(4) A provider who has collected and not made appropriate refund, or attempts to collect from the beneficiary, any amount in excess of the CHAMPVA-determined allowable amount may be subject to exclusion from Federal benefit programs.

(Authority: 38 U.S.C. 1713)

§ 17.273 Preauthorization.

Preauthorization or advance approval is required for any of the following:

(a) Non-emergent inpatient mental health and substance abuse care including admission of emotionally disturbed children and adolescents to residential treatment centers.

(b) All admissions to a partial hospitalization program (including alcohol rehabilitation).

(c) Outpatient mental health visits in excess of 23 per calendar year and/or more than two (2) sessions per week.

(d) Dental care.

(e) Durable medical equipment with a purchase or total rental price in excess of $300.00.

(f) Organ transplants.

(Authority: 38 U.S.C. 1713)

§ 17.274 Cost sharing.

(a) With the exception of services obtained through VA medical facilities, CHAMPVA is a cost-sharing program in which the cost of covered services is shared with the beneficiary. In addition to the beneficiary cost share, an annual (calendar year) outpatient deductible requirement ($50 per beneficiary or $100 per family) must be satisfied prior to the payment of outpatient benefits. There is no deductible for inpatient services. CHAMPVA pays the CHAMPVA-determined allowable amount less the deductible, if applicable, and less the beneficiary cost share. To provide financial protection against the impact of a long-term illness or injury, an annual cost limit or ''catastrophic cap'' has been placed on the beneficiary cost-share amount for covered services and supplies. This annual cap on cost sharing is $7,500 per CHAMPVA-eligible family. Credits to the annual catastrophic cap are limited to the applied annual deductible(s) and the beneficiary cost-share amount. Costs above the CHAMPVA-allowable amount, as well as costs associated with noncovered services are not credited to the catastrophic cap computation.

(b) If the CHAMPVA benefit payment is under $1.00, payment will not be issued. Catastrophic cap and deductible will, however, be credited.

(Authority: 38 U.S.C. 1713)

§ 17.275 Claim filing deadline.

(a) Unless an exception is granted under paragraph (b) of this section, claims for medical services and supplies must be filed with the Center no later than:

(1) One year after the date of service; or

(2) In the case of inpatient care, one year after the date of discharge; or

(3) In the case of retroactive approval for medical services/supplies, 180 days following beneficiary notification of authorization; or

(4) In the case of retroactive approval of CHAMPVA eligibility, 180 days following notification to the beneficiary of authorization for services occurring on or after the date of first eligibility.

(b) Requests for an exception to the claim filing deadline must be submitted, in writing, to the Center and include a complete explanation of the circumstances resulting in late filing along with all available supporting documentation. Each request for an exception to the claim filing deadline will be reviewed individually and considered on its own merit. The Center Director may grant exceptions to the requirements in paragraph (a) if he or she determines that there was good cause for missing the filing deadline. For example, when dual coverage exists CHAMPVA payment, if any, cannot be determined until after the primary insurance carrier has adjudicated the claim. In such circumstances an exception may be granted provided that the delay on the part of the primary insurance carrier is not attributable to the beneficiary. Delays due to provider billing procedures do not constitute a valid basis for an exception.

§ 17.276 Appeal/review process.

Notice of the initial determination regarding payment of CHAMPVA benefits will be provided to the beneficiary on a CHAMPVA Explanation of Benefits (EOB) form. The EOB form is generated by the CHAMPVA automated payment processing system. If a beneficiary disagrees with the determination concerning covered services or calculation of benefits, he or she may request reconsideration. Such requests must be submitted to the Center in writing within one year of the date of the initial determination. The request must state why the beneficiary believes the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the claimant without further consideration. After reviewing the claim and any relevant supporting documentation, a CHAMPVA benefits advisor will issue a written determination to the beneficiary that affirms, reverses or modifies the previous decision. If the beneficiary is still dissatisfied, within 90 days of the date of the decision he or she may make a written request for review by the Center Director. The Director will review the claim, and any relevant supporting documentation, and issue a decision in writing that affirms, reverses or modifies the previous decision. The decision of the Director with respect to benefit coverage and computation of benefits is final.

(Authority: 38 U.S.C. 1713)

Note to § 17.276: Denial of CHAMPVA benefits based on legal eligibility requirements may be appealed to the Board of Veterans' Appeals in accordance with 38 CFR part 20. Medical determinations are not appealable to the Board. 20 CFR 20.101.

§ 17.277 Third-party liability/Medicare cost recovery.

