(2) An application for a utility or plant patent filed under 35 U.S.C. 111(a) before June 8, 1995;

(3) An international application filed under 35 U.S.C. 363 before June 8, 1995;

(4) An application for a design patent; or

(5) A patent under reexamination.

9. Section 1.116 is revised to read as follows:

§ 1.116 Amendments after final action or appeal.

(a) An amendment after final action or appeal must comply with § 1.114 or this section.

(b) After a final rejection or other final action (§ 1.113), amendments may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action. Amendments presenting rejected claims in better form for consideration on appeal may be admitted. The admission of, or refusal to admit, any amendment after final rejection, and any related proceedings, will not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under § 1.135.

(c) If amendments touching the merits of the application or patent under reexamination are presented after final rejection, or after appeal has been taken, or when such amendment might not otherwise be proper, they may be admitted upon a showing of good and sufficient reasons why they are necessary and were not earlier presented.

(d) No amendment can be made as a matter of right in appealed cases. After decision on appeal, amendments can only be made as provided in § 1.198, or to carry into effect a recommendation under § 1.196.

10. Section 1.198 is revised to read as follows:

§ 1.198 Reopening after decision.

Cases which have been decided by the Board of Patent Appeals and Interferences will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.114 or § 1.196 without the written authority of the Commissioner, and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

11. Section 1.312 is revised to read as follows:

§ 1.312 Amendments after allowance.

No amendment may be made as a matter of right in an application after the mailing of the notice of allowance. Any amendment filed pursuant to this section must be filed before or with the payment of the issue fee, and may be entered on the recommendation of the primary examiner, approved by the Commissioner, without withdrawing the application from issue.

12. Section 1.313 is revised to read as follows:

§ 1.313 Withdrawal from issue.

(a) Applications may be withdrawn from issue for further action at the initiative of the Office or upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(i) and a showing of good and sufficient reasons why withdrawal of the application is necessary. If the Office withdraws the application from issue, the Office will issue a new notice of allowance if the Office again allows the application.

(b) Once the issue fee has been paid, the Office will not withdraw the application from issue at its own initiative for any reason except:

(1) A mistake on the part of the Office;

(2) A violation of § 1.56 or illegality in the application;

(3) Unpatentability of one or more claims; or

(4) For interference.

(c) Once the issue fee has been paid, the application will not be withdrawn from issue upon petition by the applicant for any reason except:

(1) Unpatentability of one of more claims, which petition must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;

(2) Consideration of a submission pursuant to § 1.114; or

(3) Express abandonment of the application. Such express abandonment may be in favor of a continuing application.

(d) A petition under this section will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials before the date of issue. Withdrawal of an application from issue after payment of the issue fee may not be effective to avoid publication of application information.

Dated: March 10, 2000.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 00–6514 Filed 3–17–00; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–26–1–6944a; FRL–6561–6]

Approval and Promulgation of Implementation Plan for New Mexico: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the New Mexico State Implementation Plan (SIP) that contains the transportation conformity rule. The conformity rules assure that in air quality nonattainment or maintenance areas, projected emissions from transportation plans and projects stay within the motor vehicle emissions ceiling in the SIP. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirements in regulations on Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws. The EPA's approval action streamlines the conformity process and allows direct consultation among agencies at the local levels. The final approval action is limited to regulations on Transportation Conformity. We approved the SIP revision on conformity of general Federal actions on September 9, 1998 (61 FR 48407).

The EPA approves this SIP revision under sections 110(k) and 176 of the Federal Clean Air Act (Act). We have given our rationale for approving this SIP revision in this action.

DATES: This rule is effective on May 19, 2000 without further notice, unless EPA receives adverse comment by April 19, 2000. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting

Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

New Mexico Environment Department (NMED), Harold Runnels Building, 1190 St. Francis Drive, P.O. Drawer 226110, Santa Fe, New Mexico 87502–0110.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E. or Mr. Ken Boyce; Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 665–7247 or (214) 665–7259, *behnam.jahanbakhsh@epamail.epa.gov or boyce.kenneth@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: We have outlined the contents of this document below for your reading convenience:

I. Background

A. What is a SIP?

The states under section 110 of the Act must develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by EPA. The Act under section 109 established these ambient standards which currently includes six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to us, for approval and incorporation into the federally enforceable SIP. Currently, each state has a federally approved SIP which protects air quality and has emission control plans for nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

B. What is the Federal approval process for a SIP?

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the federally enforceable SIP. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to us for inclusion in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice, and request additional public comment on the action. If anyone sends adverse comments, we must consider the comments before a final action.

