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Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(84) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(84) The Missouri Department of Natural Resources submitted rule revisions pertaining to rotogravure and flexographic printing facilities in Kansas City, Missouri, and St. Louis, Missouri; and an amendment to the sampling methods rule which adds a compliance test method for the capture efficiency of air pollution control devices. These amendments were submitted September 16 and September 23, 1992.

(i) Incorporation by reference.

(A) Revised regulations 10 CSR 10-2.290 (except section (2) Definitions and section (6) Compliance Dates) and 10 CSR 10-5.340 (except section (2) Definitions and section (6) Compliance Dates), both entitled Control of Emissions from Rotogravure and Flexographic Printing Facilities, effective February 6, 1992.

(B) Revised regulation 10 CSR 10-6.030 (section (20)), effective April 9, 1992.

[FR Doc. 93-20924 Filed 8-27-93; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 52

[NE-4-1-5861; FRL-4694-6]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves the State Implementation Plan (SIP) revision submitted by the state of Nebraska for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBAP). The revision was submitted by the state to satisfy the federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA.

EFFECTIVE DATE: This action will be effective October 29, 1993, unless notice is received by September 29, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Nebraska Department of Environmental Quality, P.O. Box 98922, Statehouse Station, Lincoln, Nebraska 68509-8922; and Jerry Kurtzweg (ANR-443), Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551-7606.

SUPPLEMENTARY INFORMATION:**I. Background**

Implementation of the provisions of the CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt an SBAP and submit this program as a revision to the federally approved SIP. In addition, the CAA directs EPA to oversee these small business assistance programs and report to Congress on their implementation.

The requirements for establishing a program are set out in section 507 of the CAA. In February 1992, EPA issued Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments, in order to delineate the federal and state roles in meeting the new statutory provisions and as a tool to provide further guidance to the states on submitting acceptable SIP revisions.

Nebraska's SBAP plan was submitted to EPA on November 16, 1992, in order to satisfy the requirements of section 507. In order to gain full approval, the state submittal must, at a minimum, contain commitments and schedules to fully implement the following elements: (1) The establishment of an SBAP to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis**1. SBAP**

Section 507(a) sets forth seven requirements that the state must meet to have an approvable SBAP. Six of these requirements are discussed in this section; the seventh requirement is discussed in the next section. The first requirement is to establish adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act.

In Phase I of the plan, the Public Advocate (Ombudsman) will coordinate with the Nebraska Department of Environmental Quality (NDEQ) staff which includes the air program staff, waste minimization program staff, the emergency response coordinator, and the Title III coordinator to define their roles for collecting and developing information. (The emergency response coordinator was designated under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*, to provide information to the public relating to emergency planning and response.) The Public Advocate will also work with staff from the Nebraska Library Commission, the Nebraska Department of Economic Development, the University of Nebraska, and the Nebraska Industrial Development Association to develop the reactive and proactive information dissemination mechanisms listed in the SBAP plan.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution.

NDEQ has a previously established Waste Minimization Program. This program has assisted all Nebraska businesses in maximizing opportunities for pollution prevention by providing examples from other facilities, alternative chemicals which are less toxic, technical literature, and case studies to interested sources. According to the plan, the Waste Minimization coordinators from this program will provide their services to eligible small businesses which are referred by the Public Advocate. The Emergency Response and Title III coordinators are also located within NDEQ, and are identified as resources which will be

available to the SBAP to provide accidental release assistance to eligible small businesses.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner.

Nebraska has committed to meet this requirement by July 1993. According to the Plan, the Public Advocate will coordinate resources from many different entities including NDEQ, private consultants, the University of Nebraska, the Nebraska Technical Information Center, and local air pollution control agencies. Individuals and/or resources from each of these agencies will be used to form the small business compliance and technical assistance program.

The fourth requirement is to develop adequate mechanisms to ensure that small business stationary sources receive notice of their rights under the Act, in such manner and form as to ensure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act.

A statewide emission inventory will be used to develop a list of potential SBAP eligible sources. The state has committed to reach these sources through the use of a reactive and proactive information dissemination program. This program will utilize SBAP staff to respond to telephone inquiries, environmental audits, electronic bulletin boards, newsletters, video networks, chambers of commerce, trade associations, and media marketing. This information transfer method will be in place by July 1993.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the state, for providing audits of the operations of such sources to determine compliance with the Act.

