

have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given

year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 946**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 14, 2005.

**Brent Wahlquist,**

*Regional Director, Appalachian Region.*

■ For the reasons set out in the preamble, 30 CFR part 946 is amended as set forth below:

**PART 946—VIRGINIA**

■ 1. The authority citation for part 946 continues to read as follows:

*Authority:* 30 U.S.C. 1201 *et seq.*

■ 2. Section 946.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

**§ 946.15 Approval of Virginia regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
July 20, 2004	April 14, 2005	4 VAC 25-130-801.17 and 801.18.

[FR Doc. 05-7495 Filed 4-13-05; 8:45 am]  
BILLING CODE 4310-05-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R06-OAR-2005-NM-0001; FRL-7897-6]

**Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County**

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving State Implementation Plan (SIP) revisions submitted by the Governor of New Mexico on September 7, 2004. The submittal revises the second ten-year carbon monoxide (CO) maintenance plan for the Albuquerque/Bernalillo County, New Mexico area. The submittal also revises the relevant parts of the New Mexico Administrative Code (NMAC) including revisions to the General Provisions, Inspection and Maintenance (I&M) Program, and the contingency measures. We are approving these revisions in accordance with the requirements of the Federal Clean Air Act (the Act).

**DATES:** This rule is effective on June 13, 2005 without further notice, unless EPA receives relevant adverse comment by May 16, 2005. 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 Regional Material in EDocket (RME) ID No. R06-OAR-2005-NM-0001, by one of the following methods:

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

*Agency Web site:* <http://docket.epa.gov/rmepub/> Regional Material in EDocket (RME), EPA’s electronic public docket and comment system, is EPA’s preferred method for receiving comments. Once in the system, select “quick search,” then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

*U.S. 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. Thomas Diggs at [diggs.thomas@epa.gov](mailto:diggs.thomas@epa.gov). Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

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

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

*Hand or Courier Delivery:* Mr. Thomas Diggs, 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 Regional Material in EDocket (RME) ID No. R06-OAR-2005-NM-0001. The EPA’s policy is that all comments received will be included in the public file without change, and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in EDocket (RME), [regulations.gov](http://regulations.gov), or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the Federal [regulations.gov](http://regulations.gov) are “anonymous access” systems, 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 RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public file 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 electronic docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in the official file which is available 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:

The City of Albuquerque,  
Environmental Health Department, One  
Civic Plaza, Albuquerque, NM 87102.

**FOR FURTHER INFORMATION CONTACT:**  
Alan Shar, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-6691, [shar.alan@epa.gov](mailto:shar.alan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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Throughout this document "we," "us," and "our" refer to EPA.

**I. Background**

Under the 1990 Clean Air Act Amendments, the Albuquerque/

Bernalillo County area was classified as a moderate nonattainment area for CO. On November 5, 1992, the State of New Mexico submitted for EPA approval a revision to the SIP to address the CO pollution in the Albuquerque/Bernalillo County area. Different aspects of this SIP revision were approved at different times by EPA, with the entire plan being approved by the end of 1995 (see 58 FR 62535, 58 FR 67326, 59 FR 23167 and 60 FR 52641).

On April 14, 1995, New Mexico submitted a request that the Albuquerque/Bernalillo County nonattainment area be redesignated to attainment for CO. Along with this request, the state submitted a maintenance plan which demonstrated that the area was expected to stay in attainment of the CO National Ambient Air Quality Standards (NAAQS) for the initial maintenance period of 1996-2006. Included in the maintenance plan was a commitment to update the plan for a subsequent ten-year period (2006-2016) no later than eight years after redesignation to attainment by EPA. The redesignation request and maintenance plan were approved by EPA on June 13, 1996 (61 FR 29970). Subsequent revisions to the maintenance plan were submitted by New Mexico and ultimately approved by EPA (see 61 FR 48404, 65 FR 33455 and 68 FR 58276).

Section 175A(b) of the Act as amended in 1990 requires the state to submit a subsequent maintenance plan covering a second ten-year period to EPA eight years after designation to attainment. To fulfill this requirement of the Act, and in response to a commitment in the current maintenance plan for the Albuquerque/Bernalillo County area, the Governor of New Mexico submitted the second ten-year update of the CO maintenance plan to EPA on September 7, 2004. See section II of this document for our evaluation of the CO maintenance plan.

On December 30, 2004 (69 FR 78312), we published the recodification and renumbering of the NMAC for the Albuquerque/Bernalillo County.

