

**NEW
MEXICO
REGISTER**

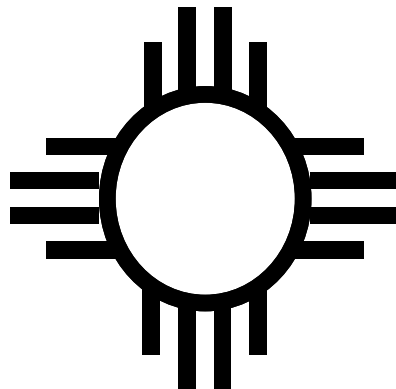


Volume XX
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New Mexico Register

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

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New Mexico Register

Volume XX, Number 9

May 14, 2009

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A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

Notice of Proposed Rulemaking

The Economic Development Department ("EDD or Department") hereby gives notice that the Department will conduct a public hearing as indicated to obtain input on amending the following rule:

5.5.50 NMAC (Industrial Development Training Program).

The proposed rulemaking actions specific to the Job Training Incentive Program may be accessed on May 15, 2009 on the Department's website (www.gonm.biz) or obtained from Therese Varela at the contact below.

A public hearing regarding the rules will be held on Friday, June 19, 2009 at the Santa Fe Incubator, 3900 Paseo del Sol, Santa Fe, New Mexico 87507. The time for the hearing on the proposed rules is 9:00 AM MDT.

Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking relating to the Job Training Incentive Program to Therese R. Varela, JTIP Program Manager, New Mexico Economic Development Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico 87504, or therese.varela@state.nm.us (505) 827-0323, fax (505) 827-1672. Written comments must be received no later than 5:00 pm on June 15, 2009.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Therese Varela as soon as possible. The Department requests at least ten days advanced notice to provide requested special accommodations.

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On **Thursday, May 28, 2009**, beginning at 9:00 a.m., at the **State Bar of New Mexico, 5121 Masthead, NE, Albuquerque, New Mexico, 87199**, the State Game Commission will meet in Public Session to

hear and consider action as appropriate on the following: Revocations; Consideration of SafariWish to Become a Recognized Wish-Granting Organization; General Public Comments (comments limited to 3 minutes); Newly Enacted Aquatic Invasive Species Control Act; Fiscal Year 2009 3rd Quarter Depredation Report; Update on Process for Pronghorn Antelope Private Land Use System Rule Development and Recent Capture and Relocation Projects; Prospective Legislation for the 2010 Session; Preliminary Budget Planning Discussion; Closed Executive Session to discuss the possible acquisition of additional lands for conservation and habitat purposes and disposal of surplus land, pursuant to Section 10-15-1(H)(8), NMSA 1978; and Land Conservation Appropriation Projects and Other Land Acquisition Projects Report; and

* Amend Licenses/Permits Rule (19.30.9, NMAC);

* Adopt Emergency Rule to Provide Authority for the Department to Take Action in Exigent Circumstances Consistent with the Aquatic Invasive Species Control Act; and

* Gaining Access Into Nature Program Implementation, Post-Implementation Review and Opening the Use of Department of Game and Fish Lands Rule (19.34.3, NMSA).

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at www.wildlife.state.nm.us for updated information.

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 or meeting, please contact Shirley Baker at (505) 476-8029. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The 49th New Mexico Legislature, Regular Session of 2008 amended the New Mexico Works Act through Senate Bill 137 signed into law April 7, 2009. Senate Bill 137 modifies the definition of parent by eliminating legal guardians. This amendment enables the Department to consider legal guardians as optional members when determining eligibility for NMW and EWP cash assistance programs. Additionally, Senate Bill 137, enables the Department to limit the eligibility of benefit groups that are eligible because a legal guardian is not included when determining eligibility based on the availability of state or federal funds.

A public hearing to receive testimony on this regulation will be held on June 15, 2009 at 9:00 am.

The hearing will be held at the Income Support Division Conference Room at Pollon Plaza, 2009 S. Pacheco St., Santa Fe, NM 87505. The Conference room is located in room 120 on the lower level. Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling toll free 1-800-432-6217.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the New Mexico Human Services Department toll free at 1-800-432-6217, in Santa Fe at 827-9454, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

The proposed regulations are available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRregister.shtml>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of

the hearing. Please send comments to:

Pamela S. Hyde, J.D., Secretary
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to:
vida.tapia-sanchez@state.nm.us

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:00 a.m., on June 16, 2009, in the ASD Conference Room, 729 St. Michael's Dr., Plaza San Miguel, Santa Fe, New Mexico. The subject of the hearing will be Coordination of Long Term Services (CoLTS).

The Medical Assistance Division is proposing amendments to the Coordination of Long Term Services (CoLTS) rules to reflect additional program requirements, to clarify language related to program policy and to change the name of the program from Coordinated Long Term Services (CLTS) to Coordination of Long Term Services (CoLTS)

Interested persons may submit written comments no later than 5:00 p.m., June 16, 2009, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at www.hsd.state.nm.us/mad/registers by sending a self-addressed stamped envelope to Medical Assistance Division, Long-Term Services and Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO PHYSICAL THERAPY BOARD

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Physical Therapy will hold a Rule Hearing on Thursday, June 25, 2009. Following the Rule Hearing the New Mexico Board of Physical Therapy will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Physical Therapy Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, 2nd Floor, Santa Fe, NM 87505.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.20.3 NMAC: Issuance of Licenses; 16.20.4 NMAC: Temporary Licenses; 16.20.5 NMAC: Schedule of Fees; 16.20.6 NMAC: Physical Therapist Assistants; 16.20.7 NMAC: Supervision; 16.20.8 NMAC: Continuing Education; 16.20.10 NMAC: Direct Care Requirements.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4880 after May 25, 2009. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than June 10, 2009. Persons wishing to present their comments at the hearing will need (8) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4880 at least two weeks prior to the meeting or as soon as possible.

Velma Rodriguez, Board Administrator
PO Box 25101- Santa Fe, New Mexico 87504

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 a public hearing at Mabry Hall, Jerry Apodaca Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Monday, June 15, 2009, from 10:00 a.m. to 12:00 p.m. The purpose of the public hearing will be to obtain input on the following rule:

Rule Number	Rule Name	Proposed Action
6.29.5 NMAC	New Mexico English Language Development Standards	Replace

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Dr. Gladys Herrera-Gurulé, State Director, Bilingual Multicultural Education Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (gladys.herrera-gurule@state.nm.us) (505)-827-6667 fax (505) 827-6563. The proposed rules will be made available at least thirty days prior to the hearing. Written comments must be received no later than 5:00 p.m. on June 15, 2009. However, submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed on the Department's website (<http://ped.state.nm.us>) or obtained from Dr. Gladys Herrera-Gurulé, State Director, Bilingual Multicultural Education Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (gladys.herrera-gurule@state.nm.us) (505)-827-6667 fax (505) 827-6563.

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 Dr. Gladys Herrera-Gurulé 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 NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Wednesday, June 17, 2009, from 9:00 a.m. to 11:00 a.m. The purpose of the public hearing will be to obtain input on the following rules.

Rule Number	Rule Name	Proposed Action
6.2.2 NMAC	OPERATIONAL BYLAWS OF THE EDUCATIONAL STANDARDS COMMISSION	Repeal rule
6.2.5 NMAC	OPERATIONAL BYLAWS OF THE INSTRUCTIONAL MATERIAL COMMISSION	Repeal rule
6.2.6 NMAC	OPERATIONAL BYLAWS OF THE NONPUBLIC SCHOOLS COMMISSION	Repeal rule
6.10.2 NMAC	UNITED STATES FLAG AND THE PLEDGE OF ALLEGIANCE	Amend rule
6.10.4 NMAC	DISENROLLMENT WHEN A STUDENT IS NOT LEGALLY ENROLLED IN SCHOOL	Amend rule
6.10.5 NMAC	VARIABLE SCHOOL CALENDAR APPLICATION REVIEW AND REPORTING PROCESS	Amend rule
6.10.6 NMAC	PROHIBITION ON THE SALE OR USE OF LISTS IN DIRECT MARKETING; DEFINITION OF "LEGITIMATE EDUCATIONAL PURPOSES"	Amend rule
6.10.7 NMAC	STATEWIDE STANDARDIZED TESTING SECURITY ISSUES AND IRREGULARITIES	Amend rule
6.11.2 NMAC	RIGHTS AND RESPONSIBILITIES OF THE PUBLIC SCHOOLS AND PUBLIC SCHOOL STUDENTS	Amend rule
6.12.4 NMAC	TOBACCO FREE SCHOOL DISTRICTS	Amend rule
6.13.2 NMAC	INTERSCHOLASTIC ACTIVITIES PROMULGATED BY THE NEW MEXICO ACTIVITIES ASSOCIATION	Amend rule
6.13.3 NMAC	INTERSCHOLASTIC STUDENT ACTIVITIES	Repeal rule
6.13.4 NMAC	GOVERNING PARTICIPATION IN INTERSCHOLASTIC SPORTS	Amend rule
6.19.2 NMAC	PUBLIC SCHOOL ACCOUNTABILITY SYSTEM FOR SCHOOLS RATED PROBATIONARY	Repeal rule
6.20.4 NMAC	DEFINITIONS OF FULL-TIME AND PART-TIME SCHOOL INSTRUCTORS	Amend rule
6.20.5 NMAC	PROCEDURES FOR PROVIDING PUBLIC SCHOOL DISTRICTS WITH FINANCIAL ASSISTANCE REGARDING GENERAL OBLIGATION INDEBTEDNESS	Amend rule
6.21.2 NMAC	AUDIT RESOLUTION PROCESS, APPLICATION HEARING PROCESS, ENFORCEMENT PROCESS	Amend rule
6.23.2 NMAC	REGIONAL CENTER COOPERATIVES	Repeal rule
6.23.3 NMAC	REGIONAL EDUCATION COOPERATIVES	Amend rule
6.30.3 NMAC	ELIGIBILITY FOR THE GENERAL EDUCATIONAL DEVELOPMENT TESTS (GED TESTS) AND DIPLOMA IN NM	Amend rule
6.30.4 NMAC	PROFESSIONAL QUALIFICATIONS TO TEACH DRIVER'S SAFETY FOR ELECTIVE GRADUATION CREDIT	Amend rule
6.30.5 NMAC	OPTIONAL FULL-DAY KINDERGARTEN LITERACY READINESS PROGRAM	Amend rule
6.41.2 NMAC	SCHOOL BUS INSPECTIONS	Amend rule
6.41.3 NMAC	STANDARDS FOR DETERMINING HAZARDOUS WALKING CONDITIONS	Amend rule
6.42.2 NMAC	TEMPORARY BOUNDARY AGREEMENTS	Amend rule
6.43.2 NMAC	REQUIREMENTS FOR SCHOOL BUS CONTRACTS AND PER CAPITA FEEDER AGREEMENTS	Amend rule
6.43.3 NMAC	PUBLIC SCHOOL TRANSPORTATION OPERATIONAL FUNDING REPORTING REQUIREMENTS	Amend rule
6.43.4 NMAC	REQUIREMENTS FOR SCHOOL BUS SERVICE NEGOTIATIONS WITH CHARTER SCHOOLS	Amend rule
6.81.2 NMAC	REQUIREMENTS FOR NONPUBLIC SCHOOLS AND FOR STATE BOARD OF EDUCATION ACCREDITATION	Amend and rename rule

Interested individuals may testify either at the public hearing or submit written comments to Mary H. Deets, Administrative Assistant, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (MaryH.Deets@state.nm.us) (505) 827-6641 fax (505) 827-6681. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Mary H Deets, Administrative Assistant, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (MaryH.Deets@state.nm.us) (505) 827-6641 fax (505) 827-6681.

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 Ms Deets as soon as possible. The Department requires at least ten (10) days advance notice to provide requested special accommodations.

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

These are amendments to 16.30.3 NMAC, Sections 10 and 11, effective June 1, 2009.

16.30.3.10 REGISTRATION THROUGH RECIPROCIDITY:

A. An individual who holds a current NCARB certificate and is seeking registration through reciprocity or endorsement shall return a completed application and all fees to ~~[NCARB]~~ the board for processing. The application shall be valid for six (6) months from the time the board receives it ~~[from NCARB]~~.

B. A person currently registered as an architect in another jurisdiction who is not certified by NCARB may apply for a New Mexico architectural license upon receiving an NCARB broadly experienced architect certificate or an NCARB broadly experienced foreign architect certificate.

C. Each applicant must attest on an affidavit that the applicant:

(1) has not performed or offered to perform, and will not perform or offer to perform, architectural services in the state of New Mexico until such time as the applicant becomes a New Mexico registered architect;

(2) is in good standing and has disclosed all requested information on disciplinary proceedings in any other jurisdiction; and

(3) has secured a copy and has read the Architectural Act, Sections 61-15-1 through -13 NMSA 1978 and the New Mexico board of examiners for architects rules and regulations, and shall comply with the same.

D. All applicants must pass a New Mexico architectural jurisprudence exam administered by the board. An applicant who has failed two (2) successive architectural jurisprudence exams shall not be eligible to apply for architectural registration for a period of one (1) year from the date of the last jurisprudence exam failed.

E. Applicants for registration through reciprocity or endorsement shall present a certificate of good standing from a jurisdiction in which a current and valid registration is held.

F. Seismic design requirements: Applicants for registration through reciprocity or endorsement shall present evidence satisfactory to the board of their qualification in design for seismic forces. The evidence shall be based on NCARB

requirements existing at the time of application.

G. The board may require an applicant for registration through reciprocity or endorsement to appear before the board for a personal interview and to complete a written or oral examination.

H. The board shall review all applications on a case-by-case basis.

I. Provisional registration:

(1) An applicant for registration through reciprocity or endorsement may be issued a provisional registration prior to full registration upon satisfaction of the following requirements:

(a) the applicant has complied with all requirements prescribed in Subsections A-G of 16.30.3.10 NMAC above;

(b) the board director has certified that the application is complete and there are no apparent disciplinary actions pending or in force in any jurisdiction at the time of the application; and

(c) the exam and reciprocity committee has reviewed the application and will recommend registration at the next board meeting.

(2) The board may issue provisional registration to an applicant upon the review and recommendation of the application by the exam and reciprocity committee.

(3) Any provisional registration shall be valid only from the date of issuance through the date of the next regularly scheduled board meeting.

(4) An applicant for registration through reciprocity or endorsement who has received provisional registration and who engages in the practice of architecture during the term of provisional registration shall do so under the regulatory authority of the Architectural Act, Sections 61-15-1 through -13 NMSA 1978 and these rules and regulations.

J. Upon approval of the board, a new registrant will receive a wall certificate within a reasonable period following the board's decision.

[16.30.3.10 NMAC - Rp 16 NMAC 30.3.10, 9/6/2001; A, 9/15/2003; A, 9/16/2004; A, 9/9/2005; A, 12/23/2005; A, 6/1/2009]

16.30.3.11 REGISTRATION RENEWAL:

A. Fees: Renewal fees are paid biennially in even-numbered years. New registrations occurring in a non-renewal year shall be prorated on a yearly basis and shall expire on December 31st of that odd-numbered year. The fees for two

(2) years are:

(1) in state\$225.00

(2) out of state \$325.00

B. Continuing education: Effective December 31, 2001, all architects will be required to show compliance with these mandatory education requirements as a condition for renewing registration:

(1) Purpose and scope:

(a) These rules provide for a continuing education program to insure that all architects remain informed of these technical subjects necessary to safeguard life, health, property, and promote the public welfare.

(b) Continuing education is focused on registrants becoming more proficient at their architectural practice. Activities not at an architectural registrant level or within an architectural context cannot be claimed for continuing education credit.

(c) These rules apply to all architects registered in New Mexico.

(2) Definitions:

(a) "Eligible contact hour" means fifty (50) minutes actual time engaged in continuing education activities supported by documentation of content and registrant participation.

(b) "Health, safety and welfare in architecture" is anything that relates to the structure or soundness of a building or site or its role in promoting the health, safety or well being of its occupants.

(c) "Public protection hours" means continuing education contact hours in which the subject matter is health, safety and welfare as defined in Subparagraph (b) of Paragraph (2) of Subsection B of 16.30.3.11 NMAC above. Twenty-four (24) public protection hours are required for each renewal cycle.