According to the Plan, the state has committed to make NDEQ staff available to provide SBAP eligible sources with advice. Also, the state will coordinate with the Nebraska Society of Professional Engineers and the Nebraska Society of Civil Engineers to develop a comprehensive list of engineers who are available and who have the expertise to advise small business stationary sources of their rights, obligations, and compliance posture under the CAA. The

referral list is scheduled to be completed by July 1993.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (1) Any work practice or technological method of compliance; or (2) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source.

The state has committed to developing these procedures within the purview of its operating permit program regulations.

2. Ombudsman

Section 507(a)(3) requires the designation of a state office to serve as the Ombudsman for small business stationary sources.

The state has met this requirement by hiring a Public Advocate in November 1992. The Public Advocate is located in the office of the NDEQ Deputy Director. The position has statutory authority to conduct the duties required of the Ombudsman in the CAA. These duties include: (1) Rendering advisory opinions concerning the effectiveness of the SBAP; (2) making periodic reports to Congress regarding the SBAP compliance with the Paper Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act; and (3) reviewing information for the small businesses to ensure that it is understandable by the layperson. A specific list of other Public Advocate duties is listed in Section 1 of the plan and their implementation is described in Section 2 of the plan.

3. CAP

Section 507(e) requires the state to establish a CAP that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the state legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program.

The state has committed to meet this requirement. Because the Nebraska constitution provides for a nonpartisan, unicameral legislature, there are no minority and majority parties. Therefore, the panel members will be selected by the unicameral legislature as a whole. The CAP appointments should be completed by July 1993. EPA believes that the process for designation

by the legislature meets the intent of section 507(e).

In addition to establishing the minimum membership of the CAP, the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered, and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act; (3) to review and ensure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP.

(Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with the three federal statutes listed in point number 2 of the previous paragraph. However, since state agencies are not required to comply with them, EPA believes that the state PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these federal statutes.)

The state submittal meets these requirements. The Plan lists CAP duties that include providing advisory opinions, reporting on SBAP compliance with statutory requirements, and annual reporting on the effectiveness of the SBAP.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

- a. Is owned or operated by a person who employs 100 or fewer individuals;
- b. Is a small business concern as defined in the Small Business Act;
- c. Is not a major stationary source;
- d. Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and
- e. Emits less than 75 tpy of all regulated pollutants.

According to the Plan, the SBAP will use numerous proactive mechanisms to transfer compliance information to Nebraska small businesses. (See the "fourth requirement" under Section II.1 of this notice.) The Public Advocate will develop a tracking system which quantifies the number of eligible businesses which request assistance from the SBAP via the established phone line. Source eligibility will be determined using the criteria in section 507(c)(1) of the CAA.

The state of Nebraska has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C),

(D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants.

The state has also provided for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator, and after providing notice and opportunity for public comment, of any category or subcategory of sources that the state determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

III. This Action

In this action, EPA is approving the SIP revision submitted by the state of Nebraska. The state of Nebraska has submitted a SIP revision implementing each of the program elements required by section 507 of the CAA. NDEQ had selected a Small Business Public Advocate (Ombudsman) at the time of the submission of this program to EPA. This Public Advocate is currently implementing the program schedule to develop the full program. The CAP will be selected in June 1993 and will develop the first annual review of the SBAP effectiveness by December 1993. Coordination with each of the agencies involved in staffing the SBAP has already taken place. The establishment of the SBAP will be fully completed by July 1993. EPA is therefore approving this submittal.

EPA Action

In this notice, EPA is approving a state program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. This program does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

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 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 CAA 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, EPA 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 regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA 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)).

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

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 the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 1993. 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).)

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective October 29, 1993, unless, by September 29, 1993, notice is received that adverse or critical comments will be submitted.

If such notice is received this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 29, 1993.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations.

Dated: August 2, 1993.

William W. Rice,
Acting Regional Administrator.

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. 7401-7671q.

Subpart CC—Nebraska

2. Section 52.1420 is amended by adding paragraph (c)(40) to read as follows:

§52.1420 Identification of plan.

(c) * * *

(40) The Nebraska Department of Environmental Quality submitted the Small Business Assistance program State Implementation Plan revision on November 12, 1992.

(i) Incorporation by reference.

(A) Revision to the Nebraska State Implementation Plan for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program was adopted by the state of Nebraska on November 12, 1992, and became effective on the same date.

[FR Doc. 93-20925 Filed 8-27-93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[TX-18-1-5692; FRL-4691-3]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan Correcting Sulfur Dioxide Enforceability Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.