions [~~must~~] shall

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

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

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

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

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

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

20.11.3.208 CRITERIA AND PROCEDURES: LATEST EMISSIONS MODEL:

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

most appropriate emission estimation model to be used.

B. EPA ~~will~~ shall consult with DOT to establish a grace period following the specification of any new model.

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

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

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

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

20.11.3.209 CRITERIA AND PROCEDURES: CONSULTATION:

Conformity ~~must~~ shall be determined according to the consultation procedures in 20.11.3 NMAC and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR Part 450. Until the implementation plan revision required by 40 CFR 51.390 is fully approved by EPA, the conformity determination ~~must~~ shall be made according to Subsection A and Subsection ~~D~~ E of 20.11.3.202 NMAC and the requirements of 23 CFR Part 450.

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

20.11.3.210 CRITERIA AND PROCEDURES: TIMELY IMPLEMENTATIONS OF TCMs:

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

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

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely com-

pletion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under Title 23 U.S.C. or the Federal Transit Laws, consistent with schedules included in the applicable implementation plan.

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

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

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

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

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

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

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

20.11.3.211 CRITERIA AND PROCEDURES: CURRENTLY CONFORMING TRANSPORTATION PLAN AND TIP:

There ~~must~~ shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

A. Only one conforming

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

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

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

20.11.3.212 CRITERIA AND PROCEDURES: PROJECTS FROM A PLAN AND TIP:

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

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

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

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

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

(1) the project is included in the conforming TIP and the design concept and scope of the project were adequate at the

time of the TIP conformity determination to determine its contribution to the TIP's regional emissions, and the project design concept and scope have not changed significantly from those ~~[which]~~ that were described in the TIP; and

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

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

[7/1/98; 20.11.3.212 NMAC - Rn, 20 NMAC 11.03.II.13, 6/1/02; A, 6/13/05]

20.11.3.213 CRITERIA AND PROCEDURES: LOCALIZED CO AND PM₁₀ VIOLATIONS (hot-spots):

A. ~~[This paragraph]~~ Subsection A of 20.11.3.213 NMAC applies at all times. The FHWA/FTA project ~~[must]~~ shall not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) no new local violations ~~[will]~~ shall be created and the severity or number of existing violations ~~[will]~~ shall not be increased as a result of the project. The demonstration ~~[must]~~ shall be performed according to the consultation requirements of ~~[Paragraph (1), of Subsection D of 20.11.3.206 NMAC]~~ Paragraph (1) of Subsection D of 20.11.3.202 NMAC and the methodology requirements of 20.11.3.220 NMAC.

B. ~~[This paragraph]~~ Subsection B of 20.11.3.213 NMAC applies for CO nonattainment areas as described in Paragraph (1) of Subsection ~~[D]E~~ of 20.11.3.206 NMAC. Each FHWA/FTA project ~~[must]~~ shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations ~~[will]~~ shall be eliminated or reduced in

severity and number as a result of the project. The demonstration ~~[must]~~ shall be performed according to the consultation requirements of Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC and the methodology requirements of 20.11.3.220 NMAC.

[7/1/98; 20.11.3.213 NMAC - Rn, 20 NMAC 11.03.II.14, 6/1/02; A, 6/13/05]

20.11.3.214 CRITERIA AND PROCEDURES: COMPLIANCE WITH PM₁₀ and PM_{2.5} CONTROL MEASURES:

The FHWA/FTA project ~~[must]~~ shall comply with any PM₁₀ and PM_{2.5} control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications and estimates for the project those control measures (for the purpose of limiting PM₁₀ and PM_{2.5} emissions from the construction activities ~~[and]~~ or normal use and operation associated with the project) that are contained in the applicable implementation plan.

[7/1/98; 20.11.3.214 NMAC - Rn, 20 NMAC 11.03.II.15, 6/1/02; A, 6/13/05]

20.11.3.215 CRITERIA AND PROCEDURES: MOTOR VEHICLE EMISSIONS BUDGET:

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

B. Consistency with the motor vehicle emissions budget(s) ~~[must]~~ shall be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the attainment year (if it is within the time-frame of the transportation plan), for the last year of the transportation plan's forecast period and for any ~~[intermediated]~~ intermediate years as necessary so that the years for which consistency is demonstrated are no more than ~~[ten]~~ 10 years apart, as follows.

(1) Until a maintenance plan is submitted:

(a) emissions in each year (such as milestone years and the attainment year)

for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) ~~[must]~~ shall be less than or equal to that years motor vehicle emissions budget(s); and

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

(2) When a maintenance plan has been submitted:

(a) emissions ~~[must]~~ shall be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets; if the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emission budget(s) ~~[must]~~ shall be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan; the interagency consultation process required by ~~[Subsection C of 20.11.3.200 NMAC]~~ 20.11.3.202 NMAC shall determine what ~~[must]~~ shall be considered in order to make such a finding;

(b) for years after the last year of the maintenance plan, emissions ~~[must]~~ shall be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan; ~~[and]~~

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

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

C. Consistency with the motor vehicle emissions budget(s) ~~[must]~~ shall be demonstrated for each pollutant or pollutant precursor in Subsection B of 20.11.3.2 NMAC for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) estab-

lishes a motor vehicle emissions budget.

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

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

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

E. Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance ~~[plan]~~ plans:

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans ~~[must]~~ shall be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes ~~[or beginning 45 days after the control strategy implementation plan revision or maintenance plan has been submitted (unless EPA has declared the motor vehicle emissions budget(s) inadequate for transportation conformity purposes)]~~ and the adequacy finding is effective. However, motor vehicle emission budgets in submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans ~~[for the period of years addressed by the approved implementation plan.]~~ for the same Clean Air Act requirement and the period of years addressed by the previously approved implementation plan, unless EPA specifies otherwise in its approval of a SIP.

(2) If EPA has not declared an implementation plan submission's motor vehicle emissions budget(s) ~~[inadequate]~~ adequate for transportation conformity purposes, the ~~[inadequate]~~ budget(s) shall not be used to satisfy the requirements of ~~[this~~

~~section]~~ 20.11.3.215 NMAC. Consistency with the previously established motor vehicle emissions budget(s) ~~[must]~~ shall be demonstrated. If there are no ~~[previous]~~ previously approved implementation plans or implementation plan submissions with adequate motor vehicle emissions budgets, the ~~[emission reduction]~~ interim emission tests required by 20.11.3.216 NMAC ~~[must]~~ shall be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes ~~[more than 45 days after its submission to EPA]~~ after EPA had previously found the budget(s) adequate, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination ~~[will]~~ shall remain valid. Projects included in that transportation plan or TIP could still satisfy 20.11.3.211 NMAC and 20.11.3.212 NMAC, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) EPA ~~[will]~~ shall not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes ~~[including a motor vehicle emissions budget(s) established for any year beyond the time period addressed by a maintenance plan.]~~ unless the following minimum criteria are satisfied:

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

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

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

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

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

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

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

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

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

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

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

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

(c) after the public comment period closes, EPA will inform the state in writing whether EPA has found the submission adequate or inadequate for use in trans-

portation conformity, including response to any comments submitted directly and review of comments submitted through the state process, or EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or disapproving the implementation plan under Subparagraph (c) of Paragraph (2) of Subsection F of 20.11.3.215 NMAC;

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

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

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

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

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

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

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

(c) EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in EPA's final rulemaking or through the process described in Subparagraphs (c) through (e) of Paragraphs (1) of Subsection F of 20.11.3.215 NMAC; if EPA makes an

adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication date of EPA's approval in the federal register, or upon the effective date of EPA's approval if such action is conducted through direct final rulemaking; EPA will respond to comments received directly and review comments submitted through the state process and include the response to comments in the applicable docket.

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

20.11.3.216 CRITERIA AND PROCEDURES: [EMISSION REDUCTIONS] INTERIM EMISSIONS IN AREAS WITHOUT MOTOR VEHICLE EMISSIONS BUDGETS:

A. The transportation plan, TIP and project not from a conforming transportation plan and TIP ~~[must]~~ shall ~~[contribute to emissions reductions]~~ satisfy the interim emissions test(s) as described in Subsections C through L of 20.11.3.206 NMAC. This criterion applies ~~[as described in Subsections C through G of 20.11.3.206 NMAC. It applies]~~ to the net effect of the action (transportation plan, TIP or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

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

~~[B.]~~ (1) ~~[This criterion may be met]~~ in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA section 182(b)(1) ~~[and in moderate with design value greater than 12.7 ppm and serious CO nonattainment areas]~~ if a regional emissions analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections ~~[E through H]~~ G through J of 20.11.3.216 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection ~~[D]~~ F of 20.11.3.216 NMAC:

~~[4]~~ (a) the emissions predicted in the "action" scenario are less than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

~~[2]~~ (b) the emissions predicted in the "action" scenario are lower than:

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

(ii) 2002 emissions by any nonzero amount, in areas for the 8-hour

ozone NAAQS as described in Subsection D and Subsection E of 20.11.3.206 NMAC;

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

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

(b) the emissions predicted in the "action" scenario are not greater than:

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

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

C. CO areas: This criterion may be met:

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

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

(b) the emissions predicted in the "action" scenario are lower than 1990 emissions by any nonzero amount;

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

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

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

[C] D. PM₁₀ and NO₂ areas:

This criterion may be met in PM₁₀ and NO₂ nonattainment areas ~~[marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA section 182(b)(1); and moderate with design value less than 12.7 ppm and below CO nonattainment areas]~~ if a regional emissions analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections ~~[E through H]~~ G through J of 20.11.3.216 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection ~~[D]~~ F of 20.11.3.216 NMAC, one of the following requirements is met:

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

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

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

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

(2) the emissions predicted in the "action" scenario are not greater than 2002 emissions.

[D] E. Pollutants: The regional emissions analysis ~~[must]~~ shall be performed for the following pollutants:

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

(3) CO in CO areas;

(4) PM₁₀ in PM₁₀ areas;

(5) ~~[Transportation related pre-~~

~~ursors of PM₁₀ in PM₁₀ nonattainment and maintenance areas if the EPA Regional Administrator or the director of the state air agency has made a finding that such precursor emissions from within the area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT; and] VOC and/or NO_x in PM₁₀ areas if the EPA regional administrator or the director of the air agency has made a finding that one or both of such precursor emissions from within the area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT;~~

(6) NO_x in NO₂ areas;

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

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

[E] G. Analysis Years:

(1) The regional emissions analysis ~~[must]~~ shall be performed for analysis years that are no more than ~~[ten]~~ 10 years apart. The first analysis year ~~[must]~~ shall be no more than five years beyond the year in which the conformity determination is being made. The last year of the transportation plan's forecast period ~~[must]~~ shall also be an analysis year.

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

[F] H. "Baseline" scenario:

The regional emissions analysis required by ~~[Subsections B and C of 20.11.3.212 NMAC must]~~ Subsections B through E of 20.11.3.216 NMAC shall estimate the emissions that would result from the "baseline" scenario in each analysis year. The "baseline" scenario ~~[must]~~ shall be defined for each of the analysis years. The "baseline" scenario is the future transportation system

that ~~[will]~~ shall result from current programs, including the following (except that exempt projects list in 20.11.3.223 NMAC and projects exempt from regional emissions analysis as listed in 20.11.3.224 NMAC need not be explicitly considered):

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

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

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

[G] I. "Action" scenario:

The regional emissions analysis required by ~~[Subsections B and C]~~ Subsections B through E of 20.11.3.216 NMAC ~~[must]~~ shall estimate the emissions that would result from the "action" scenario in each analysis year. The "action" scenario ~~[must]~~ shall be defined for each of the analysis years. The "action" scenario is the transportation system that would result from the implementation of the proposed action (MTP, TIP or project not from a conforming transportation plan and TIP) and all other expected regionally significant ~~[project]~~ projects in the nonattainment area. The "action" scenario ~~[must]~~ shall include the following (except that exempt projects ~~[list]~~ listed in 20.11.3.223 NMAC and projects exempt from regional emissions analysis as listed in 20.11.3.224 NMAC need not be explicitly considered):

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

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

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

(4) the incremental effects of any travel demand management programs and transportation system management activi-

ties known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;

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

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

[H] L. Projects not from a conforming transportation plan and TIP:

For the regional emissions analysis required by ~~[Subsections B and C]~~ Subsections B through E of 20.11.3.216 NMAC, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "baseline" scenario ~~[must]~~ shall include the project with its original design concept and scope, and the "action" scenario ~~[must]~~ shall include the project with its new design concept and scope.

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

20.11.3.217 CONSEQUENCES OF CONTROL STRATEGY IMPLEMENTATION PLAN FAILURES:

A. Disapprovals:

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

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, ~~[then beginning 120 days after such disapproval]~~ only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning [120 days after] on the effective date of a disapproval without a protective finding, no transportation plan, TIP or project not in the first three years of the currently conforming transportation plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, [and con-

formity to this submission is determined. During the first 120 days following EPA's disapproval without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget(s) in the disapproved control strategy implementation plan, unless another control strategy implementation plan revision has been submitted and its motor vehicle emissions budget(s) applies for transportation conformity purposes, pursuant to 20.11.3.206 NMAC] EPA finds its motor vehicle emissions budget(s) adequate pursuant to 20.11.3.215 NMAC or approves the submission, and conformity to the implementation plan revision is determined.

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

B. Failure to submit and incompleteness:

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

C. Federal implementation plans:

If EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a state failure, the conformity lapse imposed by ~~[this section]~~ 20.11.3.217 NMAC because of that failure is removed.