Today, we are approving, as a part of the SIP, the second ten-year carbon monoxide (CO) maintenance plan for the Albuquerque/Bernalillo County, New Mexico area. In addition, we are approving the relevant parts of the NMAC for the Albuquerque/Bernalillo County area that further support the second ten-year maintenance plan for CO within that area. Specifically, we are approving revisions to title 20, chapter 11, parts 1 (General Provisions) "Definitions," "Resolutions," and "Interpretation," 100 (Motor Vehicle Inspection-Decentralized), and 102

(Oxygenated Fuels) of the NMAC. Our Technical Support Document (TSD) prepared in conjunction with this SIP revision contains detailed information concerning our evaluation of each one of these parts.

**II. Evaluation of New Mexico's Submittal**

On September 7, 2004, the State of New Mexico submitted a revision to the SIP for Bernalillo County. This revision provides the second 10-year update to the maintenance plan for the area, as required by the section 175A(b) of the Act. The purpose of this plan is to ensure continued maintenance of the NAAQS for carbon monoxide in Bernalillo County by demonstrating that future emissions of this criteria pollutant are expected to remain at or below emission levels necessary for continued attainment of the CO NAAQS.

Since there are few specific content requirements defined in section 175A of the Act for maintenance plans, EPA has exercised its discretion in determining the required content and has a Limited Maintenance Plan policy in effect for areas that can demonstrate consistent air quality at or below 85% of the NAAQS for carbon monoxide. Other criteria for the Limited Maintenance Plan approach are detailed in the EPA guidance memorandum, "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, Office of Air Quality Planning and Standards, dated October 6, 1995. The Albuquerque/Bernalillo County area has opted to develop a Limited Maintenance Plan to fulfill the second ten-year maintenance period required by the Act.

Pursuant to this approach, EPA will consider the maintenance demonstration satisfied if the monitoring data show the 8-hour CO design value is at or below 7.65 parts per million (ppm), or 85% of the 8-hour CO NAAQS of 9 ppm. In addition, the 1-hour CO design value must be at or below 29.75 ppm, or 85% of the 1-hour CO NAAQS of 35 ppm. The EPA believes that if the area begins the maintenance period at or below 85% of the applicable NAAQS, the continuing applicability of PSD and other Federal measures along with the existing control measures already adopted should provide adequate assurance of maintenance of the NAAQS over the ten-year period. The last monitored violation of the CO NAAQS in Bernalillo County occurred in December of 1991 and monitored CO levels have been steadily in decline ever since. For this submission, the state provided data

showing monitored CO values from 1994–2003, reflecting 2003 design values of 3.9 ppm and 9.6 ppm of the 8-hour and 1-hour CO standards, respectively. These values, well below the 85% threshold, render the Albuquerque/Bernalillo County maintenance area eligible for the Limited Maintenance Plan option.

*A. Elements of a Limited Maintenance Plan*

A Limited Maintenance Plan consists of several core provisions per the Limited Maintenance Plan Guidance memo: an attainment inventory, a demonstration of maintenance of the CO NAAQS, operation of a monitoring network, a provision for contingency measures, a discussion of the approach necessary to meet conformity requirements, and a commitment to develop a full maintenance plan upon violation of the NAAQS.

Emission inventories contain estimates of how much CO is produced by all categories in the maintenance area on an annual basis: on-road mobile sources, off-road mobile sources, area sources and stationary sources. As part of the currently approved maintenance plan, Bernalillo County has produced Periodic Emissions Inventories (PEIs) for CO every three years, and approved PEIs exist for 1993, 1996, and 1999. The 2002 PEI is currently under review but is not required for approval of a limited maintenance plan. These emission inventories establish the baseline amount of emissions, which is the amount of CO in tons per day under which an area’s emissions must remain in order to not exceed the NAAQS for CO. The submitted attainment year inventory was developed from the previous 1993 CO attainment inventory. Since 1993 was a year in which Bernalillo County did not violate the CO NAAQS, this inventory remains applicable as the baseline CO inventory. The attainment inventory was developed following EPA guidance, and therefore is approvable for the Limited Maintenance Plan. Under the Limited Maintenance Plan option a cap on total emissions is not needed during the maintenance period (2006–2016). However, the State provided the draft 2002 PEI estimates for informational purposes with this SIP revision. The estimates from the table below are from the 2002 PEI still under review. Although we do not expect major changes, some fine-tuning and revision of emissions estimates may occur.

