

of any mandate upon the private sector, the EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, the EPA has determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

#### *C. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *D. Procedural Information*

This action has been classified as a Table Three action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Ms. Mary Nichols, Assistant Administrator for Air and Radiation.

#### *E. Petition 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 November 12, 1996. Filing a petition for reconsideration of this final rule by the Regional Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

Environmental protection, Air pollution control, Carbon monoxide, General conformity, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: July 24, 1996.

Allyn M. Davis,

*Acting Regional Administrator.*

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. 7401-7671q.

#### **Subpart GG—New Mexico**

2. Section 52.1620 is amended by adding paragraph (c)(60) to read as follows:

##### **§ 52.1620 Identification of Plan.**

\* \* \* \* \*

(c) \* \* \*

(60) A revision to the New Mexico State Implementation Plan for General Conformity: Albuquerque/Bernalillo County Air Quality Control Regulation No. 43 "General Conformity" as adopted on November 9, 1994, and filed with the State Records and Archives Center on December 16, 1994, was submitted by the Governor on December 19, 1994.

(i) Incorporation by reference.

(A) Albuquerque/Bernalillo County Air Quality Control Regulation No. 43 "General Conformity" as adopted on November 9, 1994, and filed with the State Records and Archives Center on December 16, 1994.

[FR Doc. 96-23267 Filed 9-12-96; 8:45 am]

BILLING CODE 6560-50-P

#### **40 CFR Part 52**

[LA 25-1-6964a; FRL-5449-7]

#### **Approval and Promulgation of Implementation Plans for Louisiana: General Conformity Rules**

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

**ACTION:** Direct final rule.

**SUMMARY:** This action conditionally approves a revision to the Louisiana State Implementation Plan (SIP) that contains regulations for implementing and enforcing the general conformity rules which the EPA promulgated on November 30, 1993. Specifically, the

general conformity rules enable the Louisiana Department of Environmental Quality (LDEQ) to review conformity of all Federal actions (see 40 CFR part 51 subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans) with the control strategy SIP's submitted for the nonattainment and maintenance areas in Louisiana. This approval action is intended to streamline the conformity process and allow direct consultation among agencies at the local levels. The Federal actions by the Federal Highway Administration and Federal Transit Administration (under 23 U.S.C. or the Federal Transit Act) are covered by the transportation conformity rules under 40 CFR part 51, subpart T—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 Act. The EPA will act on the State's transportation conformity SIP under a separate Federal Register document.

The EPA is approving this SIP revision under sections 110(k) and 176 of the Clean Air Act (the Act). The rationale for the approval and other information are provided in this notice.

**DATES:** This action is effective on November 12, 1996, unless adverse or critical comments are received by October 15, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents 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, Telephone: (214)  
665-7214

Air and Radiation Docket and  
Information Center, Environmental  
Protection Agency, 401 M Street,  
S.W., Washington, D.C. 20460

Air Quality Division, Louisiana  
Department of Environmental Quality,  
7290 Bluebonnet Boulevard, Baton  
Rouge, Louisiana 70810, Telephone:  
(504) 765-0219

**FOR FURTHER INFORMATION CONTACT:** Mr.  
J. Behnam, P. E., Air Planning Section  
(6PDL), Multimedia Planning and  
Permitting Division, Environmental  
Protection Agency, Region 6, 1445 Ross

Avenue, Dallas, Texas 75202, telephone (214) 665-7247.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Conformity provisions first appeared in the Act as amended in 1977 (Public Law 95-95). Although these provisions did not define conformity, they provided 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 that has been approved or promulgated for the nonattainment or maintenance areas.

The 1990 Amendments of the Act expanded the scope and content of the conformity provisions by defining conformity to an implementation plan. Conformity is defined in section 176(c) of the Act as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (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.

The Act requires the EPA to promulgate criteria and procedures for determining conformity of all other Federal actions in the nonattainment or maintenance areas (actions other than those under Title 23 U.S.C. or the Federal Transit Act) to a SIP. The criteria and procedures developed for this purpose are called "general conformity" rules. The rules pertaining to actions under Title 23 U.S.C. or the Federal Transit Act were published in a separate Federal Register notice on November 24, 1993 (see 58 FR 62188). The EPA published the final general conformity rules on November 30, 1993 (58 FR 63214) and are codified under 40 CFR Part 51 Subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The general conformity rules require the States and local air quality agencies (where applicable) to adopt and submit a general conformity SIP revision to the EPA not later than November 30, 1994.

