

Patrol Commander or any Official Patrol.

(ii) Proceed as directed by the Coast Guard Patrol Commander or any Official Patrol.

(d) *Enforcement period.* This section will be enforced from 10 a.m. until 5 p.m. on May 29, 2010.

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event date and times.

Dated: April 7, 2010.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. 2010-9496 Filed 4-22-10; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2006-0990; FRL-9141-1]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Revisions to New Mexico Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is approving revisions to the New Mexico State Implementation Plan (SIP) concerning the State transportation conformity rules. On November 2, 2006, the State of New Mexico submitted revisions to the New Mexico Administrative Code (NMAC) 20.2.99 to ensure consistency with amendments to the Federal Transportation Conformity Rule. On June 27, 2007, and May 13, 2009, the State submitted further revisions to NMAC 20.2.99 for consistency with subsequent Federal rule revisions. These plan revisions meet statutory and regulatory requirements, and are consistent with EPA's guidance.

DATES: This rule is effective on June 22, 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-2006-0990, 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. 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-2006-0990. 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:

New Mexico Environment Department, 1190 St. Francis Drive, Suite N4050, Santa Fe, New Mexico 87505.

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.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we", "us", or "our" is used, we mean the EPA.

Outline

- I. Background
- II. Analysis of the State's Submittals
 1. November 2, 2006, New Mexico SIP Submittal
 2. June 27, 2007, New Mexico SIP Submittal
 3. May 13, 2009, New Mexico SIP Submittal
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background

The 1990 CAA required each State to submit a revision to its SIP to address the requirements of Section 176(c) of the Act pertaining to conformity determinations for metropolitan transportation plans, transportation improvement programs and other projects funded by the Federal Highway Administration or the Federal Transit Administration. This process is known as "transportation conformity," and serves to ensure that federally supported highway and transit projects are consistent with the purpose of the State's air quality plans in nonattainment and maintenance areas. EPA promulgated final rules on transportation conformity on November 24, 1993 (58 FR 62188), and these rules have been revised many times since; the latest revision is that of January 24, 2008 (73 FR 4420). The initial New Mexico SIP revision that incorporated EPA's conformity rules was adopted on November 9, 1998, and it also has been revised several times to remain in alignment with the Federal rules. The latest EPA approval of New Mexico transportation conformity SIP provisions was on March 20, 2000 (65 FR 14877). This approval was a partial approval, with no action taken on sections 109.C.1, 114, 128.C-F, 137.E, 139.A.2, 140.A.1, and 147.B, which could not be approved at that time due to the March 2, 1999 United States Court of Appeals for the District of Columbia Circuit decision in *Environmental Defense Fund v. Environmental Protection Agency*, 167 F.3d 641 (D.C. Cir. 1999). Revisions to the New Mexico transportation conformity rules were submitted by the State to EPA on November 2, 2006, June 27, 2007, and May 13, 2009.

The November 2, 2006 SIP revision addresses amendments to the Federal transportation conformity rule made on August 6, 2002 (67 FR 50808) and July 1, 2004 (68 FR 40003). The June 27, 2007 SIP revision submitted by the State addresses amendments to the Federal transportation conformity rule made on May 6, 2005 (70 FR 24279) and March 10, 2006 (71 FR 12467). The May 13, 2009 SIP revision submitted by the State addresses amendments to the Federal transportation conformity rule made on January 24, 2008 (73 FR 4420). For more information on the State submittals and the amendments to the Federal transportation conformity rule please see our Technical Support Document (TSD) found in the electronic docket for this action. The electronic docket can be found at the Web site <http://>

www.regulations.gov (Docket number EPA-R06-OAR-2006-0990).

II. Analysis of the State's Submittals

1. November 2, 2006, New Mexico SIP Submittal

In this submittal the State amended NMAC 20.2.99 as represented in Table 1, to bring the rules into alignment with Federal provisions. These changes include:

- Minor revisions to the 18-month requirement for the initial SIP submissions;
- Addition of a grace period for newly designated nonattainment areas;
- Adding the 1997 8-hour Ozone and fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS); and
- Miscellaneous revisions to clarify the existing regulation and improve implementation.

