

(b) *Enforcement Period.* This section will be enforced from 8 a.m. to 5 p.m. on April 25, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: designated representative, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF-FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: April 9, 2010.

**T.H. Farris,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2010-9333 Filed 4-21-10; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2005-NM-0007; FRL-9140-2]

#### Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Transportation Conformity Requirement for Bernalillo County

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the Governor of New

Mexico on December 4, 2008 on behalf of the Albuquerque Environmental Health Department (AEHD). This revision serves to incorporate recent changes to the Federal conformity rule into the state conformity SIP for Bernalillo County, and supersedes previous revisions submitted by the Governor of New Mexico on May 15, 2003 and August 4, 2005. EPA is approving the December 4, 2008 revision in accordance with the requirements of the Federal Clean Air Act (CAA).

**DATES:** This rule is effective on June 21, 2010 without further notice, unless EPA receives relevant adverse comment by May 24, 2010. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2005-NM-0007, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *EPA Region 6 "Contact Us" Web site:* <http://epa.gov/region6/r6coment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

- *E-mail:* Mr. Guy Donaldson at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov). Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2005-NM-0007. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

City of Albuquerque Environmental Health Department, Air Quality

Division, Office of Air Quality, One Civic Plaza Northwest, Albuquerque, New Mexico 87103.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey Riley, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-8542; fax number 214-665-7263; e-mail address [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, whenever “we” “us” or “our” is used, we mean the EPA.

**Outline**

- I. What Is Transportation Conformity?
- II. What Is the Background for This Action?
- III. What Did the State Submit and How Did We Evaluate It?
- IV. Final Action
- V. Statutory and Executive Order Reviews

**I. What Is Transportation Conformity?**

Transportation conformity is required under section 176(c) of the Clean Air Act to ensure that Federally supported highway, transit projects, and other activities are consistent with (conform to) the purpose of the approved SIP. Conformity currently applies to areas that are designated nonattainment, and those areas redesignated to attainment after 1990 (maintenance areas), with plans developed under section 175A of the Clean Air Act for the following transportation related criteria pollutants: Ozone, particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>), carbon monoxide (CO), and nitrogen dioxide (NO<sub>2</sub>). Conformity with the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant National Ambient Air Quality Standards (NAAQS). The Federal transportation conformity regulations (Federal Rule) are found in 40 CFR part 93 and provisions related to conformity SIPs are found in 40 CFR 51.390.

**II. What Is the Background for This Action?**

The transportation conformity SIP enables the area to implement and enforce the Federal transportation conformity requirements per 40 CFR 51 subpart T and 40 CFR 93 subpart A. The AEHD initially complied with this requirement by submitting a SIP to EPA on December 19, 1994; we approved this SIP on November 8, 1995 (60 FR 56241). A revision to the conformity SIP was submitted on December 9, 1998 and approved by EPA on July 8, 1999 (64 FR 36786). Since the July 8, 1999 approval, the Governor of New Mexico has

submitted three further revisions to the conformity SIP. The most recent of these, the December 4, 2008 submittal, supersedes the previous revisions submitted on May 15, 2003 and August 4, 2005. These previous revisions were also made to incorporate Federal conformity rule changes into the state conformity SIP for Bernalillo County, but contained language that was in conflict with the Federal rules that were in effect at the time of EPA’s review of the conformity SIP. Therefore, EPA could not approve the language in question. EPA and AEHD agreed that rather than EPA acting to partially approve the submittals, AEHD would develop a subsequent submittal to supersede the previous submittal, address the conflicting language, and capture any revisions made to the Federal rules in the elapsed time since state adoption of revisions to the Bernalillo County transportation conformity SIP. This approach was taken on both the August 4, 2005 submittal (to supersede the May 15, 2003 submittal) and the December 4, 2008 submittal (to supersede the August 4, 2005 submittal) to keep pace with necessary revisions to the Bernalillo County transportation conformity SIP.