##### II. Evaluation of State's Submission

###### A. Evaluation of the State Rules

In response to the Federal Register notice of November 30, 1993, the Governor of Louisiana submitted a SIP revision which included the general

conformity rules adopted by the Louisiana Department of Environmental Quality. The general conformity SIP revision is applicable to all nonattainment and maintenance classifications under the Act. The following paragraphs present the results of EPA's review and evaluation of the Louisiana general conformity SIP revision.

On November 10, 1994, the Governor of Louisiana submitted a SIP revision in compliance with 40 CFR Part 51 Subpart W that contained the State general conformity rules. The SIP revision was adopted by the State and published in the Louisiana Register on November 20, 1994, after appropriate public participation and interagency consultation. The LDEQ adopted the Federal general conformity rules verbatim with the exception of limited changes and additional definitions, where necessary, to create consistency with the local processes, procedures, and area-specific terms or names. These minor modifications and additional clarifications do not in any way alter the effect, implementation, and enforcement of the Federal conformity requirements in the State nonattainment and maintenance areas except for the provision discussed in section II(B) of this notice.

###### B. Conditions and Commitments

Review of the State rules indicated that section 1405(B) of the State rule allows the State Administrative authority to approve changes to the emissions estimating methods and use of new or modified models in the air quality and conformity analyses. This is contrary to 40 CFR 51.859 of the EPA general conformity rule which recommends use of the EPA approved procedures and models, and retains the EPA's approval authority for any deviation from the recommended provisions. In addition, section 1411 of the State rule which contains identical requirements as EPA's 40 CFR 51.859, requires approval of the EPA Regional Administrator for use of the modified emissions estimating methods and models if they are deviations from the EPA's recommended procedures or models. Therefore, the EPA can not approve this SIP revision unless this inconsistency has been corrected in section 1405(B) of the State's general conformity rule.

After the EPA's consultation with the State, the State has agreed to modify section 1405(B) of its conformity rule by removing the inconsistency discussed above. In a letter dated December 5, 1995, from the Assistant Secretary of LDEQ to the EPA Region 6

Administrator, the State commits to make the necessary correction in section 1405(B) and submit a SIP revision to the EPA within twelve (12) months from the date of this document, September 15, 1997. The EPA accepted this commitment from the State because the EPA believes that the State has shown a good faith effort in complying with the SIP requirements and this minor inconsistency was not intentionally added to the regulations. The State's commitment letter will allow the EPA to proceed with a conditional approval while the State is preparing the appropriate corrections for submission of a SIP revision.

The EPA has determined that LDEQ's general conformity rule meets the Federal requirements except the provisions of section 1405(B) as cited above. Therefore, the EPA is conditionally approving this SIP revision until the State makes the appropriate corrections and submits a SIP revision before the date specified above. If the State does not submit a SIP revision for correction of section 1405(B) by the date specified in section II(B) of this notice, this conditional approval will automatically be converted to a disapproval on the date specified above and as further discussed in section III of this notice.

##### III. Final Action

The EPA is conditionally approving a revision to the Louisiana general conformity SIP revision based on the rationale elaborated in this action. The general conformity rule is applicable to all nonattainment and maintenance areas. The EPA has evaluated this SIP revision and has determined that the State has fully adopted the provisions of the Federal general conformity rules in accordance with 40 CFR Part 51 Subpart W, with one exception as noted in section II of this notice. The State has undertaken appropriate public participation and comprehensive interagency consultations during development and adoption of the rules at the local level.

The EPA is approving this SIP revision, based on the State's December 5, 1995, commitment letter and on the condition that the State will adopt and submit a revised general conformity rule which will contain the corrections detailed in this notice (see section II) within twelve months of this final approval action, but not later than September 15, 1997. If the State fails to submit a SIP revision, as committed in the letter of December 5, 1995, for correction of section 1405(B) by September 15, 1997, this conditional approval under section 110(k) will

automatically be converted to a disapproval on that date and the sanctions clock will begin. If the State does not submit a SIP, and the EPA does not approve the SIP on which the disapproval was based within 18 months of the disapproval, the EPA must impose the sanctions under section 179 of the Act.

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 12, 1996, unless adverse or critical comments concerning this action are submitted and postmarked by October 15, 1996. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received concerning this action will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective November 12, 1996.

#### IV. Administrative Requirements

##### A. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Conditional 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 impose any new requirements, the EPA certifies that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory

flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA from basing its actions concerning SIPs on such grounds.

*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

If conditional approval is converted to a disapproval under Section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, the EPA certifies that such a disapproval will not have a significant impact on a substantial number of small entities because it does not remove existing State requirements, nor does it substitute a new Federal requirement.

