provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance, approved in accordance with AD 96–07–71, amendment 39–9562, are approved as alternative methods of compliance with this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 17, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27238 Filed 10–22–96; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–036–1–0008; FRL–5632–2]

Approval and Promulgation of Implementation Plans; Arizona—Phoenix Nonattainment Area; PM_{10}

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA today proposes to restore its approval of portions of the State implementation plan (SIP) submitted by the State of Arizona for the purpose of bringing about the attainment in the Phoenix Planning Area (PPA) of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

In April 1995, EPA approved the State's ''moderate'' area SIP as satisfying Federal requirements in the Clean Air Act for an approvable nonattainment area PM_{10} plan for the PPA. In May 1996, the United States Court of Appeals for the Ninth Circuit in *Ober* v. *EPA* vacated EPA's approval and directed the Agency to provide an opportunity for comment on issues related to the reasonably available control measure (RACM) and reasonable further progress (RFP) demonstrations in the SIP. The intent of this proposed action is to comply with the Court's opinion by providing such an opportunity.

DATES: Comments on this proposed action must be received in writing by December 23, 1996.

ADDRESSES: Comments must be submitted to Frances Wicher, U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the State's submittal and other information are contained in the docket for this rulemaking. The docket is available for inspection during normal business hours at the above Region 9 address.

FOR FURTHER INFORMATION CONTACT: Frances Wicher (A–2–1) U. S. Environmental Protection Agency, Region 9, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements

On the date of enactment of the 1990 Clean Air Act Amendments, PM_{10} areas, including the Phoenix Planning Area (PPA), meeting the conditions of section 107(d) of the Act were designated nonattainment by operation of law. Once an area is designated nonattainment, section 188 of the Act outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, all PM_{10} nonattainment areas were initially classified as ''moderate'' by operation of law. See 56 FR 11101 (March 15, 1991). A moderate area may subsequently be reclassified as ''serious'' under section 188(b)(1) of the Clean Air Act (CAA) if at any time EPA determines that the area cannot practicably attain the PM_{10} NAAQS by the applicable attainment date for moderate areas, December 31, 1994. Moreover, a moderate area must be reclassified if EPA determines within six months after the applicable attainment date that, based on actual air quality data, the area is not in attainment after that date. See section 188(b)(2) of the CAA.[1]

The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of Title I of the Act. EPA has issued a ''General Preamble'' describing EPA's preliminary views on how the Agency intends to review SIPs and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM_{10} nonattainment area SIP provisions. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

Those states containing initial moderate PM_{10} nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Pursuant to section 189(a)(1)(C) of the CAA, provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Pursuant to section 189(a)(1)(B), either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Pursuant to section 189(c), for plan revisions demonstrating attainment, quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994;[2] and

4. Pursuant to sections 172(c)(2) and 171(1), for plan revisions demonstrating impracticability, such annual incremental reductions in PM_{10} emissions as are required by part D of the Act or may reasonably be required by the Administrator for the purpose of ensuring attainment of the PM_{10} NAAQS by the applicable attainment date.

B. EPA Approval of Arizona's Moderate Area PM_{10} Plan

On July 28, 1994, EPA proposed to approve The State of Arizona's moderate area PM_{10} implementation plan revision for the PPA. 59 FR 38402. In its Notice of Proposed Rulemaking (NPRM), EPA proposed to approve, among other elements in the plan, the State's RFP and RACM demonstrations as meeting the requirements of sections 172(c)(2), 171(1), 172(c)(1), and 189(a)(1)(C) of the CAA. Based on its

[1] On May 10, 1996, EPA published a final reclassification of the PPA as a serious PM_{10} nonattainment area based on actual air quality data. See 61 FR 21372. Having been reclassified, the area is required to meet the serious area requirements in the CAA, including a demonstration that the area will attain the PM_{10} NAAQS as expeditiously as practicable but no later than December 31, 2001. See sections 188(c)(2) and 189(b).