TABLE I.—CO EMISSIONS BY SOURCE CATEGORY, 2002

Source category	Tons per day (tpd)
On-road Mobile .....	364.14
Off-road Mobile .....	34.45
Area .....	71.51
Stationary .....	3.24
<b>Total .....</b>	<b>473.34</b>

The State has chosen to demonstrate maintenance of the NAAQS by continued monitoring of the air quality in Bernalillo County. To qualify for the Limited Maintenance Plan option, the design value for each monitor must be at or below 85% of the 8-hour and 1-hour CO NAAQS. The values corresponding to this 85% threshold are 7.65 ppm for the 8-hour CO standard and 29.75 ppm for the 1-hour CO NAAQS. The 2003 design values for Bernalillo County are 3.9 ppm and 9.6 ppm for the 8-hour and 1-hour standards, respectively. Thus, the design value for the 8-hour standard is less than 44% of the CO NAAQS and the design value for the 1-hour standard is less than 28% of the CO NAAQS. The EPA believes that if an area begins the maintenance period at or below the 85% threshold, it is unreasonable to expect that so much growth will occur during the ten-year maintenance period to cause a violation of the NAAQS. Therefore, we find that the State demonstrates continued maintenance of the standard.

The Plan includes a commitment to maintain operation of the existing EPA-approved air quality monitoring network in accordance with 40 CFR part 58. The Environmental Health Department of the City of Albuquerque will continue to monitor CO through the end of the second ten-year maintenance period to ensure the CO level remains below 85% of the NAAQS. This data will be reported to EPA annually.

Section 175A of the Act requires that a maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area to attainment. Contingency measures are specific control strategies that will be activated if they are triggered by a predefined event. Under the current EPA-approved plan, two contingency measures were incorporated: an annual Inspection and Maintenance Program versus the current biennial program and an increase in the oxygenate content in fuels from 2.7% to 3%. The current EPA-approved plan’s trigger for these contingency measures is a monitored CO violation. There have been no violations at any monitor since

the area was redesignated to attainment in 1996, thus these contingency measures have never been triggered.

With this submission, the State is revising the contingency measures and trigger for Bernalillo County. The contingency requirement to implement an annual Inspection and Maintenance Program is being eliminated. The contingency requirement to increase the oxygenate concentration in fuels from 2.7% to 3%, by weight, will remain in place. Instead of the contingency trigger being a monitored CO violation, it will be triggered if an air quality monitor indicates that the 85% CO NAAQS threshold has been exceeded. This oxygenated fuel contingency measure will be implemented no later than November 1st following activation of the contingency trigger. The State rule (20.11.102 NMAC) has been updated to reflect this change to the contingency trigger. We believe that the new stricter trigger and one control measure are as protective as the previously-approved trigger and two control measures. Therefore, the revised contingency measures plan is being approved.

Finally, in the event that a violation of the CO NAAQS occurs, the State has committed to development and submission of a full maintenance plan within 12 months of EPA certification of the monitored violation. This plan would supercede the Limited Maintenance Plan. [Note that the State submittal reflects on p.15 an 18-month time frame for submittal of a full maintenance plan following a violation of the NAAQS. However, elsewhere in the State submittal (see p. 13), the 12-month commitment is stated.] The EPA was informed by the State that the 18-month time frame is a typographical error and therefore we are approving the State’s commitment to submit a full maintenance plan within 12 months of EPA certification of the monitored violation.

Section 176(c) of the Act defines conformity as actions that do not interfere with the SIP’s purpose of eliminating or reducing the severity and number of NAAQS violations. It also says that actions cannot cause or contribute to any new violation or delay attainment or any milestones. In most nonattainment and maintenance areas this is shown by regional emissions analyses that demonstrate that estimated emissions from the proposed project(s) are expected to be below a defined emissions budget contained in the State’s SIP, or by an interim emissions test prior to availability of emissions budgets. However, in areas with adequate or approved Limited Maintenance Plans, emissions budgets

are treated as essentially not constraining for the length of the maintenance plan as long as the area continues to meet the Limited Maintenance Plan criteria. The EPA believes there is no reason to expect that these areas will experience so much growth that a violation of the CO NAAQS would result. Therefore, for areas meeting the Limited Maintenance Plan criteria, all Federal actions that require conformity determinations are considered to have satisfied the regional emissions analysis requirement of the conformity regulations. Since these areas are still maintenance areas; however, other aspects of the transportation conformity regulations still apply. Specifically, such areas must demonstrate that the metropolitan transportation plans and transportation improvement programs are fiscally constrained (40 CFR part 108) and that any Transportation Control Measures in the SIP are being implemented according to the conformity rule (40 CFR 93.113). Additionally, for most transportation projects in limited maintenance areas, a CO "hot spot" analysis will still be required, incorporating the latest planning assumptions and using the latest available EPA-approved emissions model.