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

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

A. Except as provided in Subsection B of 20.11.3.218 NMAC, no recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds

that the requirements of one of the following are met:

~~[(1) the project was included in the first three years of the most recently conforming transportation plan and TIP (or the conformity determinations regional emissions analyses), even if conformity status is currently lapsed; and the projects design concept and scope has not changed significantly from those analyses; or~~

~~(2) there is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of 20.11.3.215 NMAC and/or 20.11.3.216 NMAC for a project not from a conforming transportation plan and TIP)]~~

(1) the project comes from the currently conforming transportation plan and TIP, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis for that transportation plan and TIP;

(2) the project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project selection or endorsement) and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis; or

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

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

(1) the project was included in the regional emissions analysis supporting the most recent conformity determination [as supported by documentation acceptable to the director of the air agency for] that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope

~~has~~ have not changed significantly; or

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

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

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

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

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

20.11.3.219 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED EMISSIONS:

A. General requirements:

(1) The regional emissions analysis required by 20.11.3.215 NMAC and 20.11.3.216 NMAC for the transportation plan, TIP or project not from a conforming plan and TIP ~~must~~ shall include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by 20.11.3.202 NMAC. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects ~~must~~ shall be estimated in accordance with reasonable professional practice and shall be reviewed by the TCTC as part of the interagency consultation described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice and ~~should~~ shall be reviewed by the TCTC as part of the interagency consultation described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

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

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

(a) the regulatory action is already adopted by the enforcing jurisdiction;

(b) the project, program or activity is included in the applicable implementation plan;

(c) the control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of 20.11.3.215 NMAC contains a written commitment to the project, program or activity by the agency with authority to implement it; or

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

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

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

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

mitments ~~must~~ shall be fulfilled.

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

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

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

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

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

(a) Network-based travel models ~~must~~ shall be validated against observed counts (peak and off-peak, if possible) for a base year that is ~~preferably 3-5 years, but~~ not more than 10 years prior to the date of the conformity determination. Model fore-

casts ~~must~~ shall be analyzed for reasonableness and compared to historical trends and other factors, and the results ~~must~~ shall be documented;

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

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

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

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

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

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

(3) Highway performance monitoring system (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are ~~sample~~ sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration ~~will~~ shall

be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

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

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

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

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

[C] D. In all areas not otherwise subject to Subsection B of 20.11.3.219 NMAC, regional emissions analyses ~~must~~ shall use those procedures described in Subsection B of 20.11.3.219 NMAC if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to Subsection B of 20.11.3.219 NMAC may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per person. These methods ~~must~~ shall also consider future economic activity, transit alternatives and transportation system policies.

[D] E. PM₁₀ from construction-related fugitive dust:

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

~~(b)~~ (2) In PM₁₀ nonattainment and maintenance areas with implementation plans ~~which~~ that identify construction-related fugitive PM₁₀ as a contributor to the

nonattainment problem, the regional PM₁₀ emissions analysis shall consider construction-related fugitive PM₁₀ and shall account for the level of construction activity, the fugitive PM₁₀ control measures in the applicable implementation plan and the dust-producing capacity of the proposed activities.

E. PM_{2.5} from construction-related fugitive dust:

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

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

[E] G. Reliance on previous regional emissions analysis:

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

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

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

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

(d) the previous regional emissions analysis is consistent with the requirements of 20.11.3.215 NMAC (including

that conformity to all currently applicable budgets is demonstrated) and/or 20.11.3.216 NMAC, as applicable.

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

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

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

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

20.11.3.220 PROCEDURES FOR DETERMINING LOCALIZED CO AND PM₁₀ CONCENTRATIONS (Hot-Spot Analysis):

A. CO hot spot analysis:

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

(a) projects in or affecting locations, areas or categories of sites which are identified in the applicable implementation plan ~~or by the air agency's most current monitored data~~ as sites of violation or possible violation;

(b) projects affecting intersections that are at level-of-service D, E or F, or those that ~~will~~ shall change to level-of-

service D, E or F because of increased traffic volumes related to the project;

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

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

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

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

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

B. PM₁₀ hot-spot analysis:

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

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

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

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

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

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

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

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

C. General requirements:

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

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

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

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

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

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

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

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

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

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

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

~~**B.** If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the state may submit an implementation plan revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such an implementation plan revision, once it is endorsed by the governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.~~

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

mechanisms for such trades.

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

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

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

20.11.3.222 ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES:

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

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

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

D. If the MPO or project

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

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

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

TABLE 2. EXEMPT PROJECTS SAFETY

Railroad/highway crossing
Hazard elimination program
Safer non-federal-aid system roads
Shoulder improvements
Increasing sight distance
Safety improvement program
Traffic control devices and operating assistance other than signalization projects
Railroad/highway crossing warning devices
Guardrails, median barriers, crash cushions
Pavement resurfacing and/or rehabilitation
Pavement marking demonstration
Emergency relief (23 U.S.C. 125)

Fencing
 Skid treatments
 Safety roadside rest areas
 Adding medians
 Truck climbing lanes outside the urbanized area
 Lighting improvements
 Widening narrow pavements or reconstructing bridges (no additional travel lanes)
 Emergency truck pullovers

MASS TRANSIT

Operating assistance to transit agencies
 Purchase of support vehicles
 Rehabilitation of transit vehicles¹
 Purchase of office, shop and operating equipment for existing facilities
 Purchase of operating equipment for vehicles (e.g., radios, fare boxes, lifts, etc.)
 Construction or renovation of power, signal and communications systems
 Construction of small passenger shelters and information kiosks
 Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals and ancillary structures)
 Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
 Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet¹
 Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR Part 771

AIR QUALITY

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

OTHER

Specific activities which do not involve or lead directly to construction, such as:
 Planning and technical studies
 Grants for training and research programs
 Planning activities conducted pursuant to titles 23 and 49 U.S.C. [~~and~~]
 Federal-aid systems revisions
 Engineering to assess social, economic and environmental effects of the proposed action or alternatives to that action
 Noise attenuation
 Emergency or hardship advance land acquisitions [~~(23 CFR Part 712.204(d))~~] 23 CFR Part 710.503
 Acquisition of scenic easements
 Plantings, landscaping, etc.
 Sign removal
 Directional and informational signs
 Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures or facilities)
 Repair of damage caused by natural disasters, civil unrest or terrorist acts, except projects involving substantial functional, locational or capacity changes

[~~Drainage projects~~]

Note: ¹In PM₁₀ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.
 [7/1/98; 20.11.3.223 NMAC - Rn, 20 NMAC 11.03.II.24, 6/1/02; A, 6/13/05]

20.11.3.224 PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES:

Notwithstanding the other requirements of 20.11.3 NMAC, highway and transit projects of the types listed in Table 3 of 20.11.3.224 NMAC are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM₁₀ concentrations [~~must~~] shall be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 of 20.11.3.224 NMAC is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see Subparagraph (c) Paragraph (1) of Subsection D of 20.11.3.202 NMAC), the EPA and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows:

TABLE 3. PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES

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

20.11.3.225 TRAFFIC SIGNAL SYNCHRONIZATION PROJECTS:

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

20.11.3.226 APPLICABLE LAW:
 The federal conformity rules under 40 CFR

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

20.11.3.227 SPECIAL EXEMPTIONS FROM CONFORMITY REQUIREMENTS FOR PILOT PROGRAM AREAS:

EPA and DOT may exempt no more than six areas for no more than three years from certain requirements of 20.11.3 NMAC if these areas are selected to participate in a conformity pilot program and have developed alternative requirements that have been approved by EPA as an implementation plan revision in accordance with 40 CFR 51.390. For the duration of the pilot program, areas selected to participate in the pilot program shall comply with the conformity requirements of the pilot area's implementation plan revision for 40 CFR 51.390 and all other requirements in 40 CFR parts 51 and 93 that are not covered by the pilot area's implementation plan revision for 40 CFR 51.390. The alternative conformity requirements in conjunction with any applicable state and/or federal conformity requirements shall be proposed to fulfill all of the requirements of and achieve results equivalent to or better than section 176(c) of the Clean Air Act. After the three-year duration of the pilot program has expired, areas will again be subject to all of the requirements of 20.11.3 NMAC and 40 CFR part 51, subpart T, and/or to the requirements of any implementation plan revision that was previously approved by EPA in accordance with 40 CFR 51.390.

[20.11.3.227 NMAC - N, 6/13/05]

**NEW MEXICO ENERGY,
 MINERALS AND NATURAL
 RESOURCES
 DEPARTMENT
 OIL CONSERVATION DIVISION**

Explanatory Paragraph: This is an

amendment to 19.15.3 NMAC, Section 104. The amendment to Section 104 authorizes operation of infill wells in a spacing unit by an operator other than the operator of the first well in the unit, subject to certain restrictions and exceptions. This amendment is to be effective 05/31/05. The rest of the rule has corrections made to unnecessary capitalization with no substantive changes.

19.15.3.104 WELL SPACING AND LOCATION:

C. Gas Wells Acreage And Well Location Requirements. Any wildcat well that is projected to be drilled as a gas well to a formation and in an area that in the opinion of the division may reasonably be presumed to be productive of gas rather than oil and each development well for a defined gas pool, unless otherwise provided in special pool orders, shall be spaced and located as follows:

(1) 640-acre spacing applies to any deep gas well in Rio Arriba, San Juan, Sandoval or McKinley county that is projected to be drilled to a gas producing formation older than the Dakota formation or is a development well within a gas pool created and defined by the division after June 1, 1997 in a formation older than the Dakota formation, which formation or pool is located within the surface outcrop of the Pictured Cliffs formation (i.e., the San Juan Basin). Such well shall be located on a spacing unit consisting of 640 contiguous surface acres, more or less, substantially in the form of a square which is a section and legal subdivision of the U.S. public land surveys and shall be located no closer than: 1200 feet to any outer boundary of the spacing unit, 130 feet to any quarter section line, and 10 feet to any quarter-quarter section line or subdivision inner boundary.

(2) 320-acre spacing applies to any deep gas well in Lea, Chaves, Eddy or Roosevelt county, defined as a well that is projected to be drilled to a gas producing formation or is within a defined gas pool in the Wolfcamp or an older formation. Such well shall be located on a spacing unit consisting of 320 surface contiguous acres, more or less, comprising any two contiguous quarter sections of a single section that is a legal subdivision of the U.S. public land surveys provided that:

(a) the initial well on a 320-acre unit is located no closer than 660 feet to the outer boundary of the quarter section on which the well is located and no closer than 10 feet to any quarter-quarter section line or subdivision inner boundary; and

(b) only one infill well on a 320-acre unit shall be allowed provided that the well is located in the quarter section of the 320-acre unit not containing the initial well and is no closer than 660 feet to the outer

boundary of the quarter section and no closer than 10 feet to any quarter-quarter section line or subdivision inner boundary ~~and~~.

~~[(c) the division designated operator for the infill well is the same operator currently designated by the division for the initial well.]~~

(3) 160-acre spacing applies to any other gas well not covered above. Such well shall be located in a spacing unit consisting of 160 surface contiguous acres, more or less, substantially in the form of a square which is a quarter section and a legal subdivision of the U.S. public land surveys and shall be located no closer than 660 feet to any outer boundary of such unit and no closer than 10 feet to any quarter-quarter section or subdivision inner boundary.

D. Acreage Assignment

(1) Well Tests and Classification.

It is the responsibility of the operator of any wildcat or development gas well to which more than 40 acres has been dedicated to conduct a potential test within 30 days following completion of the well and to file the test with the division within 10 days following completion of the test. (See Rule 401)

(a) The date of completion for a gas well is the date of the conclusion of active completion work on the well.

(b) If the division determines that a well should not be classified as a gas well, the division will reduce the acreage dedicated to the well to the standard acreage for an oil well.

(c) Failure of the operator to file the test within the specified time will also subject the well to such acreage reduction.

(2) Non-Standard Spacing Units. Any well that does not have the required amount of acreage dedicated to it for the pool or formation in which it is completed may not be produced until a standard spacing unit for the well has been formed and dedicated or until a non-standard spacing unit has been approved.

(a) Division district offices have the authority to approve non-standard spacing units without notice when the unorthodox size or shape is necessitated by a variation in the legal subdivision of the U. S. public land surveys and/or consists of an entire governmental section and the non-standard spacing unit is not less than 70% or more than 130% of a standard spacing unit. The operator must obtain division approval of division Form C-102 showing the proposed non-standard spacing unit and the acreage contained therein.

(b) The director may grant administrative approval to non-standard spacing units after notice and opportunity for hearing when an application has been filed and the unorthodox size or shape is necessitated by a variation in the legal subdivision of the U.S. public land surveys or the following facts exist:

(i) the non-standard spacing unit consists of: (A) a single quarter-quarter section or lot or (B) quarter-quarter sections or lots joined by a common side; and

(ii) the non-standard spacing unit lies wholly within: a single quarter section if the well is completed in a pool or formation for which 40, 80, or 160 acres is the standard spacing unit size; a single half section if the well is completed in a pool or formation for which 320 acres is the standard spacing unit size; or a single section if the well is completed in a pool or formation for which 640 acres is the standard spacing unit size.

(c) Applications for administrative approval of non-standard spacing units pursuant to Subsection D, Paragraph (2), Subparagraph (b) of 19.15.3.104 NMAC shall be submitted to the division's Santa Fe office and accompanied by: (i) a plat showing the spacing unit and an applicable standard spacing unit for that pool or formation, the proposed well dedications and all adjoining spacing units; (ii) a list of affected persons as defined in Rule 1207.A(2); and (iii) a statement discussing the reasons for the formation of the non-standard spacing unit.