[2] As will be seen below, the PM_{10} plan for the PPA did not demonstrate attainment by December 31, 1994, but rather included the alternative demonstration that attainment by that date is impracticable. Therefore, section 189(c) does not apply and is not discussed further in this notice.

approval of the RACM demonstration, EPA also proposed to approve, as meeting the requirements of section 189(a)(1)(B), the State's demonstration that even with the implementation of all RACM by December 10, 1993, it was impracticable for the PPA to attain the PM_{10} NAAQS by December 31, 1994.[3]

During the 30 day public comment period on the NPRM, the Arizona Center for Law in the Public Interest (ACLPI) submitted lengthy comments on many aspects of EPA's proposed approval of the State's moderate area PM_{10} plan. Among ACLPI's comments was a claim that the State had failed to submit adequate, or in some instances any, justifications, as required by the CAA and EPA policy guidance, for rejecting certain measures as RACM. In preparing a response to this comment, EPA requested that the State submit additional detail and elaboration on the State's reasoning regarding its RACM determination. The State submitted this information in December 1994 after the close of the public comment period on the NPRM in a document entitled ''Summary of Local Government Commitments to Implement Measures and Reasoned Justification for Nonimplementation for the MAG 1991 Particulate Plan for PM_{10} and Select Measures from the Clean Air Act Section 108(f)'' (MAG Supplementary document). This document is included in the docket for EPA's final action approving the moderate area plan. 60 FR 18010.

ACLPI also disputed EPA's proposed approval of the State's moderate area PM_{10} plan as meeting the CAA's RFP requirements. ACLPI claimed that the State failed to demonstrate any incremental progress in the PPA because under the plan PM_{10} emissions would actually increase from the 1989 base year to 1994, the attainment year.[4]

On April 10, 1995, having considered ACLPI's comments, EPA published a NFRM in the Federal Register approving the State's moderate area PM_{10} SIP for the PPA. 60 FR 18010. In its final action, EPA approved, among other elements of the plan, the State's RACM and RFP demonstrations, and the State's demonstration that even with the implementation of all RACM by December 10, 1993, it was not practicable for the PPA to attain the PM_{10} NAAQS by December 31, 1994.

C. Ninth Circuit Litigation

On May 1, 1995, ACLPI filed, on behalf of two Phoenix residents, a petition for review, *Ober* v. *EPA*, No. 95–70352, of EPA's approval of Arizona's moderate area PM_{10} plan for the PPA in the United States Court of Appeals for the Ninth Circuit. On May 14, 1996, the Court issued its opinion in the *Ober* case vacating EPA's approval of the State's plan.[5]

As an initial matter, the Court concluded that the State was required to address in its SIP the moderate area requirements regarding RFP, RACM and attainment or impracticability for both the 24-hour and the annual PM_{10} NAAQS. The Court found that the State's moderate area SIP improperly addressed the required demonstrations only for the annual standard.[6] The Court then considered EPA's approval of the following annual standard demonstrations in the plan.

With regard to EPA's approval of the State's RACM demonstration, the Court concluded that EPA violated the Administrative Procedure Act and the CAA by not providing an opportunity for public comment on the justifications for rejecting certain control measures as RACM that the State provided to EPA after the close of the public comment period on the Agency's proposed SIP approval action. See MAG Supplementary document.

In addition, with regard to EPA's approval of the RFP demonstration, the Court did not reach the merits of ACLPI's challenge to EPA's interpretation of RFP for moderate PM_{10} areas demonstrating that it was impracticable to attain the PM_{10} NAAQS by the statutory deadline. Instead, the Court found that the Agency improperly substituted its own recalculation of the emission reduction credit attributed to rule 310 without providing the required opportunity for public comment.

Having made the above findings, the Court remanded the case to EPA with instructions to provide an opportunity for public comment on the post-comment period justifications for rejecting certain control measures as RACM and on the RFP demonstration.

II. Today's Actions

A. RACM Demonstration

In today's action, EPA is taking comment on the expanded justifications for rejecting certain control measures as RACM that the State submitted to EPA in December 1994, following the close of the public comment period on EPA's July 1994 proposed approval of the State's moderate area PM_{10} plan. See MAG Supplementary document.