This revision is consistent with the amendments to the Federal transportation conformity rule made on August 6, 2002 (67 FR 50808) and July 1, 2004 (68 FR 40003) which incorporate:

- A requirement that conformity to be redetermined within 18 months of an initial State implementation plan submission;
- A one-year grace period for newly designated nonattainment areas, consistent with an October 27, 2000 amendment to the Clean Air Act (42 U.S.C. 7506(c)(6));
- Procedures for implementing conformity for the 1997 ozone and PM_{2.5} NAAQS;
- Procedures for advancing highway and transit projects during a conformity lapse, and
- The administrative process for determining whether the motor vehicle emissions budgets (MVEB) in SIP submissions are appropriate to use in conformity determinations.

A more detailed analysis of the amendments contained in this SIP submittal can be found in the TSD found in the electronic docket for this action.

2. June 27, 2007, New Mexico SIP Submittal

In this submittal the State amended NMAC 20.2.99 as represented in Table 1, to bring the rules into alignment with Federal provisions by:

- Adding nitrogen oxides (NO_x), volatile organic compounds (VOCs), sulfur oxides (SO_x), and ammonia (NH₃), each of which are precursors to PM_{2.5}, to the transportation conformity determinations for PM_{2.5} nonattainment and maintenance areas; and

- Establishing criteria for which transportation projects must be analyzed for local impacts of particle emissions in nonattainment and maintenance areas for the PM_{2.5} and coarse particulate matter (PM₁₀) NAAQS.

This revision is consistent with the amendments to the Federal transportation conformity rule made on May 6, 2005 (70 FR 24279) and March 10, 2006 (71 FR 12467) which:

- Incorporate NO_x, VOCs, SO_x, and NH₃ as possible transportation-related PM_{2.5} precursors;
- Require that upon submittal of a PM_{2.5} SIP, a PM_{2.5} precursor must be considered in an area's conformity determinations if the SIP determines that emissions for that precursor are a significant contributor to the area's PM_{2.5} air quality problem;
- Require criteria for determining which transportation projects must be analyzed for local impacts of particle emissions in PM_{2.5} and PM₁₀ nonattainment and maintenance areas.

A more detailed analysis of the amendments contained in this SIP submittal can be found in the TSD found in the electronic docket for this action.

2. May 13, 2009, New Mexico SIP Submittal

In this submittal the State amended NMAC 20.2.99 sections represented in Table 1 of this notice. The amendments help bring the State rules into alignment with Federal provisions.

These changes:

- Provide more time for State and local governments to meet conformity requirements;
- Provide a one-year grace period before the consequences of not meeting certain conformity requirements apply;
- Allow the option of shortening the timeframe of conformity determinations;
- Provide procedures for areas to use in substituting or adding transportation control measures (TCMs) to approved SIPs, and;
- Streamline other provisions.

This revision is consistent with the January 24, 2008 (73 FR 4420) transportation conformity rule amendments. These amendments were made by EPA to implement the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), (Pub. L. 109-59), and implement other changes not related to SAFETEA-LU. Prior to SAFETEA-LU, States were required to address these provisions as well as all other Federal conformity rule provisions in their conformity SIPs. With amendments to address SAFETEA-LU, EPA now allows States to submit

conformity SIPs that address only the following sections of the Federal rule that need to be tailored to a State's individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which states that conformity SIPs must require that written commitments to control measures be obtained prior to a conformity determination if the control measures are not included in an MPO's transportation plan and TIP, and that such commitments be fulfilled; and
- 40 CFR 93.125(c), which states that conformity SIPs must require that written commitments to mitigation measures be obtained prior to a project-level conformity determination, and that

project sponsors comply with such commitments.