(d) "Continuing education provider" means any association, organization or business entity which supplies structured, architectural registrant continuing education activities and the corresponding documentation of content and participation. If a continuing education provider includes a testing component to be successfully completed in order to receive a certificate, the registrant must complete all phases of the provider's program. Contact hours shall be credited as indicated by the provider.

(3) Requirements:

(a) To renew registration, in addition to other requirements, an architect must have acquired continuing education for each 24-month period since the architect's last renewal of initial registration, or be exempt from these continuing education requirements as provided below. Failure to comply with these requirements may result in non-

renewal of the architect's registration, or other disciplinary action, or both.

(b) Renewal period: For any 24-month biennial renewal period a total of twenty-four (24) contact hours from the activities listed in Paragraph (4) of Subsection B of 16.30.3.11 NMAC below must be reported. All twenty-four (24) contact hours shall be in public protection subjects: safeguarding life, health, property and promoting the public welfare.

(4) Activities: The following list shall be used by all registrants in determining the types of activities that would fulfill continuing education requirements:

(a) contact hours in attendance at short courses or seminars dealing with architectural subjects and sponsored by academic institutions;

(b) contact hours in attendance at technical presentations on architectural subjects which are held in conjunction with conventions or at seminars related to materials use and functions; such presentations as those sponsored by the American institute of architects, construction specifications institute, construction products manufacturers council or similar organizations devoted to architectural education may qualify;

(c) contact hours in attendance at short courses or seminars related to ~~business practice or~~ new technology and offered by colleges, universities, professional organizations or system suppliers;

(d) contact hours spent in self-study courses such as those sponsored by the national council of architectural registration boards, American institute of architects or similar organizations;

(e) up to three preparation hours may be credited for each class hour spent teaching architectural courses or seminars; college or university faculty may not claim credit for teaching regular curriculum courses;

(f) up to three (3) contact hours spent in architectural research that is published or formally presented to the profession or public;

(g) college or university credit courses dealing with architectural subjects ~~or business practice~~; each semester hour shall equal fifteen (15) contact hours; a quarter hour shall equal ten (10) contact hours;

(h) up to four (4) contact hours in service to the public that is directly related to the practice of architecture in the area of public protection, also known as health, safety and welfare.

(5) Records and record-keeping:

(a) A registered architect shall complete and submit forms prescribed or accepted by the board certifying to the architect's having obtained the required continuing education hours. Registrants

also shall maintain substantiating information in support of each continuing education claim.

(b) One (1) continuing education hour shall represent a minimum of actual course time. No credit will be allowed for introductory remarks, meals, breaks or administrative matters related to courses of study.

(c) Failure to fulfill the continuing education requirements, or file the required biennial report, properly and completely signed, shall result in non-renewal of an architect's certificate of registration.

(d) Any untrue or false statements or the use thereof with respect to course attendance or any other aspect of continuing education activity is fraud or misrepresentation and will subject the registrant to revocation of registration or other disciplinary action.

(6) Initial registration:

(a) An architect whose initial registration occurs less than twelve (12) months from the December 31st deadline of the next renewal cycle shall not be required to report continuing education hours.

(b) An architect whose initial registration occurs more than twelve (12) months from the December 31st deadline of the next renewal cycle but less than twenty-four (24) months from the date of initial registration shall be required to report twelve (12) contact hours, all of which shall be in public protection subjects.

(7) Reinstatement: A former registrant may only apply for reinstatement under 16.30.3.13 NMAC if all delinquent contact hours are earned within the twenty-four (24) months preceding the application to renew. However, if the total number of contact hours required to become current exceeds twenty-four (24), then twenty-four (24) shall be the maximum number of contact hours required.

(8) Exemptions: A registrant shall be deemed to have complied with the foregoing continuing education requirements if the architect attests in the required affidavit that for not less than twenty-one (21) months of the preceding two-year period of registration, the architect:

(a) has served honorably on active duty in the military service (exceeding ninety (90) consecutive days); or

(b) is a government employee working as an architect and assigned to duty outside the United States.

(9) The board may consider a hardship case.

(10) Audit: A number of registrants shall be selected at random to submit substantiating information to support their continuing education claim. If any credits are disallowed by the board, then the registrant shall have one hundred and eighty (180) calendar days after notification to

substantiate the original claim or obtain other contact hours to meet the minimum requirements. Such contact hours shall not be used again in the next renewal cycle. Additional audits may be conducted at the board's discretion.

(11) Non-compliance: Failure to comply with the requirements of this section shall result in non-renewal of registration and forfeit of the renewal fee.

[16.30.3.11 NMAC - Rp 16 NMAC 30.3.11, 9/6/2001; A, 9/15/2003; A, 4/15/2004; A, 9/16/2004; A, 3/12/2006; A, 5/4/2008; A, 6/1/2009]

NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE AND ADMINISTRATIVE CENTER

This is an amendment to 10.14.200 NMAC, Sections 7, 8 and 10. The purpose of these changes are to effect the amending of Paragraphs (1) through (61) of Subsection C, Subsection H and Subsection I of 10.14.200.7 NMAC, Subsection G of 10.14.200.8 NMAC and Subsections F and H of 10.14.200.10 NMAC all to be effective on May 14, 2009.

10.14.200.7 DEFINITIONS:

A. "Administrative center" means the ~~law enforcement agency~~ part of a national DNA index system qualified New Mexico crime laboratory that administers and operates the DNA identification system and is governed by the DNA oversight committee.

B. "Analysis" means DNA profile generation.

C. "Arrestee" for purposes of DNA sample collection means any person as listed in Subsection A of 29-3-10 NMSA 1978 that is arrested for a felony offense committed as an adult and as defined by Paragraph (3) of Subsection D of 29-3-10 NMSA 1978. The qualifying arrestee offenses are:

(1) 30-2-1 ~~Murder~~ murder in the first or second degree [?];

~~[(2) 30-2-1 Murder in the second degree;]~~

~~[(3) (2) 30-2-3 [Voluntary] voluntary or involuntary manslaughter [?];~~

~~[(4) 30-2-3 Involuntary manslaughter;]~~

~~[(5) (3) 30-2-4 [Assisting] assisting suicide [?];~~

~~[(6) (4) 30-3-2 [Aggravated] aggravated assault [?];~~

~~[(7) (5) 30-3A-3.1 [Aggravated] aggravated stalking [(if second or subsequent conviction)];~~

~~[(8)]~~ (6) 30-3-5(C) [~~Aggravated~~] aggravated battery (~~resulting in~~) only when the result is great bodily harm or is committed with a firearm or explosive) [;] ;

~~[(9)]~~ (7) 30-3-7 [~~Injury~~] injury to pregnant woman (~~resulting~~) only when the injury results in a stillbirth) [;] ;

~~[(10)]~~ (8) 30-3-8 [~~Shooting~~] shooting at dwelling or occupied building; shooting at or from a motor vehicle (~~resulting in great bodily harm~~); [;] ;

~~[(11)]~~ (9) 30-3-9(C) [~~Aggravated~~] aggravated assault upon a school employee [;] ;

~~[(12)]~~ (10) 30-3-9(F) [~~Aggravated~~] aggravated battery upon a school employee (~~resulting in~~) only when the result is great bodily harm or is committed with a firearm or explosive) [;] ;

~~[(13)]~~ (11) 30-3-9.1(D) [~~Aggravated~~] aggravated assault upon a sports official [;] ;

~~[(14)]~~ (12) 30-3-9.1(H) [~~Aggravated~~] aggravated battery upon a sports official (~~resulting in~~) only when the result is great bodily harm or is committed with a firearm or explosive) [;] ;

~~[(15)]~~ (13) 30-3-9.2(C) [~~Aggravated~~] aggravated assault upon a health care worker [;] ;

~~[(16)]~~ (14) 30-3-9.2(F) [~~Aggravated~~] aggravated battery upon a health care worker (~~resulting in~~) only when the result is great bodily harm or is committed with a firearm or explosive) [;] ;

~~[(17)]~~ (15) 30-3-13 [~~Aggravated~~] aggravated assault against a household member [;] ;

~~[(18)]~~ (16) 30-3-14 [~~Assault~~] assault against a household member with intent to commit a violent felony [;] ;

~~[(19)]~~ (17) 30-3-16(C) [~~Aggravated~~] aggravated battery against a household member (~~resulting in~~) only when the result is great bodily harm or is committed with a firearm or explosive) [;] ;

~~[(20)]~~ (18) 30-4-1 [~~Kidnapping~~] kidnapping (in any form); (~~when the victim is less than eighteen years of age and the offender is not a parent of the victim~~);

~~[(21)] 30-4-1 Attempted kidnapping (when the victim is less than eighteen years of age and the offender is not a parent of the victim);~~

~~[(22)] 30-4-1 Kidnapping;~~

~~[(23)]~~ (19) 30-4-3 [~~False~~] false imprisonment (only when the victim is less than eighteen years of age and the offender is not a parent of the victim) [;] ;

~~[(24)]~~ (20) 30-6-1(B) [~~Abandonment~~] abandonment of a child (~~resulting~~) only when the abandonment results in death or great bodily harm) [;] ;

~~[(25)]~~ (21) 30-6-1(E) [~~Abuse~~] abuse of a child (~~negligent or intentional, resulting~~) only when the abuse results in great bodily harm) [;] ;

~~[(26)]~~ (22) 30-6-1(F) [~~Abuse~~] abuse of a child (~~negligent, resulting~~) only when the abuse results in death) [;] ;

~~[(27)]~~ (23) 30-6-1(G) [~~Abuse~~] abuse of a child (only when the child is 12 to 18 years of age [~~intentional, resulting~~] and the abuse results in death) [;] ;

~~[(28)]~~ (24) 30-6-1(H) [~~Abuse~~] abuse of a child (only when the child is under 12 years of age [~~intentional, resulting~~] and the abuse results in death) [;] ;

~~[(29)]~~ (25) 30-6A-3 [~~Sexual~~] sexual exploitation of children [;] ;

~~[(30)]~~ (26) 30-6A-3 [~~Attempted~~] attempted sexual exploitation of children as defined in 30-6A-3(B), 30-6A-3(C) or 30-6A-3(D) [;] ;

~~[(31)]~~ (27) 30-6A-4 [~~Sexual~~] sexual exploitation of children by prostitution [;] ;

~~[(32)]~~ (28) 30-6A-4 [~~Attempted~~] attempted sexual exploitation of children by prostitution [;] ;

~~[(33)]~~ (29) 30-7-5 [~~Dangerous~~] dangerous use of explosives [;] ;

~~[(34)]~~ (30) 30-9-11 [~~Aggravated~~] aggravated criminal sexual penetration; (~~effective 7/1/2007~~);

~~[(35)]~~ (31) 30-9-11 [~~Attempted~~] attempted aggravated criminal sexual penetration; (~~effective 7/1/2007~~);

~~[(36)]~~ (32) 30-9-11 [~~Criminal~~] criminal sexual penetration in the first, second, third or fourth degree [;] ;

~~[(37)]~~ (33) 30-9-11 [~~Attempted~~] attempted criminal sexual penetration in the first, second or third degree [;] ;

~~[(38)]~~ (34) 30-9-12 [~~Criminal~~] criminal sexual contact in the fourth degree [;] ;

~~[(39)]~~ (35) 30-9-13 [~~Criminal~~] criminal sexual contact of a minor in the second, third or fourth degree [;] ;

~~[(40)]~~ (36) 30-9-13 [~~Attempted~~] attempted criminal sexual contact of a minor in the second or third degree [;] ;

~~[(41)]~~ (37) 30-9-13 [~~Solicitation~~] solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree [;] ;

~~[(42)]~~ (38) 30-9-14.3 [~~Aggravated~~] aggravated indecent exposure [;] ;

~~[(43)]~~ (39) 30-10-3 [~~Incest~~] incest (when the victim is less than eighteen years of age) [;] ;

~~[(44)]~~ (40) 30-10-3 [~~Attempted~~] attempted incest (when the victim is less than eighteen years of age) [;] ;

~~[(45)]~~ (41) 30-16-1 [~~Larceny~~] larceny (stolen property over \$500; livestock of any value; or firearm of any value) [;] ;

~~[(46)]~~ (42) 30-16-2 [~~Robbery~~] robbery [;] ;

~~[(47)] 30-16-3 Burglary (dwelling house);~~

~~[(48)]~~ (43) 30-16-3 [~~Burglary~~]

burglary (in any form) [;] ;

~~[(49)]~~ (44) 30-16-4 [~~Aggravated~~] aggravated burglary [;] ;

~~[(50)]~~ (45) 30-17-6 [~~Aggravated~~] aggravated arson [;] ;

~~[(51)]~~ (46) 30-20A-3 Antiterrorism Act; unlawful acts [;] ;

~~[(52)]~~ (47) 30-22-17(B) [~~Assault~~] assault by prisoner [;] ;

~~[(53)]~~ (48) 30-22-22 [~~Aggravated~~] aggravated assault upon a peace officer [;] ;

~~[(54)]~~ (49) 30-22-25(C) [~~Aggravated~~] aggravated battery upon a peace officer (~~resulting in~~) only when the result is great bodily harm or is committed with a firearm or explosive) [;] ;

~~[(55)]~~ (50) 30-28-3 [~~Solicitation~~] solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree [;] ;

~~[(56)]~~ (51) 30-37-3.2 [~~Child~~] child solicitation by electronic communication device; (~~effective 7/1/2007~~);

~~[(57)]~~ (52) 30-47-4(D) [~~Abuse~~] abuse of a resident [;] ;

~~[(58)]~~ (53) 30-47-5(D) [~~Neglect~~] neglect of a resident [;] ;

~~[(58)]~~ (54) 66-8-101 [~~Homicide~~] homicide by vehicle; great bodily harm by vehicle [;] ;

~~[(60)]~~ (55) 66-8-101.1 [~~Injury~~] injury to pregnant woman by vehicle (~~resulting in~~) only when the result is a stillbirth) [;] ;

~~[(61)] any federal offense equivalent to the above listed New Mexico qualifying felony offenses;~~

D. "Buccal cell" means cells from the interior linings of the cheek and gum.

E. "CODIS" means the federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by designated forensic DNA laboratories.

F. "Collection kit" see Subsection N of 10.14.200.7 NMAC.

G. "Core loci" means the chromosomal locations designated as being required for a convicted offender profile to be considered complete by the board of the national DNA index system, and consistent with the federal DNA Identification Act of 1994 and subsequent federal laws.

H. "Covered offender" for purposes of fee assessment means any person convicted of a felony offense, committed after July 1, 1997, and as defined by Subsection ~~[D]~~ C of 29-16-3 NMSA 1978 and as described in Paragraphs (1) through (3) of Subsection A of 29-16-6 NMSA 1978.

I. "Covered offender" for purposes of DNA sample collection means any person as defined by Subsection ~~[D]~~ C of 29-16-3 and Subsection A of 29-16-6

NMSA 1978.

J. "DNA" means deoxyribonucleic acid.

K. "DNA Identification Act" means Sections 29-16-1 to 29-16-13 NMSA 1978, and any subsequent amendments or additions to these sections, the law that authorizes the DNA identification system and the DNA oversight committee.

L. "DNA identification system" means the system established pursuant to the DNA Identification Act.

M. "DNA oversight committee" means the DNA identification system oversight committee.

N. "DNA sample collection kit" means materials designed for the collection of DNA samples.

O. "FTA card" means an FTA collection card, a card of blotter paper designed for the collection of liquid biological samples or any other device designed for the collection of liquid biological samples.

P. "Head of the administrative center" means the authorized person who supervises the day-to-day operations of the administrative center.

Q. "Identification system" see Subsection L of 10.14.200.7 NMAC.

R. "In writing" means a document hand or typewritten on paper and includes the use of facsimile copies or computer requests that can be printed.

S. "Kit" see Subsection N of 10.14.200.7 NMAC.

T. "Records" means the results of analysis, testing, and related information.

U. "Sample" means a sample of biological material sufficient for DNA testing.

V. "Sample collection kit" see Subsection N of 10.14.200.7 NMAC.

W. "Sample profile hit" means a match of the examined loci as determined by the servicing forensic DNA laboratory.

X. "Secured" means limited and controlled access only by authorized personnel including use of protection and safety devices such as restricted space access, physical locks and keys, passwords, encryption, firewalls etc. to safeguard any and all functions of that equipment or facility.