(d) The applicant shall submit a statement attesting that the applicant, on or before the date the application was submitted to the division, sent notification to the affected persons by submitting a copy of the application, including a copy of the plat described in Subparagraph (c) above, by certified mail, return receipt requested, advising them that if they have an objection it must be filed in writing within 20 days from the date the division receives the application. The director may approve the application upon receipt of waivers from all the notified persons or if no person has filed an objection within the 20-day period.

(e) The director may set for hearing any application for administrative approval.

(3) Number of wells per spacing unit. Exceptions to the provisions of statewide rules or special pool orders concerning the number of wells allowed per spacing unit may be permitted by the director only after notice and opportunity for hearing. Notice shall be given to those affected persons defined in Rule 1207.A.(2).

E. ~~[Forms Form C 102 "Well Location and Acreage Dedication Plat" for any well shall designate the exact legal subdivision dedicated to the well. Form C 101 "Application for Permit to Drill, Deepen, or Plug Back" will not be approved without an acreage designation on Form C 102.]~~ Special rules for multiple operators within a spacing unit

(1) Allowable production. If an

operator completes a well in an oil pool or prorated gas pool, located within a proration unit containing an existing well or wells producing from that pool and operated by a different operator, unless otherwise agreed by all operators of wells producing from that proration unit, the allowable production from such newly completed well shall not exceed the difference between the allowable production for such proration unit and the actual production from such pool of the existing well or wells within such proration unit. The division may authorize exceptions to this provision after hearing following appropriate notice.

(2) Notice requirements. Any operator who intends to operate a well in a spacing or proration unit containing an existing well or wells operated by another operator shall, prior to filing the application for permit to drill, deepen or plug back for such well, furnish written notification of its intent to the operator of each such existing well, and, if the unit includes state or federal minerals, to the state land office or United States bureau of land management, as applicable; provided that separate notification to the bureau of land management shall not be required if the application will be filed with that agency pursuant to 19.15.1.14 NMAC. Such notices shall be sent by certified mail, return receipt requested, and shall specify the location and depth of the proposed well. The applicant shall submit with its application for permit to drill, deepen or plug back either (a) a statement attesting that, at least twenty days before the date that the application was submitted to the division, it sent notices to the designated parties, by certified mail, return receipt requested, advising them that if they have an objection a written statement thereof must be delivered to the proposing operator within twenty days of the date such notice was mailed, and that it has received no such objection, or (b) written waivers from all persons required to be notified (approval of the application by the United States bureau of land management being deemed equivalent to waiver by that agency). In event of objection, the application may be approved only after hearing.

(3) Transfer of wells. If an operator transfers operation of less than all of its wells located within a spacing or proration unit to another operator, and such spacing unit includes any state or federal minerals, the operator shall, prior to filing form C-104A to effectuate such transfer, provide written notification to the state land office or United States bureau of land management, as applicable, of such transfer.

(4) Compulsory pooled units. No provision of 19.15.3.104 NMAC shall authorize the operation of any producing well within a unit described in an existing compulsory pooling order by any operator other than the operator designated in such

order.

(5) Federal or state exploratory units. No provision of 19.15.3.104 NMAC shall authorize the operation of any producing well within any federal exploratory unit or state exploratory unit by an operator other than the designated operator of such unit except as provided in the rules of the United States bureau of land management or state land office applicable to such unit. [1-1-50...2-1-96; A, 6-30-97; A, 8-31-99; 19.15.3.104 NMAC - Rn, 19 NMAC 15.C.104, 11-15-01; A, 05/31/05]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION

Explanatory Paragraph: This is an amendment to 19.15.9 NMAC, Section 701. The amendment to Section 701 prohibits the operation of any well in a waterflood or pressure maintenance unit by any operator other than the designated unit operator. This amendment is to be effective 05/31/05. The rest of the rule has corrections made to unnecessary capitalization with no substantive changes.

19.15.9.701 INJECTION OF FLUIDS INTO RESERVOIRS:

F. Pressure Maintenance Projects

(1) Pressure maintenance projects are defined as those projects in which fluids are injected into the producing horizon in an effort to build up and/or maintain the reservoir pressure in an area which has not reached the advanced or "stripper" state of depletion.

(2) All applications for establishment of pressure maintenance projects shall be set for hearing. The project area and the allowable formula for any pressure maintenance project shall be fixed by the division on an individual basis after notice and hearing.

(3) Pressure maintenance projects may be expanded and additional wells placed on injection only upon authority from the division after notice and hearing or by administrative approval.

(4) The division director shall have authority to grant an exception to the hearing requirements of Subsection A of 19.15.9.701 NMAC for the conversion to injection of additional wells within a project area provided that any such well is necessary to develop or maintain efficient pressure maintenance within such project and provided that no objections are received pursuant to Subsection C of 19.15.9.701 NMAC.

(5) An established pressure maintenance project shall have only one design-

ated operator. Any application for exception must be set for hearing.

G. Water Flood Projects

(1) Water flood projects are defined as those projects in which water is injected into a producing horizon in sufficient quantities and under sufficient pressure to stimulate the production of oil from other wells in the area, and shall be limited to those areas in which the wells have reached an advanced state of depletion and are regarded as what is commonly referred to as "stripper" wells.

(2) All applications for establishment of water flood projects shall be set for hearing.

(3) The project area of a water flood project shall comprise the proration units owned or operated by a given operator upon which injection wells are located plus all proration units owned or operated by the same operator which directly or diagonally offset the injection tracts and have producing wells completed on them in the same formation; provided however, that additional proration units not directly nor diagonally offsetting an injection tract may be included in the project area if, after notice and hearing, it has been established that such additional units have wells completed thereon which have experienced a substantial response to water injection.

(4) The allowable assigned to wells in a water flood project area shall be equal to the ability of the wells to produce and shall not be subject to the depth bracket allowable for the pool nor to the market demand percentage factor.

(5) Nothing herein contained shall be construed as prohibiting the assignment of special allowables to wells in buffer zones after notice and hearing. Special allowables may also be assigned in the limited instances where it is established at a hearing that it is imperative for the protection of correlative rights to do so.

(6) Water flood projects may be expanded and additional wells placed on injection only upon authority from the division after notice and hearing or by administrative approval.

(7) The division director shall have authority to grant an exception to the hearing requirements of Subsection A of 19.15.9.701 NMAC for conversion to injection of additional wells provided that any such well is necessary to develop or maintain thorough and efficient water flood injection for any authorized project and provided that no objections are received pursuant to Subsection C of 19.15.9.701 NMAC.

(8) An established water flood project shall have only one designated operator. Any application for exception must be set for hearing.

[1-1-50...2-1-96; 19.15.9.701 NMAC - Rn,

19 NMAC 15.1.701, 11-30-00; A, 05/31/05]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.20 NMAC, sections 65, 66, 67, 68 & 69, effective 06-30-2005.

16.19.20.65 SCHEDULE I:

A. NMSA 1978 Section 30-31-6 Schedule I shall consist of the following drugs and other substances, by whatever name, common or usual name, chemical name or brand name designated, listed in this section; **OPIATES**, unless specifically exempt or unless listed in another schedule, any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol
- (2) Allyl prodine
- (3) Alphacetylmethadol
- (4) Alphameprodine
- (5) Alphamethadol
- (6) Alpha-methyl fentanyl
- (7) Benzethidine
- (8) Betacetylmethadol
- (9) Betameprodine
- (10) Betamethadol
- (11) Betaprodine
- (12) Clonitazene
- (13) Dextromoramide
- (14) Diampromide
- (15) **Diethylthiambutene**
- ~~(15)~~(16) Dimethylthiambutene
- ~~(16)~~(17) Difenoxin
- ~~(17)~~(18) Dimenoxadol
- ~~(18)~~(19) Dimepheptanol
- ~~(19)~~(20) Dimethylthiambutene
- ~~(20)~~(21) Dioxaphetyl Butyrate
- ~~(21)~~(22) Dipipanone
- [~~(22)~~] (2 3)

Ethylmethylthiambutene

- ~~(23)~~(24) Etonitazene
- ~~(24)~~(25) Etoxadine
- ~~(25)~~(26) Furethidine
- ~~(26)~~(27) Hydroxypethidine
- ~~(27)~~(28) Ketobemidone
- ~~(28)~~(29) Levomoramide
- ~~(29)~~(30) Levophenacymorphan
- ~~(30)~~(31) Morpheridine
- ~~(31)~~(32) Noracymethadol
- ~~(32)~~(33) Norlevorphanol
- ~~(33)~~(34) Normethadone
- ~~(34)~~(35) Norpipanone
- ~~(35)~~(36) Phenadoxone
- ~~(36)~~(37) Phenampromide
- ~~(37)~~(38) Phenomorphan
- ~~(38)~~(39) Phenoperidine
- ~~(39)~~(40) Piritramide
- ~~(40)~~(41) Propeptazine
- ~~(41)~~(42) Propiperidine
- ~~(42)~~(43) Propiram

~~(43)~~(44) Racemoramide~~(44)~~(45) Tilidine~~(45)~~(46) Trimeperidine

B. OPIUM DERIVATIVES:

Unless specifically exempt or unless listed in another schedule, any of the following opium derivatives, its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine
- (2) Acetyl dihydrocodeine
- (3) Benzyl morphine
- (4) Codeine methylbromide
- (5) Codeine-N-Oxide
- (6) Cyprenorphine
- (7) Desomorphine
- (8) Dehydro morphine
- (9) Etorphine
- (10) Heroin
- (11) Hydromorphanol
- (12) Methyl-desorphine
- (13) Methyl-dihydromorphine
- (14) Morphine methylbromide
- (15) Morphine methylsulfonate
- (16) Morphine-N-Oxide
- (17) Myorphine
- (18) Nicocodeine
- (19) Nicomorphine
- (20) Normorphine
- (21) Pholcodine
- (22) Thebacon
- (23) Drotebanol
- (24) Beta-Hydroxy-3-Methylfentanyl
- (25) 3-Methylthiofentanyl
- (26) Acetyl-Alpha-Methyl fentanyl
- (27) Alpha-Methylthiofentanyl
- (28) Beta-hydroxfentanyl
- (29) Para-Fluoro fentanyl
- (30) Thiofentanyl

C. HALLUCINOGENIC

SUBSTANCES. Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purpose of this sub-section only, the term "isomers" includes the optical position, and geometric isomers):

- (1) 3,4 -methylenedioxy amphetamine
- (2) 5 - methoxy - 3,4-methylenedioxy amphetamine
- (3) 3,4,5 -trimethoxy amphetamine
- (4) Bufotenine
- (5) Diethyltryptamine; DET
- (6) Dimethyltryptamine; DMT
- (7) 4-methyl-2,5-dimethoxy-amphetamine; DOM or STP

(8) Lysergic acid diethylamide

(9) Lysergic acid diethylamide

(10) Marijuana

(11) Mescaline

(12) Peyote

(13) N-ethyl-3-piperidyl benzilate

(14) N-methyl-3-piperidyl benzilate

late

(15) Psilocybin

(16) Psilocyn

(17) Tetrahydrocannabinols

(18) Parahexyl (synthetic analog of delta-9-tetrahydrocannabinol (THC) an active ingredient of cannabis)

(19) Hashish

(20) 2,5 -dimethoxyamphetamine; 2, 5-DMA

(21) 4-bromo-2, 5-dimethoxyamphetamine; 2,5-DMA

(22) 4-methoxyamphetamine;

PMA

(23) Ethylamine N-ethyl-1-phenylcyclohexylamine (PCE)

(24) Pyrrolidine 1-(1-phenylcyclohexyl)-pyrrolidine (PCPy), (PHP) analog of the drug phencyclidine

(25) Thiophene (analog of phen-cyclidine) TCP or TPCP

(26) Alpha-ethyltryptamine(27) 2, 5-dimethoxy-4-ethylam-phet-amine(29) Ibogaine

D. DEPRESSANTS.

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its' salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone
- (2) Methaqualone
- (3) Benzodiazepines
 - (a) bromazepam
 - (b) camazepam
 - (c) clobazam
 - (d) cloxazolam
 - (e) delorazepam
 - (f) ethyl loflazepate
 - (g) fludiazepam
 - (h) flunitrazepam
 - (i) haloxazolam
 - (j) ketazolam
 - (k) loprazolam
 - (l) lormetazepam
 - (m) medazepam
 - (n) nimetazepam
 - (o) nitrazepam
 - (p) nordiazepam
 - (q) oxazolam
 - (r) pinazepam
 - (s) tetrazepam
- (4) Gamma hydroxybutyric acid and any chemical compound that is meta-

bologically converted to GHB.

(5) Gamma butyrolactone and any chemical compound that is metabolically converted to GHB.

(6) 1-4 butane diol and any chemical compound that is metabolically converted to GHB.

E. STIMULANTS.

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its' salts, isomers, and salts of isomers.

- (1) Fenethylamine
- (2) N-ethylamphetamine
- (3) cis-4-methylaminorex
- (4) N, N-dimethylamphetamine

F. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) 3-Methylfentanyl(N-3-methyl-1-(2-phenyl-ethyl)-4-Piperidyl)-N-phenylpropanamide, its' optical and geometric isomers, salts and salts of isomers.

(2) 3,4-methylenedioxymethamphetamine (MDMA), its' optical, positional and geometric isomers, salts and salts of isomers.