Other changes to Federal transportation conformity rule regulations not related to SAFETEA-LU were made:

- Allowing the U.S. Department of Transportation, in consultation with EPA, to make categorical hot-spot findings for projects in areas that are in nonattainment or maintenance for carbon monoxide; and
- Removing the provision that allowed 8-hour ozone areas to use other tests for conformity instead of their 1-hour ozone SIP budgets.

However, the State has opted to revise 20.2.99 NMAC to reflect all amendments to the Federal Transportation Conformity Rule. A more detailed analysis of the amendments

contained in this SIP submittal can be found in the TSD for this action.

III. Final Action

EPA is approving revisions to the New Mexico SIP and associated rules which were submitted by NMED on November 2, 2006, June 27, 2007, and May 13, 2009. These revisions achieve the purpose of bringing the State SIP and associated rules into alignment with Federal statutes and regulations. Table 1 represents the revised sections of NMAC 20.2.99 that EPA is approving in this action. Where sections were repeated in subsequent revisions, the more recent revisions are taken to supersede the previous revisions, since the more recent language captures the previous revisions.

TABLE 1—REVISIONS TO NMAC 20.2.99
[By submittal date]

NMAC 20.2.99 section	State effective date	Submittal date to EPA
109, 114, 116, 117, 118, 120, 121, 123, 129, 136, 143, 144, 145, 146, 147, 149, 152, 153, 154	10/15/2005	11/2/2006
150	9/1/2007	6/27/2007
2, 7, 111, 112, 113, 115, 122, 124, 125, 128, 133, 134, 135, 137, 138, 139, 140, 148, 151	6/1/2009	5/13/2009

We have evaluated the State's submittals and have determined that they meet the applicable requirements of the Clean Air Act and EPA regulations, and are consistent with EPA policy.

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 22, 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.

IV. 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 22, 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 first table in § 52.1620(c) entitled “EPA Approved New Mexico Regulations” is amended by revising the entry for Part 99 and adding new entries for 20.2.99.1 to 20.2.99.154 immediately following the entry for Part 99 to read as follows:

§ 52.1620 Identification of plan.

* * * * *
 (c) * * *

EPA-APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality				
Part 99—Transportation Conformity				
20.2.99.1	Issuing Agency	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.2	Scope	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.3	Statutory Authority	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.4	Duration	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.5	Effective Date	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.6	Objective	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.7	Definitions	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.8	Documents	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.9 to 20.2.99.108	[Reserved]	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.109	Applicability	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.110	Priority	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.111	Frequency of Conformity Determinations	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.112	Frequency of Conformity Determinations—Transportation Plans.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.113	Frequency of Conformity Determinations—Transportation Improvement Programs.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.114	Frequency of Conformity Determinations—Projects.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.115	Frequency of Conformity Determinations—Triggers for Transportation Plan and Tip Conformity Determinations.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	

EPA-APPROVED NEW MEXICO REGULATIONS—Continued

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
20.2.99.116	Consultation	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.117	Agency Roles in Consultation	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.118	Agency Responsibilities in Consultation	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.119	General Consultation Procedures	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.120	Consultation Procedures for Specific Major Activities.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.121	Consultation Procedures for Specific Routine Activities.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.122	Notification Procedures for Routine Activities	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.123	Conflict Resolution and Appeals to the Governor.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.124	Public Consultation Procedures	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.125	Content of Transportation Plans and Timeframes of Conformity Determinations.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.126	Relationship of Transportation Plan and Tip Conformity to the NEPA Process.	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.127	Fiscal Constraints for Transportation Plans and TIPs.	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.128	Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects—General.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.129	Criteria and Procedures—Latest Planning Assumptions.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.130	Criteria and Procedures—Latest Emissions Model.	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.131	Criteria and Procedures—Consultation	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.132	Criteria and Procedures—Timely Implementation of TCMs.	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.133	Criteria and Procedures—Currently Conforming Transportation Plan and TIP.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.134	Criteria and Procedures—Projects from a Transportation Plan and TIP.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.135	Criteria and Procedures—Localized Co, PM ₁₀ , and PM _{2.5} Violations (Hot Spots).	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.136	Criteria and Procedures—Compliance with PM ₁₀ , and PM _{2.5} Control Measures.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.137	Criteria and Procedures—Motor Vehicle Emissions Budget.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.138	Criteria and Procedures—Interim Emissions in Areas without Motor Vehicle Emissions Budgets.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.139	Consequences of Control Strategy Implementation Plan Failures.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
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.	6/1/2009	4/23/2010, [Insert FR page number where document begins].	

