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these circumstances, the moderate area attainment requirements for both the annual and 24 hour NAAQS have been legally superseded by the serious area attainment requirements and therefore are now moot and need not be addressed after the area's reclassification.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

---

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.

concern the control of volatile organic compound (VOC) emissions from the storage and transfer of gasoline and organic liquid storage.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by November 22, 1996.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

Ventura County Air Pollution Control District, 669 County Square Drive, Second Floor, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1197).

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District Rule 463, Organic Liquid Storage, and Ventura County Air Pollution Control District Rule 70, Storage and Transfer of Gasoline, submitted to EPA on May 24, 1994 and August 10, 1995, respectively, by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 30, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–26572 Filed 10–22–96; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[MT001–0001b; FRL–5635–7]

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: Notice of proposed rulemaking.

SUMMARY: In this document, the EPA is proposing approval of revisions to the State Implementation Plan (SIP) submitted by the Governor of Montana on May 22, 1995. The revisions included; 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.

In the final rules section of this Federal Register, the EPA is acting on the State's SIP submittals in a direct final rule without prior proposal because the Agency views these submittals as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, then the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received in writing by November 22, 1996.

ADDRESSES: Written comments should be addressed to Vicki Stamper, 8P2–A, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and Montana Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper at (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule of the same title which is located in the Rules Section of this Federal Register.

Dated: September 26, 1996.

Patricia D. Hull,

Acting Regional Administrator.

[FR Doc. 96–27007 Filed 10–22–96; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[Region 2 Docket No. NJ12–3–157b, VI2–3–158b; FRL–5637–9]

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: Proposed 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. In the final rules section of this Federal Register, the EPA is approving the States' SIP revisions as a direct final rule without prior proposal