EPA is today reaffirming its analysis of the RACM demonstration in the State's moderate area PM_{10} plan as discussed in the NPRM and the NFRM for the Agency's approval action, and therefore proposes to restore its approval of these elements of the State's plan.[7]

B. RFP Demonstration

As stated above, the *Ober* Court directed EPA to take comment on the appropriate emission reduction credit attributed to Maricopa County rule 310 as it relates to the RFP demonstration in the State's moderate area PM_{10} plan. In preparing to comply with the Court's directive, the Agency reviewed both the emission reduction credits originally assigned by the State to the control measures in the plan, including rule 310, and EPA's recalculation of those credits as described in the NFRM. See 60 FR 18018. In that recalculation EPA had assumed the measures in the plan would yield emission reductions over a greater geographic area than the State had claimed. EPA has, however, concluded from its current review that the emission reduction potential of the measures cited in the NFRM was in error, and that the State's original calculation was appropriate. EPA's review and conclusions are discussed in detail in the Technical Support Document (TSD) for this notice.

In conducting the above review, it also came to the Agency's attention that

[3] The reader should refer to both the NPRM, 59 FR 38402, and the Notice of Final Rulemaking (NFRM), 60 FR 18010 (April 10, 1995), for EPA's interpretation of the certain moderate area PM_{10} requirements of the CAA and the Agency's application of these interpretations to the State's moderate area PM_{10} plan. Those notices should also be consulted for the history of the State's PM_{10} plan submittals and EPA's actions concerning them.

[4] During the Ninth Circuit litigation on EPA's approval of the plan, discussed in section I.C. of this notice, ACLPI elaborated on this claim. ACLPI maintained that EPA had erroneously and improperly recalculated the emission reduction credit assigned by the State to Maricopa County rule 310 (fugitive dust). ACLPI asserted that EPA was not entitled to calculate the control effectiveness of the rule based on the entire nonattainment area (rather than just the urban portion as the State had done). ACLPI claimed that without EPA's unwarranted inflation of the credit assigned to the rule, PM_{10} emissions in the PPA would increase in violation of the CAA's RFP requirements.

[5] The reader is referred to the text of the opinion for the Court's disposition of the range of issues raised by ACLPI in its petition. See 84 F.3d 304 (9th Cir. 1996). Today's notice addresses only a portion of that disposition.

[6] In order to remedy the failure of the State to address the required demonstrations for the 24-hour standard, the Court required EPA to in turn require the State to submit those demonstrations. Today's notice, however, addresses only those aspects of the Court's findings and conclusions with respect to the RACM, RFP and impracticability demonstrations for the annual standard.

[7] EPA intends in a future rulemaking to restore its final approval of several Maricopa County rules in the moderate area PM_{10} plan that were not challenged in the Ninth Circuit, the approval of which were nevertheless vacated by the Court's opinion.

its statements in the NFRM regarding the scope of the emission reductions required to demonstrate RFP under sections 172(c)(2) and 171(1) of the Act for plans demonstrating impracticability may be ambiguous. In order to eliminate any confusion that may have resulted from these statements, EPA is today clarifying its interpretation of the RFP requirements for such plans.

In response to ACLPI's comment on the NPRM that the plan did not demonstrate RFP from the 1989 base year to 1994 because emissions actually increased during that period, EPA in the NFRM noted the 1989 base year inventory and the projected 1994 inventory numbers. EPA then stated that ''* * * the total 1994 projected inventory after application of RACM * * * shows, consistent with EPA's guidance on demonstrating RFP, which is described in greater detail earlier in this notice [at p. 18013] * * * that the area has indeed made progress in reducing emissions from the base year total, and thus has demonstrated it has met the requirements of section 172(c)(2) for the period 1990–1994.'' 60 FR 18018, col. 2.

Elsewhere in the NFRM, in its general discussion of the issue, the Agency stated that plans demonstrating impracticability ''should show that even though the emission reductions achieved through the implementation of all RACM may not be enough to enable the area to demonstrate attainment by the moderate area deadline of December 31, 1994, such implementation has resulted in 'incremental reductions' in emissions of PM_{10} as the RFP definition in section 171(1) specifies.'' 60 FR 18013, col. 2.