We incorporate all state regulations and supporting information (sent under section 110 of the Act) into the federally approved SIP after our approval action. We maintain records of such SIP actions in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans. The Government does not reproduce the text of the federally approved state regulations in the CFR. They are ''incorporated by reference,'' which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

C. What is transportation conformity?

Conformity first appeared in the Act's 1977 amendments (Public Law 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The Act's 1990 Amendments expanded the scope and content of the conformity concept by defining conformity in relation to an implementation plan. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

D. Why must the State send a transportation conformity SIP?

We were required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each State submit a revision to its SIP including conformity criteria and procedures. We published the first transportation conformity rule in the November 24, 1993, **Federal Register**, and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. We required the States and local agencies to adopt and submit a transportation conformity SIP revision to us by November 25, 1994. The State Governor sent a transportation conformity SIP on December 19, 1994. However, this SIP was not approvable. We revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780), and it was codified under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws (62 FR 43780). Our action of August 15, 1997, required the States to change their rules and send a SIP revision by August 15, 1998.

E. How Does Transportation Conformity Work?

The Federal or State transportation conformity rule applies to all nonattainment and maintenance areas in the State. The Metropolitan Planning organizations (MPO), the State Departments of Transportation (in absence of a MPO), and U.S. Department of Transportation make conformity determinations. These agencies make conformity determinations on programs and plans such as transportation improvement programs, transportation plans, and projects. The MPOs calculate the projected emissions for the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the motor vehicle emissions ceiling for showing a positive conformity with the SIP.

II. Approval of the Transportation Conformity Rule

A. What Did the State Send?

The State of New Mexico initially submitted a SIP revision on November 17, 1994, however, this SIP was not approvable. On November 20, 1998, the Governor of New Mexico sent a SIP revision that includes the transportation conformity and consultation rule. The NMED adopted this SIP revision on November 9, 1998, after appropriate public participation and interagency consultation. In addition, this SIP was revised to correct a typographical error in section 124. The Governor submitted this revision on August 27, 1999. Today's approval action is solely based on the November 20, 1998, and August 27, 1999, submissions.

B. What is EPA Approving Today and Why?

We are approving the transportation conformity rule that the Governor of New Mexico sent us on November 20, 1998, and August 27, 1999, except for New Mexico Administrative Code (NMAC) Title 20, Chapter 2, Part 99, sections 109. C.1, 114, 128.C–F, 137.E, 139.A.2, 140.A.1, and 147.B. The rationale for exclusion of these sections is discussed in section II–E of this action. The NMED has adopted the Federal rules in verbatim form except for the interagency consultation section (40 CFR 93.105) and the grace period for new nonattainment areas (40 CFR 93.102(d)). We will discuss the reasons for exclusion of these two sections later in this document.

The Federal Transportation Conformity Rule required the states to adopt a majority of the Federal rules in verbatim form with a few exceptions. The States can not make their rules more stringent than the Federal rules unless the state's rules apply equally to nonfederal as well as Federal entities. The NMED's transportation conformity rule is the same as the Federal rule and the State has made no additional changes or modifications, with the exception of those sections mentioned above.

We have evaluated this SIP revision and have determined that the NMED has fully adopted the Federal Transportation Conformity Rules as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. Also, the NMED has completed and satisfied the public participation and comprehensive interagency consultations during development and adoption of these rules at the local level. Therefore, we are approving this SIP revision.

Our approval action does not include general conformity (40 CFR part 51, subpart W). We approved the general conformity SIP on September 9, 1998 (63 FR 48106).

C. How Did the NMED Satisfy the Interagency Consultation Process?

Our rule requires the states to develop their own processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts by meeting the criteria in 40 CFR 93.105. The SIP revisions must include processes and procedures to be followed by the MPO, State Department of Transportation (DOT), and the U.S. Department of Transportation (USDOT) in consulting with the State and local air quality agencies and EPA before making conformity determinations. Also, the transportation conformity SIP revision must have processes and procedures for the State and local air quality agencies and EPA in coordinating development of applicable SIPs with MPOs, State DOT, and USDOT.

The NMED developed its own consultation rule based on the elements in 40 CFR 93.105. As a first step, the NMED established an *ad hoc* multi-agency committee that included representatives from the State air quality agency, State DOT, USDOT, MPOs, EPA, the local air quality agency, local transportation agencies, and local transit operators. The NMED served as the lead agency in coordinating the multi-agency efforts for developing the consultation rule. The committee met periodically and drafted consultation rules by considering the elements in 40 CFR 93.105 and 23 CFR part 450, and by integrating the local procedures and processes into the final consultation rule. The consultation rule developed through this process is codified under 20 NMAC 2.99.119 and 2.99.120. We have determined that the NMED adequately included all elements of 40 CFR 93.105 in their rule and it meets the EPA SIP requirements.