[3/1/1998; 10.14.200.7 NMAC - Rn & A, 10 NMAC 14.200.7, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006; A, 5/15/2007; A, 4/30/2008; A, 5/14/2009]

10.14.200.8 COLLECTION AND TRANSFER OF SAMPLES AND FEES:

A. Routine collection of samples from a covered offender shall be performed only by trained employees of the

department of corrections adult prisons or probation and parole divisions, jail or detention facility personnel, employees of the county sheriff office, members of the administrative center or persons designated by the administrative center as trained by and in coordination with the administrative center, utilizing the collection protocol approved by the oversight committee.

B. Collection and deposit of assessed fees from covered offenders shall be performed by employees of the department of corrections adult prisons and probation and parole divisions pursuant to policies and procedures established by the department of corrections.

C. The department of corrections shall be responsible for establishing policies and procedures for the collection of samples and assessed fees from covered offenders utilizing a collection protocol to be approved by the DNA oversight committee when custody is maintained by private or out-of-state, probation and parole or corrections facilities.

D. Routine collection of samples from arrestee's shall be performed only by trained jail or detention facility personnel, members of the administrative center or persons designated by the administrative center as trained by and in coordination with the administrative center, utilizing the collection protocol approved by the oversight committee.

E. DNA sample collection kits and information on the collection, storage, and transfer of samples shall be provided at no cost by the administrative center.

F. The routine method of sample collection shall be by buccal cell collection using the standardized sample collection kit as supplied by the administrative center. In non-routine circumstances, including a refusal by an arrestee or a covered offender, the collection shall, pursuant to Section 29-16-9 NMSA 1978:

- (1) be referred to the administrative center;
- (2) require a written consent or court order;
- (3) consist of an appropriate, alternative sample type as designated by the administrative center or the court; and
- (4) shall be collected by members of the administrative center; or
- (5) by persons trained in the collection of the designated alternative sample type in coordination with, and as designated by, the administrative center.

G. In the case of an arrestee who refuses to provide a DNA sample to jail or detention facility personnel upon booking as required by Subsection A of 29-3-10 NMSA 1978, the jail or detention facility personnel shall immediately

document the refusal and shall immediately report the refusal to the administrative center in order for the administrative center to coordinate, with the office of the district attorney for the county where the arrest took place, the initiation of the required legal proceedings as required by Paragraph (2) of Subsection F of 10.14.200.8 NMAC.

H. The determination of a person's eligibility for DNA sample collection as a qualifying arrestee or as a covered offender shall be the responsibility of the authorized collector designated in Subsection A or D of 10.14.200.8 NMAC. The determination of a person's eligibility shall be based upon the statutory requirements for the specific collection.

I. Questions on supplies, collection or packaging should be directed to the administrative center.

[3/1/1998, A, 4/30/99; 10.14.200.8 NMAC - Rn, 10 NMAC 14.200.8, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006; A, 5/15/2007; A, 5/14/2009]

10.14.200.10 SAMPLE PROCESSING AND ANALYSIS:

A. All samples received by the administrative center for DNA analysis should be considered potentially bio-hazardous. Universal safety precaution procedures shall be followed when handling biological samples.

B. The mechanism of sample collection authorization for samples collected pursuant to Subsection B of 29-16-6 NMSA 1978 shall be documented and a copy of that authorization maintained by the administrative center.

C. Samples shall be handled, examined, and processed individually to avoid possible cross-contamination from another sample or from the examiner.

D. Samples tested shall follow DNA testing procedures approved by the administrative center. Remaining samples shall be returned to secured storage.

E. Five percent of all samples tested shall consist of samples with a known DNA profile and shall be presented to the analyzing laboratory in a "blind" fashion to ensure proficiency and to act as a quality assurance measure. Results of these analyses are to be evaluated with the corresponding offender or arrestee samples. Should any resultant "blind" sample's DNA profile not match the expected known result for that sample, an error rate is to be calculated by the administrative center and be presented to the analyzing laboratory and to the oversight committee.

F. The genetic markers analyzed shall consist of those contained in commercial analysis kits approved by the DNA oversight committee and approved by

the board of the national DNA index system, having been selected for identification and statistical purposes only. Approved are the profiler plus, cofiler and identifier analysis kits; as well as any other kit(s) that may be approved subsequent to the amending of this section.

G. Excess extracted or amplified arrestee and offender DNA shall be destroyed within thirty (30) days after completion of analysis.

H. Excess DNA collected or extracted pursuant to Subsection C of ~~[29-16-2]~~ 29-16-2 NMSA 1978 shall be retained by the administrative center, the analyzing laboratory or the submitting agency at the discretion of the submitting agency. Excess amplified DNA generated pursuant to Subsection C of ~~[29-16-2]~~ 29-16-2 NMSA 1978 shall be destroyed within thirty (30) days after completion of analysis.

I. No written letters of notification shall be released on any specific DNA sample except as authorized by the DNA Identification Act and these rules. [3/1/1998; 10.14.200.10 NMAC - Rn & A, 10 NMAC 14.200.10, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006; A, 5/14/2009]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.99 NMAC, Sections 2, 7, 111, 112, 113, 115, 122, 124, 125, 128, 133, 134, 135, 137, 138, 139, 140, 148, and 151 effective 6/1/09.

20.2.99.2 SCOPE. Agencies affected by this part are: federal transportation agencies (the federal highway administration (FHWA) and the federal transit administration (FTA) of the United States department of transportation (US DOT)), and state and local agencies responsible for transportation planning and air quality management that are within the geographic jurisdiction of the environmental improvement board (see also 20.2.99.6 NMAC).

A. The provisions of this part shall apply in all non-attainment and maintenance areas for transportation-related criteria pollutants for which the area is designated non-attainment or has a maintenance plan.

B. The provisions of this part apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, 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 (PM2.5).

C. The provisions of this part apply with respect to emissions of the following precursor pollutants in nonattainment or maintenance areas:

(1) volatile organic compounds and nitrogen oxides in ozone areas;

(2) nitrogen oxides in nitrogen dioxide areas;

(3) volatile organic compounds and/or, nitrogen oxides, in PM10 areas if:

(a) the EPA region 6 administrator or the department has made a finding (including a finding as part of a SIP or a submitted implementation plan revision) that transportation-related emissions of one or both of these precursor emissions within the nonattainment area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT; or

(b) the applicable SIP (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy;

(4) nitrogen oxides in PM2.5 areas, unless both the EPA regional administrator and the department have made a finding that transportation-related emis-

sions of nitrogen oxides within the nonattainment area are not a significant contributor to the PM2.5 nonattainment problem and has as notified the MPO (or the NMDOT in the absence of an MPO) and US DOT, or the applicable implementation plan (or implementation plan submission) does not establish as approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy; and

(5) VOC, sulfur [~~oxides (SOx)~~] dioxide (SO₂) and/or ammonia (NH₃) in PM2.5 areas either if the EPA regional administrator or the department has made a finding that transportation-related emissions of any of these precursors within the nonattainment area are a significant contributor to the PM2.5 nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT, or it the applicable implementation plan (or implementation plan submission) establishes and approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

D. The provisions of this part apply to PM2.5 nonattainment and maintenance areas with respect to PM2.5 from re-entrained road dust if the EPA regional administrator or the department has made finding that re-entrained road dust emissions within the area are a significant contributor to the PM2.5 nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT, or if the applicable SIP (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 and paved and unpaved roads (including emissions from anti-skid and deicing material(s)).

E. The provisions of this part apply to maintenance areas [~~for 20 years from the date US EPA approves the department's request under Section 107(d) of the CAA for redesignation to attainment]~~ through the last year of a maintenance area's approved CAA section 175A(b) maintenance plan, [~~unless the applicable implementation plan specifies that the provisions of this part shall apply for more than 20 years.~~]

[12/14/94; 11/23/98; 20.2.99.2 NMAC - Rn, 20 NMAC 2.99.101 10/31/02; A, 10/15/05; A, 9/1/07; A, 06/01/09]

20.2.99.7 DEFINITIONS. Terms used but not defined in this part shall have the meaning given them by the CAA titles 23 and 49 U.S.C., US EPA regulations, US DOT regulations, and 20.2.2 NMAC

(Definitions), in that order of priority.

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.

C. "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 (of the CAA), 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.

D. "CAA" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

E. "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 area.

F. "CFR" means the code of federal regulations.

G. "Clean data" means air quality monitoring data determined by US EPA to meet the national ambient air quality standard.

H. "Conformity analyses" means regional or localized "hot-spot" computer modeling assessment or any other analyses which serve as the basis for the conformity determination.

I. "Conformity determination" means the demonstration of consistency with motor vehicle emissions budgets for each pollutant and precursor identified in the applicable SIP. The conformity determination is the affirmative written documentation declaring conformity with the applicable SIP which is submitted to FHWA and FTA for approval with EPA consultation. An affirmative conformity determination means conformity to the plans purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards; and that such activities will 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.

J. "Consultation" means that one party confers with another identified party, provides or makes available all relevant information to that party, and, prior to taking any action, considers the views of that party and (except with respect to those actions for which only notification is required) responds to written comments in a timely, substantive written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action. Specific procedures and processes are described in 20.2.99.116 through 20.2.99.124 NMAC.

K. "Control strategy implementation plan revision" is the implementation plan which 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 (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), 189(a)(1)(B), 189(b)(1)(A) and 189(d); and Sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provisions requiring a demonstration of reasonable further progress or attainment).

L. "Department" means the New Mexico environment department.

M. "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.

N. "Design scope" means the design aspects of a facility which will 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.

O. "Donut areas" are 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.

P. "FHWA" means the federal highway administration of US DOT.

Q. "FHWA / FTA project", for the purpose of this part, is any highway or transit project which 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. "Forecast period" with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

S. "FTA" means the federal transit administration of US DOT.

T. "Highway project" is 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 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.

U. "Horizon year" is a year for which the transportation plan describes the envisioned transportation system in accordance with 20.2.99.125 NMAC.

V. "Hot-spot analysis" is an estimation of likely future localized CO, PM10, and/or PM2.5 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.

W. "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.

X. "Isolated rural nonattainment and maintenance areas" are 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 in such areas are instead included in statewide transportation

improvement programs. These are not donut areas.

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

Z. “Limited maintenance plan” is 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 must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth.

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

AB. “Maintenance plan” means an implementation plan under Section 175A of the CAA, as amended.

AC. “Metropolitan planning organization (MPO)” ~~[is that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision making. In the absence of an MPO, the NMDOT shall be responsible for the transportation planning processes assigned to MPOs under this part] means the policy board of an organization created as a result of the designation process in 23 U.S.C.134(d).~~

AD. “Milestone” has the meaning given in CAA Sections 182(g)(1) and 189(c) 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 that level is to be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.

AE. “Motor vehicle emissions budget” is that 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 by the SIP to highway and transit vehicle use and emissions.

AF. “National ambient air

quality standards (NAAQS)” are those standards established pursuant to Section 109 of the CAA.

AG. “NEPA” means the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, et seq.

AH. “NEPA process completion”, for the purposes of this part, with respect to FHWA or 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.

AI. “NMDOT” means the New Mexico department of transportation or its successor agency or authority, as represented by the department secretary or his or her designee.

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

AK. “Project” means a highway project or transit project.

AL. “Protective finding” means a determination by US 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 requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

AM. “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 law 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.

AN. “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 net-

work, including at a minimum:

(1) all principal arterial highways; and

(2) all fixed guideway transit facilities that offer an alternative to regional highway travel.

AO. “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.

AP. “Standard” means a national ambient air quality standard.

AQ. “State implementation plan (SIP)” means an applicable implementation plan and the applicable portion (or portions) of the New Mexico state 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) of the CAA and which implements the relevant requirements of the CAA (see the definition for “applicable implementation plan”).

AR. “Title 23 U.S.C.” means title 23 of the United States Code.

AS. “Transit” is mass transportation by bus, rail, or other conveyance which 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.

AT. “Transit project” is 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 may consist of several phases. For analytical purposes, it 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.

AU. “Transportation control measure (TCM)” is any measure that is specifically identified and committed to in the [SIP] applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA section 176(c)(8), that is either one of the types

listed in Section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this part.

AV. "Transportation improvement program (TIP)" means a ~~[staged, multi year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to]~~ transportation improvement program developed by a metropolitan planning organization under 23 [CFR part 450] U.S.C. 134(j).

AW. "Transportation plan" means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

AX. "Transportation project" is a highway project or a transit project.

AY. "US EPA" means the United States environmental protection agency

AZ. "US DOT" means the United States department of transportation.

BA. "Written commitment" for the purposes of this part 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.

[12/14/94; 11/23/98; 20.2.99.7 NMAC - Rn, 20 NMAC 2.99.107, 10/31/02; A, 10/15/05; A, 9/1/07; A, 06/01/09]

20.2.99.111 FREQUENCY OF CONFORMITY DETERMINATIONS:

A. Conformity determinations and conformity redeterminations for transportation ~~[plans]~~ plan, TIPs, and FHWA/FTA projects shall be made according to the requirements of 20.2.99.111 NMAC through 20.2.99.115 NMAC and the SIP.

B. During the twelve (12) month grace period referenced in 20.2.99.112 NMAC, 20.2.99.113 NMAC, and 20.2.99.115 NMAC, a project may be found to conform according to the requirements of this subsection (Subsection B of 20.2.99.111 NMAC) if:

(1) the project is included in the currently conforming transportation plan

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

[12/14/94; 11/23/98; 20.2.99.111 NMAC - Rn, 20.NMAC 2.99.111, 10/31/02; A, 06/01/09]

20.2.99.112 FREQUENCY OF CONFORMITY DETERMINATIONS - TRANSPORTATION PLANS.

A. Each new transportation plan shall be found to conform before the transportation plan is approved by the MPO (or NMDOT in the absence of an MPO) and accepted by the US DOT.

B. All transportation plan ~~[revisions]~~ amendments shall be found to conform before the transportation plan ~~[revisions]~~ amendments are approved by the MPO (or NMDOT in the absence of an MPO) or accepted by the US DOT, unless the ~~[revision]~~ amendment merely adds or deletes exempt projects listed in ~~[20.2.99.149]~~ 20.2.99.151 NMAC [and has been made in accordance with the notification provisions of 20.2.99.122 NMAC]. The conformity determination shall be based on the transportation plan and the ~~[revision]~~ amendment taken as a whole.

C. The MPO and US DOT shall determine the conformity of the transportation plan (including a new regional emission analysis) no less frequently than every ~~[three (3)]~~ four (4) years. If more than ~~[three (3)]~~ four (4) years elapse after US DOT's conformity determination without the MPO and US DOT determining conformity of the transportation plan, a twelve (12) month grace period will be implemented as described in Subsection B of 20.2.99.111 NMAC. At the end of this twelve (12) month grace period, the existing conformity determination will lapse.

[12/14/94; 11/23/98; 20.2.99.112 NMAC - Rn, 20 NMAC 2.99.112, 10/31/02; A, 10/15/05; A, 06/01/09]

20.2.99.113 FREQUENCY OF CONFORMITY DETERMINATIONS - TRANSPORTATION IMPROVEMENT PROGRAMS.

A. A new TIP must be found to conform before the TIP is approved by the MPO (or NMDOT in the absence of an MPO) or accepted by the US DOT.

B. A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO (or NMDOT in the absence of an MPO) or accepted by the US DOT, unless the amendment merely adds or deletes exempt projects listed in 20.2.99.149 NMAC and has been made in accordance with the notification provisions of 20.2.99.122 NMAC.

C. The MPO and US DOT shall determine the conformity of the TIP (including a new regional emissions analysis) no less frequently than every ~~[three (3) or else]~~ four (4) years. If more than four (4) years elapse after US DOT's conformity determination without the MPO and US DOT determining conformity on the TIP, a twelve (12) month grace period will be implemented as described in Subsection B of 20.2.99.111 NMAC. At the end of this twelve (12) month grace period, the existing conformity determination will lapse.