EPA intended in the above NFRM discussions to interpret the RFP requirement for areas demonstrating impracticability as being met by a showing that the implementation of all RACM has resulted in incremental emission reductions below pre-implementation levels.[8] That EPA intended this interpretation is demonstrated by the discussion of the RFP issue in the Agency's brief in the *Ober* litigation. See Brief for Respondents, pp. 7–8 and 42.[9]

EPA believes the interpretation presented in the Agency's Ober brief is consistent with the statutory term ''reasonable further progress.'' RFP is defined in section 171(1) as either annual incremental reductions as are required under part D, or such reductions as the Administrator may *reasonably* require ''for the purpose of ensuring attainment of the [NAAQS] by the applicable date.'' However, as mentioned above, the PPA did not demonstrate attainment, but instead demonstrated that it was impracticable to attain the PM_{10} standard by the December 31, 1994 moderate area PM_{10} attainment deadline, even after implementation of RACM. Once EPA has determined that such an area has implemented *all reasonable* control measures that are available, and that the area still would not timely attain, there are no further reductions that would be reasonable to require ''for the purpose of ensuring attainment'' by the moderate area attainment deadline. Thus, the emissions reductions achieved by such an area through implementation of all RACM, by definition, would satisfy the requirement to demonstrate *reasonable* further progress in the period before the State must submit the additional measures needed to produce the net emissions reductions required to bring about attainment.

As discussed in the TSD for this notice, EPA has concluded that the State's original calculation of the emission reduction potential of the control measures in its moderate area PM_{10} plan demonstrates incremental PM_{10} emission reductions from the implementation of all RACM over pre-implementation levels. Therefore, EPA believes that the State has met the RFP requirements, as clarified in today's notice, of section 172(c)(2) for plans demonstrating impracticability. As a result, EPA is today proposing to restore its approval of the RFP demonstration in the State's moderate area PM_{10} plan. EPA is also today reaffirming, with the above clarification, its analysis of the RFP requirements for moderate area PM_{10} plans demonstrating impracticability as discussed in the NFRM at 60 FR 18012–13.

[8] EPA did not intend to suggest, as might be inferred from its response to ACLPI's comment, that a showing in such plans of emission reductions from 1989 (or 1990) to 1994 would be necessary to meet the RFP requirements. As stated in the quoted passage from EPA's response to ACLPI's comment, the Agency simply meant that such a showing would be consistent with EPA's guidance as set forth at 60 FR 18013. Having concluded that the State's original calculation of the emission reduction potential of the control measures in the plan is appropriate, EPA agrees with ACLPI that PM_{10} emissions increased from 1989 to 1994. EPA does not, however, agree that emissions must decrease during that period in order for the plan to meet the section 172(c)(2) RFP requirement.

[9] See also Brief for Respondents at pp. 43–44:

What the Act requires is the implementation of RACM by December 10, 1993. 42 U.S.C. 7513a(a)(1)(C). For that reason * * * EPA has stated that the incremental reductions compelled for moderate areas are those that resulted from the implementation of RACM. 60 Fed. Reg. 18013 * * *. The definition of RFP, 42 U.S.C. 7501(1), does not mandate that EPA require any additional reductions beyond what RACM itself would achieve.

C. Impracticability Demonstration

The *Ober* Court did not specifically address EPA's approval of the State's moderate area demonstration that it was impracticable for the PPA to attain the PM_{10} NAAQS by the statutory deadline. Nor did the Court direct EPA to take any action with respect to that demonstration. Nevertheless, for the reasons discussed below, EPA is today proposing to restore its approval of the State's moderate area impracticability demonstration.

As stated previously, the Ninth Circuit vacated EPA's approval of the State's moderate area PM_{10} plan in its entirety, including the State's demonstration that it was impracticable for the PPA to attain the annual PM_{10} NAAQS by the end of 1994 even with the implementation of all RACM. Clearly the validity of EPA's approval of this impracticability demonstration is dependent on an approved RACM demonstration. The approvability of the RACM demonstration depends in turn on the appropriateness of the State's justification for rejecting certain control measures as RACM. As stated above, EPA is providing an opportunity for comment on a number of these justifications and proposing to restore its approval of the RACM demonstration in today's notice.