(3) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its' optical isomers, salts, and salts of isomers.

(4) 1-(-2-phenylethyl)-4-phenyl-4-acetoxy piperidine (PEPAP), its' optical isomers, salts and salts of isomers.

[16.19.20.65 NMAC - Rp 16 NMAC 19.20.28, 07-15-02; A, 06-30-05]

16.19.20.66 SCHEDULE II

A. Shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section. Substance, vegetable origin or chemical synthesis. Unless specifically exempt or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(1) Opium and opiate, and any salts, compound, derivative, or preparation of opium or opiate excluding naloxone, dextropropofol, nalbuphine, naltrexone and apomorphine but including the following:

- (a) raw opium
- (b) opium extracts
- (c) opium fluid extracts
- (d) powdered opium
- (e) granulated opium
- (f) tincture of opium
- (g) codeine
- (h) ethylmorphine

(i) etorphine hydrochloride

(j) hydrocodone

(k) hydromorphone

(l) metopon

(m) morphine

(n) oxycodone

(o) oxymorphone

(p) thebaine

(q) alfentanil

(2) Any salt, compound derivative, or preparation thereof, which is chemically equivalent or identical with any of the substances referred to in 16.19.20.66.A.(1) NMAC, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include de-cocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

B. OPIATES. Unless specifically exempted or unless in another schedule any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation except dextrose and levopropoxyphene:

- (1) Alphaprodine
- (2) Anileridine
- (3) Bezitramide
- (4) Diphenoxylate
- (5) Dihydrocodeine
- (6) Dextropropoxyphene (bulk)

non-dosage form

- (7) Fentanyl
- (8) Isomethadone
- (9) Levomethorphan
- (10) Levorphanol
- (11) Metazocine
- (12) Methadone
- (13) Methadone-Intermediate
- (14) Monamide-Intermediate
- (15) Pethidine
- (16) Pethidine-Intermediate A
- (17) Pethidine-Intermediate B
- (18) Pethidine-Intermediate C
- (19) Phenazocine
- (20) Piminodine
- (21) Racemethorphan
- (22) Racemorphan
- (23) Sufentanil
- (24) Carfentanil
- (25) Levo-alphaacetylmethadol

(LAAM)

C. STIMULANTS.

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which con-

tains any quantity of the following substances having a stimulant effect on the central nervous system.

(1) Amphetamine, its' salts, optical isomers and salts of its' optical isomers.

(2) Methamphetamine, its' salts, isomers and salts of isomers.

(3) Phenmetrazine and its' salts.

(4) Methylphenidate.

(5) Immediate Precursors.

(6) Phenylacetone.

See 16.19.21 NMAC - Drug Precursors

D. DEPRESSANTS.

Unless specifically exempt or unless listed in another schedule any material, compound mixture or preparation which contains any quantity of the substance having a depressant effect on the central nervous system, including its' salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Amobarbital
- (2) Secobarbital
- (3) Pentobarbital
- (4) Phencyclidine
- (5) Dronabinol (synthetic) - in sesame oil and encapsulated in soft gelatin capsules in a drug product approved by the U.S. Food and Drug Administration

(6) Glutethimide

(7) 1-phenylcyclohexylamine

(8) 1-piperidinocyclohexanecar-

bonitrile

E. HALLUCINOGENIC SUBSTANCES.

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purpose of this paragraph only, the term "isomers" includes the optical position, and geometric isomers): Nabilone

F. MISCELLANEOUS:

(1) Dihydroetorphine

(2) Bulk dextropropoxyphene

(3) Remifentanil

[16.19.20.66 NMAC - Rp 16 NMAC 19.20.28(1), 07-15-02; A, 06-30-05]

16.19.20.67 SCHEDULE III: Shall Consist of Drugs and Other Substances, By Whatever Official Name, Common or Usual Name Designated Listed in This Section.

A. STIMULANTS.

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Those compounds, mixtures or preparations in dosage unit form contain-

ing any stimulant, amphetamine, phenmetrazine or methamphetamine previously exempt, for which the exemption was revoked by FDA Regulation Title 21, Part 308.13, and any other drug of the quantitative composition shown in that regulation for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

- (2) Benzphetamine
- (3) Phendimetrazine
- (4) Chlorphentermine
- (5) Clortermine

B. DEPRESSANTS.

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:

- (a) Amobarbital,
- (b) Secobarbital,
- (c) Pentobarbital,

(d) Butalbital; or any salt thereof and one or more active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

- (a) Amobarbital,
- (b) Secobarbital,

(c) Pentobarbital; or any salt of any of these drugs approved by the FDA for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid.

- (4) Chlorhexadol
- (5) Lysergic Acid
- (6) Lysergic Acid Amide
- (7) Methyprylon
- (8) Sulfondiethylmethane
- (9) Sulfonethylmethane
- (10) Sulfonmethane
- (11) Tiletamine/zolazepam

(Telazol)

(12) Ketamine Hydrochloride

(13) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug and Cosmetic Act.

C. Nalorphine (a narcotic drug)

D. Buprenorphine

[F]G. NARCOTIC DRUGS.

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an

equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage units, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

[F]E. ANABOLIC STEROIDS. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth. Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances listed in this section:

- (1) boldenone
- (2) chloro testosterone
- (3) clostebol
- (4) dehydrochlormethyltestosterone
- (5) dihydrotestosterone
- (6) drostanolone
- (7) ethylestrenol
- (8) fluoxymesterone
- (9) formebolone
- (10) mesterolone
- (11) methandienone
- (12) methandranone
- (13) methandriol
- (14) methandrostenolone
- (15) methenolone
- (16) methyltestosterone

- (17) mibolerone
- (18) nandrolone
- (19) norethandrolone
- (20) oxandrolone
- (21) oxymesterone
- (22) oxymetholone
- (23) stanolone
- (24) stanozolol
- (25) testolactone
- (26) testosterone
- (27) trenbolone; and
- (28) any salt, ester, or isomer of a

drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

[F]G. The following anabolic steroid containing compounds, mixtures, or preparations have been exempted by the Board from 16.19.20.67.E NMAC, Schedule III:

[16.19.20.67 NMAC - Rp 16 NMAC

[Please see Table on page 473]

TABLE OF EXEMPT ANABOLIC STEROID PRODUCTS

Trade Name	Company	NDC No.	Form	Ingredients	Quantity
Androgyn L. A.	Forest Pharmaceuticals, St. Louis MO	0456-1005	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4mg/ml
Andro-Estro 90-4	Rugby Laboratories, Rockville Centre, NY	0536-1605	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4mg/ml
depANDROGY N	Forest Pharmaceuticals, St. Louis, MO	0456-1020	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2mg/ml
DEPO-T.E	Quality Research Pharm., Carmel,IN	52728-257	Vial	Testosterone cypionate Estradiol cypionate	50mg/ml 2mg/ml
DepTESTROGE N	Martica Pharmaceuticals, Phoenix, AZ	51698-257	Vial	Testosterone cypionate Estradiol cypionate	50mg/ml 2mg/ml
Dumone	Wintec Pharmaceutical Pacific, MO	52047-360	Vial	Testosterone enanthate Estradiol valerate	90mg/ml 4mg/ml
DURATESTRI N	W.E. Hauck Alpharetta, GA	43797-016	Vial	Testosterone cypionate Estradiol cypionate	50mg/ml 2mg/ml
DUP-SPAN II	Primedics Laboratories Gardena, CA	0684-0102	Vial	Testosterone cypionate Esterified cypionate	50mg/ml 2mg/ml
Estratest	Solvay Pharmaceuticals Marietta, GA	0032-1026	TB	Esterified estrogens Methyltestosterone	125mg 2.5mg
Estratest HS	Solvay Pharmaceuticals Marietta, GA	0032-1023	TB	Esterified estrogen Methyltestosterone	0.625 mg 1.25 mg
PAN ESTRA TEST	Pan American Labs Covington, LA	0525-0175	Vial	Testosterone cypionate Estradiol cypionate	50mg/ml 2mg/ml
Premarin with Methyltestosterone	Ayerst Labs, Inc. New York, NY	0046-0879	TB	Conjugated estrogens Methyltestosterone	1.25mg 10.0mg
Premarin with Methyltestosterone	Ayerst Labs, Inc. New York, NY	0046-878	TB	Conjugated estrogens Methyltestosterone	0.625 mg 5.0 mg
Synovex H Pellets In process	Syntex Animal Health Palo Alto, CA	Drum	Testosterone Propionate Estradiol benzoate	25mg 2.5 mg

Synovex H Pellets in process granulation	Syntex Animal Health Palo Alto, CA	Drum	Testosterone Propionate	10 parts 1 part
TEST-ESTRO Cypionate	Rugby Laboratories Rockville Center NY	0536-9470	Vial	Estradiol bensoate Testosterone cypionate	50mg/ml 2mg/ml
Testagen	Clint Pharmaceuticals Nashville, TN	55553-257	Vial	Estradiol cypionate Testosterone cypionate	50mg/ml 2mg/ml
Testosterone Cyp 50 Estradiol Cyp 2	I.D.E. Interstate Amityville, NY	0814-7737	Vial	Estradiol cypionate Testosterone cypionate	50mg/ml 2mg/ml
Testosterone Cypionate- Estradiol Cypionate injection	Best Generics, No. Miami Beach, FL	54274-530	Vial	Estradiol cypionate Testosterone cypionate	50mg/ml 2mg/ml
Testosterone Cypionate- Estradiol Cypionate injection	Goldline Labs Ft. Lauderdale, FL	0182-3069	Vial	Estradiol cypionate Testosterone cypionate	50mg/ml 2mg/ml
Testosterone Cypionate- Estradiol Cypionate injection	Schein Pharmaceuticals Port Washington, NY	0364-6611	Vial	Estradiol cypionate Testosterone cypionate	50mg/ml 2mg/ml
Testosterone Cypionate- Estradiol Cypionate injection	Steris Labs Inc. Phoenix, AZ	0402-0257	Vial	Estradiol cypionate Testosterone cypionate	50mg/ml 2mg/ml
Testosterone Enanthate- Estradiol Valerate Injection	Goldline Labs Ft. Lauderdale, FL	0182-3073	Vial	Estradiol valerate Testosterone enanthate	90mg/ml 4mg/ml
Testosterone Enanthate- Estradiol Valerate Injection	Schein Pharmaceuticals Port Washinfon, NY	0364-6618	Vial	Estradiol valerate Testosterone enanthate	90 mg/ml 4 mg/ml
Testosterone Enanthate- Estradiol Valerate Injection	Steris Labs, Inc. Phoenix, AZ	0402-0360	Vial	Estradiol valerate Testosterone enanthate	90 mg/ml 4 mg/ml
Testosterone Cypionate- Estradiol Cypionate Injection	The Upjohn Co. Kalamazoo, MI	0009-0253	Vial	Estradiol cypionate Testosterone Cypionate	50 mg/ml 2 mg/ml

19.20.28(2), 07-15-02; A, 02-15-03; A, 06-30-05]

16.19.20.68 SCHEDULE IV: Shall Consist of the Drugs and Other Substances, by Whatever Official Name, Common or Usual Name, Chemical Name, or Brand Name Designated, Listed in this Section:

A. DEPRESSANTS. Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its' salts, isomers, and salts of isomers whenever the exis-

tence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam
- (2) Barbital
- (3) Chloral Betaine
- (4) Chloral Hydrate
- (5) Chlordiazepoxide
- (6) Clonazepam
- (7) Clorazepate
- (8) Clotiazepam
- (9) Diazepam
- (10) Estazolam
- (11) Ethchlorvynol
- (12) Ethinamate
- (13) Flurazepam
- (14) Halazepam
- (15) Lorazepam
- (16) Mebutamate
- (17) Meprobamate
- (18) Methohexital
- (19) Methylphenobarbital
- (20) Midazolam
- (21) Oxazepam
- (22) Paraldehyde
- (23) Petrichloral
- (24) Phenobarbital
- (25) Prazepam
- (26) Quazepam
- (27) Temazepam
- (28) Triazolam

B. FENFLURAMINE.

Any material, compound, mixture or preparation which contains any quantity of the following substance, including its' salts, isomers (whether optical position, or geometric) and its' salts, or such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine

C. STIMULANTS.

Unless specifically exempt or unless listed in another schedule any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its' salts, isomers (whether optical position, or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Diethylpropion
- (2) Phentermine
- (3) Pemoline (including organometallic complexes and chelates thereon)
- (4) Pipradrol
- (5) SPA ((-)-1-dimethyl amino-1,2-diphenylmethane)
- (6) Mazindol
- (7) Cathine
- (8) Fencamfamin
- (9) Fenproporex
- (10) Mefenorex
- (11) Modafinil
- (12) Sibutramine

D. OTHER SUBSTANCES. Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its' salts:

- (1) Dextropropoxyphene(Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)
- (2) Pentazocine
- (3) Carisoprodol
- (4) Nalbuphine Hydrochloride
- (5) Butorphanol Tartrate
- (6) Dezocine
- (7) Dichloralphenazone
- (8) Zaleplon
- (9) Zolpidem

E. NARCOTIC DRUG.

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof: Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

F. EXEMPTION OF CHLORAL.

When packaged in a sealed, oxygen-free environment, under nitrogen pressure, safeguarded against exposure to the air. Chloral when existing under the above conditions, is a substance which is not intended for general administration to a human being or another animal, and contains no narcotic controlled substances and is packaged in such a form that the package quantity does not present any significant potential for abuse. All persons who engage in industrial activities with respect to such chloral are subject to registration; but shall be exempt from Section 30-31-16 through 19 of the New Mexico Controlled Substances Act and 16.19.20.19 NMAC through 16.19.20.52 NMAC of the Board of Pharmacy regulations.