The Center will actively pursue third-party liability/medical care cost recovery in accordance with applicable law.

§ 17.278 Confidentiality of records.

Confidentiality of records will be maintained in accordance with 38 CFR 1.460 through 1.582.

[FR Doc. 98–22857 Filed 9–8–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM 22–1–7103a; FRL–6152–4]

Approval and Promulgation of Implementation Plan for New Mexico: General Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action conditionally approves a revision to the New Mexico State Implementation Plan (SIP) that contains regulations for implementing and enforcing the general conformity rules which the EPA promulgated on November 30, 1993 (58 FR 63214). Specifically, the general conformity rules enable the New Mexico Environment Department 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 SIPs

submitted for the nonattainment and maintenance areas within the State except for actions within the boundaries of Bernalillo County. 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 Title 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 New Mexico transportation conformity SIP under a separate action.

The EPA is approving this SIP revision under sections 110(k) and 176 of the Clean Air Act (the Act) on the condition that the agreed-to revision is made. The rationale for the approval and other information are provided in this document.

DATES: This action is effective on October 9, 1998.

ADDRESSES: Copies of the State general conformity SIP 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 Bureau, New Mexico Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87502, Telephone: (505) 827–0042.

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

Section 176(c) of the Act requires that all Federal actions conform to an applicable 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.

As required by section 176(c) of the Act, EPA published the final general conformity rules on November 30, 1993 (58 FR 63214), which 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 EPA no later than November 30, 1994.

On November 17, 1994, the Governor of New Mexico submitted a SIP revision in accordance with 40 CFR part 51, subpart W that contained the general conformity rule. The SIP revision was adopted by the New Mexico Environmental Improvement Board on November 10, 1994, after appropriate public participation and interagency consultation. The EPA could not approve this submittal because it was not consistent with the requirements of 40 CFR part 51. Subsequently, the Governor of New Mexico submitted a completely revised SIP on July 18, 1996, which revised the rule and included a completely recodified set of general conformity regulations. The revised and recodified SIP revision was adopted by the New Mexico Environmental Board on June 14, 1996.

The EPA published a direct final approval action on March 26, 1997 (62 FR 14332) for approval of the New Mexico general conformity SIP, and EPA concurrently published a proposed action on March 26, 1997 (62 FR 14382), to allow interested parties to submit comments, if any. During the public comment period, EPA received one adverse comment from FAA. Subsequently, EPA withdrew the direct final approval action on May 28, 1997 (62 FR 28806).

II. Response to Public Comments

During the public comment period, EPA received an adverse comment from FAA opposing approval of the New Mexico general conformity SIP without certain revisions to the reporting requirements of the State rule. The following paragraphs present the commenter's remarks and EPA's response.

Comment—The commenter noted that 40 CFR 51.851 allows the State to establish more stringent criteria and procedures only if they apply equally to non-Federal as well as Federal entities. The commenter contended that Section 20 NMAC 2.98.110.C of the State regulation would make the State general conformity rule more stringent than the Federal rule and, as there are not similar reporting requirements or subsequent penalties for non-Federal entities, the section should be removed.

The commenter also noted that the possible reduction of the FAA's emission budget by 50 percent may indirectly impact interstate air carrier services. Therefore, according to the commenter, Section 110.C of the proposed rules is Federally preempted by Section 41713 of Title 49 of the United States Code. Further, the commenter argued, the police powers of the State with respect to aircraft operations are also subject to Federal preemption. The commenter also argued that by its potential to reduce flights into and out of the State of New Mexico, Section 110.C of the proposed rules violates the Commerce Clause of the United States Constitution.

Response: The EPA has reviewed the FAA comments and examined provisions of the Act and general conformity rule pertaining to Section 110.C of the State rule. The EPA did not find any statutory or regulatory provisions similar to Section 110.C. In addition, a review by the State of New Mexico Environment Department indicated that the provisions of Section 110.C would not be appropriate since the State never intended their requirements to be more stringent than the Federal requirements. Subsequently, the State agreed to remove Section 110.C from its general conformity rule, making the State rule consistent with the Federal rule. This action by the State satisfactorily addresses the FAA concerns.

III. Conditions and Commitments

Review of the State rule, the public comment, and the State's evaluation of its rule indicated that Section 110.C of the State rule makes the New Mexico general conformity rule more stringent than the Federal rule. Since the State's original intention was to make the general conformity rule requirements, including the provisions of Section 110.C, applicable to the Federal actions only, EPA has determined that Section 110.C is not consistent with the Federal rule 40 CFR 51.851 that specifies more stringent criteria and procedures must

apply equally to non-Federal as well as Federal entities.

After EPA's consultation with the State, the State has agreed to correct this inconsistency by removing Section 110.C from its general conformity rule. In a letter dated April 22, 1998, from the Chief of the Air Quality Bureau, New Mexico Environment Department, to the EPA Region 6 Office, the State commits to remove Section 110.C from its general conformity rule and submit a SIP revision to EPA within twelve (12) months from the date of this notice, September 9, 1999. The EPA accepted this commitment from the State because 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 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 New Mexico's general conformity rule meets the Federal requirements except the provisions of Section 110.C as cited above. Therefore, 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 removal of Section 110.C by the date specified in this Section of this action, this conditional approval will automatically be converted to a disapproval on the date specified above and as further discussed in Section IV of this action.

IV. Final Action

The EPA is conditionally approving a revision to the New Mexico general conformity SIP revision based on the rationale elaborated in this action. The general conformity rule is applicable to all nonattainment and maintenance areas within the State, outside the boundaries of Bernalillo County. The EPA has evaluated this SIP revision and has determined that the State has fully adopted the provisions of the Federal general conformity rule in accordance with 40 CFR part 51, subpart W, with one exception as noted in Sections II and III of this action. The State has undertaken appropriate public participation and 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 April 22, 1998, 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 action (see Sections II and III) within 12 months of this final approval action, but not later than September 9, 1999. If the State fails to submit a SIP revision, as committed in the letter of April 22, 1998, for removal of Section 110.C by September 9, 1999, this conditional approval under section 110(k) of the Act 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 EPA does not approve the SIP on which the disapproval was based within 18 months of the disapproval, EPA must impose the sanctions under section 179 of the Act.

V. Administrative Requirements

A. Executive Orders (E.O.) 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning Review.'' This rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 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 rule will not have a significant impact on a substantial number of small entities because conditional approvals of SIP submittals 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, 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 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).

If the conditional approval is converted to a disapproval under section 110(k) of the Act, 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, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, I certify that this disapproval action will not have a significant economic impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

C. 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 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 this approval action does not include a Federal mandate that may result in estimated 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.

D. 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 9, 1999. 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, General conformity, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: August 14, 1998.

Jerry Clifford,

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. In § 52.1620(c) the first table is amended by adding a new entry in numerical order 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	Comments
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality				
*	*	*	*	*	*	*
Part 98	General Conformity	08/02/96	September 9, 1998	Conditional approval expires on September 9, 1999.

* * * * *

3. Section 52.1623 is added to read as follows:

§ 52.1623 Conditional approval.

(a) *General Conformity.* (1) A letter, dated April 22, 1998, from the Chief of Air Quality Bureau New Mexico Environment Department to the EPA Regional Office, commits the State to remove Section 110.C from its rule for making the State's rule consistent with Federal rule. Specifically, the letter states that:

This letter is regarding our general conformity rule, 20 NMAC 2.98—Conformity of General Federal Actions to the State Implementation Plan. We have been reviewing paragraph 110.C under Section 110—Reporting Requirements. This is the paragraph in which the Federal Aviation Administration (FAA) had submitted a comment of concern to EPA, during EPA's proposed/final approval period for our rule. This comment caused EPA to withdraw its approval. The FAA had commented that New Mexico was more stringent than EPA, since our rule does not apply to non-Federal agencies. Our analysis has determined that our inclusion of this paragraph may make our rule more stringent than EPA, and should not have been included. The paragraph had originally come from a STAPPA/ALAPCO model rule. New Mexico had never intended to be more stringent than EPA with regards to general conformity. Hence, the State commits to putting 20 NMAC 2.98 on our regulatory agenda and plan to delete this paragraph within one year from the **Federal Register** publication of final notice of conditional approval to New Mexico's general conformity SIP.

(2) If the State ultimately fails to meet its commitment to remove this section from its rule within one year of publication of this conditional approval, then EPA's conditional action will automatically convert to a final disapproval.

(b) [Reserved]

[FR Doc. 98–23330 Filed 9–8–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300704; FRL–6024–1]

RIN 2070–AB78

Acrylic Acid Terpolymer, Partial Sodium Salts; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of acrylic acid terpolymer, partial sodium salts when used as inert ingredients (dispersant) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. BF Goodrich Specialty Chemicals requested this exemption from the requirement of a tolerance under the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective September 9, 1998. Objections and requests for hearings must be received by EPA on or before November 9, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300704], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300704], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW.,