EPA-APPROVED NEW MEXICO REGULATIONS—Continued

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
20.2.99.141	Procedures for Determining Regional Transportation-Related Pollutant Emissions—General Requirements.	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.142	Procedures for Determining Regional Transportation-Related Pollutant Emissions—Analysis in Serious, Severe, and Extreme Ozone Nonattainment Areas and Serious Carbon Monoxide Areas.	11/23/1998	3/20/2000, 65 FR 14873	
20.2.99.143	Procedures for Determining Regional Transportation-Related Pollution Emissions—Two-Year Grace Period for Regional Emissions Analysis Requirements in Certain Ozone and Co Areas.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.144	Procedures for Determining Regional Transportation-Related Pollutant Emissions—Areas Which are not Serious, Severe or Extreme Ozone Nonattainment Areas or Serious Carbon Monoxide Areas.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.145	Procedures for Determining Regional Transportation-Related Pollutant Emissions—PM ₁₀ from Construction-Related Fugitive Dust.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.146	Procedures for Determining Regional Transportation—Related Pollutant Emissions—PM _{2.5} from Construction—Related Fugitive Dust.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.147	Procedures for Determining Regional Transportation-Related Pollutant Emissions—Reliance on Previous Regional Emissions Analysis.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.148	Procedures for Determining Localized CO, PM ₁₀ , and PM _{2.5} Concentrations (Hot-Spot Analysis).	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.149	Using the Motor Vehicle Emissions Budget in the SIP (or Implementation Plan Submission).	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.150	Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures.	9/1/2007	4/23/2010, [Insert FR page number where document begins].	
20.2.99.151	Exemptions	6/1/2009	4/23/2010, [Insert FR page number where document begins].	
20.2.99.152	Traffic Signal Synchronization Projects	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.153	Special Exemptions from Conformity Requirements for Pilot Program Areas.	10/15/2005	4/23/2010, [Insert FR page number where document begins].	
20.2.99.154	Savings Provision	10/15/2005	4/23/2010, [Insert FR page number where document begins].	

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 483

[CMS–2266–F]

RIN 0938–AO82

Medicare and Medicaid Programs; Waiver of Disapproval of Nurse Aide Training Program in Certain Cases

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule will permit a waiver of a nurse aide training disapproval as it applies to skilled nursing facilities, in the Medicare program, and nursing facilities, in the Medicaid program, that are assessed a civil money penalty of at least \$5,000 for noncompliance that is not related to quality of care. This is a statutory provision enacted by section 932 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted December 8, 2003).

DATES: *Effective Date:* These regulations are effective on May 24, 2010.

FOR FURTHER INFORMATION CONTACT: Pat Miller, (410) 786–6780.

SUPPLEMENTARY INFORMATION:

I. Background

Waiver of Disapproval of Nurse Aide Training Program in Certain Cases

To participate in the Medicare and/or Medicaid programs, long-term care facilities must be certified as meeting Federal participation requirements. Long-term care facilities include skilled nursing facilities (SNFs) for Medicare and nursing facilities (NFs) for Medicaid. The Federal participation requirements for these facilities are specified in regulations at 42 CFR part 483, subpart B.

Section 1864(a) of the Social Security Act (the Act) authorizes the Secretary to enter into agreements with State survey agencies to determine whether SNFs meet the Federal participation requirements for Medicare. Section 1902(a)(33)(B) of the Act provides for State survey agencies to perform the same survey tasks for facilities participating or seeking to participate in the Medicaid program. The results of Medicare and Medicaid related surveys are used by the Centers for Medicare & Medicaid Services and the State Medicaid agency, respectively, as the

basis for a decision to enter into or deny a provider agreement, recertify facility participation in one or both programs, or impose remedies on a noncompliant facility.

To assess compliance with Federal participation requirements, surveyors conduct onsite inspections (surveys) of facilities. In the survey process, surveyors directly observe the actual provision of care and services to residents and the effect or possible effects of that care to evaluate whether the care furnished meets the assessed needs of individual residents.

Sections 1819(b)(5) and 1919(b)(5) of the Act and implementing regulations at § 483.75(e) require that all individuals employed by a facility as nurse aides must have successfully completed a nurse aide training program.

Sections 1819(f)(2) and 1919(f)(2) of the Act provide that facility-based nurse aide training could be offered either by the facility or in the facility by another entity approved by the State. Therefore, a facility in good standing (that is, one that is not subject to an event that results in disapproval of a nurse aide training program) may offer a facility-based program in one of two ways: It can either conduct its own facility-based State-approved nurse aide training and have the State or a State-approved entity administer the nurse aide competency evaluation program, or it can offer the entire nurse aide training and competency evaluation program through an outside entity which has been approved by the State to conduct both components.

Further, these sections prohibit States from approving a nurse aide training and competency evaluation program or a nurse aide competency evaluation program offered by or in a SNF or NF when any of the following specified events have occurred in that facility—

- The facility has operated under a nurse staffing waiver;
- The facility has been subject to an extended or partial extended survey unless the survey shows the facility is in compliance with the participation requirements; or
- The facility has been assessed a civil money penalty of not less than \$5,000, or has been subject to a denial of payment, the appointment of a temporary manager, termination, or in the case of an emergency, been closed and had its residents transferred.

Program disapproval is a required, rather than a discretionary, response whenever any of these events occur. Since facilities are required to employ nurse aides who have successfully completed a training program, when a facility loses its ability to conduct

facility-based training, it must, for the duration of the 2-year program disapproval, provide the required training through either the State or another State-approved outside organization as provided by § 483.151(a). However, sections 1819(f)(2)(C) and 1919(f)(2)(C) of the Act permit a waiver for program disapproval of programs offered in (but not by) a facility if the State—

- Determines that there is no other such program offered within a reasonable distance of the facility;
- Assures that an adequate environment exists for operating the program in the facility; and
- Notifies the State Long Term Care Ombudsman of this determination and these assurances.

Section 932(c)(2)(B) of the MMA added sections 1819(f)(2)(D) and 1919(f)(2)(D) of the Act which allows the Secretary to waive a facility's disapproval of its nurse aide training program upon application of a facility if the disapproval resulted from the imposition of a civil money penalty of at least \$5,000 and that is not related to quality of care provided to residents in the facility.

II. Summary of the Proposed Provisions and Response to Comments

In the November 23, 2007 **Federal Register** 72 FR 65692, we published the proposed rule entitled, "Medicare and Medicaid Programs; Waiver of Disapproval of Nurse Aide Training Program in Certain Cases and Nurse Aide Petition for Removal of Information for Single Finding of Neglect" and provided for a 30 day comment period.

A. Waiver of Disapproval of Nurse Aide Training Program in Certain Cases

The statutory provisions set forth in the published proposed rule pertain specifically and only to the civil money penalty disapproval trigger under sections 1819(f)(2)(B)(iii)(I)(c) and 1919(f)(2)(B)(iii)(I)(c) of the Act and establish authority for CMS to approve a facility's request to waive disapproval of its nurse aide training program when that facility has been assessed a civil money penalty of at least \$5,000 for deficiencies that are not related to quality of care.

We received a total of 23 comments from various States, health care associations and consumer advocacy organizations. The comments for this