G. EXEMPT COMPOUNDS.

Librax and Menrium are preparations which contain chlordiazepoxide, a depressant listed in Schedule IV, 16.19.20.68.A.5 NMAC and other ingredients in such combinations, quantity, preparation or concentration as to vitiate the potential for abuse of chlordiazepoxide, and are hereby exempt preparations.

- (1) Librax
- (2) Menrium, 5-2
- (3) Menrium, 4-5
- (4) Menrium, 10-4

[16.19.20.68 NMAC - Rp 16 NMAC 19.20.28(3), 07-15-02; A, 06-30-05]

16.19.20.69 SCHEDULE V: Shall consist of the Drugs and Other Substances By Whatever Official Name, Common or Usual Name, Chemical Name or Brand Name Designated, Listed in this Section. Narcotic drugs containing non-narcotic

active medicinal ingredients. Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone.

A. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

B. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

C. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

D. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

E. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

F. Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

G. Pyrovalerone.
16.19.20.69 NMAC - Rp 16 NMAC 19.20.28(4), 07-15-02; A, 06-30-05]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

This Part 14.10.4 NMAC, State of New Mexico Electrical Code filed 5-27-2004 - part name later changed to 2002 State of New Mexico Electrical Code filed 10-18-04 both repealed, effective 07-01-05.

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 10 ELECTRICAL
CODES
PART 4 2005 NEW MEXICO
ELECTRICAL CODE**

14.10.4.1 ISSUING AGENCY:
The Construction Industries Division of the Regulation and Licensing Department.
[14.10.4.1 NMAC - Rp, 14.10.4.1 NMAC, 7-1-05]

14.10.4.2 SCOPE: This rule applies to all contracting work performed in New Mexico on or after July 1, 2005, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date.

[14.10.4.2 NMAC - Rp, 14.10.4.2 NMAC, 7-1-05]

14.10.4.3 STATUTORY AUTHORITY: NMSA 1978 Section 60-13-9.

[14.10.4.3 NMAC - Rp, 14.10.4.3 NMAC, 7-1-05]

14.10.4.4 DURATION: Permanent.

[14.10.4.4 NMAC - Rp, 14.10.4.4 NMAC, 7-1-05]

14.10.4.5 EFFECTIVE DATE: July 1, 2005, unless a later date is cited at the end of a section.

[14.10.4.5 NMAC - Rp, 14.10.4.5 NMAC, 7-1-05]

14.10.4.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for electrical wiring, as defined in CILA Section 60-13-32, in New Mexico.

[14.10.4.6 NMAC - Rp, 14.10.4.6 NMAC, 7-1-05]

14.10.4.7 DEFINITIONS: [Reserved]

14.10.4.8 ADOPTION OF THE 2005 NATIONAL ELECTRICAL CODE:

A. This rule adopts by reference the 2005 national electrical code, as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the 2005 national electrical code.

[14.10.4.8 NMAC - Rp, 14.10.3.8 NMAC, 7-1-05]

14.10.4.9 ADMINISTRATION AND ENFORCEMENT:

A. Inspectors. See 14.6.5 NMAC, Inspectors.

B. Disconnect Orders. See CILA Section 60-13-42.

C. Stop Orders. See 14.5.3 NMAC, Inspections.

D. Unsafe Wiring. See 14.5.1 NMAC, General Provisions.

E. Electrical Plan Review. See 14.5.2 NMAC, Permits.

F. Electrical Permit. See 14.5.2 NMAC, Permits.

G. Electrical Inspections.
(1) Inspections Required: See 14.5.3 NMAC, Inspections.

(2) Electrical Customer-Owned Distribution System Requirements. See 14.5.3 NMAC, Inspections.

[14.10.4.9 NMAC - Rp, 14.10.4.8 NMAC, 7-1-05]

14.10.4.10 AMENDMENTS TO THE 2005 NATIONAL ELECTRICAL CODE. The following amendments are made to the 2005 national electrical code. The article and section numbering is keyed to the national electrical code format.

A. Article 110. Requirements for Electrical Installations.

(1) 110.2 Add: Listing and labeling by a nationally recognized testing laboratory as listed by the occupation safety and health administration.

(2) Electrical wiring, equipment, or material that is not listed and labeled and a (UL) safety standard exists shall be certified by a nationally recognized testing laboratory approved by the electrical bureau.

(3) Electrical wiring, equipment, or materials that is not listed and labeled and a (UL) safety standards does not exist shall be certified by an electrical engineer licensed to practice in New Mexico. The certification will verify manufacturer's safety and performance test data of the product.

(4) 110.21. Marking of warning signs. All equipment used on circuits over 300 volts between conductors shall have a warning sign either on or adjacent to the equipment.

(5) Signs shall be made in accordance with ANSI Z535 environmental and safety signs. The language shall read:

(a) for voltages over 300 volts but less than 600 volts - install a 1" x 4" label that reads - "480 VOLTS";

(b) for voltages over 600 volts and there are exposed parts - "DANGER - HIGH VOLTAGE - KEEP OUT";

(c) warning signs shall be consistent with national electrical code articles 230.203, 370.72 (e), 620.3 (a), 665.23, 490.53, and 490.55.

(6) 110.26 (A) Working space. Add: "Disconnects that do not provide overcurrent, overload, short circuit, or ground fault protection are not required to maintain the dimensions of 110.26(A)(1), (A)(2) and (A)(3) where adequate space is not readily available and the disconnect is permanently labeled "Not to be opened while energized".

(7) 110.26 (E) Exception no. 2: headroom. Add: "In underground water well pump enclosures, service equipment or panelboards that do not exceed 200 amperes, operating at 250 volts or less and only feeding equipment associated with the water well enclosure, shall be permitted in spaces where the headroom is less than six and a half feet (6 ½ ft.) but greater than five feet (5 ft.) provided the enclosure is sup-

plied with a removable lid, that when removed would allow six and a half feet (6 ½ ft.) headroom".

B. Article 210. Branch Circuits.

(1) 210.8(B) (6) GFCI Protection. Add: "All 15 or 20 amp receptacles installed within six(6) feet of any sink shall be GFCI protected, unless otherwise specifically allowed in the 2005 national electrical code." Add exception: Receptacles for appliances and equipment within dedicated space that in normal use is not easily moved from one place to another, and that is cord and plug connected in accordance with section 400.7(A)(6)(7)(8).

(2) 210.11 (A) (1). Number of branch circuits. Add: "In dwelling occupancies, circuits for general purpose receptacles shall be limited to a maximum of ten (10) current consuming outlets. Single and duplex receptacle outlets are considered to be one current consuming outlet. Exception: Circuits serving only lighting loads may be calculated per article 220 of the national electrical code.

(3) 210.11 (C) (1). Small appliance branch circuits - dwelling unit. Add: "Not more than four (4) current consuming outlets shall be connected to these circuits. Single and duplex receptacle outlets are considered to be one current consuming outlet. Exception: Small appliance circuits that supply only dining area receptacles may serve not more than six (6) receptacle outlets".

(4) 210.11 (C) (2). Laundry area receptacle. "This circuit shall provide supply to the laundry equipment receptacle only. This circuit shall not serve any other outlets.

(5) 210.12 (B) Dwelling unit bedrooms. Change: "All branch circuits that supply 125-volt, single-phase, 15-and 20-ampere receptacle outlets installed in dwelling unit bedrooms shall be protected by a listed arc-fault circuit interrupter(s). Exception: The location of the arc-fault circuit interrupter shall be permitted to be at other than the origination of the branch circuit in compliance with (a) and (b) below:

(a) the arc-fault circuit interrupter installed within six feet (6 ft.) of the branch circuit overcurrent device as measured along the branch circuit conductors;

(b) the circuit conductors between the branch circuit overcurrent device and the arc-fault circuit interrupter shall be installed in a metal raceway or a cable with a metallic sheath."

(6) 210.19 (A). General. Voltage drop. Add: "Conductors for branch circuits shall be sized to prevent excessive voltage drop. Conductors on 15 amp branch circuits, between the overcurrent protection device and the farthest outlet served, shall not exceed 75 feet for # 14 AWG copper cir-

cuit conductors, or 150 feet for # 12 AWG copper, measured along the branch circuit conductors. Conductors on 20 amp branch circuits, between the overcurrent protection device and the farthest outlet served, shall not exceed 75 feet for # 12 AWG copper, or 150 feet for # 10 AWG copper, measured along the branch circuit conductors. Branch circuits exceeding 150 feet from the overcurrent device to the farthest outlet served measured along the branch circuit conductors, shall be sized so that the voltage drop does not exceed 5%.”

(7) 210.52 (C) (3). Peninsula counter spaces. Add: “At least one receptacle outlet shall be installed at each peninsular counter space, when the total length of the peninsular has a long dimension of six (6) feet, or greater and a short dimension of one (1) foot, or greater. A peninsular countertop is measured from the connection edge.”

(8) 210.52 (G) Basement and garages. Add: “Receptacle outlets must be installed a minimum of eighteen (18) inches above finished floor, in attached or detached garages.”

(9) 210.70 (A)(2)(D)&(C)(1) Lighting outlets required. Add: “At least one (1) switched lighting outlet shall be installed in all accessible attics and crawl spaces adjacent to the access point.”

(10) 210.70 (A) (2)(E). Lighting outlets switch locations. Add: “On single family dwellings at least one wall switch, or automatic lighting control such as a motion detector shall be installed at each entrance or exit to control exterior illumination.”

C. Article 215. Feeders.

(1) 215.1. Scope Wiring methods for feeders: Add: “Article 334, nonmetallic-sheathed cable and article 338, service entrance cable type SER, shall be permitted to be used for feeders in dwelling units providing the cables shall not pass through or under any other occupancy. Article 340. UF cable shall be permitted to be used underground for any occupancy, and indoors only in accordance with article 334, nonmetallic-sheathed cable, providing the cable shall not pass through or under any other occupancy.”

(2) 215.2 (A) (4). Voltage drop. Add: “Feeder conductors shall be sized to prevent excessive voltage drop. The maximum voltage drop on both feeders and branch circuits at the farthest outlet of power shall not exceed eight percent (8%).”

D. Article 225. Outside Branch-Circuit and Feeders.

(1) 225.5 Voltage drop. Add: “Feeder conductors shall be sized to prevent excessive voltage drop. The maximum voltage drop on both feeders and branch circuits at the farthest outlet of power shall not exceed eight percent (8%).”

(2) 225.19 (A) Clearance above

roofs. Exception no. 2. Delete in its entirety.

(3) 225.32 Location. Add: “The disconnecting means shall be located at a readily accessible point outside the building or structure and within thirty (30) feet and in sight of the building or structure; or within forty eight (48) inches from the point where the feeder conductor raceway enters the building or structure

(4) 225.32 Disconnect location. Exception no. 1. Change: “For industrial installations under single management, where documented safe switching procedures are established and maintained for disconnection, the disconnection means shall be permitted to be located elsewhere on the premises.”

E. Article 230. Services.

(1) 230.24 (A) Clearance above roofs. Exception no. 2: Delete in its entirety.

(2) 230.28. Service masts as supports. Add: “Where a service mast is used for the support of service drop conductors, it shall be a minimum two inch (2”) rigid metal conduit, intermediate metal conduit or comply with local utility requirements.”

(3) 230.31 (D) Voltage drop. Add: “Where the underground service lateral is customer owned, the service lateral conductors shall be sized to prevent excessive voltage drop. The maximum voltage drop on the service lateral, feeders and branch circuits at the farthest outlet of power shall not exceed eight percent (8%). Customer owned includes all non-utility owned or operated service lateral conductors.”

(4) 230.43. Wiring methods for 600 volts, nominal, or less. Change: “Service entrance conductors shall be limited to the following wiring methods: article 330 metal-clad cable, 338 service-entrance cable type USE, 342 intermediate metal conduit, 344 rigid metal conduit, 352 rigid nonmetallic conduit, 358 electrical metallic tubing, 366 auxiliary gutters, 368 busways, 370 cablebus or 376 wireways. All other methods referred to in article 230.43 are hereby deleted.”

(5) 230.54 (H) Add: “Overhead service support shall comply with the serving utility requirements or be at least six inch by six inch (6” x 6”) pressure-treated timber or equivalent round poles installed to a depth not less than four (4) feet below finish grade.”

(6) 230.70 (A) Add: “The disconnecting means for each occupant of a multiple occupancy building shall be grouped at a common location.

(7) 230.70 (A) (1). General locations of service disconnect. Amend paragraph to read as follows: “The service disconnecting means shall be located at a readily accessible point. Where the disconnect-

ing means is located outside the building or structure the disconnect shall be associated with the meter enclosure. Where the disconnecting means enclosure is located outside the building or structure within thirty (30) feet and in sight of the building or structure it will not be considered a separate structure but will require a permanent plaque located at the building distribution equipment stating the location of the building disconnecting means. Where the meter enclosure is located on the building or structure the service disconnecting means enclosure shall be located at a readily accessible point within forty eight (48) inches from the meter enclosure.” Exception: “Bushing current transformer meter installations that are associated with the utility transformer are not required to be associated with the disconnecting means. Where the disconnecting means is located inside the building the disconnect shall be located at a readily accessible point within forty eight (48) inches from the point where the service conductor raceway enters the building or structure.”

