

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.

EPA has determined that the 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 pre-existing requirements under State or local law, and imposes no new Federal 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 General Accounting Office

Under section 801(a)(1)(A) added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 1996. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 7, 1996.

A. Stanley Meiburg,
Acting Regional Administrator.

Part 52 of chapter I, title 40, *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 RR—Tennessee

2. Section 52.2237 is added to read as follows:

§ 52.2237 NO_x RACT and NO_x Conformity Exemption.

Approval. EPA is approving the section 182(f) oxides of nitrogen (NO_x) reasonably available control technology (RACT) and NO_x conformity exemption request submitted by the Tennessee Department of Environment and Conservation on March 21, 1995, for the five county middle Tennessee (Nashville) ozone moderate nonattainment area. This approval exempts the area from implementing federal NO_x RACT on major sources of NO_x and exempts Tennessee from NO_x conformity. This approval does not exempt sources from any State required or State Implementation Plan (SIP) approved NO_x controls. If a violation of the ozone NAAQS occurs in the area, the exemption from the requirement of section 182(f) of the CAA in the applicable area shall not apply.

[FR Doc. 96–26875 Filed 10–22–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MT001–0001a; FRL–5635–6]

Clean Air Act Approval and Promulgation of State Implementation Plan for Montana; Revisions to the Montana Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State implementation plan (SIP) revisions submitted by the Governor of Montana on May 22, 1995. The revisions being approved in this document include: changes to the State's open burning rules which, among other things, address deficiencies and add new rules for the open burning of Christmas tree waste and open burning for commercial film or video productions; and changes to numerous State regulations to make minor administrative amendments and to update incorporation by reference citations. EPA is approving these revisions because they are consistent with the Clean Air Act (Act).

DATES: This action is effective on December 23, 1996 unless adverse

comments are received by November 22, 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 information are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; Montana Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, Montana 59620–0901; and The Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8P2–A, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, (303) 312–6445.

SUPPLEMENTARY INFORMATION: On May 22, 1995, the Governor of Montana submitted two SIP submittals which are being acted on in this document. One submittal included changes to the State's open burning rules. The second submittal included changes to numerous State regulations to make minor administrative amendments. This document evaluates the State's submittals for conformity with the corresponding Federal regulations and the requirements of the Act.

I. Procedural Analysis of the State's Submissions

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565, April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(a)(B) if a completeness determination is not made by EPA

within six months after receipt of the submission.

The State of Montana held public hearings on May 20, 1994 for the revisions to the open burning rules and on September 16, 1994 for the other revisions to entertain public comment on the SIP revisions, and the rule revisions were subsequently adopted at the respective public hearings by the State. These rule revisions were formally submitted to EPA for approval in the SIP as two separate SIP submittals on May 22, 1995.

The SIP revisions were reviewed by EPA to determine completeness shortly after their submittal, in accordance with the completeness criteria referenced above. The submittals were found to be complete, and a letter dated July 27, 1995 was forwarded to the Governor indicating the completeness of the submittals and the next steps to be taken in the processing of the SIP submittals.

II. Evaluation of the State's Submittals

A. Revisions to the Open Burning Rules

Numerous revisions were made to the State's open burning provisions in rules 16.8.1301-1310 of the Administrative Rules of Montana (ARM). Revisions were made to address EPA's January 2, 1992 disapproval of the State's previous revisions to its open burning rules (see 57 FR 23-24) and to add new provisions addressing open burning of Christmas tree waste and open burning for commercial film or video productions. In addition, the State made other revisions to its open burning rules to add public participation requirements for major open burning permits, to add more specific requirements for open burning for firefighter training, to add requirements for the issuance of conditional open burning permits, and to extend the essential agricultural burning period to be the same as prescribed wildland open burning periods and add new provisions for these types of open burning.

On January 2, 1992, EPA disapproved the State's previous SIP revision of its open burning rules because the State had relaxed its rules by allowing the open burning of creosote-treated railroad ties (which were previously prohibited from being open-burned), and the State did not adequately demonstrate that the SIP relaxation would not adversely impact attainment and/or maintenance of the particulate matter national ambient air quality standards (NAAQS). In the State's May 22, 1995 SIP revision, the State reinstated the prohibition on open burning of creosote-treated railroad ties,

thus addressing EPA's January 2, 1992 disapproval.