D. Why Did the NMED Exclude the Grace Period for New Nonattainment Areas (40 CFR 93.102(d))?

The NMED excluded 40 CFR 93.102(d) from its rule. This section allows up to 12 months for newly designated nonattainment areas to complete their conformity determination. However, Sierra Club challenged this section of the rule arguing that allowing a 12 month grace period was unlawful under the Act. On November 4, 1997, the United Sates Court of Appeals for the District of Columbia Circuit held in *Sierra Club* v. *Environmental Protection Agency*, 129 F.3d 137 (D.C. Cir. 1997), that EPA's grace period violates the plain terms of the Act and, therefore, is unlawful. Based on this court action, the NMED has excluded this section from its rule. We agree with the NMED's action, and exclusion of 40 CFR 93.102(d) will not prevent us from approving the State transportation conformity SIP.

E. What Parts of the Rule Are Excluded?

We promulgated the transportation conformity rule on August 15, 1997. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund* v. *Environmental Protection Agency*, 167 F.3d 641 (D.C. Cir. 1999). The Court granted the environmental group's petition for review and ruled that 40 CFR 93.102(c)(1), 40 CFR 93.121(a)(1), and 40 CFR 93.124(b) are unlawful and remanded 40 CFR 93.118(e) and 40 CFR 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act for an affirmative determination the federal actions will not cause or increase violations or delay attainment. The sections that were included in this decision were:

(a) 40 CFR 93.102(c)(1) which allowed certain projects for which the NEPA process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity lapse,

(b) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (MVEB) in the submitted SIPs after 45 days if EPA had not declared them inadequate,

(c) 40 CFR 93.120(a)(2) which allowed use of the MVEB in a disapproved SIP for 120 days after disapproval,

(d) 40 CFR 93.121(a)(1) which allowed the nonfederally funded projects to be approved if included in the first three years of the most recently conforming transportation plan and transportation improvement programs, even if conformity status is currently lapsed, and

(e) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval.

Since the States were required to submit transportation conformity SIPs not later than August 15, 1998, and include those provisions in verbatim form, the State's SIP revision includes all those sections which the Court ruled unlawful or remanded for consistency

with the Act. The EPA cannot approve these sections.

We believe that the NMED has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to EPA. If the court had issued its ruling before adoption and SIP submittal by the NMED, we believe the NMED would have removed these unlawful sections from its SIP. The NMED has expended its resources and time in preparing this SIP and meeting the Act's statutory deadline, and EPA acknowledges the agency's good faith effort in submitting the transportation conformity SIP on time.

The NMED will be required to submit a SIP revision in the future when EPA revises its rule to comply with the court decision. Because the court decision has invalidated these provisions, we believe that it would be reasonable to exclude the corresponding sections of the NMED rules from this SIP approval action. As a result, we are not taking any action on 20 NMAC, Chapter 2, Part 99, sections 109. C.1, 114, 128.C–F, 137.E, 139.A.2, 140.A.1, and 147.B under the State Transportation Conformity Rules. The conformity determinations affected by these sections must comply with the relevant requirements of the statutory provisions of the Clear Air Act underlying the court's decision on these issues. The EPA has already issued guidance on how to implement these provisions in the interim prior to EPA's amendment of the Federal transportation conformity rules. Once these Federal rules have been revised, conformity determinations should comply with the requirements of the revised Federal rule until corresponding provisions of the State's conformity SIP have been approved by EPA.

III. Opportunity for Public Comments

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on May 19, 2000 without further notice unless we receive adverse comment by April 19, 2000. If EPA receives adverse comment, 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 at this time.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This final rule will 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it approves a State program.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant

economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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. The 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 can not 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). This rule will be effective May 19, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 2000. 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: March 6, 2000.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

Part 52, Chapter I, title 40 of the Code of Federal Regulations 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(c) is amended by adding to the end of the first table to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

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 98 * * *				
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2				
Part 99 ...	Transportation Conformity	11/23/98 and 09/08/99	3/20/00 [FR volume and page number].	(1) No action is taken on sections 109. C.1, 114, 128.C–F, 137.E, 139.A.2, 140.A.1, and 147.B

[FR Doc. 00–6563 Filed 3–17–00; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE76

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Chlorogalum purpureum* (Purple Amole), a Plant From the South Coast Ranges of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine threatened status pursuant to the Endangered Species Act of 1973, as amended (Act), for the California plant, *Chlorogalum purpureum* (purple amole). This species comprises two varieties, *C. p. var. purpureum* and *C. p.* var. *reductum. Chlorogalum purpureum* var. *purpureum* is known only from the south coast ranges in Monterey County, on lands managed by the Department of the Army at Fort Hunter Liggett. It is threatened by loss and alteration of habitat, direct loss of plants from construction and use of military training facilities and from military field training activities, displacement by nonnative annual grasses, and potentially by alteration of fire cycles due to military training. Livestock grazing is a potential threat, as grazing may be reinstated in occupied habitat in the future. The other variety, *C. p.* var. *reductum,* is known only from two sites in the La Panza region of the coast ranges in San Luis Obispo County, on U.S. Forest Service and private lands. It is threatened by illegal vehicle trespass into the population on Forest Service land, road maintenance, displacement by nonnative annual grasses, and by livestock grazing depending upon the intensity of grazing use within the population area. This final rule implements the Federal protection and recovery provisions afforded by the Act. Although this rule lists *Chlorogalum purpureum* at the species level, each variety should be treated as a separate taxonomic unit for the purposes of applying the section 7 jeopardy standard and identifying recovery units, if applicable.