(8) 230.72 (A) Grouping of disconnects. Add: “All building or structure disconnects shall be grouped at one location and shall be separated by the least practical distance, not to exceed an overall distance of twenty (20) feet.”

F. Article 240. Overcurrent Protection. 240.24 (F) Location in or on premises. Add: Overcurrent devices shall not be located in bathrooms, cupboards, pantries or similar locations which restrict ready access.”

G. Article 250 - Grounding.

(1) 250.32 (B) (2). Two or more buildings, grounded conductor. Delete in its entirety.

(2) 250.50 Grounding electrode systems. Add: “On new construction a concrete encased electrode shall be considered available and installed in compliance with NEC 250.52(A) (3). If a concrete encased electrode is not present, at least 20 feet of No. 2 bare copper in direct contact with the earth at a depth below the earth’s surface of not less than thirty (30) inches shall be installed with a minimum of two (2), eight (8) foot grounds rods spaced a minimum of six (6) feet apart.”

(3) 250.52 (A)(5) Rod electrodes. Add: “Copper or copper-clad grounding electrodes shall be not less than 5/8” diameter and when in direct contact with the earth it shall be copper or copper-clad.”

(4) 250.66 (B) Connections to concrete-encased electrodes. Amend paragraph to read as follows: “... the grounding electrode conductor shall not be smaller than #4 AWG copper.”

(5) 250.104 (A). Bonding metal water piping systems. Add: “The hot and cold metal water pipes shall be bonded

together at an accessible location. The bonding jumper shall be No. 6 copper minimum. Non-metallic water pipe systems, which contain short sections of metal water pipes and are not likely to become energized, are not required to be bonded."

(6) 250.118. Equipment grounding conductor. Add (15): "An equipment grounding conductor shall be installed in all branch circuit and feeder raceways on or above a roof. The equipment grounding conductor shall be sized in accordance with table 250.122."

H. Article 290. Energy Conservation.

(1) 290.10. Scope. "This article sets forth minimum requirements for the design of new buildings and structures or portions thereof and additions to existing buildings that provide facilities or shelter for public assembly, educational, business, mercantile, institutional, storage and residential occupancies designed primarily for human occupancy, by regulating their illuminating systems and equipment for effective use of energy."

(2) 290.20. Exempt buildings, areas, and equipment. For exemptions refer to the New Mexico energy conservation code.

(3) 290.30. Lighting power budget.

(a) The interior lighting power is the upper limit of the power to be available to provide the lighting needs in accordance with the criteria and calculation procedures specified herein, and shall include the load of lamps and ballasts.

(b) The interior lighting power shall not exceed the unit power density permitted by the New Mexico energy conservation code.

(c) In lieu of the unit power density method, the interior lighting power may be calculated in accordance with the electrical power and lighting chapter of the New Mexico energy conservation code.

(4) 290.40 Night Sky Protection Act. Outdoor lighting shall comply with the Night Sky Protection Act.

I. Article 300. Wiring Methods.

(1) 300.11 (A) Secured in place. Add: "Independent support wires shall be limited to support of flexible wiring methods from the last point of support or junction box for connections within an accessible ceiling to lighting fixtures or equipment."

(2) 300.11 (A) (1). Securing and supporting. This section shall apply to fire rated and non-fire rated ceiling assemblies.

(3) 300.11 (A) (1). Exception. Delete in its entirety.

(4) 300.11 (A) (2). Exception. Delete in its entirety.

(5) 300.14. Length of conductors

at boxes. Add: "The six (6) inches shall be measured from the front edge of the box to the end of the conductor."

J. Article 310.

Conductors for General Wiring. 310.2 (B). Conductor material. Add the restriction: "The use of aluminum current carrying conductors shall be of the AA-8000 series and shall be limited to no. 2 or larger for aluminum or copper-clad aluminum." Exception: The equipment-grounding conductor shall be limited to No. 4 or larger if in a listed cable assembly.

K. Article 314. Outlet, Device Pull and Junction Boxes. 314.27(a) Exception. Delete in its entirety.

L. Article 334. Nonmetallic-Sheathed Cable.

(1) 334.10 (3) Delete in its entirety.

(2) 334.10(C)(3) Type NMS. Add: "For smoke detector circuits in dwellings."

(3) 334.12(A)(11) Uses not permitted. Add (11): "Type NM, NMC, or NMS shall not be installed in buildings, or structures such as stores, professional offices, motels, hotels, and similar occupancies classified as commercial or industrial."

(4) 334.12(A) (12) Uses not permitted. Add (12): "In any multifamily dwelling or other structure exceeding three (3) floors above grade. For the purpose of this article, the first floor of a building shall be that floor that has fifty (50) percent or more of the exterior wall surface area level with or above finished grade. One additional level that is the first level and not designed for human habitation and used only for vehicle parking, storage or similar use shall be permitted."

M. Article 340. Underground Feeder and Branch Circuit Cable.

(1) 340.10 (8) Uses permitted. Add (8): "Type UF cable shall be permitted to be imbedded in adobe construction."

(2) 340.10 (9). Add (9): "Type UF cable, or an approved electrical raceway shall be installed on straw bale residential construction."

(3) 340.12 (12) Uses not permitted. Add (12): "Type UF cable shall not be installed in buildings or structures such as stores, professional offices, motels, hotels, or similar occupancies classified as commercial or industrial."

N. Article 352 Rigid Nonmetallic Conduit. 352.12 (C) Uses not permitted. Add: "Schedule 40 rigid non-metallic conduit shall not be used where the raceway is exposed."

O. Article 348 Flexible Metal Conduit. 348.12(1) Uses not permitted. Change: In wet locations.

P. Article 358 Electrical Metallic Tubing. 358.12 (7). Uses not per-

mitted. Add: "Electrical metallic tubing shall not be permitted to be installed underground or in concrete slabs or walls, which are in contact with the earth."

Q. Article 394 Concealed Knob and Tube Wiring. 394.12 Uses not permitted. Concealed knob and tube wiring shall not be permitted to be installed except by special written permission from the electrical bureau.

R. Article 410 Luminaries. 410.4 (D) (1) Bathtub and shower areas. Add (1): "Wall mount luminaries (fixtures) installed in bathtub or shower space shall be marked 'suitable for wet locations' and be ground fault circuit interruption protected."

S. Article 422. Appliances. 422.9. Installation of appliance. Add: "Where an evaporative cooler is installed, a listed raceway shall be installed during rough-in from the control point to the evaporative cooler location. The raceway shall contain an equipment-grounding conductor from the control box to the junction box at the unit. The equipment grounding conductor shall be sized in accordance with table 250.122."

T. Article 550. Mobile Homes and Mobile Home Parks.

(1) 550.32 (A) Mobile home service equipment. Change: "The mobile home service equipment shall be located adjacent to the mobile home and not mounted in or on the mobile home. The service equipment shall be located in sight from and not more than one hundred (100) feet from the exterior wall of the mobile home it serves. The service equipment shall be permitted to be located elsewhere on the premises, provided that a disconnecting means suitable for service equipment is located in sight from and not more than thirty (30) feet from the exterior wall of the mobile home it serves. Grounding at the disconnecting means shall be in accordance with 250.32."

(2) 550.32 (H) Mobile home service equipment. Add (H): "A 125 volt 15 or 20 amp receptacle outlet shall be installed with ground fault circuit interruption protection at each mobile home or manufactured home service equipment, or the local external disconnecting means permitted in 550.32 (A)."

(3) 550.32 (I) Overhead service. Add (I): "Overhead service support shall comply with the serving utility requirements or be at least six inch by six inch (6" x 6") pressure-treated timber or equivalent round poles installed to a depth not less than four (4) feet below finish grade."

U. Article 552. Park Trailers. 552.47(D) Calculations. Add (D): Minimum allowable demand factors. Service and feeders for park trailer sites shall be permitted to be calculated in accordance with article 550.31 for mobile homes.

V. Article 700. Emergency Systems. 700.1. Scope. Add: "Refer to the latest adopted edition of the building code and the NFPA-101 life safety code for exit and emergency lighting requirements."

W. Article 800. Communications Circuits. 800.154 (H). Applications of listed communications wires and cables. Add (H): "Each dwelling unit telephone outlet shall have not less than 4 pairs of No. 24 AWG communication conductors. Each 4 pair cable shall serve not more than three telephone outlets. Conductors shall terminate in a listed box or on a terminal block near the electrical service or location of telephone service. Any exterior wall penetration shall be installed in a listed raceway."

[14.10.4.10 NMAC - Rp, 14.10.4.10 NMAC, 7-1-05]

14.10.4.11 SMOKE DETECTORS. For smoke detectors, refer to the latest adopted edition of the building code. Smoke detectors installed in new single family dwellings shall be served by a single source. When two (2) or more smoke detectors are required in a dwelling unit, they shall be interconnected with a multi-conductor cable assembly. Location and power back-up requirement shall be in accordance with the latest adopted edition of the building code.

[14.10.4.11 NMAC - Rp, 14.10.4.11 NMAC, 7-1-05]

14.10.4.12 ACCESSIBILITY REQUIREMENTS FOR PERSONS WITH DISABILITIES. Add: "Electrical device installation shall comply with accessibility codes adopted for New Mexico."

[14.10.4.12 NMAC - Rp, 14.10.4.12 NMAC, 7-1-05]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
MANUFACTURED HOUSING
DIVISION**

This is an amendment to 14.12.2.8 NMAC; 14.12.2.15 NMAC; 14.12.2.16 NMAC; 14.12.2.28 NMAC; 14.12.2.40 NMAC; 14.12.2.41 NMAC; 14.12.2.46 NMAC; 14.12.2.53 NMAC; 14.12.2.57 NMAC; 14.12.2.62 NMAC; effective 7/1/05:

14.12.2.8 MINIMUM STANDARDS:

A. Manufactured Homes: The division adopts as part of these regulations the H.U.D. Manufactured Home Construction and Safety Standards Act of 1974, 24 C.F.R. 3280 and the H.U.D. Manufactured Home Procedural and

Enforcement Regulations as authorized under Title VI of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5401, et seq., as the minimum New Mexico standards, except as provided herein.

B. Installation of Manufactured Homes:

(1) The division adopts, as part of these regulations, the NFPA 70, *national electrical code*, [1996] 2002 edition, as amended, that pertains to manufactured (mobile) homes.

(2) The division adopts, as part of these regulations, the NFPA 54, *national fuel gas code*, [1992] 2002 edition, as amended, that pertains to manufactured (mobile) homes.

(3) The division adopts, as part of these regulations, the *uniform plumbing code*, [1994] 2003 edition, as amended, that pertains to manufactured (mobile) homes.

(4) The division adopts, as part of these regulations, the NFPA 58, *standards for the storage and handling of liquefied petroleum gases*, 1992 edition, as amended, that pertains to manufactured (mobile) homes.

(5) The division adopts as part of these regulations, the *uniform mechanical code*, 2003 edition, as amended, that pertains to manufactured (mobile) homes.

C. The amendments and changes in these regulations as made by the division shall be enforced thirty (30) days after filing as provided by the State Rules Act (Section 14-4-1, et. seq., NMSA 1978) and the Uniform Licensing Act (Section 61-1-1, et seq., NMSA 1978).

D. Manufactured homes installed before May 19, 1988, used for nonresidential purposes are granted until May 19, 1993 to comply with the requirements for access to the handicapped. If a nonresidential manufactured home is relocated or if major modifications are made to the unit, the unit must be brought into compliance to the state requirements for access to the handicapped.

E. Any unit manufactured or installed after May 19, 1988, used for nonresidential, or commercial purposes must be constructed to the appropriate codes or standards as adopted by construction industries division. Construction industries division has full jurisdiction in approval and inspection of nonresidential manufactured units. None of the provisions contained in Subsection E of this section shall apply to retailers licensed by the motor vehicle division of the taxation and revenue department.

F. Any person or entity licensed under the Manufactured Housing Act will post a "notice to the public" poster at their place of business in a conspicuous place to the public. The poster will include

the name and address of the regulation and licensing department, manufactured housing division, and will inform the consumer where they would be able to file a complaint in regards to any violation of the New Mexico Manufactured Housing Act and regulations. The division will furnish the posters.

[14.12.2.8 NMAC - Rp, 14 NMAC 12.2.8, 9-14-00; A, 7-1-05]

14.12.2.15 DEALERS:

A. A dealer's license entitles its holder to engage in the business of selling, exchanging, buying for resale, leasing, offering to or attempting to negotiate sales or exchanges or lease-purchases of new and pre-owned manufactured homes. A dealer may also perform all functions, which a broker is authorized to perform under the act and these regulations. Any person who in any manner acts as a dealer in the transaction of more than one manufactured home in any consecutive 12-month period is required to be licensed as a dealer.

B. Each dealer's location shall have a qualifying party and each location shall have a separate license.

C. A dealer shall maintain a place of business, which is an actual physically, established location from which business can be conducted and where accounts and records shall be available for inspection during normal business hours by a representative of the division. A post office box, secretarial service, telephone answering service, or similar entity does not constitute an actual physically established location.

D. The following provisions shall govern all transactions in which a dealer is involved in a transfer of a pre-owned manufactured home between a buyer and a seller, other than the dealer.

(1) The dealer's role is that of a fiduciary to his principal.

(2) In all such transactions which require a transfer of title, the dealer must: determine the status of title, including all recorded liens and security interests, of the manufactured home according to the title records of the motor vehicle division, and disclose in writing to all parties in the transaction the status of title of the home as shown by such records.

(3) All listing agreements entered into by a dealer shall disclose the percentage amount or fee to be received by the dealer upon the completion of a transaction under the terms of the listing agreement.

(4) Prior to the closing between the buyer and seller on a transaction, the dealer shall deliver to both the buyer and the seller a closing statement which shall contain, but is not limited to, the following information: the purchase price; all funds paid and to be paid by the buyer; all funds received and to be received by the seller;

receipt and disposition of all other funds relevant to the transaction; the method of assumption, disposition or other treatment of existing loans on the home and liens on or security interests in the home.

E. Each dealership location must have at least one (1) licensed salesperson per location. For an individual dealer (i.e. non-corporate) the dealer's license shall meet the requirement of a salesman license for the person to whom it is issued. A dealership filing as a corporation must have at least one (1) licensed salesperson. All persons engaged in selling manufactured homes for a dealer must be licensed ~~and bonded~~ with the division before engaging in the business.

F. Each dealer is required at the time of sale of a manufactured home to make a full disclosure to the buyer, concerning the disposition of the wheels, axles and hitch(es). Such disclosure must be signed and approved by the purchaser.

G. The director of the manufactured housing division may grant a temporary display dealer license to a licensed dealership for a time period not to exceed thirty (30) days.

(1) The original consumer protection bond will cover the temporary display dealership license.

(2) The temporary display dealer's license can only be issued for a display area such as state or county fairs; shopping malls, flea markets, etc.

(3) The cost for temporary display dealer's license is twenty-five dollars (\$25.00).

(4) A letter of request and the appropriate license fee must be submitted to the division and an approval received before the home(s) can be displayed. The letter of request will include the following information how long the home will display at the designated address; the address or location home will be displayed; the names of home(s) and serial number(s).

H. If a dealership is open for business prior to receiving the appropriate license to conduct business, the division may tag each home with a "prohibit sales notice" and an inspection fee of \$60.00 will be charged to the dealer for removal of each such tag.

I. Temporary Sales Locations: Any licensed dealership may display and offer for sale manufactured homes in a single family residential area specifically designated for manufactured home use.

(1) The dealer shall notify the manufactured housing division in writing, on a form supplied by the division of the address(es) and location where homes will be displayed and offered for sale.

(2) The fee for a temporary sales location shall be \$50.00 and shall be

renewed every six months.

(3) All rules and regulations of the manufactured housing division shall apply to temporary sales locations.

(4) If a dealer discharges a salesperson for any activities in violation of the MHD rules and regulations the dealer must report the discharge to the division to investigate the potential violation.

[14.12.2.15 NMAC - Rp, 14 NMAC 12.2.15, 9-14-00; A, 12-1-03; A, 7-1-05]

14.12.2.16 BROKERS:

A. A manufactured home broker's license entitles its holder to engage in the functions authorized for brokers in the act. A manufactured home broker's functions are strictly limited to only pre-owned manufactured homes. Any person who in any manner engages in brokerage activities for more than one manufactured home in any consecutive 12-month period is required to be licensed as a manufactured home ~~dealer~~ broker.

B. A manufactured home broker cannot negotiate any transaction involving the sale, exchange, renting or leasing of real estate unless he is licensed under the Real Estate Act of New Mexico.

C. Each manufactured home broker shall be individually licensed.

D. A manufactured home broker's role is that of a fiduciary to his principal.

E. In all transactions which require the transfer of title to a manufactured home and in which a manufactured home broker is involved the manufactured home broker must determine the status of title, including all recorded liens and security interests, of the manufactured home according to the title records of the motor vehicle division, and disclose in writing to all parties in the transaction the status of title of the home as shown by such records.

F. A manufactured home broker shall maintain a place of business, which is an actual physically, established location from which business can be conducted and where accounts and records shall be available for inspection during normal business hours by a representative of the division. Each branch office shall also maintain copies of adequate records for this same inspection purpose of all transactions handled within the branch office.

G. A manufactured home broker shall fully disclose to the consumer any ownership interest of the manufactured home broker, either direct or indirect, in the manufactured home prior to the consumer's entering into any agreement for the purchase of the home.

H. All listing agreements entered into by a manufactured home broker shall disclose the percentage amount or fee

to be received by the manufactured home broker upon the completion of a transaction under the terms of the listing agreement.

I. A manufactured home broker shall not enter into a net listing agreement.

J. Upon receipt of a written offer to purchase, a manufactured home broker shall promptly deliver the written offer to purchase to the seller. Upon obtaining written acceptance of the offer to purchase, the manufactured home broker shall promptly deliver true copies to the purchaser and seller. All terms of the transaction must be included in the written offer to purchase.

K. Before receiving a customer deposit, a manufactured home broker shall give to a purchaser an itemized statement of all approximate costs relevant to the transaction.

L. A manufactured home broker shall initiate the transfer of title on a manufactured home no later than 30 days from the completion of the transaction. A manufactured home broker shall not be responsible for title transfer if it is the responsibility of the purchaser's lienholder.

M. Prior to the closing between the buyer and seller, the manufactured home broker shall deliver to both the buyer and seller a closing statement which shall contain, but is not limited to, the following information:

(1) the purchase price;

(2) all funds paid and to be paid by the buyer;

(3) all funds received and to be received by the seller;

(4) receipt and disposition of all other funds relevant to the transaction;

(5) the method of assumption, disposition or other treatment of existing loans on the home and liens on or security interest in the home.

N. A manufactured home broker shall not operate or provide a lot or other location where manufactured homes are displayed for consumers.

O. Each manufactured home broker branch location shall have as qualifying party, a licensed and bonded associate manufactured home broker.

P. A manufactured home broker shall not purchase a manufactured home from a financial institution licensed by the New Mexico financial institutions division or consumer for the purpose of resale.

Q. A manufactured home broker will not engage in the business of buying and selling manufactured homes.

R. Every manufactured home broker will be audited annually to ensure they are not in the business of buying or selling manufactured homes.

[14.12.2.16 NMAC - Rp, 14 NMAC

12.2.16, 9-14-00; A, 12-13-02; A, 12-1-03; A, 7-1-05]

14.12.2.28 BONDS:

A. Consumer protection bonds or other security as approved by the division, shall not be released by the division until all claims and complaints against the licensee have finally resolved or until two (2) years after the licensee ceased doing business in New Mexico, whichever period is later; the time period provided herein shall be six (6) months for bonds or other security posted by installers and repairmen.

B. All liability on a consumer protection bond or other form of security allowed by the division shall be applicable to the bond or other security in effect as of the date of sale or service of the occurrence which gave rise to the liability. In the event that the total amount of claims against a consumer protection bond exceeds the aggregate total amount of any bond or other form of approved security, the division may distribute the proceeds of such bond as other approved security pro rata to the claimants.

C. The committee may order the division to attach and disburse a licensee's consumer protection bond subsequent to a hearing before the committee without necessarily taking action against the licensee's license. The division may attach any licensee's consumer protection bond and indemnify a consumer for losses to the limit of the bond for damages resulting from such licensee's violation of the act or regulations or from fraud, misrepresentation, making of false promises or the refusal, failure of inability to transfer good and sufficient legal titles, as these causes are set forth and authorized in Section 60-14-6, N.M.S.A. 1978. The division, upon a finding of a violation by a licensee, may further require the licensee to increase the amount of any bond. Any increase shall be in proportion to the seriousness of the offense or to the repeat nature of the licensee's violation, but shall not exceed one hundred thousand dollars (\$100,000.00) for manufacturers, fifty thousand dollars (\$50,000.00) for dealers, and brokers, twenty-five thousand dollars (\$25,000.00) for installers and repairmen. The division may reduce any increased bond when satisfied that violations have been cured by appropriate corrective action and that the licensee is otherwise in good standing. The division director is authorized to negotiate settlements and is authorized to sign and enter into stipulated agreements with licensees.

D. If reimbursement to a consumer for repairs, parts or other work is requested in a complaint the committee shall determine the reasonable value of such repairs, parts or work.

E. If a licensee has posted

more than one (1) consumer protection bond with the division, the division may, upon request from such licensee, review the performance record of the licensee and authorize the release of one (1) or more bonds. In no case shall the division authorize the release of all bonds except in accordance with Section 14.12.2.28 NMAC.

F. If a licensee does not conduct any business after issuance of his license and the posting of the applicable bond, the division, upon receipt of the satisfactory evidence that no business was conducted, and upon surrender of the license, may release the licensee's bond.

G. A corporate surety which issues a surety bond for a license may cancel the surety bond by giving sixty (60) days prior written notice to the division of such cancellation, provided, however, that no such cancellation shall be effective unless the division has approved the cancellation by appropriate signature on the notice.

H. The division shall give written notice to any corporate surety of any formal notice of contemplated disciplinary action served upon a licensee that is insured by that corporate surety.

I. Payments from a consumer protection surety bond may only be used to reimburse a consumer for actual damages incurred as a result of actions caused by a licensee. Actual damages may include, but are not limited to, repairs, parts or other work requested in a complaint, after the committee determines the reasonable value of such repairs, parts or work, and for reimbursement of deposits or down payments. The proceeds of a bond may not be used to pay punitive damages, attorneys fees or costs associated with, or attributable, to pain and suffering.

[14.12.2.28 NMAC - Rp, 14 NMAC 12.2.28, 9-14-00; A, 7-1-05]

14.12.2.40 INSTALLATION INSPECTIONS:

A. The division shall inspect each installation of a manufactured home.

B. The division shall issue a notice of violation whenever a manufactured home contains a violation of the installation requirements pursuant to regulations. The notice shall include a description of each violation.

C. Upon correction of any violation a re-inspection of the manufactured home shall be requested.

D. Upon receipt of an inspection request, the division shall inspect the manufactured home and shall post notice of any continuing violation.

E. Mechanical, ~~and~~ electrical and general construction contractors ~~and journeymen~~ licensed with the con-

struction industries division and who perform work on manufactured homes are not required to hold a license with the manufactured housing division. However, they must be registered with the manufactured housing division. The registration form shall show the name of the license holder, business address, mailing address, type of license issued by the construction industries division, expiration date of license, and the name of the qualifying party. Registrants must pay any required fee and must post a consumer protection bond with the division.

F. All materials used in the installation of all manufactured homes shall be listed materials or have prior written approval of the division.

[14.12.2.40 NMAC - Rp, 14 NMAC 12.2.40, 9-14-00; A, 7-1-05]

14.12.2.41 INSPECTION PERMITS:

A. No manufactured home shall be installed in New Mexico unless the installer, or homeowner, if authorized, has obtained an installation and/or permanent foundation inspection permit(s) from the division.

B. Installation inspection permits shall include the name and license number of each licensee performing installation work and the consumer's name and address. When the consumer's address is a post office box or rural route, a map showing the current location shall be included. Unlicensed homeowners performing work on their own principal residential property must perform all the work themselves, or must employ or contract division approved licensees, to perform said work. The unlicensed homeowner shall execute a document, prepared by the division, acknowledging their understanding and expertise, pursuant to federal and New Mexico installation rules, regulations, standards, including the manufacturer's installation and site engineering requirements; and, shall assume all legal liability for any work performed, or under the supervision or contract of said homeowner. The unlicensed homeowner shall assume all responsible for compliance with all local and state requirements, codes and inspection requirements.

C. Installation inspection permits shall be returned to the division in accordance with the instructions on the permit. Upon final inspection, inspectors shall certify on the permit, or upon any inspection report, that the manufactured home meets the minimum standards for use and occupancy provided for by the act and these regulations.

D. Permits are valid ~~ninety (90)~~ one hundred eighty (180) days from the date of issuance. A time extension may be granted by the division for delay occasioned by weather conditions or with

inspections involving a home that is being re-manufactured or installed on a permanent foundation.

E. An installation permit must be issued with each new or pre-owned manufactured home to be installed in the state of New Mexico. The issued permit shall be utilized by the person who installs the home.

F. Upon a written request the division may issue a \$15.00 permit for any alteration, modification or repair of a manufactured home or any component part of a manufactured home except warranty work, which is performed under a previous permit and installation.

G. Any system or structural modification work done under the manufacturer II license must be permitted and inspected.

H. If a manufactured home installation is made without a permit, the homeowner, dealer or installer will be subject to a fine of a double permit fee.

I. The division may assess a re-inspection fee against any person found to be in violation of this regulation.

J. Upon a written request the division may issue a \$15.00 permit for an existing installation when the home is converting from LP Gas to natural gas or natural gas to LP gas.

K. Where a licensed installer does not perform the gas pressure test on a manufactured home the installer shall leave the original installation permit taped to the furnace door. (This applies only to natural gas homes.)

[14.12.2.41 NMAC - Rp, 14 NMAC 12.2.41, 9-14-00; A, 7-1-05]

14.12.2.46 GAS CONNECTIONS: Any installation or repair of liquefied petroleum gas piping, or appliances in a manufactured home shall be performed by a person licensed by the liquefied petroleum gas bureau of the construction industries division of the regulation and licensing department, and shall be performed in accordance with the regulations of the LPG bureau.

A. No riser, inlet or gas connection or inlet gas connection shall be located beneath any manufactured home or any exit. No manufactured home shall be installed over a gas yardline.

B. The gas inlet on the manufactured home shall protrude no more than six (6) inches from the manufactured home. The inlet shall be rigidly anchored or strapped to a structural member within six (6) inches of the point where it enters beneath the manufactured home.

[14.12.2.46 NMAC - Rp, 14 NMAC 12.2.45.2, 9-14-00; A, 7-1-05]

14.12.2.53 ELECTRIC CON-

NECTIONS:

A. General Requirements:

(1) All manufactured homes shall be connected to the electrical power by means of a four (4) wire connection, with the fourth (4th) (green) wire acting as an equipment ground, grounding the home to the service pole or pedestal.

(2) No electrical power connection shall be spliced unless the splice is protected in an approved weather-tight raceway.

(3) Aluminum wire may be used in the state of New Mexico in size #2 or larger.

(a) Aluminum wire shall not be directly connected to copper wire without the use of an approved disconnect device.

(b) Metallic gas, water, waste pipes, and air-circulating ducts on a manufactured home shall be bonded. They will be considered bonded if they are attached to the terminal on the chassis by clamps, solderless connectors, or by suitable grounding type straps.

(c) All electrical wiring installed to an evaporative cooler must be installed in a protective conduit and the cooler must be installed in accordance to the manufacturer's listed instructions.

(d) All electrical wiring installed to any air conditioning unit must be installed in accordance to the air conditioners manufacturer's listed instructions.

(4) The manufacturer's electrical installation instructions must be followed on all new homes installed in the state of New Mexico.

B. Power Cords:

(1) If the manufactured home is rated less than one hundred (100) AMPS and does not use an underground electrical supply, a listed power cord of the proper sizing may be installed pursuant to the manufacturer's installation manual or the national electric code (NEC).

(2) Only one (1) power cord may be connected to a manufactured home.

(3) The power cord must be a single continuous length and shall not exceed either the length requirements of the (NEC) or the rated ampacity, including voltage drop.

(4) When a power cord is used, it shall be protected at the connection by an over-load device sized pursuant to the NEC and the ampere rating of the cord.

(5) The power supply to the manufactured home shall be a feeder assembly consisting of not more than one manufactured home power-supply cord with integral molded cap.

(6) If the manufactured home has a power-supply cord, it shall be permanently attached to the distribution panelboard or to a junction box permanently connected to the distribution panelboard, with the free

end terminating in an attachment plug cap.

(7) A listed clamp or the equivalent shall be provided at the distribution panelboard knock out to afford strain relief for the cord to prevent strain from being transmitted to the terminals when the power-supply cord is handled in its intended manner.

(8) The cord shall be of an approved type with four conductors, one of which shall be identified by a continuous green color or a continuous green color with one or more yellow stripes for use as the grounding conductor.

(9) Length of Supply Cord: The overall length of a power-supply cord, measured from the end of the cord, including bared leads, to the face of the attachment- plug cap shall not be less than 21 feet and shall not exceed 36 ½ feet.

(10) The power-supply cord shall bear the following marking: "For use with manufactured homes."

(11) The point of entrance of the feeder assembly to the manufactured home shall be in the exterior wall, floor, or roof, in the rear third section of the manufactured home.

(12) Where the cord passes through walls or floors, it shall be protected by means of conduit and bushings. The cord may be installed within the manufactured home walls, provided a continuous raceway is installed from the branch- circuit panelboard to the underside of the manufactured home floor. The raceway may be rigid conduit, electrical metallic tubing or polyethylene (PE), polyvinylchloride (PVC) or acrylonitrile-butadiene-styrene (ABS) plastic tubing having a minimum schedule forty.

C. Underground Electrical

Supply:

(1) Manufactured homes which are rated at one hundred (100) AMPS and over, and which use an underground electrical supply, must be connected by a permanently installed feeder circuit.

(2) All underground feeder assemblies shall meet the requirements set forth in the edition of the national electrical code currently in effect pursuant to the Construction Industries Licensing Act, and must comply with manufacturers installation manual.

D. Overhead Electrical

Feeder:

(1) A manufactured home may have an overhead feeder installed provided it meets the following requirements.

(2) The mast weatherhead must be installed in accordance with the instructions provided by the manufacturer and must be located on the load bearing exterior wall.

E. Overhead Electrical

Supply:

(1) Overhead electrical supply

may only be made to a manufactured home that is installed on an approved permanent foundation and pursuant to Section 14.12.2.57 NMAC.

(2) The mast weatherhead must be installed in accordance with the instructions provided by the manufacturer and the NEC, and must be located on the load bearing exterior wall.

F. All connections must be installed in accordance with the service requirements of the national electrical code, NFPA No. 70 as set forth in the edition of the national electrical code currently in effect pursuant to the Construction Industries Licensing Act.

[14.12.2.53 NMAC - Rp, 14 NMAC 12.2.46; A, 3-29-02; A, 7-1-05]

14.12.2.57 PERMANENT FOUNDATION SYSTEM:

A. These standards are minimum state requirements and they are applicable to new and used home installations, unless expressly specified otherwise. The division may approve other permanent foundations when the manufacturer's installation manual does not make a provision for permanent foundations or is not available. Two sets of drawings submitted by a New Mexico licensed engineer or a HUD approved D.A.P.I.A. engineer may be submitted to the division for review, and subsequent denial or approval along with a certificate that the engineer has contacted the home's manufacturer. No political subdivision of the state shall regulate the installations or construction standards, of a manufactured home, including foundation systems.

B. Perimeter Enclosure:

(1) All materials used for a perimeter enclosure must be approved by the division.

(2) Materials shall be installed in accordance with the manufacturer's recommended installation instructions or in accordance with the minimum standards accepted by the division.

(3) The manufactured home's perimeter enclosure must be self-ventilating, and no flammable objects may be stored under the manufactured home.

(4) An access or inspection panel shall be installed in the perimeter enclosure and shall be located so that utilities and blocking may be inspected.

(5) All vents and openings shall be installed to prevent entry of rodents and direct rainfall not to exceed ¼ inch mesh.

(6) All perimeter enclosures in excess of thirty inches (30") in height must be supported vertically at least every four (4') feet or installed according to the enclosure manufacturer's specifications.

C. New Home Installations: The manufacturer's installa-

tion manual shall be followed for all new homes installed within the state of New Mexico. The person(s) performing the work to install a new home shall be responsible to insure that all necessary installation permits have been obtained by the homeowner, customer or installer, to be determined in writing prior to the delivery of subject home. Compliance with permanent foundation criteria, site ~~preparation~~ work 14.12.2.60 NMAC, planning, and zoning, slope and drainage requirements is the sole and separate responsibility of the persons, companies or contractors performing such work.

D. Installation of Used, Pre-owned or Resold Manufactured Homes: The installer of a used, pre-owned or resold manufactured home shall be responsible to insure that all necessary installation permits have been obtained by the customer, retailer and or installer to be determined in writing prior to delivery of subject home. Compliance with permanent foundation criteria, site ~~preparation~~ work 14.12.2.60 NMAC, planning, and zoning, slope and drainage requirements is the sole and separate responsibility of the persons, companies or contractors performing such work. The manufacturer's manual shall be kept with the subject home at all times. The installer shall use the manufacturer's installation instructions and installation manual when available.

E. Re-installed Unit's: The following regulations shall apply to all homes being re-installed where no manufacturer's installation manual is provided.

(1) The lowest point of the frame shall be a minimum of eighteen (18") inches above the ground level under the manufactured home (also see Section [49] 14.12.2.56 NMAC).

(2) The slope around the manufactured home shall provide for the control and drainage of surface water and shall be sufficient to prevent the collection of water under the home or around the perimeter of the home (see site requirements, Section [53] 14.12.2.60 NMAC).

(3) In lieu of an engineered soil report, the soil conditions (relative to the placement of the foundation) at the installation site shall be tested by the installer prior to installing the foundation and shall be an average of at least 1000 psf with no more than 25% variability between readings. The installer shall list the psf measurement on the permanent foundation permit. Testing and recording shall be conducted as follows:

(a) test an area adjacent to, or within 10 feet of, the perimeter of the home;

(b) dig down to undisturbed soil a minimum of four (4) inches; uncover an area of at least one square foot;

(c) using a penetrometer take at least seven readings;

(d) take an average of the middle five readings disregarding the highest and lowest readings; round the average down to the nearest soil bearing value;

(e) installers shall then record the psf measurement on the permanent foundation permit; and

(f) drive a wooden stake beside the test area so that the inspector will be able to verify the results should the inspector desire to do so.

F. A minimum thirty-two inch by thirty-two inch (32"X32") access or inspection panel shall be installed a minimum of three (3") inches above grade and located to allow inspection at any time. The cover on the exterior access inspection panel must be constructed to exclude entry of vermin and water.

G. Footings and Piers:

(1) The manufactured home shall be installed on ribbon footings set on the undisturbed ground not less than five and one-half (5 1/2") inches in thickness and sixteen (16") inches in width with two (2) pieces of continuous three-eighth (3/8") inch rebar or a number 10 gauge re-mesh wire installed in the footing. All footings shall be constructed of a minimum of ~~twenty five hundred (2500)~~ three thousand (3000) pound concrete. All above grade footings shall be constructed with forms (wood, fiberboard, metal, plastic), used to contain poured concrete while in a plastic state. These forms must be firmly braced to withstand side pressure or settlement and to maintain design dimensions. Finished concrete surface(s) shall be smooth and level to fully accept and support pier installation(s). Forms may be removed upon sufficient hardening of concrete. The home may be placed whenever concrete is properly cured, minimum of seven (7) days.

(2) Piers shall be constructed in accordance with Section [56] 14.12.2.56 NMAC of these regulations.

(3) The steel frame must be ~~permanently~~ attached to the footing supporting the structure by means of a listed anchoring device at least every ~~sixteen (16)~~ twelve (12) feet at a minimum and at least two (2) feet from each end wall.

H. Ventilation:

(1) All manufactured homes shall have one (1) square foot of unrestricted venting area for every one hundred-fifty (150) square feet of enclosed floor space. Vents shall be uniformly distributed on the two (2) opposite long- walls. At least one vent shall be located within four (4) feet of each end-wall.

(2) Vents shall be constructed and installed to exclude entry of vermin and water.

I. Retro-fit permanent foundation systems:

(1) Other types of permanent

foundation systems designed for the purpose of classifying an existing installation as a permanent foundation shall be submitted on an individual basis. These require submittal of installation instructions and calculations and or design layouts. All submissions shall be stamped by a New Mexico licensed engineer, and each application shall be region specific. Commercially packaged systems must submit their complete installation and design package to be kept on file with the division. It shall be the responsibility of the system proprietor to submit any updates or alterations of the system.

(2) These systems are limited for use on homes at least two years out from original purchase date. Any installation of a retro-fit system on a new home or any home within two years of original purchase must be installed based upon the manufacturer's DAPIA approval and must be included in the manufacturer's installation manual.

(3) All systems whether commercially packaged or individually engineered must contain a certification that the system meets or exceeds the minimum requirements of a permanent foundation as defined in Subsection W of 14.12.2.7 NMAC and 14.12.2.57 NMAC) and the permanent foundations guide for manufactured homes (HUD-007487), and must bear the engineers stamp. All calculations and or testing results in support of certification must be submitted to the division upon request.
[14.12.2.57 NMAC - Rp, 14 NMAC 12.2.50, 9-14-00; A, 12-1-03; A, 7-1-05]

14.12.2.62 INSPECTION OF PUBLIC RECORDS:

A. Requests for inspection of division and committee records are governed by the Inspection of Public Records Act (NMSA 1978, Section 14-2-1 and following).

B. The division director shall appoint a custodian of public records. The custodian may require that a request for inspection of records be in writing and delivered or addressed to the Custodian of Public Records, Manufactured Housing Division, Regulation and Licensing Department, ~~[725 St. Michael's Drive]~~ 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504. A written request shall state the name, address, and telephone number of the person requesting the records and shall identify the records with reasonable particularity.

C. The custodian of public records, or a substitute in the custodian's absence, shall respond to all written requests for inspection of public records as provided for in this rule and shall provide reasonable facilities to make or furnish copies of public records to persons requesting them, during regular business hours.

D. Within three business days after the custodian of public records receives a written request for inspection of public records, he or she shall inform the requesting party in writing when the request will be acted on, if it is not acted on within the three day period. The custodian shall either make the requested records available to the requesting party, or shall state why the requested records (or some of them) will not be made available, within fifteen calendar days of the division's receipt of a request, except as provided in ~~[Section 55.5]~~ Subsection E of 14.12.2.62 NMAC of this rule.

E. If the custodian determines that a written request for records is excessively burdensome or broad, the custodian may take a reasonable additional period of time or make the requested records available or explain why the requested records (or some of them) will not be made available and, within fifteen days of the division's receipt of the request, shall provide the requesting party with written notification that an additional period of time will be needed to respond to the request.

F. Where the number of pages of public records provided in response to a request is fewer than 25 pages, no charge will be assessed for the division making copies for requesting party. Where the number of pages of public records provided in response to a request is 25 pages or more, the custodian shall charge a reasonable copying fee per page of \$.20 per page and, at the custodian's discretion, may require such payment to be received before copies are made.

G. Nothing in this rule prevents a member of the public from making an oral request for public records and the custodian or other official or employee of the division or the committee either providing public records that have been requested orally (after determining that the requested records are public), or require the request to be put in written form.

[14.12.2.62 NMAC - Rp, 14 NMAC 12.2.55, 9-14-00; A, 7-1-05]

End of Adopted Rules Section

2005

SUBMITTAL DEADLINES AND PUBLICATION DATES

Volume XVI	Submission Deadline	Publication Date
Issue Number 1	January 3	January 14
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 14
Issue Number 8	April 15	April 29
Issue Number 9	May 2	May 13
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 18	July 29
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 3	October 17
Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.