EPA believes that because the PPA was reclassified from a moderate to a serious nonattainment area in 1996, the moderate area attainment requirements (demonstration of impracticability or attainment by no later than December 31, 1994) have been superseded by the serious area attainment requirement (attainment by no later than December 31, 2001) and are therefore now moot. Having reviewed the CAA's moderate and serious area PM_{10} attainment provisions, EPA has concluded that when a moderate PM_{10} area has been reclassified after the moderate area attainment deadline has passed and been replaced with a new deadline, the moderate area deadline no longer has any logical, practical or legal significance. Similarly, once such a reclassification has occurred, the approval status of the SIP provisions addressing the previous attainment requirements is no longer of any consequence. Thus, under this interpretation, there would be no need to restore the Agency's approval of the State's moderate area impracticability demonstration for the PPA.

However, in addition to the Ninth Circuit's remedy, addressed in today's notice, for deficiencies related to EPA's approval of the moderate area RFP and RACM demonstrations for the annual

PM_{10} standard, the Court directed EPA to require the State to address the moderate area attainment requirements for the 24-hour standard. See footnote 6. By analogy, EPA assumes that the Court expects that the moderate area attainment requirements for the annual standard must also be met.

When the Court fashioned its remedy requiring the State to address the moderate area attainment requirements for the 24-hour standard, it did so in the context of a pending proposed reclassification of the PPA to serious.[10] However, the Court believed that EPA was proposing the reclassification under section 188(b)(1) of the CAA based on the State's impracticability demonstration. 304 F.3d at 309. In fact, EPA had proposed to reclassify the area either under section 188(b)(1) or, in the alternative, under section 188(b)(2) (after the attainment deadline based on actual air quality data indicating that the area has failed to attain the PM_{10} NAAQS by the statutory deadline). See 60 FR 30046 (June 7, 1995). The area's final reclassification was based on a finding under section 188(b)(2) that the area had failed to attain the PM_{10} NAAQS because of violations of both the annual and 24-hour standards. See 61 FR 21372.

Therefore, EPA believes that, to the extent the Court concluded in fashioning its remedy that an area must continue to meet the moderate area attainment requirements after it has been reclassified to serious, the Court could not have made this judgment based on a consideration of the legal effect of a final reclassification under section 188(b)(2) on the area's pre-existing moderate area attainment requirements. Consequently, EPA believes that it is not precluded by the Court's decision from concluding that, under these circumstances, the moderate area attainment requirements for both the annual and 24 hour NAAQS have been legally superseded by the serious area attainment requirements and therefore are now moot and need not be addressed after the area's reclassification.

While EPA could have sought clarification from the Ninth Circuit in order to apply this conclusion in the context of compliance with the Court's remedies in *Ober*, the Agency does not believe that it would have been in the public interest to do so. Such a review would necessarily have occurred without benefit of a thorough briefing on the issue and in the absence of an administrative record. Thus EPA has chosen to comply with the Court's remedies regarding the moderate area attainment requirements in spite of the Agency's view that the reclassification of the PPA based on air quality rendered those requirements legally ineffective.[11] The Agency does, however, reserve its right to assert its interpretation in any challenge to EPA's implementation of the Court's remedies or in the context of other reclassifications.

III. 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 impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under subchapter I, part D of the Clean Air Act, do not create any new requirements, but simply approve requirements that a 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 CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base 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. 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 that 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 this rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimate 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, imposes no new federal requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, results from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 26, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–26574 Filed 10–22–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 083–0015b; FRL–5633–9]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which

[10] While neither the reclassification nor its effect on moderate area planning requirements was before the *Ober* Court, the Court was aware of the proposed reclassification when the case was briefed and argued. And it is clear from the opinion that the Court believed EPA was required to promulgate a final reclassification. 304 F.3d at 309–311. EPA published its final reclassification of the PPA to a serious nonattainment area on May 10, 1996, four days before the Ninth Circuit issued its *Ober* opinion. 61 FR 21372.

[11] Because EPA is not applying this interpretation in today's rulemaking, it does not constitute final agency action.