DATES: This rule is effective April 19, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Listing and Recovery, at the address above (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Chlorogalum purpureum was first described by Brandegee in 1893 from specimens collected in the Santa Lucia Mountains by William Vortriede a year earlier (Brandegee 1893). In 1904, E.L. Greene (1904) published the new combination *Laothoe purpurea* when he discovered that the genus name *Laothoe* had been published earlier than *Chlorogalum.* However, R.F. Hoover (1940) reinstated use of the name *Chlorogalum* through the rule of *nomen conservandum.* Hoover (1964) described the variety *reductum* (Camatta Canyon amole), first collected in the late 1940s, based on its shorter stature compared to the nominative variety. This nomenclature was retained in the most recent treatment of the genus (Jernstedt 1993). These two varieties comprise the entire species.

Chlorogalum purpureum is a bulb-forming perennial herb in the lily family (Liliaceae). It has a basal rosette of linear leaves 2 to 5 millimeters (mm) (0.1 to 0.2 inches (in)) wide with wavy margins. A widely branching stem supports bluish-purple flowers with six recurved tepals (petals and sepals that have a similar appearance). The stems of *C. p.* var. *purpureum* are 25 to 40 centimeters (cm) (10 to 16 in) high, whereas those of *C. p.* var. *reductum* are only 10 to 20 cm (4 to 8 in) high (Hoover 1964, Jernstedt 1993). Chlorogalum purpureum is the only member of the genus with bluish-purple flowers that open during the day (Jernstedt 1993).

Reproduction in *Chlorogalum purpureum* is primarily by seed. Each flower contains six ovules, although not all develop into seeds in the wild (Hoover 1964). The species is reported to be self-compatible, and insect pollination appears to result in increased seed set (D. Wilken, Santa Barbara Botanic Garden, *in litt.* 1998; M. Elvin, U.S. Fish and Wildlife Service, pers. com. 1998). Hoover (1940) reports that clonal reproduction by longitudinal splitting of the bulbs is rare; some splitting has been noted in one population of *C. p.* var. *reductum* (Alice Koch, California Department of Fish and Game (CDFG), pers. comm. 1997b).

Chlorogalum purpureum occurs in grassland, oak woodland, and oak savannah between 300 and 620 meters (m) (1,000 and 2,050 feet (ft)) in elevation in the south coast ranges of California. Like other members of the lily family, *C. purpureum* is probably mycorrhizal (develops root-hyphae relationships with a fungus).

Mycorrhizal relationships can aid in nutrient and water uptake by a host plant and can alter growth and competitive interactions between species (Allen 1991).

Chlorogalum purpureum var. *purpureum* is known from oak woodlands and grasslands at three sites near Jolon in Monterey County on lands owned and managed by the Department of the Army (Fort Hunter Liggett). Historically, appropriate habitat may have existed east of the base, in Jolon Valley, but most of the flat areas in that valley have been converted to cropland, pasture, or vineyards. At Fort Hunter Liggett, the plant occurs on flat or gently sloping terrain with a gravelly surface underlain by clay soils, often where other herbaceous vegetation is sparse.

Of the three localities of *Chlorogalum purpureum* var. *purpureum,* one comprises discontinuous and fragmented patches of plants scattered over an area 7 to 9 kilometers (km) (4 to 6 miles (mi)) long and about 5 km (3 mi) wide in the cantonment (housing and administration area), the Ammunition Supply Point, adjacent Training Area 13, and the boundary of Training Area 10 (U.S. Army Reserve Command 1996; map provided by D. Hines, *in litt.* 1998; Painter and Neese 1998). While some of the discontinuities in distribution are due to unsuitable intervening habitat, other patches have been fragmented by roads, the historical settlement of Jolon, and military training facilities. No population counts have been made at this site, but estimates of some areas within it suggest that it supports several thousand plants (U.S. Department of the Army 1997, Painter and Neese 1998). The second locality is about 4 km (2.5 mi) to the southeast in Training Area 25. The taxon is patchily distributed in an area of about 6 square km (2 square mi) that is laced with vehicle tracks and dirt roads. At one location there, 400 to 500 plants have been recorded (Painter and Neese 1998), but the entire site may support several thousand individuals. The third and southernmost locality is at the boundaries of Training Areas 23, 24, and 27. This is the largest known site and contains plants in high densities. Following a fire that may have