Discounts for GPL service to Japan are 3 percent off the base rates for those packages sent over 100,000 during a 12-month period. Parcels sent via the Premium Oversize service weighing less than 15 pounds but measuring more than 84 inches in length and girth combined are chargeable with a minimum rate equal to that for a 15-pound parcel.

* Weights over 44 pounds, use Premium Oversize service.

** Weights over 6 pounds, use Premium service.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–4824 Filed 2–24–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–006–FON FRL–5969–8]

Finding of Failure To Submit Required State Implementation Plans for Particulate Matter; Arizona; Phoenix PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act (Act), EPA is taking final action to find that the State of Arizona has failed to make required State Implementation Plan (SIP) submittals for the metropolitan Phoenix PM–10 nonattainment area. These submittals are the regional moderate area plan requirements for the 24-hour PM–10 standard and the serious area plan requirements for annual PM–10 standard and the regional serious area requirements for the 24-hour standard. The deadline for these submittals was December 10, 1997.

This final action triggers the 18-month time clock for mandatory application of sanctions and 2-year time clock for a federal implementation plan under the Act. This action is consistent with the Act's mechanism for assuring SIP submissions.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3901, telephone (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

A. Serious Area PM–10 Planning Requirements for the Phoenix Metropolitan Area

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the PM–10 NAAQS.[1] Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C., 7401–7671q (1991). On the date of enactment of the Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the amended Act were designated nonattainment by operation of law. These areas included all former Group I areas identified in 52 FR 29383 (August 7, 1987) and clarified in 55 FR 45799 (October 31, 1980), and any other areas violating the PM–10 NAAQS prior to January 1, 1989. The metropolitan Phoenix PM–10 nonattainment area (Phoenix area) was identified as a Group I area in the August 7, 1987, **Federal Register** notice. A **Federal Register** notice announcing all areas designated nonattainment for PM–10 at enactment of the 1990 amendments was published on March 15, 1991 (56 FR 11101). The boundaries of the Phoenix nonattainment area were set forth in a November 6, 1991, **Federal Register** notice (56 FR 56694, codified for the State of Arizona at 40 CFR 81.303).

Once an area is designated nonattainment, section 188 of the amended 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, the Phoenix area was initially classified as moderate by operation of law with an attainment date of December 31, 1994.

The Act further provides that moderate areas that the Administrator finds have failed to attain by their moderate area deadlines are reclassified to serious by operation of law, CAA section 188(b)(2). Reclassified areas are then required to submit revised SIPs to address the serious area PM–10 requirements within 18 months of the effective date of the reclassification, CAA section 189(a)(2).

On May 10, 1996, EPA published a final reclassification of the metropolitan Phoenix PM–10 nonattainment area to serious (61 FR 21372). Pursuant to section 189(b)(2), the State of Arizona was thus required to submit a serious area plan addressing both PM–10 NAAQS for the area by December 10, 1997, 18 months after the effective date of the reclassification.

These requirements, as they pertain to the Phoenix nonattainment area, include:

(a) Provisions to assure that the best available control measures (BACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of best available control technology (BACT)) for the control of PM–10 shall be implemented no later than 4 years after the area is reclassified, (CAA section 189(b)(1)(B));

(b) A demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 2001, or an alternative demonstration that attainment by that date would be impracticable and that the plan provides for attainment by the most expeditious alternative date practicable (CAA section 189(b)(1)(A)(i) and (ii)); and

(c) Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress toward attainment by December 31, 2001 (CAA section 189(c)).

B. Residual Moderate Area Planning Requirements in the Phoenix Metropolitan Area

On May 14, 1996—just days after the reclassification was published—the Court of Appeals for the Ninth Circuit found that the Phoenix *moderate* area PM–10 plan failed to address the 24-hour PM–10 standard as required by the Clean Air Act (*Ober* v. *EPA*, 84 F.3d 304 (9th Cir. 1996)). As a result, the Court mandated that EPA require ''the State to submit a separate demonstration of the implementation of all 'reasonably available control measures' targeting the 24 hour standard violations; attainment and 'reasonable further progress' for the 24 hour standard.'' 84 F.3d at 316.

[1] EPA revised the NAAQS for particulate matter on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulate with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (μg/m^3). The 24-hour PM–10 standard of 150 μg/m^3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

On July 18, 1997, EPA slightly revised both the annual and the 24-hour PM–10 standard and also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5) (62 FR 38651).

This finding applies to the outstanding obligation of the State to submit for the Phoenix metropolitan PM–10 nonattainment area a plan addressing the 24-hour and annual PM–10 standards, as originally promulgated.

Breathing particulate matter can cause significant health effects, including an increase in respiratory illness and premature death.

In order to comply with the court's order without diverting resources from the serious area planning effort, EPA—in consultation with the Arizona Department of Environmental Quality (ADEQ) and the Maricopa County Environmental Services Department (MCESD)—decided that the State would incorporate the moderate area plan elements for the 24-hour standard into the serious area plan but would split that planning effort into two related parts. Accordingly, EPA required submittal of a limited, locally-targeted plan (known as the microscale plan) meeting both the moderate and serious area requirements for the 24-hour standard by May 9, 1997 and a full regional plan meeting those requirements for both the 24-hour and annual standards by December 10, 1997. Letter from Felicia Marcus, EPA, to Russell Rhoades, ADEQ, September 18, 1996. Thus, the microscale and regional plans taken together would satisfy both the moderate area requirements mandated by the court and the serious area planning requirements for both standards.

In brief, the microscale plan was to address the 24-hour standard violations at five specific monitors in the metropolitan Phoenix area and meet the statutory RACM, BACM, attainment, and RFP requirements for moderate and serious PM–10 areas.