#### *B. Control Measures in the Limited Maintenance Plan*

The CO control program for Bernalillo County is comprised of both Federal and local measures. The current maintenance plan for the area includes several control strategies that will remain in place for the duration of the second ten-year maintenance period of 2006–2016. The Federal strategies expected are continued implementation of the Tier 2 motor vehicle emission standards along with the requirement for reduced sulfur in gasoline, which became effective on February 10, 2000 (65 FR 6697). Additionally, EPA's newly approved non-road rule (69 FR 38957; June 29, 2004) will regulate non-road diesel engines and diesel fuel. This rule incorporates new emission standards, based on advanced emission control devices, for non-road diesel engines and will result in significant reductions in several criteria pollutants, including CO. As newer vehicles gradually replace older ones in the fleet, these control programs will result in lowered CO emissions in the Albuquerque/Bernalillo County area and elsewhere.

Local control strategies remaining in place for the duration of the second ten-year maintenance plan include an I&M Program, Oxygenated Fuels Program, Woodburning Control Program, and the

Prevention of Significant Deterioration Program (PSD). The I&M program has been in effect in Bernalillo County since 1989. The I&M SIP requires biennial emissions testing of 1975 and newer vehicles with a 2-speed idle test. For more information on the I&M SIP revision see section D of this document and our TSD. Today, we are approving revisions to the I&M SIP that, among other things, includes annual testing of 1975 through 1985 vehicles. The annual testing of older vehicles is designed to reduce CO emissions from the on-road mobile sector by identifying high-emitting vehicles and requiring repair. Failure to do so, as with all failing vehicles, will result in vehicles not being issued a registration renewal. The biennial testing of 1986 and newer vehicles will continue. In addition, non-Bernalillo County vehicles used for commuting into Bernalillo County for sixty or more days per year will now be required to be tested. The combined annual/biennial program as described above with the revisions discussed below in section C, will remain in place for the duration of the second ten-year maintenance period (2006–2016).

The Oxygenated Fuels Program aims to reduce vehicle emissions by providing for the use of oxygenated fuels. Various forms of this program have been in place during the Winter months (November 15 through February) since 1988. The minimum oxygenate content of Winter fuels in Bernalillo County is 2.7% by weight, and this requirement will remain in effect for the duration of the second ten-year (2006–2016) maintenance period.

Another local control strategy is the Woodburning Control Program, which initially began during the winter of 1988. Because poor air dispersion combined with high CO emissions from woodburning activities can contribute to elevated CO levels, the Environmental Health Department of the City of Albuquerque uses weather forecast information to declare "no burn" periods which restrict woodburning activity in Bernalillo County. This control program will remain in effect for the duration of the second ten-year maintenance period.

The PSD program is a control program that has been approved into the Bernalillo County SIP for local implementation. This program has been in effect for CO since Bernalillo County was redesignated to attainment in 1996. Under this program, new stationary sources of CO are evaluated and are required to use the Best Available Control Technology (BACT) to control emissions. This program will continue

as a control strategy during the second maintenance period of 2006–2016.

Based on above evaluation, outlined in sections A and B, this SIP revision satisfies the requirements of the Act as amended in 1990 for the second ten-year update to the Albuquerque/Bernalillo County CO maintenance area.

#### *C. Part 20.11.1 NMAC, General Provisions*

The title 20, chapter 11, part 1, General Provisions, was submitted to us for approval by the Governor of New Mexico, in a letter dated September 7, 2004, on behalf of the Albuquerque/Bernalillo County, Environmental Health Department. The proposed title 20, chapter 11, part 1, General Provisions, contains three sections titled "Resolution," "Definitions," and "Interpretation." The EPA initially approved Regulation 1 (Resolution) of the Albuquerque/Bernalillo County, New Mexico on 04/10/1980 (45 FR 24468). See 40 CFR 52.1620(c)(11). The EPA initially approved Regulation 2 (Definitions) on 04/10/1980 (45 FR 24468). Further revisions to Regulation 2 were later approved by EPA on 12/21/93 (54 FR 67330). See 40 CFR 52.1620(c)(53). The EPA initially approved Regulation 26 (Interpretation) on 02/23/1993 (58 FR 10972). See 40 CFR 52.1620 (c)(49). The proposed revisions to "Resolution," "Definitions," and "Interpretation" reflect the new format and renumbering of the NMAC. The proposed revisions also reflect renaming of "Regulation" to "Part." These changes are administrative in nature, and do not change the text of the SIP-approved rules. We published our approval of the recodification and renumbering of chapter 11 on December 30, 2004 (69 FR 78312). Therefore, these revisions are being approved today. The proposed revisions may be found at: [http://www.nmcpr.state.nm.us/nmac/\\_title20/T20C011.htm](http://www.nmcpr.state.nm.us/nmac/_title20/T20C011.htm).