On January 9, 2002, the AEHD adopted changes to the conformity SIP to include a definition for Land Use Measures (LUM) along with requirements for using LUMs as air quality credits in conformity determinations. This revision also incorporated language regarding an acceptable Transportation Control Measure (TCM) substitution process and provided clarity on when emission reduction credits for TCMs may be used in the conformity process. These revisions were approved by the AEHD on January 9, 2002 and they were submitted to EPA by the Governor of New Mexico on May 15, 2003. EPA did not take action on these revisions, and the December 4, 2008 submittal is intended to supersede these revisions.

On July 1, 2004, EPA published significant revisions to our conformity regulations (69 FR 4004) to address criteria and procedures for the new 8-hour ozone and fine particulate (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). In the same **Federal Register** notice, EPA also addressed a March 2, 1999 ruling by the U.S. Court of Appeals for the District of Columbia (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641 D.C. Cir. 1999); the July 1 revisions served to bring our regulatory language in line with this court decision. The SIP revision package adopted by the AEHD on May 11, 2005, and submitted by the Governor of New

Mexico on August 4, 2005, addressed these mandatory revisions, as well as EPA’s August 6, 2002 revision to the Federal conformity rule (67 FR 50808). EPA did not take action on these revisions, and the December 4, 2008 submittal is intended to supersede these revisions.

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was signed into law. SAFETEA-LU revised certain provisions of section 176(c) of the Clean Air Act, related to transportation conformity. Prior to SAFETEA-LU, states were required to address all of the Federal Rule’s provisions in their conformity SIPs. After SAFETEA-LU, state’s SIPs were required to contain all or portions of only the following three sections of the Federal Rule, modified as appropriate to each state’s circumstances: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (written commitments to implement certain kinds of control measures); and 40 CFR 93.125(c) (written commitments to implement certain kinds of mitigation measures). Pursuant to SAFETEA-LU, states are no longer required to submit conformity SIP revisions that address the other sections of the Federal conformity rule. However, as with previous SIP revisions, the AEHD has maintained its practice of incorporating federal language into local rules and customizing such rules to meet the standard required by the New Mexico Administrative Code (NMAC) style guidance, rather than incorporating by reference the federal rules.

EPA promulgated amendments to the Federal conformity rule on January 24, 2008 (73 FR 4420). The December 4, 2008 revision serves to update Albuquerque’s regulations and bring them in line with these most recent changes to the Federal conformity rule, as well as EPA’s May 6, 2005 (70 FR 24279) and March 10, 2006 (71 FR 12467) revisions to the Federal conformity rule.

**III. What Did the State Submit, and How Did We Evaluate It?**

On December 4th, 2008, the Governor of New Mexico submitted a revision to the Bernalillo County, New Mexico State Implementation Plan (SIP) for Transportation Conformity purposes. The SIP revision consists of language to address the three provisions of the EPA Conformity Rule required under SAFETEA-LU: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (certain control measures), and 40 CFR 93.125(c)

(mitigation measures). As previously stated, the AEHD did not incorporate the Federal conformity rule by reference, but submitted language intended to mirror the content of the Federal conformity rule, while placing greater specificity on the roles and expectations of state and local agencies/entities which have responsibility for undertaking transportation conformity in conjunction with transportation planning activities along with the three Federal Agencies (EPA, Federal Highway Administration, and Federal Transit Administration) who are participating members in the conformity consultation process.

We reviewed the submittal to assure consistency with the January 2009, "Guidance for Developing Transportation Conformity State Implementation Plans". The guidance document can be found at <http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf>. The guidance document states that each state is only required to address and tailor the afore-mentioned three sections of the Federal Conformity Rule in their state conformity SIPs.

EPA's review of New Mexico's Bernalillo County Transportation Conformity SIP revision indicates that it is consistent with EPA's guidance in that it included the three elements specified by SAFETEA-LU and EPA's guidance. Consistent with the EPA Conformity Rule at 40 CFR 93.105 (consultation procedures), NMAC 20.11.3.202 establishes the requirements for the appropriate agencies, procedures and allocation of responsibilities as required under 40 CFR 93.105 for consultation procedures. In addition, this chapter provides for appropriate public consultation/public involvement consistent with 40 CFR 93.105. With respect to 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c), NMAC 20.11.3.219(A)(4)(b) and NMAC 20.11.3.222(C) of the executed MOUs specifies that written commitments for control measures and mitigation measures for meeting these requirements will be provided as needed.