EPA's review of the new ARM 16.8.1309 and 16.8.1310, which allow open burning of Christmas tree waste and open burning for commercial film or video productions, found these rules to be consistent with corresponding Federal requirements. The State's rules will only allow these types of open burning if such burning will not endanger public health or welfare or cause or contribute to a violation of the NAAQS.

In a May 18, 1994 letter commenting on these regulatory changes, EPA requested that the State provide documentation that the extension of the essential agricultural open burning season will not adversely impact Montana's PM-10 nonattainment areas. The State's response indicated that the majority of essential agricultural open burning "is done in areas sufficiently removed from the PM-10 nonattainment areas" and that Montana's fall smoke management program, which is also used to regulated prescribed wildland open burning, will minimize the impact from smoke during the fall season from essential agricultural open burning. EPA concurs with the State's response and believes the State's smoke management plan will help to ensure the NAAQS are met.

EPA has reviewed the other revisions to the State's open burning rules and believes that the revisions are consistent with the requirements of the Act. Consequently, EPA is approving the State's revisions to its open burning regulations in ARM 16.8.1301-1310 submitted on May 22, 1995.

B. Other Minor Administrative Regulatory Revisions

The State's second May 22, 1995 SIP submittal being acted on in this document contained minor administrative revisions and updated the incorporation by reference citations for both Federal regulations and State procedures. EPA has reviewed the revisions and found the revisions to be consistent with the requirements of the Act. Therefore, EPA is approving the revisions to ARM 16.8.708, 16.8.946, 16.8.1120, 16.8.1429, 16.8.1702, 16.8.1802, and 16.8.2003 submitted on May 22, 1995.

III. Final Action

EPA is approving the revisions to the Montana SIP submitted by the State on May 22, 1995, which affect the State's open burning rules and make other minor administrative changes. Specifically, EPA is approving revisions to the following sections of the ARM:

16.8.1301-1310, as in effect on September 9, 1994, and 16.8.708, 16.8.946, 16.8.1120, 16.8.1429, 16.8.1702, 16.8.1802, and 16.8.2003, as in effect on October 28, 1994.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 Federal Register (59 FR 24054), this action will be effective December 23, 1996 unless, by November 22, 1996, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. 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, the public is advised that this action will be effective on November 22, 1996.

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

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 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 Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, 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, EPA may certify 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 government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air 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 Administrator certifies that it does not have a significant impact on any small entities affected. 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. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), 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 the 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.

EPA has determined that the approval action promulgated 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 pre-existing requirements under state or local law, and imposes no new Federal 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 General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 1996. 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 must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 26, 1996.

Patricia D. Hull,

Acting Regional Administrator.

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 BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(43) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(43) On May 22, 1995, the Governor of Montana submitted revisions to the plan, which included revisions to the State's open burning regulation and other minor administrative revisions.

(i) Incorporation by reference.

(A) Revisions to the Administrative Rules of Montana (ARM), 16.8.1301-1310, effective September 9, 1994; and

(B) Revisions to the ARM, 16.8.708, 16.8.946, 16.8.1120, 16.8.1429,

16.8.1702, 16.8.1802, and 16.8.2003, effective October 28, 1994.

* * * * *

[FR Doc. 96-27006 Filed 10-22-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[Region 2 Docket No. NJ12-3-157a, VI2-3-158a; FRL-5637-8]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program; New Jersey and the U.S. Virgin Islands

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is fully approving the State Implementation Plan (SIP) revisions submitted by the States of New Jersey and the U.S. Virgin Islands for the establishment of Compliance Advisory Panels under their Small Business Stationary Source Technical and Environmental Compliance Assistance Programs. The SIP revisions were submitted by New Jersey and the Virgin Islands to satisfy the Federal mandate, found in the Clean Air Act (CAA), that states create a Compliance Advisory Panel which is authorized to determine the state's effectiveness in ensuring that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this document; additional information is available at the address indicated in the ADDRESSES section.

DATES: This rule is effective on December 23, 1996 unless adverse or critical comments are received by November 22, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of all of New Jersey's and the Virgin Islands' submittals are available for inspection during normal business hours at the EPA Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. In addition, copies can be found at the New Jersey Department of Environmental Protection, Office of Permit Information and Assistance, 401 East State Street, Trenton, New Jersey, attention: Chuck McCarty; and the Virgin Islands Department of Planning and Natural Resources, Division of Environmental Protection, Wheatley Shopping Center #2, St. Thomas, VI 00802, attention: Marilyn Stapleton.