#### *D. Part 20.11.100 NMAC, Motor Vehicle Inspection-Decentralized*

As a moderate nonattainment area for CO, the Albuquerque/Bernalillo County area was required to implement a basic vehicle I&M program. The latest version of the I&M SIP for this program was approved by EPA on June 13, 1996 (61 FR 29970), along with the area redesignation to attainment for CO. The program consists of a decentralized network of "test only" and "test and repair" stations. One of the submitted revisions is that vehicles model years 1975–1985 are tested annually instead of biennially with a 2-speed idle test. Vehicles model years 1986–1995 will

continue to be tested biennially with a 2-speed idle test. Vehicles model years 1996 and newer will be tested biennially consistent with the new On-board Diagnostic testing required by the Act. Revisions to this SIP also include adding a gas cap pressure test, and exempting the first four years for new vehicles from testing. Language clarification, minor format changes, and some innovative measures are also included. An example of an innovative measure is commuter vehicles which are more than four years old and are driven into Bernalillo County for 60 or more days per year are now subject to I&M testing. For further information about the changes to the program, see the TSD.

The revisions made to the 20.11.100 NMAC, Motor Vehicle Inspection-Decentralized for the Albuquerque/Bernalillo County area are consistent with the requirements of the Act, the Federal Inspection and Maintenance rules in 40 CFR 51 subpart S, do not weaken, but rather strengthen the existing federally approved SIP. Therefore, these revisions are being approved today.

#### *E. Part 20.11.102 NMAC, Oxygenated Fuels*

The initial EPA-approved revision to the SIP concerning oxygenated fuels program for the Albuquerque/Bernalillo County utilizing ethanol was approved on November 29, 1993 (58 FR 62535). Various forms of this program have been in place during the Winter months (November 1 through February) since 1988. The current SIP revision requires a minimum oxygenate concentrate of Winter fuels of 2.7% by weight in the Albuquerque/Bernalillo County (November 1 through February).

In a letter dated September 7, 2004, the Governor of New Mexico submitted a request to revise the current carbon monoxide maintenance plan for the Albuquerque/Bernalillo County area. This request, among others as described above, was to incorporate the revised regulation 20.22.102 NMAC, Oxygenated Fuels, which only applies to the Albuquerque/Bernalillo County area. The Albuquerque/Bernalillo County Air Control Board adopted the amended regulation on July 14, 2004, after a public comment period and public hearing conducted on June 9, 2004. The amended regulation became locally effective on September 1, 2004.

The SIP revision submitted provides minor grammatical and typographical changes to the current EPA-approved Oxygenated Fuels program. These changes are administrative in nature and are approvable. Therefore, we are

approving the revisions to the Oxygenated Fuels Program into the SIP.

As noted and previously discussed in section A, the State also submitted a request for the revision of the current contingency measures plan in the Albuquerque/Bernalillo County maintenance plan approved on June 13, 1996 (61 FR 29970). The oxygenated fuels' contingency measure functions in 2 phases.

The first contingency measure phase, July 1, 1995 until June 13, 2006, or when EPA has approved this SIP revision regarding the second half of the carbon monoxide maintenance plan for Bernalillo county, increases the oxygenate concentration in gasoline from 2.7% to 3.0%, by weight, for ethanol in the event the area exceeds the CO NAAQS. The increase in oxygenate concentration will occur beginning November 1 immediately following the period of violation and will continue every subsequent winter pollution season. The winter pollution season lasts from November through February.

The second contingency measure phase, June 13, 2006 until June 13, 2016, or when EPA has approved this SIP revision regarding the second half of the CO maintenance plan for Albuquerque/Bernalillo County, whichever is sooner increases the oxygenate concentration in gasoline from 2.7% to 3.0%, by weight, for ethanol in the event the area exceeds 85% of the CO NAAQS. The increase in oxygenate concentration will occur beginning November 1 immediately following the period in which the area exceeded 85% of the CO NAAQS and continues every subsequent winter pollution season.