##### B. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, the EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this SIP or plan revision approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 176 of the Clean Air Act. The rules and commitments approved in this action may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, the EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, the EPA has determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal

governments in the aggregate or to the private sector.

##### C. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

##### D. Procedural Information

This action has been classified as a Table Three action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Ms. Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

##### E. 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 November 12, 1996. Filing a petition for reconsideration of this final rule by the Regional Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

Environmental protection, Air pollution control, Carbon monoxide, General conformity, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: July 24, 1996.

Allyn M. Davis,

Acting Regional Administrator.

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. 7401–7671q.

#### **Subpart T—Louisiana**

2. Section 52.970 is amended by adding paragraph (c)(67) to read as follows:

##### **§ 52.970 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(67) A revision to the Louisiana State Implementation Plan for General Conformity: LAC 33:III. CHAPTER 14. SUBCHAPTER A “Determining Conformity of General Federal Actions to State or Federal Implementation Plan” as adopted by the Louisiana Department of Environmental Quality Secretary and published in the Louisiana Register, Vol. 20, No. 11, 1268, November 20, 1994, was submitted by the Governor on November 10, 1994.

(i) Incorporation by reference.

(A) Louisiana General Conformity: LAC 33:III. CHAPTER 14. SUBCHAPTER A “Determining Conformity of General Federal Actions to State or Federal Implementation Plan” as adopted by the Louisiana Department of Environmental Quality Secretary and published in the Louisiana Register, Vol. 20, No. 11, 1268, November 20, 1994.

3. Section 52.994 is added to read as follows:

##### **§ 52.994 Conditional approvals.**

(a) General Conformity. A letter, dated December 5, 1995, from Assistant Secretary of the Louisiana Department of Environmental Quality to the EPA Regional Administrator, commits the State to make corrections in section 1405(B) for restoring the EPA’s authority in certain sections of the rule. Specifically, the letter states that:

The State of Louisiana submitted a State Implementation Plan (SIP) for General Conformity on November 30, 1994. The SIP review conducted by EPA General Counsel identified an inconsistency with the federal rule.

EPA’s General Counsel advised that under 40 CFR 51.859 and LAC 33:III.1411, administrative authority belongs to EPA; and

clarifies that all requirements of Section 51.859 (State’s 1411) are applicable to any analyses required in 40 CFR 51.859 (State’s LAC 33:III.1405). To clarify that requirements of Section 1411 are applicable to Section 1405 and to correct the inconsistency, the sentence cited in EPA’s review will be changed to read as follows: ‘Emissions from federal actions must be determined using methods described in Section 1411 of this Subchapter.’ Since Section 1411 gives administrative authority to EPA regional administrator, no further clarification will be needed.

The State commits to make the above rule change within one year from the Federal Register publication of final notice of conditional approval to Louisiana’s General Conformity SIP.

(b) (reserved)

[FR Doc. 96–23264 Filed 9–12–96; 8:45 am]

BILLING CODE 6560–50–P

#### **DEPARTMENT OF THE INTERIOR**

#### **Fish and Wildlife Service**

##### **50 CFR Part 17**

RIN 1018–AD96

#### **Endangered and Threatened Wildlife and Plants; Listing of the Umpqua River Cutthroat Trout in Oregon**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (FWS) is adding the Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*) to the List of Endangered and Threatened Wildlife. This measure, authorized by the Endangered Species Act of 1973 (Act), corresponds with a determination of endangered status for this species, as defined under the Act, by the National Marine Fisheries Service (NMFS) which has jurisdiction for this species.

**EFFECTIVE DATE:** September 9, 1996.

**FOR FURTHER INFORMATION CONTACT:** E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, (703/358–2171).

**SUPPLEMENTARY INFORMATION:** In accordance with Reorganization Plan No. 4 of 1970, the NMFS, National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the decisions regarding the Umpqua River cutthroat trout under the Act. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as

endangered or threatened. The FWS is responsible for the actual addition of a species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

The NMFS published its determination of endangered status for the Umpqua River cutthroat trout on August 9, 1996 (61 FR 41514). Accordingly, the FWS is now adding it to the List of Endangered and Threatened Wildlife as an endangered species. This addition is effective as of September 9, 1996, as indicated in the NMFS’s determination. Because this action of the FWS is nondiscretionary, and in view of the public comment period provided by NMFS on the proposed listing (July 8, 1994; 50 FR 35089), the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

National Environmental Policy Act

The FWS has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act, as amended. A notice outlining the FWS’s reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

#### **PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Fish, to the List of Endangered and Threatened Wildlife, to read as follows:

##### **§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*