[12/14/94; 11/23/98; 20.2.99.113 NMAC - Rn, 20 NMAC 2.99.113, 10/31/02; A, 10/15/05; A, 06/01/09]

20.2.99.115 FREQUENCY OF CONFORMITY DETERMINATIONS - TRIGGERS FOR TRANSPORTATION PLAN AND TIP CONFORMITY DETERMINATIONS.

Conformity of existing transportation plans and TIPs shall be redetermined within ~~[eighteen (18) months]~~ two (2) years of the following, or after a twelve (12) month grace period (as described in 20.2.99.116 NMAC) the existing conformity determination will 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 US DOT:

A. the date of the department's initial submission to US EPA of each control strategy implementation plan or maintenance plan establishing a motor vehicle emissions budget;

B. the effective date of US EPA approval of a control strategy implementation plan revision or maintenance plan which establishes or revises a motor vehicle emissions budget if that budget has not yet been used in a conformity determination prior to approval; and

C. the effective date of US EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget.

[12/14/94; 11/23/98; 20.2.99.115 NMAC - Rn, 20 NMAC 2.99.115, 10/31/02; A, 10/15/05; A, 06/01/09]

20.2.99.122 NOTIFICATION PROCEDURES FOR ROUTINE ACTIVITIES.

Notification of affected agencies (including those listed in Paragraph (1) of Subsection C of 20.2.99.116 NMAC) of transportation plan or TIP ~~[revisions or]~~ amendments which merely add or delete exempt projects listed in 20.2.99.149 NMAC, shall be the affirmative responsibility of NMDOT and/or the MPO. Such notification shall be provided not later than thirty (30) days prior to the preparation of the final draft of the document or decision. This process shall include:

A. notification of the affected agencies (including those listed in Paragraph (1) of Subsection C of 20.2.99.116 NMAC) early in the process of decision on the final document; and

B. supplying all relevant documents and information to the affected agencies (including those listed in Paragraph (1) of Subsection C of 20.2.99.116 NMAC).

[12/14/94; 11/23/98; 20.2.99.122 NMAC - Rn, 20 NMAC 2.99.122 10/31/02; A, 10/15/05; A, 06/01/09]

20.2.99.124 PUBLIC CONSULTATION PROCEDURES:

A. Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which 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 all transportation plans and TIPs, and projects, consistent with the requirements of 23 CFR part 450, including sections 450.316 ~~[(b)(1)]~~ (a), 450.322(c), and 450.324(c) as in effect on the date of adoption of this Part. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.43. In addition, any such agency must specifically address in writing all public comments which allege 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 a proposed conformity finding for a transportation plan or TIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for projects to the extent otherwise required by law (e.g. NEPA).

B. The opportunity for public involvement provided under this section (20.2.99.124 NMAC) shall include access to information, emissions data, analyses, models and modeling assumptions used to perform a conformity determination, and the obligation of any such agency to consider and respond in writing to significant comments.

C. No transportation plan, TIP, or project may be found to conform unless the determination of conformity has been subject to a public involvement process in accordance with this section, without regard to whether the US DOT has certified any process under 23 CFR part 450.

[12/14/94; 11/23/98; 09/08/99; 20.2.99.124 NMAC - Rn, 20 NMAC 2.99.124 10/31/02;

A, 9/1/07; A, 06/01/09]

20.2.99.125 CONTENT OF TRANSPORTATION PLANS AND TIMEFRAMES OF CONFORMITY DETERMINATIONS.

A. Transportation plans adopted after January 1, 1997, in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas. If the metropolitan planning area contains an urbanized area population greater than two hundred thousand (200,000), the transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The agency or organization developing the transportation plan, after consultation in accordance with 20.2.99.116 NMAC through 20.2.99.124 NMAC, may choose any years to be horizon years, subject to the following restrictions:

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

(b) the first horizon year may be no more than ten (10) years from the base year used to validate the transportation demand planning model.

(c) ~~[(#)]~~ the attainment year is must be a horizon year if it is in the [time span of the] timeframe of the transportation plan[; the attainment year shall be a horizon year] and conformity determination.

(d) the last ~~[horizon]~~ year of the transportation plan's forecast period shall be [the last] a horizon year, and

(e) if the timeframe of the conformity determination has been shortened under Subsection D of this section (20.2.99.125 NMAC), the last year of the timeframe of the conformity determination must be a horizon year.

(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 20.2.99.116 NMAC through 20.2.99.124 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 sufficiently to allow modeling of their transit ridership; the description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is 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. Two-year grace period for transportation plan requirements in certain ozone and CO areas. The requirements of Subsection A of 20.2.99.125 NMAC applies 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 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 meet the requirements of Subsection A of 20.2.99.125 NMAC at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of 20.2.99.128 NMAC through 20.2.99.138 NMAC.

D. Timeframe of conformity determination.

(1) Unless an election is made under this subsection (Subsection D of 20.2.99.125 NMAC), the timeframe of the conformity determination shall be through the last year of the transportation plan's forecast period.

(2) For areas that do not have an adequate or approved CAA section 175A(b) maintenance plans, the MPO may elect to shorten the timeframe of the transportation plan and TIP conformity determination,

after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

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

(i) the tenth year of the transportation plan;

(ii) the latest year for which an adequate or approved motor vehicle emissions budget(s) is established in the submitted or applicable implementation plan; or

(iii) the year after the completion date of a regionally significant project if the project is included in the TIP or project requires approval before the subsequent conformity determination.

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

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

(4) Any election made by an MPO under Paragraphs (2) and (3) of Subsection D of 20.2.99.125 NMAC shall continue in effect until the MPO elects otherwise, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

[D-] E. Savings. The requirements of this section (20.2.99.125 NMAC) supplement other requirements of applicable law or regulation governing the format or content of transportation plans. [12/14/94; 11/23/98; 20.2.99.125 NMAC - Rn, 20 NMAC 2.99.125 10/31/02; A, 10/15/05; A, 06/01/09]

20.2.99.128 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 US DOT must demonstrate that the applicable criteria and procedures in this part are satisfied and the MPO and US DOT must 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 or state projects), the relevant pollutant(s), and the status of the implementation plan.

B. The following table (table 1) indicates the criteria and procedures in 20.2.99.129 NMAC through 20.2.99.138 NMAC which apply for transportation plans, TIPs, and FHWA/FTA projects. Subsections C through I of this section (20.2.99.128 NMAC) explain when the budget, interim emission, and hot spot tests are required for each pollutant and NAAQS. Subsection J of this section (20.2.99.128 NMAC) addresses conformity requirements for areas with approved or adequate limited maintenance plans. Subsection K of this section (20.2.99.128 NMAC) addresses nonattainment maintenance areas which EPA has determined have insignificant motor vehicle emissions. Subsection L of this section (20.2.99.128 NMAC) addresses isolated rural nonattainment and maintenance areas. Table 1 follows. Table 1. Conformity Criteria.

- (1)** All actions at all times
- (a)** 20.2.99.129 NMAC. Latest planning assumptions
- (b)** 20.2.99.130 NMAC. Latest emissions model
- (c)** 20.2.99.131 NMAC. Consultation
- (2)** Transportation Plan
- (a)** Subsection B of 20.2.99.132 NMAC. TCMs
- (b)** 20.2.99.137 NMAC and/or 20.2.99.138 NMAC. Emissions budget and/or interim emissions
- (3)** TIP
- (a)** Subsection C of 20.2.99.132 NMAC. TCMs
- (b)** 20.2.99.137 NMAC and/or 20.2.99.138 NMAC. Emissions budget and/or interim emissions
- (4)** Project (From a conforming plan and TIP)
- (a)** 20.2.99.133 NMAC. Currently conforming plan and TIP
- (b)** 20.2.99.134 NMAC. Project from a conforming plan and TIP
- (c)** 20.2.99.135 NMAC. CO, PM10, and PM2.5 hot spots
- (d)** 20.2.99.136 NMAC. PM10 and PM2.5 control measures
- (5)** Project (Not from a conforming plan and TIP)
- (a)** Subsection D of 20.2.99.132 NMAC. TCMs
- (b)** 20.2.99.133 NMAC. Currently conforming plan and TIP
- (c)** 20.2.99.135 NMAC. CO, PM10, and PM2.5 hot spots
- (d)** 20.2.99.136 NMAC. PM10 and PM2.5 control measures

(e) 20.2.99.137 NMAC and/or 20.2.99.138 NMAC. Emissions budget and/or interim emissions.

C. 1-hour ozone nonattainment and maintenance areas. This subsection (Subsection C of section 20.2.99.128 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 this section (20.2.99.128 NMAC) that are required to be satisfied at all times, in such ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emission tests are satisfied as described in the following.

(1) In all 1-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made on or after:

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

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

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

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually moderate and above areas), the interim emissions tests must be satisfied as required by 20.2.99.138 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget form an applicable implementation plan for the 1-hour ozone NAAQS and no adequate motor vehicle emissions budget form a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS.

(3) An ozone nonattainment area must satisfy the interim emissions test for NOx, as required by 20.2.99.138 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or phase I attainment demonstration that does not include a motor vehicle emissions budget for NOx. The implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NOx if the implementation plan or plan submission contains an explicit NOx motor vehicle emissions budget that is intended to act as a

ceiling on future NOx emissions, and the NOx motor vehicle emissions budget is a net reduction from NOx 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 NAAQS (usually marginal and below areas) must satisfy one of the following requirements:

(a) the interim emissions tests required by 20.2.99.138 NMAC; or

(b) the department shall submit to US EPA an implementation plan revision for the 1-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or an attainment demonstration, and the budget test required by 20.2.99.137 NMAC must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (1) of Subsection C of 20.2.99.128 NMAC).

(5) Notwithstanding Paragraphs (1) and (2) of Subsection C of 20.2.99.128 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 US EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 1-hour NAAQS must satisfy one of the following requirements:

(a) the interim emissions tests as required by 20.2.99.138 NMAC;

(b) the budget test as required by 20.2.99.137 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 20.2.99.128 NMAC); or

(c) the budget test as required by 20.2.99.137 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 US EPA rulemaking that determines that the area has clean data.

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. This subsection (Subsection D of section 20.2.99.128 NMAC) applies to areas that were never 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. This subsection (Subsection D of section 20.2.99.128 NMAC) applies one (1) year after the effective

date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of 20.2.99.109 NMAC. In the addition to the criteria listed in table 1 in Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations much 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 much be satisfied as required by section 20.2.99.137 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 must be satisfied as required by section 20.2.99.138 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for 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 NAAQS.

(3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NOx, as required by section 20.2.99.138 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determination is a fifteen percent (15%) plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NOx. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NOx if the implementation plan or plan submission contains an explicit NOx motor vehicle emissions budget that is intended to act as a ceiling on future NOx emissions, and the NOx motor vehicle emissions bud-

get is a net reduction from NOx 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) must satisfy one of the following requirements:

(a) the interim emissions tests required by section 20.2.99.138 NMAC; or

(b) the department 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 section 20.2.99.137 NMAC must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (1) of Subsection D of 20.2.99.128 NMAC).

(5) Notwithstanding Paragraphs (1) and (2) of Subsection D of 20.2.99.128 NMAC, ozone nonattainment areas with three (3) years of clean data for the 8-hour ozone NAAQS that have not submitted maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 9-hour ozone NAAQS must satisfy one of the following requirements:

(a) the interim emissions tests as required by section 20.2.99.138 NMAC;

(b) the budget test as required by section 20.2.99.137 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 20.2.99.128 NMAC); or

(c) the budget test as required by section 20.2.137 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. This provision applies one (1) year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of section 2.20.99.109 NMAC. In addition to the criteria listing in table 1 in Subsection B of this section (2.20.2.128 NMAC) that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance

nance areas conformity determinations must 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 must be satisfied as required by section 20.2.99.137 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, is such approval is completed through direct final rulemaking.

(2) Prior to Paragraph (1) [~~of Subsection E of this section~~] of Subsection E of 20.2.99.128 NMAC applying, the following test(s) must be satisfied[~~subject to the exception in Subparagraph (c) of Paragraph (2) of Subsection E of this section (20.2.99.128 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 section 20.2.99.137 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 section 20.2.99.137 NMAC for either 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 section 20.2.99.116 NMAC ; or 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 emission reductions are necessary to meet the budget test for the 8-hour ozone NAAQS in such cases, these emissions reductions must 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) the budget test as required by section

20.2.99.137 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 the interim emissions tests as required by section 20.2.99.138 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 area partially covers a 1-hour ozone nonattainment or maintenance area(s).

(d) If the 8-hour ozone nonattainment area partially covers a 1-hour ozone nonattainment of maintenance area(s) the budget test as required by section 20.2.99.137 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 section 20.2.99.116 NMAC ; and the interim emissions tests as required by section 20.2.99.138 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 this section (20.2.99.128 NMAC), the interim emissions tests as required by Section 20.2.99.138 NMAC, where the budget test using the approved or adequate motor vehicle emissions budget 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 Section 20.2.99.116 NMAC.]~~

(3) Such an 8-hour ozone nonattainment area must satisfy the interim emis-

sions test for NOx, as required by section 20.2.99.138 NMAC, if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NOx. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NOx if the implementation plan or plan submission contains an explicit NOx motor vehicle emissions budget that is intended to act as a ceiling on future NOx emissions, and the NOx motor vehicle emissions budget is a net reduction from NOx emissions levels in 2002. Prior to an adequate or approved NOx 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 NOx if the implementation plan contains an explicit NOx motor vehicle emissions budget that is intended to act as a ceiling on future NOx emissions, and the NOx motor vehicle emission budget is a net reduction from NOx emissions levels in 1990.

(4) Notwithstanding Paragraphs (1) and (2) of Subsection E of this section (20.2.99.128 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 requirement for the 8-hour ozone NAAQS must satisfy one of the following requirements:

(a) the budget test and/or interim emissions tests are required by sections 20.2.99.137 NMAC and 20.2.99.138 NMAC and as described in Paragraph (2) of Subsection E of this section (20.2.99.128 NMAC);

(b) the budget test as required by section 20.2.99.137 NMAC, using the adequate or approved motor vehicle emission 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 20.2.99.128 NMAC; or

(c) the budget test as required by section 20.2.99.137 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.

F. CO nonattainment and maintenance areas. In addition to the criteria listed in table 1 in Subsection B of

20.2.99.128 NMAC that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or interim emissions tests are satisfied as described in the following.

(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot spot test required by Subsection A of 20.2.99.135 NMAC at all times. Until a CO attainment demonstration or maintenance plan is approved by US EPA, FHWA/FTA projects must also satisfy the hot spot test required by Subsection B of 20.2.99.135 NMAC.

(2) In CO nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made:

(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 F of 20.2.99.128 NMAC, in CO nonattainment areas the interim emissions tests must be satisfied as required by 20.2.99.138 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.

(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 satisfy one of the following requirements:

(a) the interim emissions tests required by 20.2.99.138 NMAC; or

(b) the department shall submit to US EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by 20.2.99.137 NMAC must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (2) of Subsection F of 20.2.99.128 NMAC).

G. PM10 nonattainment and maintenance areas. In addition to the criteria listed in table 1 in Subsection B of

20.2.99.128 NMAC that are required to be satisfied at all times, in PM10 nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or interim emissions tests are satisfied as described in the following.

(1) FHWA/FTA projects in PM10 nonattainment or maintenance areas must satisfy the hot spot test required by 20.2.99.135 NMAC.

(2) In PM10 nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made:

(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 interim emissions tests must be satisfied as required by 20.2.99.138 NMAC for conformity determinations made:

(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

(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.

H. NO2 nonattainment and maintenance areas. In addition to the criteria listed in table 1 in Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in NO2 nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following.

(1) In NO2 nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made:

(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 interim emissions tests must be satisfied as required by 20.2.99.138 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.

I. PM2.5 nonattainment and maintenance areas. In addition to the criteria listed in table 1 in Subsection B of section 20.2.99.128 NMAC that are required to be satisfied at all times, in PM2.5 nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) FHWA/FTA projects in PM2.5 nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by Subsection A of section 20.2.99.135 NMAC;

(2) in PM2.5 nonattainment and maintenance areas the 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 PM2.5 nonattainment areas the interim emissions tests must be satisfied as required by section 20.2.99.138 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 paragraphs of this section, an area is not required to satisfy the regional emissions analysis for sections 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for a given pollutant and NAAQS, if the area has an adequate or approved 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 or Subsection B of this section (20.2.99.128 NMAC) is still required, including the hot-spot requirements for projects in CO, PM10, and PM2.5 areas.

K. Areas with insignificant motor vehicle emissions. Notwithstanding the other subsections in this section (20.2.99.128 NMAC), and area is not required to satisfy a regional emissions analysis for sections 20.2.99.137 NMAC and/or 20.2.99.138 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 or Subsection B of this section (20.2.99.128 NMAC) is still required, including regional emissions analyses for sections 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO, PM10, and PM2.5 areas in section 20.2.99.135 NMAC must also be satisfied, unless EPA determined 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.

L. Isolated rural nonattainment and maintenance areas. This 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 subsection does not apply to "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 20.2.99.129 NMAC through 20.2.99.131 NMAC, Subsection D of 20.2.99.132 NMAC, 20.2.99.135 NMAC, and 20.2.99.136 NMAC. Until US EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of Subsection B of 20.2.99.135 NMAC ("Localized CO, PM10, and PM2.5 violations (hot spots)").

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or interim emissions tests as described in Subsections C through K of 20.2.99.128 NMAC, with the following modifications:

(a) when the requirements of Subsection D of 20.2.99.125 NMAC, 20.2.99.135 NMAC, 20.2.99.137 NMAC and 20.2.99.138 NMAC apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area; when the requirements of Subsection D of 20.2.99.125 NMAC apply to isolated rural nonattainment and maintenance areas, references to "MPO" should be taken to mean NMDOT;

(b) in isolated rural nonattainment and maintenance areas that are subject to 20.2.99.137 NMAC, FHWA/FTA projects must 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 satisfy one of the following requirements:

(i) 20.2.99.137 NMAC;

(ii) 20.2.99.138 NMAC

(including regional emissions analysis for NOx in all ozone nonattainment and maintenance areas, notwithstanding Paragraph (2) of Subsection F of 20.2.99.138 NMAC; or

(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 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 be enforceable;

(c) the choice of requirements in Subparagraph (b) of Paragraph (2) of Subsection G of 20.2.99.128 NMAC and the methodology used to meet the requirements of item (iii) of Subparagraph (b) of Paragraph (2) of Subsection G of 20.2.99.128 NMAC must be determined through the interagency consultation process required in Paragraph (6) of Subsection B of 20.2.99.117 NMAC and Paragraph (5) of Subsection C of 20.2.99.117 NMAC through which the relevant recipients of title 23 U.S.C. or federal transit laws funds, NMDOT, the department, or the local air quality agency should reach consensus about the option and methodology selected; US EPA and US DOT must 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 20.2.99.123 NMAC, which applies to department comments on a conformity determination.

[12/14/94; 11/23/98; 20.2.99.128 NMAC - Rn, 20 NMAC 2.99.128 10/31/02; A, 10/15/05; A, 9/1/07; A. 06/01/09]

20.2.99.133 CRITERIA AND PROCEDURES - CURRENTLY CONFORMING TRANSPORTATION PLAN AND TIP:

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval, or a project must meet the requirements in Subsection B of 20.2.99.111 NMAC during the twelve (12) month lapse grace period. 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 conformity determination for the current plan or TIP is made by US DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of 20.2.99.111 NMAC through 20.2.99.115 NMAC. This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the SIP, provided that all other relevant criteria of this Part are satisfied.

[12/14/94; 11/23/98; 20.2.99.133 NMAC - Rn, 20 NMAC 2.99.133 10/31/02; A, 06/01/09]

20.2.99.134 CRITERIA AND PROCEDURES - PROJECTS FROM A TRANSPORTATION PLAN AND TIP:

A. The project must come from a conforming transportation plan and TIP. If this criterion is not satisfied, the

project must satisfy all criteria in table 1 of Subsection B of 20.2.99.128 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 20.2.99.134 NMAC and from a conforming TIP if it meets the requirements of Subsection C of 20.2.99.134 NMAC. Special provisions for TCMs in an applicable implementation plan are provided in Subsection D of 20.2.99.134 NMAC.

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

(1) for projects which are required to be identified in the transportation plan in order to satisfy 20.2.99.125 NMAC, 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 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 not interfere with other projects specifically included in the transportation plan.

C. A project is considered to be from a conforming TIP 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 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 be obtained from the project sponsor and/or operator as required by Subsection A of 20.2.99.148 NMAC in order for the project to be considered to be 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.

E. Notwithstanding the requirements of Subsections A, B, and C of this section (20.2.99.134 NMAC), a project must meet the requirements of Subsection B

of 20.2.99.111 NMAC during the twelve (12) month lapse grace period.

[12/14/94; 11/23/98; 20.2.99.134 NMAC - Rn, 20 NMAC 2.99.134 10/31/02; A, 06/01/09]

20.2.99.135 CRITERIA AND PROCEDURES - LOCALIZED CO, PM10, AND PM2.5 VIOLATIONS (HOT SPOTS).

A. This ~~[paragraph]~~ sub-section (Subsection A of 20.2.99.135 NMAC) applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO, PM10, and/or PM2.5 violations or increase the frequency or severity of any existing CO, PM10, and/or PM2.5 violations in CO, PM10, and PM2.5 nonattainment and maintenance areas. This criterion is satisfied without a hotspot analysis in PM10 and PM2.5 nonattainment and maintenance areas for FHWA/FTA projects that are not identified in Paragraph (1) of Subsection B of 20.2.99.148 NMAC. This criterion is satisfied for all other FHWA/FTA projects in CO, PM10, and PM2.5 nonattainment and maintenance areas if it is demonstrated that during the time frame of the transportation plan ~~[(or regional emissions analysis)]~~ no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration shall be performed according to the consultation requirements of Subsection A of 20.2.99.120 NMAC and the methodology requirements of 20.2.99.148 NMAC.

B. This ~~[paragraph]~~ sub-section (Subsection B of 20.2.99.135 NMAC) applies for CO nonattainment areas as described in Paragraph (1) of Subsection F of 20.2.99.128 NMAC. Each FHWA/FTA project must 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 be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of Subsection A of 20.2.99.120 NMAC and the methodology requirements of 20.2.99.146 NMAC.

[12/14/94; 11/23/98; 20.2.99.135 NMAC - Rn, 20 NMAC 2.99.135 10/31/02; A, 10/15/05; A, 9/1/07; A, 06/01/09]

20.2.99.137 CRITERIA AND PROCEDURES - MOTOR VEHICLE EMISSIONS BUDGET.

A. The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable control strategy implementation plan (or implementation plan submission). This criterion applies as described in Subsections C through L of 20.2.99.128 NMAC. This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in Subsection C of 20.2.99.137 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 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 and conformity determination), for the last year of the ~~transportation plan's forecast period~~ time-frame of the conformity determination (as described under Subsection D of 20.2.99.125 NMAC), and for any intermediate years within the timeframe of the conformity determination as necessary so that the years for which consistency is demonstrated are no more than ten 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 be less than or equal to that year's motor vehicle emissions budget(s); and

(b) emissions in years for which no motor vehicle emissions budget(s) are specifically established must 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 establish a budget must 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 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 emissions budget(s) must 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 inter-agency consultation process required by 20.2.99.116 NMAC through 20.2.99.124 NMAC shall determine what must be considered in order to make such a finding;

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

(c) if an approved and/or submitted control strategy implementation plan has established motor vehicle emissions budgets for years in the timeframe of the transportation plan, emissions in these years must 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 must 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 be demonstrated for each pollutant or pollutant precursor in Subsection B of 20.2.99.109 NMAC (or 20.2.99.101 NMAC) for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

D. Consistency with the motor vehicle emissions budget(s) must 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 timeframe of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of 20.2.99.141 NMAC through 20.2.99.147 NMAC and 20.2.99.120 NMAC.

(2) The regional emissions analysis may be performed for any years in the timeframe of the ~~transportation plan~~ conformity determination (as described under Subsection D of 20.2.99.125 NMAC) provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan and conformity determination) and the last year of the ~~plan's forecast period~~ timeframe for the conformity determination. Emissions in years for which consistency with motor

vehicle emissions budgets must be demonstrated, as required in Subsection B of 20.2.99.137 NMAC, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(3) When the timeframe of the conformity determination is shortened under Paragraph (2) of Subsection D of 20.2.99.125 NMAC, the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan, and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis (if such a year extends beyond the timeframe of the conformity determination).

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

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

(2) If US EPA has not declared an implementation plan submission's motor vehicle emissions budget(s) adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previously approved implementation plans or implementation plan submissions with adequate motor vehicle emissions budgets, the interim emissions tests required by 20.2.99.138 NMAC must be satisfied.

(3) If US EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes and conformity of a transportation plan or TIP has already been determined by US DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy 20.2.99.133 NMAC and 20.2.99.134 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) US EPA will 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 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 US EPA, consultation among federal, state, and local agencies occurred; full implementation plan documentation was provided to US EPA; and US 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 Subsection AO of 20.2.99.7 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, US EPA will review the department's compilation of public comments and response to comments that are required to be submitted with any implementation plan. US EPA will document its consideration of such comments and responses in a letter to the department 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 are established by an implementation plan submittal that has not yet been approved or disapproved by US EPA, the MPO and US DOT's conformity determinations will be deemed to be a statement that the MPO and US DOT are not

aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will 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.

F. Adequacy review process for implementation plan submissions. US EPA will use the procedure listing in Paragraph (1) of Subsection F of this section (20.2.99.137 NMAC) to review the adequacy of an implementation plan.

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

(a) US EPA will notify the public through US EPA's website when US 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 fifteen (15) days of the date of the website notice, the comment period will be extended 30 days from the date that a copy of the implementation plan is mailed;

(c) after the public comment period closes, US EPA will inform the department in writing whether US EPA has found the submission adequate or inadequate for use in transportation conformity, including response to any comments submitted directly and review of comments submitted through the department process, or US 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 this section (20.2.99.137 NMAC);

(d) US EPA will publish a federal register notice to inform the public of US EPA's finding; if EPA finds the submission adequate, the effective date of this finding will be fifteen (15) days from the date the notice is published as established in the federal register notice, unless US EPA is taking a final approval action on the SIP as described in Subparagraph (c) of Paragraph (2) for Subsection F for this section (20.2.99.137 NMAC);

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

(f) if after US EPA has found a submission adequate, US EPA has cause to reconsider this finding, US EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) of Subsection F or Paragraph (2) of Subsection F of 20.2.99.137 NMAC unless US EPA determines that there is no need for additional public comment given the deficiencies of the implementation plan submission; in all cases where US EPA reverses its previous finding to a finding of inadequacy under Paragraph (1) of Subsection F of 20.2.99.137 NMAC, such a finding will become effective immediately upon the date of US EPA's letter to the department;

(g) if after EPA has found a submission inadequate, US EPA has cause to reconsider the adequacy of that budget, US EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) of this section (20.2.99.137 NMAC).

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

(a) US EPA's federal register notice of proposed or direct final rulemaking will serve to notify the public that US 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 thirty (30) days;

(c) US EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in US EPA's final rulemaking or through the process described in Subparagraphs (c) through (e) of Paragraph (1) of Subsection F of this section (20.2.99.137 NMAC); if US 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 US EPA's approval in the federal register, or upon the effective date of US EPA's approval if such action is conducted through direct final rulemaking; US EPA will respond to comments received directly and review comments submitted through the department process and include the response to comments in the applicable docket.

[12/14/94; 11/23/98; 20.2.99.137 NMAC - Rn, 20 NMAC 2.99.137 10/31/02; A, 10/15/05; A, 06/01/09]

20.2.99.138 CRITERIA AND PROCEDURES - 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 satisfy the interim emissions test(s) as described in Subsections C through L of 20.2.99.128 NMAC. This criterion 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 this subsection (Subsection B of 20.2.99.138 NMAC) apply to all 1-hour ozone and 8-hour ozone NAAQS areas, except for certain requirements as indicated. This criterion may be met.

(1) In moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through L of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 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, in areas for the 1-hour ozone NAAQS as described in Subsection C of section 20.2.99.128 NMAC; or the 2002 emissions by any nonzero amount, in areas for the 8-hour ozone NAAQS as described in Subsections D and E of 20.2.99.128 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 the Clean Air Act Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of section 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsection G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 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 the 1990 emissions, in areas for the 1-hour NAAQS as described in Subsection C of 20.2.99.128 NMAC; or the 2002 emissions, in areas for the 8-hour ozone NAAQS as described in Subsections D and E of 20.2.99.128 NMAC.

C. CO areas. This criterion may be met:

(1) in moderate areas with design values greater than 12.7 ppm and serious CO nonattainment areas that are subject to Clean Air Act Section 187(a)(7) if a regional emissions analysis that satisfies the requirements of sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 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 values less than 12.7 ppm and not classified CO nonattainment areas if a regional emissions analysis that satisfies the requirements of sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 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.

D. PM10 and NO2 areas. This criterion may be met in PM10 and NO2 nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 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 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 pur-

pose of developing a control strategy implementation plan.

E. PM2.5 areas. This criterion may be met in PM2.5 nonattainment areas if a regional emissions analysis that satisfies the requirements of sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC, one of the following requirements is met:

(1) the emissions predicated 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.

F. Pollutants. The regional emissions analysis must be performed for the following pollutants:

(1) VOC in ozone areas;

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

(3) CO in CO areas;

(4) PM10 in PM10 areas;

(5) VOC and/or NOx in PM10 areas if the US EPA regional administrator or the department 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 US DOT;

(6) NOx in NO2 areas;

(7) PM2.5 areas;

(8) re-entrained road dust in PM2.5 areas only if the US EPA regional administrator or the department has made a finding that emissions from re-entrained road dust within the area are a significant contributor to the PM2.5 nonattainment problem and has so notified the MPO and US DOT;

(9) nitrogen oxides in PM2.5 areas, unless the EPA regional administrator and the department have made a finding that emissions of nitrogen oxides from within the area are not a significant contributor to the PM2.5 nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT; and

(10) VOC, ~~SO₂~~ SO₂ and/or ammonia in PM2.5 areas if the EPA regional administrator or the department has made a finding that any of such precursor emissions from within the area are a significant contributor to the PM2.5 nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT.

G. Analysis years.

(1) The regional emissions analysis must be performed for analysis years that are no more than ten (10) years apart. The first analysis year must be no more than five (5) years beyond the year in which the conformity determination is being made. The last year of [~~transportation plan's forecast period~~] the timeframe of the conformity determination (as described under Subsection D of 20.2.99.125 NMAC) must also be an analysis year.

(2) For areas using Subparagraph (a) of Paragraph (2) of Subsection B of section 20.2.99.138 NMAC, Subparagraph (a) of Paragraph (2) of Subsection C of section 20.2.99.138 NMAC, Paragraph (1) of Subsection D of section 20.2.99.138 NMAC, and Paragraph (1) of Subsection E of section 20.2.99.138 NMAC, a regional emissions analysis that satisfies the requirements of sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of section 20.2.99.138 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 section 20.2.99.138 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.

(3) When the timeframe of the conformity determination is shortened under Paragraph (2) of Subsection D of 20.2.99.125 NMAC, the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan.

H. "Baseline" scenario. The regional emissions analysis required by Subsections B and E of 20.2.99.138 NMAC must estimate the emissions that would result from the "baseline" scenario in each analysis year. The "baseline" scenario must be defined for each of the analysis years. The "baseline" scenario is the future transportation system that will result from current programs, including the following (except that exempt projects listed in Subsection A of 20.2.99.149 NMAC and projects exempt from regional emissions analysis as listed in Subsection B of 20.2.99.149 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.

I. "Action" scenario. The regional emissions analysis required by Subsections B and E of 20.2.99.138 NMAC must estimate the emissions that would result from the "action" scenario in each analysis year. The "action" scenario must 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 (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "action" scenario must include the following (except that exempt projects listed in Subsection A of 20.2.99.149 NMAC and projects exempt from regional emissions analysis as listed in Subsection B of 20.2.99.149 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 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 activities 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 non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

J. Projects not from a conforming transportation plan and TIP. For the regional emissions analysis required by Subsections B and E of 20.2.99.138 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 include the project with its original design concept and scope, and the "action" scenario must include the project with its new design concept and scope.