The EPA performed an analysis of the Albuquerque/Bernalillo County Air Control Board's submission and determined that it meets the applicable requirements of the Act, and EPA's regulations, and is consistent with our policies. The implementation of the oxygenated fuels contingency measure triggered at 85% of the NAAQS for carbon monoxide will provide for the reduction in the probability of the area falling into nonattainment. Therefore, we are approving the revisions to the Oxygenated Fuels rule. Our TSD prepared in conjunction with today's action contains more information concerning this rulemaking.

#### **III. Final Action**

The EPA is approving the aforementioned changes to New Mexico's Albuquerque/Bernalillo County SIP because the revisions are consistent with the Act and EPA regulatory requirements. The EPA is

publishing this rule without prior proposal because the EPA views this as a non-controversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 13, 2005 without further notice, unless EPA receives relevant adverse comment by May 16, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 13, 2005, and no further action will be taken on the proposed rule.

#### **IV. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175

(65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does

not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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 rule 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. section 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 13, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 31, 2005.

**Richard E. Greene,**

*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. Section 52.1620 is amended as follows:

■ a. In paragraph (c), in the second table entitled "EPA Approved Albuquerque/Bernalillo County, NM Regulations," by revising the entries for parts 1, 100, and 102.

■ b. In paragraph (e), in the second table entitled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP" by adding one new entry to the end of the table.

**§ 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
Albuquerque/Bernalillo County, Air Quality Control Regulations				
* * * * *	New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board			
Part 1 (20.11.1 NMAC) ..	General Provisions .....	09/07/04	04/14/05 [Insert FR page where document begins].	
* * * * *				
Part 100 (20.11.100 NMAC).	Motor Vehicle Inspection—Decentralized .....	09/07/04	04/14/05 [Insert FR page where document begins].	
Part 102 (20.11.102 NMAC).	Oxygenated Fuels .....	09/07/04	04/14/05 [Insert FR page where document begins].	
* * * * *				

\* \* \* \* \*

(e) \* \* \*

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date	Explanation
Second 10-year maintenance plan (limited maintenance plan) for Albuquerque/ Bernalillo County.	Bernalillo County .....	09/07/04	04/14/05 [Insert FR page where document begins].	

\* \* \* \* \*

■ 3. Section 52.1627 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

**§ 52.1627 Control strategy and regulations: Carbon monoxide.**

\* \* \* \* \*

(b) Approval—The Albuquerque/ Bernalillo County carbon monoxide limited maintenance plan revision dated September 7, 2004, meets the requirements of section 172 of the Clean Air Act, and is therefore approved.

[FR Doc. 05–7336 Filed 4–13–05; 8:45 am]  
 BILLING CODE 6560–50–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 041126332–5039–02; I.D. 041105A]

**Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). These actions are necessary to allow the 2005 A season total allowable catch (TAC) of Pacific cod to be harvested.

**DATES:** Effective April 13, 2005, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 A season allowance of the Pacific cod TAC specified for vessels using jig gear in the BSAI is 1,524 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005), for the period 1200 hrs, A.l.t., January 1, 2005, through 1200 hrs, A.l.t., April 30, 2005. See §§ 679.20(a)(7)(i)(C)(1), (c)(3)(iii), and (c)(5).

As of April 1, 2005, the Administrator, Alaska Region, NMFS, has determined that jig vessels will not be able to harvest 1,150 mt of the A season apportionment of Pacific cod allocated to those vessels under §§ 679.20(a)(7)(i)(A) and (a)(7)(iii)(A). Therefore, in accordance with § 679.20(a)(7)(ii)(C)(1), NMFS apportions 1,150 mt of Pacific cod from the A season apportionment of jig gear to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) are revised as follows: 374 mt to the A season apportionment for vessels using jig gear and 2,504 mt to catcher vessels

less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified for jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear and therefore would cause disruption to the industry by requiring unnecessary closures, disruption within the fishing industry and the potential for regulatory discards when the current allocation is projected to be reached on April 2, 2005. This reallocation will relieve a restriction on the industry and allow for the orderly conduct and efficient operation of this fishery.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 11, 2005.

**Galen R. Tromble**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 05–7513 Filed 4–13–05; 8:45 am]

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