#### IV. Final Action

EPA is hereby approving the Bernalillo County SIP revision for Transportation Conformity, which was submitted on December 4, 2008. We have evaluated the State's submittal and have determined that it meets the applicable requirements of the Clean Air Act and EPA regulations, and is consistent with EPA policy. The December 4, 2008 submission supersedes the May 15, 2003 and

August 4, 2005 submissions, so no action is necessary on these earlier submissions.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on June 21, 2010 without further notice unless we receive adverse comment by May 24, 2010. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 21, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Nitrogen dioxides, Particulate matter, Reporting and recordkeeping requirements, Transportation conformity, Transportation—air quality planning, Volatile organic compounds.

Dated: April 9, 2010.  
**Lawrence E. Starfield,**  
*Acting Regional Administrator, Region 6.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart GG—New Mexico**

■ 2. The second table in § 52.1620(c) entitled “EPA Approved Albuquerque/Bernalillo County, NM Regulations” is amended by revising the entry for Part 3 (20.11.3 NMAC), Transportation Conformity, to read as follows:

**§ 52.1620 Identification of plan.**

\* \* \* \* \*  
 (c) \* \* \*

**EPA-APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS**

State citation	Title/subject	State approval/effective date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
<b>New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board</b>				
* * *	* * *	* * *	* * *	* * *
Part 3 (20.11.3 NMAC) .....	Transportation Conformity .....	12/17/2008	April 22, 2010 [Insert FR page number where document begins].	
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[FR Doc. 2010–9196 Filed 4–21–10; 8:45 am]  
**BILLING CODE 6560–50–P**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 580**

[Docket No. NHTSA–2009–0174; Notice 2]

**Petition for Approval of Alternate Odometer Disclosure Requirements**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final determination.

**SUMMARY:** The State of Texas has petitioned for approval of alternate requirements to certain requirements under Federal odometer law. NHTSA is issuing this final determination granting Texas’s petition.

**DATES:** *Effective Date:* May 24, 2010. Request for reconsideration due no later than June 7, 2010.

**ADDRESSES:** Requests for reconsideration must be submitted in writing to Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Requests should refer to the docket and notice number above.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <http://DocketInfo.dot.gov>.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** Andrew DiMarsico, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202–366–5263) (Fax: 202–366–3820).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

Federal odometer law, which is largely based on the Motor Vehicle Information and Cost Savings Act (Cost Savings Act)<sup>1</sup> and the Truth in Mileage Act of 1986,<sup>2</sup> as amended (TIMA), contains a number of provisions to limit

<sup>1</sup> Pub. L. 92–513, 86 Stat 947, 961 (1972).

<sup>2</sup> Pub. L. 99–579, 100 Stat. 3309 (1986).

odometer fraud and assure that the purchaser of a motor vehicle knows the true mileage of the vehicle. The Cost Savings Act requires the Secretary of Transportation to promulgate regulations requiring the transferor (seller) of a motor vehicle to provide a written statement of the vehicle’s mileage registered on the odometer to the transferee (buyer) in connection with the transfer of ownership. This written statement is generally referred to as the odometer disclosure statement. Further, under TIMA, vehicle titles themselves must have a space for the odometer disclosure statement and States are prohibited from licensing vehicles unless a valid odometer disclosure statement on the title is signed and dated by the transferor. Titles must also be printed by a secure printing process or other secure process. TIMA also contains specific disclosure provisions on transfers of leased vehicles. Federal law also contains document retention requirements for motor vehicle dealers and lessors.

TIMA’s motor vehicle mileage disclosure requirements apply in a State unless the State has alternative requirements approved by the Secretary. The Secretary has delegated administration of the odometer program to NHTSA. A State may petition NHTSA for approval of such alternate odometer disclosure requirements.