[12/14/94; 11/23/98; 20.2.99.138 NMAC - Rn, 20 NMAC 2.99.138 10/31/02; A, 10/15/05; A, 9/1/07; A, 06/01/09]

20.2.99.139 CONSEQUENCES OF CONTROL STRATEGY IMPLEMENTATION PLAN FAILURES.

A. Disapprovals.

(1) If US EPA 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 US EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, only projects in the first ~~three (3)~~ four (4) years of the currently conforming transportation plan and TIP or that meet the requirements of Subsection B of 20.2.99.111 NMAC during the 12-month lapse grace period may be found to conform. This means that beginning on the effective date of a disapproval without a protective finding, no transportation plan, TIP, or project not in the first ~~three (3)~~ four (4) years of the currently conforming transportation plan and TIP or that meets the requirements of Subsection B of 20.2.99.111 NMAC during the 12-month lapse grace period may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted, US EPA finds its motor vehicle emissions budget(s) adequate pursuant to section 20.2.99.137 NMAC or approves the submission, and conformity to the implementation plan revision is determined.

(3) In disapproving a control strategy implementation plan revision, US

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 US EPA notifies the department, MPO, and US DOT of the department'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 US EPA regional administrator.

C. Federal implementation plans. If US EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a department failure, the conformity lapse imposed by 20.2.99.139 NMAC because of the department failure is removed.

[12/14/94; 11/23/98; 20.2.99.139 NMAC - Rn, 20 NMAC 2.99.139 10/31/02; A, 10/15/05; A, 06/01/09]

20.2.99.140 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 20.2.99.140 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 comes from the currently conforming transportation plan and TIP (or meets the requirements of Subsection B of 20.2.99.111 NMAC during the 12-month lapse grace period), and the project's design concept and scope have not changed significantly from those that were included in the regional emissions analyses for that transportation plan and TIP; or

(2) the project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (or meets the requirements of Subsection B of 20.2.99.111 NMAC during the 12-month

lapse grace period), [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] 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 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for a project not from a conforming transportation plan and TIP).

B. In isolated rural nonattainment and maintenance areas subject to Subsection G of 20.2.99.128 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 that reflects the portion of the statewide transportation plan and TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has 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 of 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for projects not from a conforming transportation plan and TIP).

C. Notwithstanding Subsections A and B of section 20.2.99.140 NMAC, in nonattainment and maintenance areas subject to Subsections J or K of section 20.2.99.128 NMAC for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under title 20 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 as included in the

most recent conformity determination that reflects the portions 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 not changed significantly.

[12/14/94; 11/23/98; 20.2.99.140 NMAC - Rn, 20 NMAC 2.99.140 10/31/02; A, 10/15/05; A, 06/01/09]

20.2.99.148 PROCEDURES FOR DETERMINING LOCALIZED CO, PM10 AND PM2.5 CONCENTRATIONS (HOT-SPOT ANALYSIS).

A. CO Hot-spot Analysis.

(1) The demonstrations required by 20.2.99.135 NMAC 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 20.2.99.116 NMAC through 20.2.99.124 NMAC and approved by the EPA region 6 administrator are used:

(a) for projects in or affecting locations, areas, or categories of sites which are identified in the SIP as sites of violation or possible violation;

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

(c) for any project affecting one or more of the intersections which the SIP identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes; and

(d) for any project affecting one or more of the intersections which the SIP identifies as the top three intersections in the nonattainment or maintenance area based on the worst level of service.

(2) In cases other than those described in Paragraph (1) of Subsection A of 20.2.99.146 NMAC, the demonstrations required by 20.2.99.135 NMAC may be based on either:

(a) quantitative methods that represent reasonable and common professional practice; or

(b) a qualitative consideration of local factors, if this can provide a clear demonstration that the requirements of 20.2.99.135 NMAC are met.

(3) US DOT, in consultation with US EPA, may also choose to make a categorical hot-spot finding that Subsection A of 20.2.99.135 NMAC is met without further hot-spot analysis for any project described in Paragraphs (1) and (2) of Subsection A of 20.2.99.148 NMAC based on appropriate modeling. US DOT, in consultation with US

EPA, may also consider the current air quality circumstances of a given CO nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

B. PM10 and PM2.5 Hot-spot Analysis.

(1) The hot-spot demonstration required by 20.2.99.135 NMAC shall be based on quantitative analysis methods for the following types of projects:

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

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

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

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

(e) projects in or affecting locations, areas, or categories of sites which are identified in the PM10 or PM2.5 applicable implementation plan submission, as appropriate, as sites of violation or possible violations.

(2) Where quantitative analysis methods are not required, the demonstration required by 20.2.99.135 NMAC for projects described in Paragraph (1) of Subsection B of this section must be based on a qualitative consideration of local factors.

(3) US DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that section 20.2.99.135 NMAC is met without further hot-spot analysis for any project described in Paragraph (1) of Subsection B of this section based on appropriate modeling. US DOT, in consultation with EPA, may also consider the current air quality circumstances of a given PM2.5 or PM10 nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

(4) The requirements of this Subsection B of 20.2.99.146 NMAC for quantitative analysis will 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 shall be based on the total emissions burden which may result from the imple-

mentation of the project, summed together with future background concentrations. The total concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

(2) Hot-spot analyses shall include the entire project, and may be performed only after the major design features which will significantly impact concentrations have been identified. The future background concentration should be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to current emission factors.

(3) Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(4) CO, PM10 or PM2.5 mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor or operator to implement such measures, as required by Subsection A of 20.2.99.148 NMAC.

(5) CO, PM10, and PM2.5 hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, 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.

[12/14/94; 11/23/98; 20.2.99.148 NMAC - Rn, 20 NMAC 2.99.148, 10/31/02; 20.2.99.148 NMAC - Rn, 20.2.99.146 NMAC, 10/15/05; A, 9/1/07; A, 06/01/09]

20.2.99.151 EXEMPTIONS.

A. Exempt projects. Notwithstanding the other requirements of this part, highway and transit projects of the types listed in table 2 of this section 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 this section) is not exempt if the MPO in consultation with other agencies (e.g. the department, see Subsection C of 20.2.99.120 NMAC, the US 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. NMDOT and the MPO, in consultation with the department, as appropriate, must assure that exempt projects do not interfere with TCM implementation. Table 2 follows. Table 2. Exempt Projects.

(1) Safety:

- (a) railroad/highway crossing;
- (b) ~~hazard elimination program~~ projects that correct, improve, or eliminate a hazardous location or feature;
- (c) safer non-federal-aid system roads;
- (d) shoulder improvements;
- (e) increasing sight distance;
- (f) ~~safety improvement program~~ highway safety improvement program implementation;
- (g) traffic control devices and operating assistance other than signalization projects;
- (h) railroad/highway crossing warning devices;
- (i) guardrails, median barriers, crash cushions;
- (j) pavement resurfacing or rehabilitation;
- (k) ~~pavement marking demonstration~~ pavement marking;
- (l) emergency relief (23 U.S.C. 125);
- (m) fencing;
- (n) skid treatments;
- (o) safety roadside rest areas;
- (p) adding medians;
- (q) truck climbing lanes outside the urbanized area;
- (r) lighting improvements;
- (s) widening narrow pavements or reconstructing bridges (no additional travel lanes);
- (t) emergency truck pullovers.
- (2) Mass transit:
 - (a) operating assistance to transit agencies;
 - (b) purchase of support vehicles;
 - (c) rehabilitation of transit vehicles (In PM10 and PM2.5 nonattainment or maintenance areas, only if projects are in compliance with control measures in the SIP.);
 - (d) purchase of office, shop, and operating equipment for existing facilities;
 - (e) purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.);
 - (f) construction or renovation of power, signal, and communications systems;
 - (g) construction of small passenger shelters and information kiosks;
 - (h) reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures);
 - (i) rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way;
 - (j) purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet (In PM10 nonattainment or maintenance areas, such

projects are exempt only if projects are in compliance with control measures in the SIP.);

(k) construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR 771.

(3) Air quality:

(a) continuation of ride-sharing and van-pooling promotion activities at current levels;

(b) bicycle and pedestrian facilities.

(4) Other:

(a) specific activities which do not involve or lead directly to construction, such as:

(i) planning and technical studies;

(ii) grants for training and research programs;

(iii) planning activities conducted pursuant to titles 23 and 49 U.S.C.; or

(iv) federal-aid systems

revisions;

(b) engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action;

(c) noise attenuation;

(d) emergency or hardship advance land acquisitions (23 CFR 710.503);

(e) acquisition of scenic easements;

(f) plantings, landscaping, etc.;

(g) sign removal;

(h) directional and informational signs;

(i) transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities);

(j) repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational, or capacity changes.

B. Projects exempt from regional emissions analyses. Notwithstanding the other requirements of this part, highway and transit projects of the types listed in table 3 of this section are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. The local effects of projects with respect to PM10 and PM2.5 concentrations must be considered and a hot-spot analysis performed prior to making a project-level conformity determination, if a project in table 3 also meets the criteria of Paragraph (1) of Subsection B of section 20.2.99.148 NMAC. 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 this section) is not exempt from regional emissions analysis if the MPO in consultation with other agencies (e.g. the department, see Subsection C of 20.2.99.120 NMAC), the US 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:

- (1) intersection channelization projects;
 - (2) intersection signalization projects at individual intersections;
 - (3) interchange reconfiguration projects;
 - (4) changes in vertical and horizontal alignment;
 - (5) truck size and weight inspection stations;
 - (6) bus terminals and transfer points.
- [12/14/94; 11/23/98; 20.2.99.151 NMAC - Rn, 20 NMAC 2.99.151, 10/31/02; 20.2.99.151 NMAC - Rn, 20.2.99.149 NMAC & A, 10/15/05; A, 9/1/07; A, 06/01/09]

NEW MEXICO GENERAL SERVICES DEPARTMENT STATE PURCHASING DIVISION

This is an amendment to 1.4.4 NMAC, Section 8, effective, 05-14-09.

1.4.4.8 PURPOSE: This rule implements the mandated requirements of Section 14-11-7 NMSA 1978, as amended, and as outlined in 1.4.4.3 NMAC of this rule, the newspaper publisher is entitled to receive no more than:

A. [~~56 cents (\$.56)~~] \$.61 cents (\$.61) for each column line of eight point or smaller type for the first insertion; and

B. [~~44 cents (\$.44)~~] \$.48 cents (\$.48) per line of each subsequent insertion;

C. all emblems, display headings, rule work and necessary blank spaces shall be calculated as solid type and shall be counted and paid for as such. [02-15-99; 1.4.4.8 NMAC - Rn, 1 NMAC 1.1.8 & A, 11-15-05; A, 05-14-09]

NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.6 NMAC Section 13, effective 5-14-09, adopted by the State Personnel Board at a meeting on 4-17-09.

1.7.6.13 COMPLAINTS:

A. Each agency shall establish a written complaint procedure by which employees can seek to remedy problems associated with their working conditions. Agency complaint procedures shall be filed with the Office and the information made available to all employees of the agency.

B. Employees have the right to present or make known their complaints, free from interference, restraint, discrimination, coercion, or reprisal.

C. Agencies should utilize alternative methods of dispute resolution, including mediation, wherever appropriate to resolve conflicts in the workplace and encourage positive working relationships between employees and management.

D. If the complaint pertains to an interpretation of these rules, it may be appealed to the director within 30 calendar days of the agency's final decision. [~~The Director may appoint a hearing officer and the Director's decision on the complaint shall be final and binding.~~] The director will issue an interpretation in accordance with 1.7.1.9 NMAC.

[7-1-80...5-15-96; Rn & A, 1 NMAC 7.15.11, 7-1-97; 1.7.6.13 NMAC - Rn, 1 NMAC 7.6.13 & A, 11/30/00; A, 5-14-09]

NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.7 NMAC Section 12, effective 5-14-09, adopted by the State Personnel Board at a meeting on 4-17-09.

1.7.7.12 FAMILY AND MEDICAL LEAVE:

A. In addition to other leave provided for in 1.7.7 NMAC eligible employees are entitled to leave in accordance with the *Family and Medical Leave Act (FMLA) of 1993 [29 U.S.C. Section 2601 et seq.]*. Employees who have been in the classified service for at least 12 months (which need not be consecutive) and who have worked, as defined by *Section 7 of the Fair Labor Standards Act [29 U.S.C. Section 201 et seq.]*, at least 1250 hours during the 12 month period immediately preceding the start of FMLA leave are eligible employees. In addition, employment in the exempt service, legislative or judicial

branch, shall count as classified employment for purposes of this rule.

B. Eligible employees are entitled to a total of 12 weeks of unpaid FMLA leave in a 12-month period, at the time of a birth or placement of a child or at the time of a serious health condition for the employee, or family members, or any qualifying exigency arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation as defined in the FMLA. The 12-month period is calculated forward from the date an employee's first FMLA leave begins.

C. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of unpaid FMLA leave in a single 12-month period to care for the servicemember. This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave. The 12 month period is calculated forward from the date an employee's first FMLA leave begins.

D. An employee may elect, or an agency may require the employee, to substitute any of the employee's accrued annual leave, accrued sick leave, personal leave day, accrued compensatory time, or donated leave for any part of unpaid FMLA leave.

E. [~~Compensatory time and paid holidays shall not count towards the 12 weeks entitled by FMLA.~~] If a paid holiday occurs within a week of FMLA leave, the holiday is counted towards the FMLA entitlement. However, if an employee is using FMLA in increments less than one week, the holiday does not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.

F. Employees shall not accrue annual and sick leave while on unpaid FMLA leave.

G. Agencies shall post the required FMLA notices, maintain the required employee records, and implement agency policies in accordance with the FMLA. All medical records and correspondence relating to employees and/or their families shall be considered confidential in accordance with 1.7.1.12 NMAC.

H. Disputes over the administration of this rule shall be forwarded to the director for resolution. [1.7.7.12 NMAC - Rp, 1 NMAC 7.7.12, 07/07/01; A, 11/14/02; A, 6-30-06; A, 10-15-08; A/E, 1/27/09; A, 5-14-09]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.16 NMAC, Sections 8 through 12, effective 06/01/09.

16.63.16.8 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO CLIENTS:

A. Commitment to clients. Social workers' primary responsibility is to promote the well being of clients. In general, clients' interests are primary. However, social workers' responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty owed clients, and clients ~~[should]~~ shall be so advised. (Examples include when a social worker is required by law to report that a client has abused a child or has threatened to harm self or others.)

B. Self-determination. Social workers respect and promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals. Social workers may limit clients' right to self-determination when, in the social workers' professional judgment, clients' actions or potential actions pose a serious, foreseeable, and imminent risk to themselves or others.

C. Professional disclosure statement. A social worker shall effectively communicate through handout or other means as appropriate for all clients and may display at the social worker's primary place of practice a statement that the client has the right to the following:

(1) to expect that the social worker has met the minimal qualifications of education, training, and experience required by the law;

(2) to examine public records maintained by the board which contain the social worker's qualifications and credentials;

(3) to be given a copy of the standards of practice upon request;

(4) to report a complaint about the social worker's practice to the board;

(5) to be informed of the cost of professional services before receiving the services;

(6) to privacy as allowed by law, and to be informed of the limits of confidentiality;

(7) limited access to client information; a social worker shall make reasonable efforts to limit access to client information in a social worker's agency to appropriate agency staff whose duties require access;

(8) supervision or consultation; a social worker receiving supervision shall

inform the client that the social worker may be reviewing the client's case with the social worker's supervisor or consultant; upon request, the social worker shall provide the name of the supervisor and the supervisor's contact information;

(9) to be free from being the object of discrimination while receiving social work services; and

(10) to have access to records as allowed by law including retention and notification requirements in Paragraphs (4) and (5) of Subsection D of 16.63.10 NMAC.

D. Informed consent.

(1) Social workers ~~[should]~~ shall provide services to clients only in the context of a professional relationship based, when appropriate, on valid informed consent. Social workers should use clear and understandable language to inform clients of the purpose of the services, risks related to the services, limits to services because of the requirements of a third-party payer, relevant costs, reasonable alternatives, clients' right to refuse or withdraw consent, and the time frame covered by the consent. Social workers should provide clients with an opportunity to ask questions.

(2) In instances when clients are not literate or have difficulty understanding the primary language used in the practice setting, social workers ~~[should]~~ shall take steps to ensure clients' comprehension. This may include providing clients with a detailed verbal explanation or arranging for a qualified interpreter or translator whenever possible.

(3) In instances when clients lack the capacity to provide informed consent, social workers ~~[should]~~ shall protect clients' interests by seeking ~~[permission]~~ consent from an appropriate third party, informing clients consistent with the clients' level of understanding. ~~[In such instances social workers should seek to ensure that the third party acts in a manner consistent with clients' wishes and interests.]~~ Social workers should take reasonable steps to enhance such clients' ability to give informed consent.

(4) In instances when clients are receiving services involuntarily, social workers ~~[should]~~ shall provide information about the nature and extent of services and about the extent of clients' right to refuse service.

(5) Social workers who provide services via electronic media (such as computer, telephone, radio, and television) ~~[should]~~ shall inform recipients of the limitations and risks associated with such services.

(6) Social workers ~~[should]~~ shall obtain clients' informed consent before audiotaping or videotaping clients or permitting observation of services to clients by

a third party. The written informed consent shall explain to the client the purpose of the taping or recording and how the taping or recording will be used, how it will be stored and when it will be destroyed.

(7) If the client, the legal guardian, or other authorized representative does not consent, the social worker shall discuss with the client that a referral to other resources may be in the client's best interest.

E. Competence.

(1) Social workers ~~[should]~~ shall provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.

(2) Social workers ~~[should]~~ shall provide services in substantive areas or use intervention techniques or approaches that are new to them only after engaging in appropriate study, training, consultation, ~~[and]~~ or supervision from people who are competent in those interventions or techniques.

(3) When generally recognized standards do not exist with respect to an emerging area of practice, social workers ~~[should]~~ shall exercise careful judgment and take responsible steps (including appropriate education, research, training, consultation, and supervision) to ensure the competence of their work and to protect clients from harm.

F. Cultural competence and social diversity.

(1) Social workers ~~[should]~~ shall understand culture and its function in human behavior and society, recognizing the strengths that exist in all cultures.

(2) Social workers ~~[should]~~ shall have a knowledge base of their clients' cultures and be able to demonstrate competence in the provision of services that are sensitive to clients' cultures and to differences among people and cultural groups.

(3) Social workers ~~[should]~~ shall obtain education about and seek to understand the nature of social diversity and oppression with respect to race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, and mental or physical disability.

G. Conflicts of interest.

(1) Social workers ~~[should]~~ shall be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment. Social workers ~~[should]~~ shall inform clients when a real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the clients' interests primary and protects clients' interests to the greatest extent possible. In some

cases, protecting clients' interests may require termination of the professional relationship with proper referral of the client.

(2) Social workers [should] shall not take unfair advantage of any professional relationship or exploit others to further their personal, religious, political, or business interests.

(3) Social workers [should] shall not engage in dual or multiple relationships with clients or former clients in which there is a risk of exploitation or potential harm to the client. In instances when dual or multiple relationships are unavoidable, social workers [should] shall take steps to protect clients and are responsible for setting clear, appropriate, and culturally sensitive boundaries. (Dual or multiple relationships occur when social workers relate to clients in more than one relationship, whether professional, social, or business. Dual or multiple relationships can occur simultaneously or consecutively.)

(4) When social workers provide services to two or more people who have a relationship with each other (for example, couples, family members), social workers [should] shall clarify with all parties which individuals will be considered clients and the nature of social workers' professional obligations to the various individuals who are receiving services. Social workers who anticipate a conflict of interest among the individuals receiving services or who anticipate having to perform in potentially conflicting roles (for example, when a social worker is asked to testify in a child custody dispute or divorce proceedings involving clients) [should] shall clarify their role with the parties involved and take appropriate action to minimize any conflict of interest.

H. Privacy and confidentiality.

(1) Social workers [should] shall respect clients' right to privacy. Social workers [should] shall not solicit private information from clients unless it is essential to providing services or conducting social work evaluation or research. Once private information is shared, standards of confidentiality apply.

(2) Social workers may disclose confidential information when appropriate with valid consent from a client or a person legally authorized to consent on behalf of a client.

(3) Social workers [should] shall protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons. The general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person. In all instances, social workers [should] shall disclose the least amount of

confidential information necessary to achieve the desired purpose; only information that is directly relevant to the purpose for which the disclosure is made [should] shall be revealed.

(4) Social workers [should] shall inform clients, to the extent possible, about the disclosure of confidential information and the potential consequences, when feasible before the disclosure is made. This applies whether social workers disclose confidential information on the basis of a legal requirement or client consent.

(5) Social workers [should] shall discuss with clients and other interested parties the nature of confidentiality and limitations of clients' right to confidentiality. Social workers [should] shall review with clients circumstances where confidential information may be requested and where disclosure of confidential information may be legally required. This discussion [should] shall occur as soon as possible in the social worker-client relationship and as needed throughout the course of the relationship.

(6) When social workers provide counseling services to families, couples, or groups, social workers [should] shall seek agreement among the parties involved concerning each individual's right to confidentiality and obligation to preserve the confidentiality of information shared by others. Social workers [should] shall inform participants in family, couples, or group counseling that social workers cannot guarantee that all participants will honor such agreements.

(7) Social workers [should] shall inform clients involved in family, couples, marital, or group counseling of the social worker's, employer's, and agency's policy concerning the social worker's disclosure of confidential information among the parties involved in the counseling.

(8) Social workers [should] shall not disclose confidential information to third-party payers unless clients have authorized such disclosure.

(9) Social workers [should] shall not discuss confidential information in any setting unless privacy can be ensured. Social workers [should] shall not discuss confidential information in public or semi-public areas such as hallways, waiting rooms, elevators, and restaurants.

(10) Social workers [should] shall protect the confidentiality of clients during legal proceedings to the extent permitted by law. When a court of law or other legally authorized body orders social workers to disclose confidential or privileged information without a client's consent and such disclosure could cause harm to the client, social workers [should] shall request that the court withdraw the order or limit the order as narrowly as possible or maintain

the records under seal, unavailable for public inspection.

(11) Social workers [should] shall protect the confidentiality of clients when responding to requests from members of the media.

(12) Social workers [should] shall protect the confidentiality of clients' written and electronic records and other sensitive information. Social workers [should] shall take reasonable steps to ensure that clients' records are stored in a secure location and that clients' records are not available to others who are not authorized to have access.

(13) Social workers [should] shall take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology. Disclosure of identifying information [should] shall be avoided whenever possible.

(14) Social workers [should] shall transfer or dispose of clients' records in a manner that protects clients' confidentiality and is consistent with state statutes governing records and social work licensure.

(15) Social workers [should] shall take reasonable precautions to protect client confidentiality in the event of the social worker's termination of practice, incapacitation, or death.

(16) Social workers [should] shall not disclose identifying information when discussing clients for teaching or training purposes unless the client has consented to disclosure of confidential information.

(17) Social workers [should] shall not disclose identifying information when discussing clients with consultants unless the client has consented to disclosure of confidential information or there is a compelling need for such disclosure.

(18) Social workers [should] shall protect the confidentiality of deceased clients consistent with the preceding standards.

I. Access to records.

(1) Social workers [should] shall provide clients with reasonable access to records concerning the clients. Social workers who are concerned that clients' access to their records could cause serious misunderstanding or harm to the client [should] shall provide assistance in interpreting the records and consultation with the client regarding the records. Social workers [should] shall limit clients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client. Both clients' requests and the rationale for withholding some or all of the record [should] shall be documented in clients' files.

(2) When providing clients with access to their records, social workers ~~should~~ shall take steps to protect the confidentiality of other individuals identified or discussed in such records.

J. Sexual relationships.

(1) Social workers ~~should~~ shall under no circumstances engage in sexual activities or sexual contact with current clients, whether such contact is consensual or forced.

(2) Social workers ~~should~~ shall not engage in sexual activities or sexual contact with clients' relatives or other individuals with whom clients maintain a close personal relationship when there is a risk of exploitation or potential harm to the client. Sexual activity or sexual contact with clients' relatives or other individuals with whom clients maintain a personal relationship has the potential to be harmful to the client and may make it difficult for the social worker and client to maintain appropriate professional boundaries. Social workers—not their clients, their clients' relatives, or other individuals with whom the client maintains a personal relationship—assume the full burden for setting clear, appropriate, and culturally sensitive boundaries.

(3) Social workers ~~should~~ shall not engage in sexual activities or sexual contact with former clients because of the potential for harm to the client. If social workers engage in conduct contrary to this prohibition or claim that an exception to this prohibition is warranted because of extraordinary circumstances, it is social workers—not their clients—who assume the full burden of demonstrating that the former client has not been exploited, coerced, or manipulated, intentionally or unintentionally.

(4) Social workers ~~should~~ shall not provide clinical services to individuals with whom they have had a prior sexual relationship. Providing clinical services to a former sexual partner has the potential to be harmful to the individual and is likely to make it difficult for the social worker and individual to maintain appropriate professional boundaries.

K. Physical contact. Social workers ~~should~~ shall not engage in physical contact with clients when there is a possibility of psychological harm to the client as a result of the contact (such as cradling or caressing clients). Social workers who engage in appropriate physical contact with clients are responsible for setting clear, appropriate, and culturally sensitive boundaries that govern such physical contact.

L. Sexual harassment. Social workers ~~should~~ shall not sexually harass clients. Sexual harassment includes sexual advances, sexual solicitation,

requests for sexual favors, and other verbal or physical conduct of a sexual nature.

M. Derogatory language. Social workers ~~should~~ shall not use derogatory language in their written or verbal communications to or about clients. Social workers ~~should~~ shall use accurate and respectful language in all communications to and about clients.

N. Payment for services.

(1) A social worker who provides a service for fee shall inform a client of the fee at the initial session or meeting with the client. Payment must be arranged at the beginning of the professional relationship, and the payment arrangement must be provided to a client in writing. A social worker shall provide, upon request from a client, a client's legal guardian, or other authorized representative, a written explanation of the charges for any services rendered.

~~(1)~~ (2) When setting fees, social workers ~~should~~ shall ensure that the fees are fair, reasonable, and commensurate with the services performed. Consideration should be given to clients' ability to pay.

~~(2)~~ (3) Social workers ~~should~~ shall avoid accepting goods or services from clients as payment for professional services. Bartering arrangements, particularly involving services, create the potential for conflicts of interest, exploitation, and inappropriate boundaries in social workers' relationships with clients. Social workers ~~should~~ shall explore and may participate in bartering only in very limited circumstances when it can be demonstrated that such arrangements are an accepted practice among professionals in the local community, considered to be essential for the provision of services, negotiated without coercion, and entered into at the client's initiative and with the client's informed consent. Social workers who accept goods or services from clients as payment for professional services assume the full burden of demonstrating that this arrangement will not be detrimental to the client or the professional relationship.

~~(3)~~ (4) Social workers ~~should~~ shall not solicit a private fee or other remuneration for providing services to clients who are entitled to such available services through the social workers' employer or agency.

O. Clients who lack decision-making capacity. When social workers act on behalf of clients who lack the capacity to make informed decisions, social workers ~~should~~ shall take reasonable steps to safeguard the interests and rights of those clients.

P. Interruption of services. Social workers ~~should~~ shall make reasonable efforts to ensure continuity of services in the event that services are interrupted by

factors such as unavailability, relocation, illness, disability, or death.

Q. Termination of services.

(1) Social workers ~~should~~ shall terminate services to clients and professional relationships with them when such services and relationships are no longer required or no longer serve the clients' needs or interests.

(2) Social workers ~~should~~ shall take reasonable steps to avoid abandoning clients who are still in need of services. Social workers should withdraw services precipitously only under unusual circumstances, giving careful consideration to all factors in the situation and taking care to minimize possible adverse effects. Social workers should assist in making appropriate arrangements for continuation of services when necessary.

(3) Social workers in fee-for-service settings may terminate services to clients who are not paying an overdue balance if the financial contractual arrangements have been made clear to the client, if the client does not pose an imminent danger to self or others, and if the clinical and other consequences of the current nonpayment have been addressed and discussed with the client.

(4) Social workers ~~should~~ shall not terminate services to pursue a social, financial, or sexual relationship with a client.

(5) Social workers who anticipate the termination or interruption of services to clients ~~should~~ shall notify clients promptly and seek the transfer, referral, or continuation of services in relation to the clients' needs and preferences.

(6) Social workers who are leaving an employment setting ~~should~~ shall inform clients of appropriate options for the continuation of services and of the benefits and risks of the options.

[16.63.16.8 NMAC - Rp, 16.63.16.9 NMAC, 4/24/06; A, 12/31/08; A, 06/01/09]

16.63.16.9 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO COLLEAGUES:

A. Respect.

(1) Social workers should treat colleagues with respect and should represent accurately and fairly the qualifications, views, and obligations of colleagues.

(2) Social workers should avoid unwarranted negative criticism of colleagues in communications with clients or with other professionals. Unwarranted negative criticism may include demeaning comments that refer to colleagues' level of competence or to individuals' attributes such as race, ethnicity, national origin, color, sex, sexual orientation, age, marital

status, political belief, religion, and mental or physical disability.

(3) Social workers ~~should~~ shall cooperate with social work colleagues and with colleagues of other professions when such cooperation serves the well-being of clients.

B. Confidentiality. Social workers ~~should~~ shall respect confidential information shared by colleagues in the course of their professional relationships and transactions. Social workers should ensure that such colleagues understand social workers' obligation to respect confidentiality and any exceptions related to it.

C. Interdisciplinary collaboration.

(1) Social workers who are members of an interdisciplinary team ~~should~~ shall participate in and contribute to decisions that affect the well-being of clients by drawing on the perspectives, values, and experiences of the social work profession. Professional and ethical obligations of the interdisciplinary team as a whole and of its individual members ~~should~~ shall be clearly established.

(2) Social workers for whom a team decision raises ethical concerns should attempt to resolve the disagreement through appropriate channels. If the disagreement cannot be resolved, social workers ~~should~~ shall pursue other avenues to address their concerns consistent with client well being.

D. Disputes involving colleagues.

(1) Social workers ~~should~~ shall not take advantage of a dispute between a colleague and an employer to obtain a position or otherwise advance the social workers' own interests.

(2) Social workers ~~should~~ shall not exploit clients in disputes with colleagues or engage clients in any inappropriate discussion of conflicts between social workers and their colleagues.

E. Consultation.

(1) Social workers should seek the advice and counsel of colleagues whenever such consultation is in the best interests of clients.

(2) Social workers should keep themselves informed about colleagues' areas of expertise and competencies. Social workers should seek consultation only from colleagues who have demonstrated knowledge, expertise, and competence related to the subject of the consultation.

(3) When consulting with colleagues about clients, social workers should disclose the least amount of information necessary to achieve the purposes of the consultation.

F. Referral for services.

(1) Social workers ~~should~~ shall refer clients to other professionals when the other professionals' specialized knowledge

or expertise is needed to serve clients fully or when social workers believe that they are not being effective or making reasonable progress with clients and that additional service is required.

(2) Social workers who refer clients to other professionals ~~should~~ shall take appropriate steps to facilitate an orderly transfer of responsibility. Social workers who refer clients to other professionals ~~should~~ shall disclose, with clients' consent, all pertinent information to the new service providers.

(3) Social workers are prohibited from giving or receiving payment for a referral when no professional service is provided by the referring social worker.

G. Sexual relationships.

(1) Social workers who function as supervisors or educators ~~should~~ shall not engage in sexual activities or contact with supervisees, students, trainees, or other colleagues over whom they exercise professional authority.

(2) Social workers ~~should~~ shall avoid engaging in sexual relationships with colleagues when there is potential for a conflict of interest. Social workers who become involved in, or anticipate becoming involved in, a sexual relationship with a colleague have a duty to transfer professional responsibilities, when necessary, to avoid a conflict of interest.

H. Sexual harassment. Social workers ~~should~~ shall not sexually harass supervisees, students, trainees, or colleagues. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

I. Impairment of colleagues.

(1) Social workers who have direct knowledge of a social work colleague's impairment that is due to personal problems, psychosocial distress, substance abuse, or mental health difficulties and that interferes with practice effectiveness ~~should~~ shall consult with that colleague when feasible and assist the colleague in taking remedial action.

(2) Social workers who believe that a social work colleague's impairment interferes with practice effectiveness and that the colleague has not taken adequate steps to address the impairment ~~should~~ shall take action through appropriate channels established by employers, agencies, ~~NASW,~~ licensing and regulatory bodies, and other professional organizations.

J. Incompetence of colleagues.

(1) Social workers who have direct knowledge of a social work colleague's incompetence ~~should~~ shall consult with that colleague when feasible and assist the colleague in taking remedial

action.

(2) Social workers who believe that a social work colleague is incompetent and has not taken adequate steps to address the incompetence ~~should~~ shall take action through appropriate channels established by employers, agencies, NASW, licensing and regulatory bodies, and other professional organizations.

K. Unethical conduct of colleagues.

(1) Social workers ~~should~~ shall take adequate measures to discourage, prevent, expose, and correct the unethical conduct of colleagues.

(2) Social workers ~~should~~ shall be knowledgeable about established policies and procedures for handling concerns about colleagues' unethical behavior. Social workers ~~should~~ shall be familiar with national, state, and local procedures for handling ethics complaints. These include policies and procedures created by ~~NASW,~~ licensing and regulatory bodies, employers, agencies, and other professional organizations.

(3) Social workers who believe that a colleague has acted unethically ~~should~~ shall seek resolution by discussing their concerns with the colleague when feasible and when such discussion is likely to be productive.

(4) ~~When necessary,~~ Social workers who believe that a colleague has acted unethically ~~should~~ shall take action through appropriate formal channels ~~(such as contacting a state licensing board or regulatory body, an NASW committee on inquiry, or other professional ethics committees)~~ established by employers, agencies, licensing and regulatory bodies, and other professional organizations.

(5) Social workers should defend and assist colleagues who are unjustly charged with unethical conduct.

[16.63.16.9 NMAC - Rp, 16.63.16.10 NMAC, 4/24/06; A, 06/01/09]

16.63.16.10 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES IN PRACTICE SETTINGS:

A. Supervision and consultation.

(1) Social workers who provide supervision or consultation ~~should~~ shall have the necessary knowledge and skill to supervise or consult appropriately and ~~should~~ shall do so only within their areas of knowledge and competence.

(2) Social workers who provide supervision or consultation are responsible for setting clear, appropriate, and culturally sensitive boundaries.

(3) Social workers ~~should~~ shall not engage in any dual or multiple relationships with supervisees in which there is a risk of exploitation or of potential harm to

the supervisee. In instances where dual or multiple relationships are unavoidable social workers should take steps to protect supervisees and are responsible for setting clear, appropriate, and culturally sensitive boundaries.

(4) Social workers who provide supervision ~~[should]~~ shall evaluate supervisees' performance in a manner that is fair and respectful.

B. Education and training.

(1) Social workers who function as educators, field instructors for students, or trainers ~~[should]~~ shall provide instruction only within their areas of knowledge and competence and ~~[should]~~ shall provide instruction based on the most current information and knowledge available in the profession.

(2) Social workers who function as educators or field instructors for students ~~[should]~~ shall evaluate students' performance in a manner that is fair and respectful.

(3) Social workers who function as educators or field instructors for students ~~[should]~~ shall take reasonable steps to ensure that clients are routinely informed when services are being provided by students.

(4) Social workers who function as educators or field instructors for students ~~[should]~~ shall not engage in any dual or multiple relationships with students in which there is a risk of exploitation or potential harm to the student. In instances where dual or multiple relationships are unavoidable social work educators and field instructors are responsible for setting clear, appropriate, and culturally sensitive boundaries.

C. Performance evaluation. Social workers who have responsibility for evaluating the performance of others ~~[should]~~ shall fulfill such responsibility in a fair and considerate manner and on the basis of clearly stated criteria.

D. Client records.

(1) Social workers ~~[should]~~ shall take reasonable steps to ensure that documentation in records is accurate and reflects the services provided.

(2) Social workers ~~[should]~~ shall include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to clients in the future.

(3) Social workers' documentation ~~[should]~~ shall protect clients' privacy to the extent that is possible and appropriate and ~~[should]~~ shall include only information that is directly relevant to the delivery of services.

(4) Social workers ~~[should]~~ shall store records following the termination of services to ensure reasonable future access. ~~[Records should be maintained for the num-~~

~~ber of years required by state statutes or relevant contracts.]~~ These records shall be maintained by the licensee or agency employing the licensee at least for a period of seven years after the last date of service, or for the time period required by federal or state law if longer.

(5) Prior to the destruction of a client record for any reason including when a social worker or social work practice anticipates to cease or ceases operations as a result of a suspension, retirement or death of the owner, sale or other cause, including insolvency, the licensee or other individual responsible for supervising the disposition of the practice, should make reasonable effort to notify the clients of their right to retrieve current records for a period of six months. Should any client fail to retrieve the records within the six month period and unless otherwise required by law, the responsible party shall arrange the destruction of such documents in a manner to ensure confidentiality.

E. Billing. Social workers ~~[should]~~ shall establish and maintain billing practices that accurately reflect the nature and extent of services provided and that identify who provided the service in the practice setting.

F. Client transfer.

(1) When an individual who is receiving services from another agency or colleague contacts a social worker for services, the social worker ~~[should]~~ shall carefully consider the client's needs before agreeing to provide services. To minimize possible confusion and conflict, social workers ~~[should]~~ shall discuss with potential clients the nature of the clients' current relationship with other service providers and the implications, including possible benefits or risks, of entering into a relationship with a new service provider.

(2) If a new client has been served by another agency or colleague, social workers ~~[should]~~ shall discuss with the client whether consultation with the previous service provider is in the client's best interest.

G. Administration.

(1) Social work administrators ~~[should]~~ shall advocate within and outside their agencies for adequate resources to meet clients' needs.

(2) Social workers ~~[should]~~ shall advocate for resource allocation procedures that are open and fair. When not all clients' needs can be met, an allocation procedure ~~[should]~~ shall be developed that is nondiscriminatory and based on appropriate and consistently applied principles.

(3) Social workers who are administrators ~~[should]~~ shall take reasonable steps to ensure that adequate agency or organizational resources are available to

provide appropriate staff supervision.

(4) Social work administrators ~~[should]~~ shall take reasonable steps to ensure that the working environment for which they are responsible is consistent with and encourages compliance with the ~~[NASW]~~ code of ~~[ethics]~~ conduct. Social work administrators should take reasonable steps to eliminate any conditions in their organizations that violate, interfere with, or discourage compliance with the code.

H. Continuing education and staff development. Social work administrators and supervisors should take reasonable steps to provide or arrange for continuing education and staff development for all staff for whom they are responsible. Continuing education and staff development ~~[should]~~ shall address current knowledge and emerging developments related to social work practice and ethics.

I. Commitments to employers.

(1) Social workers generally should adhere to commitments made to employers and employing organizations.

(2) Social workers should work to improve employing agencies' policies and procedures and the efficiency and effectiveness of their services.

(3) Social workers should take reasonable steps to ensure that employers are aware of social workers' ethical obligations as set forth in the ~~[NASW]~~ code of ~~[ethics]~~ conduct and of the implications of those obligations for social work practice.

(4) Social workers ~~[should]~~ shall not allow an employing organization's policies, procedures, regulations, or administrative orders to interfere with their ethical practice of social work. Social workers should take reasonable steps to ensure that their employing organizations' practices are consistent with the ~~[NASW]~~ code of ~~[ethics]~~ conduct.

(5) Social workers ~~[should]~~ shall act to prevent and eliminate discrimination in the employing organization's work assignments and in its employment policies and practices.

(6) Social workers should accept employment or arrange student field placements only in organizations that exercise fair personnel practices.

(7) Social workers should be diligent stewards of the resources of their employing organizations, wisely conserving funds where appropriate and never misappropriating funds or using them for unintended purposes.

J. Labor-management disputes.

(1) Social workers may engage in organized action, including the formation of and participation in labor unions, to improve services to clients and working

conditions.

(2) The actions of social workers who are involved in labor-management disputes, job actions, or labor strikes should be guided by the profession's values, ethical principles, and ethical standards. Reasonable differences of opinion exist among social workers concerning their primary obligation as professionals during an actual or threatened labor strike or job action. Social workers should carefully examine relevant issues and their possible impact on clients before deciding on a course of action.

[16.63.16.10 NMAC - N, 4/24/06; A, 06/01/09]

16.63.16.11 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES AS PROFESSIONALS:

A. Competence.

(1) Social workers ~~[should]~~ shall accept responsibility or employment only on the basis of existing competence or the intention to acquire the necessary competence.

(2) Social workers ~~[should]~~ shall strive to become and remain proficient in professional practice and the performance of professional functions. Social workers should critically examine and keep current with emerging knowledge relevant to social work. Social workers should routinely review the professional literature and participate in continuing education relevant to social work practice and social work ethics.

(3) Social workers ~~[should]~~ shall base practice on recognized knowledge, including empirically based knowledge, relevant to social work and social work ethics.

~~B. [Discrimination. Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability.]~~

Nondiscrimination. A social worker shall not discriminate against a client, student or supervisee on the basis of age, gender, sexual orientation, race, color, national origin, religion, diagnosis, disability, political affiliation, or social or economic status. If the social worker is unable to offer services because of a concern about potential discrimination against a client, student or supervisee, the social worker shall make an appropriate and timely referral. When a referral is not possible the social worker shall obtain supervision or consultation to address the concerns.

C. Private conduct. Social workers ~~[should]~~ shall not permit their private conduct to interfere with their ability to fulfill their professional responsibilities.

D. Dishonesty, fraud, and deception. Social workers ~~[should]~~ shall

not participate in, condone, or be associated with dishonesty, fraud, or deception.

E. Impairment.

(1) Social workers ~~[should]~~ shall not allow their own personal problems, psychosocial distress, legal problems, substance abuse, or mental health difficulties to interfere with their professional judgment and performance or to jeopardize the best interests of people for whom they have a professional responsibility.

(2) Social workers whose personal problems, psychosocial distress, legal problems, substance abuse, or mental health difficulties interfere with their professional judgment and performance ~~[should]~~ shall immediately seek consultation and take appropriate remedial action by seeking professional help, making adjustments in workload, terminating practice, or taking any other steps necessary to protect clients and others.

F. Misrepresentation.

(1) Social workers ~~[should]~~ shall make clear distinctions between statements made and actions engaged in as a private individual and as a representative of the social work profession, a professional social work organization, or the social worker's employing agency.

(2) Social workers who speak on behalf of professional social work organizations should accurately represent the official and authorized positions of the organizations.

(3) Social workers ~~[should]~~ shall ensure that their representations to clients, agencies, and the public of professional qualifications, credentials, education, competence, affiliations, services provided, or results to be achieved are accurate. Social workers should claim only those relevant professional credentials they actually possess and take steps to correct any inaccuracies or misrepresentations of their credentials by others.

G. Solicitations.

(1) Social workers ~~[should]~~ shall not engage in uninvited solicitation of potential clients who, because of their circumstances, are vulnerable to undue influence, manipulation, or coercion.

(2) Social workers ~~[should]~~ shall not engage in solicitation of testimonial endorsements (including solicitation of consent to use a client's prior statement as a testimonial endorsement) from current clients or from other people who, because of their particular circumstances, are vulnerable to undue influence.

H. Acknowledging credit.

(1) Social workers ~~[should]~~ shall take responsibility and credit, including authorship credit, only for work they have actually performed and to which they have contributed.

(2) Social workers ~~[should]~~ shall

honestly acknowledge the work of and the contributions made by others.

[16.63.16.11 NMAC - N, 4/24/06; A, 06/01/09]

16.63.16.12 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO THE SOCIAL WORK PROFESSION:

A. Integrity of the profession.

(1) Social workers ~~[should]~~ shall work toward the maintenance and promotion of high standards of practice.

(2) Social workers ~~[should]~~ shall uphold and advance the values, ethics, knowledge, and mission of the profession. Social workers ~~[should]~~ shall protect, enhance, and improve the integrity of the profession through appropriate study and research, active discussion, and responsible criticism of the profession.

(3) Social workers should contribute time and professional expertise to activities that promote respect for the value, integrity, and competence of the social work profession. These activities may include teaching, research, consultation, service, legislative testimony, presentations in the community, and participation in their professional organizations.

(4) Social workers should contribute to the knowledge base of social work and share with colleagues their knowledge related to practice, research, and ethics. Social workers should seek to contribute to the profession's literature and to share their knowledge at professional meetings and conferences.

(5) Social workers should act to prevent the unauthorized and unqualified practice of social work.

B. Evaluation and research.

(1) Social workers should monitor and evaluate policies, the implementation of programs, and practice interventions.

(2) Social workers should promote and facilitate evaluation and research to contribute to the development of knowledge.

(3) Social workers should critically examine and keep current with emerging knowledge relevant to social work and fully use evaluation and research evidence in their professional practice.

(4) Social workers engaged in evaluation or research ~~[should]~~ shall carefully consider possible consequences and ~~[should]~~ shall follow guidelines developed for the protection of evaluation and research participants. Appropriate institutional review boards ~~[should]~~ shall be consulted.

(5) Social workers engaged in evaluation or research ~~[should]~~ shall obtain voluntary and written informed consent from participants, when appropriate, with-

out any implied or actual deprivation or penalty for refusal to participate; without undue inducement to participate; and with due regard for participants' well-being, privacy, and dignity. Informed consent ~~should~~ shall include information about the nature, extent, and duration of the participation requested and disclosure of the risks and benefits of participation in the research.

(6) When evaluation or research participants are incapable of giving informed consent, social workers ~~should~~ shall provide an appropriate explanation to the participants, obtain the participants' assent to the extent they are able, and obtain written consent from an appropriate proxy.

(7) Social workers ~~should~~ shall never design or conduct evaluation or research that does not use consent procedures, such as certain forms of naturalistic observation and archival research, unless rigorous and responsible review of the research has found it to be justified because of its prospective scientific, educational, or applied value and unless equally effective alternative procedures that do not involve waiver of consent are not feasible.

(8) Social workers ~~should~~ shall inform participants of their right to withdraw from evaluation and research at any time without penalty.

(9) Social workers ~~should~~ shall take appropriate steps to ensure that participants in evaluation and research have access to appropriate supportive services.

(10) Social workers engaged in evaluation or research ~~should~~ shall protect participants from unwarranted physical or mental distress, harm, danger, or deprivation.

(11) Social workers engaged in the evaluation of services ~~should~~ shall discuss collected information only for professional purposes and only with people professionally concerned with this information.

(12) Social workers engaged in evaluation or research ~~should~~ shall ensure the anonymity or confidentiality of participants and of the data obtained from them. Social workers ~~should~~ shall inform participants of any limits of confidentiality, the measures that will be taken to ensure confidentiality, and when any records containing research data will be destroyed.

(13) Social workers who report evaluation and research results ~~should~~ shall protect participants' confidentiality by omitting identifying information unless proper consent has been obtained authorizing disclosure.

(14) Social workers ~~should~~ shall report evaluation and research findings accurately. They ~~should~~ shall not fabricate or falsify results and ~~should~~ shall take steps to correct any errors later found in published data using standard publication

methods.

(15) Social workers engaged in evaluation or research ~~should~~ shall be alert to and avoid conflicts of interest and dual relationships with participants, ~~should~~ shall inform participants when a real or potential conflict of interest arises, and ~~should~~ shall take steps to resolve the issue in a manner that makes participants' interests primary.

(16) Social workers ~~should~~ shall educate themselves, their students, and their colleagues about responsible research practices.

[16.63.16.12 NMAC - Rp, 16.63.16.12 NMAC, 4/24/06; A, 06/01/09]

End of Adopted Rules Section

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