ADEQ submitted the *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area* (May, 1997) to EPA on May 9, 1997. On August 4, 1997 (62 FR 41856), EPA approved in part and disapproved in part the microscale plan. For a complete discussion of the microscale plan, see the proposed approval/disapproval at 62 FR 31025 (June 6, 1997).

The regional plan, representing the balance of Phoenix's serious area plan, as well as the additional moderate area elements required by Court, was due December 10, 1997, the date established by the reclassification. This plan, which was to meet the requirements in section 189(b) and (c) of the Act, needed to assure that all statutory, regulatory, and policy requirements for serious area PM–10 plans for both the annual and 24-hour standards were fully addressed. It was to include a regional analysis, based on air quality modeling, that demonstrated implementation of BACM, RACM, and additional measures as necessary to assure expeditious attainment and quantitative milestones and RFP throughout the nonattainment area. As part of this regional plan, attainment of both PM–10 standards was to be demonstrated at all monitoring sites.

C. Consequences of a Failure To Submit Finding

The Maricopa Association of Governments (MAG), ADEQ, and MCESD have been working on the regional serious area plan since the Phoenix area was reclassified in May, 1996. These efforts have included development of a regional emission inventory, regional Urban Air Quality modeling, and evaluation of candidate BACM.[2]

Notwithstanding these significant efforts by the Maricopa Association of Governments, the Maricopa County Environmental Service Department and the Arizona Department of Environmental Quality, the State has failed to meet the December 10, 1997 deadline for the required SIP submittals. EPA is therefore compelled to find that the State of Arizona has failed to make the required SIP submittals for the Phoenix area PM–10 nonattainment area.

The CAA establishes specific consequences if EPA finds that a state has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provision. Section 179(a) sets forth four findings that form the basis for application of a sanction. The first finding, that a State has failed to submit a plan required under the CAA, is the finding relevant to this rulemaking.

If Arizona has not made the required complete submittals within 18 months of the effective date of today's rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made a complete submittal 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31.[3] In addition, CAA section 110(c) provides that EPA must promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a).

The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete submittal of a plan addressing the serious area PM–10 requirements for Phoenix area and the residual moderate area planning requirements for the 24-hour standard. In addition, EPA will not promulgate a FIP if the State makes the required SIP submittals and EPA takes final action to approve the submittals within 2 years of EPA's findings (section 110(c)(1) of the Act).[4]

II. Final Action

A. Rule

EPA is making findings of failure to submit for the Phoenix PM–10 nonattainment area, due to failure of the State to submit SIP revisions addressing (1) the Clean Air Act's moderate area plan requirements for the regional aspects of the 24-hour PM–10 standard and (2) the Act's serious area plan requirements for the annual PM–10 standard and the regional aspects of the 24-hour standard.

B. Effective Date Under the Administrative Procedures Act

Because EPA is issuing this action as a rulemaking, the Administrative Procedures Act (APA) applies.

The action will be effective on the date this action is signed, February 6, 1998. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. This action concerns SIP submittals that are already overdue and the State and general public are aware of applicable provisions of the CAA relating to

[2] MAG has also worked with the cities and towns of Maricopa County to adopt measures for PM–10 control that are in addition to those adopted for the microscale plan. These measures were submitted to EPA on December 11, 1997 as a revision to the SIP and EPA found that submittal complete on February 6, 1998. See Letter, David P. Howekamp, U.S. EPA—Region 9 to Russell Rhoades, ADEQ, February 6, 1998. These measures were not intended by the State to constitute the serious area PM–10 SIP or any part of that plan and therefore their submittal does not affect the finding of failure to submit for the serious area plan. See Letter, Russell Rhoades, ADEQ to Felicia Marcus, U.S. EPA, Region 9 re: Submittal of the Particulate Matter Control Measures for the Maricopa County Nonattainment Area (dated December 1997), December 11, 1997.

[3] In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: The offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, ''Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.''

[4] EPA is already obligated to promulgate a FIP for the moderate area plan requirements by July 18, 1998. This FIP obligation arose from an incompleteness finding made on the 1991 submittal of the initial moderate area plan. Under section 179(a) of the Act, incompleteness findings also trigger both sanction and FIP clocks. While Arizona subsequently completed the submittal and turned off the sanction clock, EPA's approval of the moderate area plan was vacated in *Ober,* leaving EPA with a FIP obligation in regards to the full moderate area plan.

overdue SIPs. In addition, this action simply starts a ''clock'' that will not result in sanctions for 18 months, and that the State may ''turn off'' through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This action is a final agency action but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submittals, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 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.

As discussed in section III.C. below, findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that today's action does not have a significant impact on small entities.

C. Unfunded Mandates Act

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') signed into law on March 22, 1995, 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.

In addition, under the Unfunded Mandates Act, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed, under section 203, a small government agency plan.

EPA has determined that today's action is not a Federal mandate. The CAA provision discussed in this notice requires states to submit SIPs. This notice merely provides findings that Arizona has not met that requirement. This notice does not, by itself, require any particular action by any State, local, or tribal government, or by the private sector.

For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

D. Submission to Congress and the General Accounting Office

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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 6, 1998. 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. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

F. Judicial Review

Under CAA Section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the appropriate circuit by April 27, 1998. 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) of the Act.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 6, 1998.

Amy K. Zimpfer,

Acting, Regional Administrator, Region IX.

[FR Doc. 98–4821 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300615; FRL–5770–8]
RIN 2070–AB78

Norflurazon; Extension of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends time-limited tolerances for residues of the herbicide norflurazon and its desmethyl metabolite in or on bermudagrass forage and hay at 2 and 3 parts per million (ppm), respectively, for an additional 1-year period, to November 30, 1999. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on bermudagrass for control of grassy weeds. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA)