

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any State Implementation Plan. Each request for revision to the State Implementation Plan 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 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 November 26, 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 of action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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 § 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, I certify 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).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 6, 1993.

Donald Guinyard,
Acting Regional Administrator.

Part 52 of 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 B—Alabama

2. Section 52.50 is amended by adding paragraphs (c) (56) and (57) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(56) Revisions to the VOC portion of the Alabama SIP were submitted on April 20, 1987, November 7, 1990, May 22, 1991, and October 4, 1991, and July 5, 1991 by the State of Alabama. These revisions were adopted on April 15, 1987; October 10, 1990; November 14, 1990 and May 8, 1991; September 18, 1991 respectively by the Jefferson County Board of Health.

(i) Incorporation by reference.

(A) Jefferson County Department of Health Air Pollution Control Program Rules and Regulations, Chapter 8 (Control of VOC Emissions) and Chapter 1 (Definitions) effective April 8, 1987.

(1) Chapter 1—General Provisions: Section 1.3

(2) Chapter 8—Control of Volatile Organic Compound (VOC) Emissions, except for 8.16.13.

(ii) Other material—none.

(57) Revisions to Chapters 335-3-1 and 335-3-6 of the Alabama Department of Environmental Management Administrative Code which were submitted on October 19, 1989 and on July 5, 1991 and adopted into the Alabama Department of Environmental Management Administrative Code on August 16, 1989 and June 26, 1991.

(i) Incorporation by reference.

(A) Amendments to the Alabama regulations 335-3-1-.02, 335-3-6-.02(1); 335-3-6-.03(1); 335-3-6-.24(1); 335-3-6-.26; 335-3-6-.27; 335-3-6-.28; 335-3-6-.29; 335-3-6-.30; 335-3-6-.31; 335-3-6-.32; 335-3-6-.33; 335-3-6-.34; 335-3-6-.35; 335-3-6-.36; 335-3-6-.37 with the exception of Subsection 335-3-6-.37(10)(a); 335-3-6-.38; 335-3-6-.39; 335-3-6-40; 335-3-6-.41; 335-3-6-.42; 335-3-6-43; 335-3-6-44; 335-3-6-45; 335-3-6-.46; 335-3-6-.47; 335-3-6-.49; 335-3-6-.51; 335-3-6-.53 effective July 31, 1991.

(ii) Other material—None.

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[FR Doc. 93-23520 Filed 9-24-93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[IA-9-1-5859; FRL-4734-5]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves the State Implementation Plan (SIP) revision submitted by the state of Iowa 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 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 DATES: This action will be effective November 26, 1993 unless notice is received by October 27, 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; and the Iowa Department of Natural Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319; and Jerry Kurtzweg (ANR-433), Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser (913) 551-7603.

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 (NAAQS) 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 an SBAP are set out in section 507 of Title V 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.

The state of Iowa has submitted an SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the state submittal must provide for each of the following program 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 six requirements (a seventh requirement, establishment of an Ombudsman office, is discussed in the next section) that the state must meet to have an approvable SBAP. 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. The state has met this requirement. The Iowa SBAP will be handled by the University of Northern Iowa (UNI) with staff from the Iowa Waste Reduction Center (IWRC). The IWRC will use a variety of information and communication sources, including a toll-free number, trade/industry presentations, publishing a quarterly newsletter, conducting workshops, and providing both brief and detailed assistance as appropriate.

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. The state has met this requirement. Pollution prevention assistance will be provided by the IWRC and the Program for Toxic Air Pollutant Studies, also housed at the UNI. Accidental release detection and prevention assistance will be provided by the IWRC at UNI. Outreach methods will include all of the methods mentioned in the preceding paragraph.

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. The state has met this requirement. This assistance will be provided by the IWRC with additional technical assistance provided by the air program staff of the Iowa Department of Natural Resources (IDNR).

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. The state has met this requirement. The notice of rights will be provided by IWRC through a reactive and proactive information dissemination program involving brief assistance contacts, availability of a toll-free number, and through presentations to trade/industry groups.

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. The state has met this requirement. The IWRC will be responsible for this activity.

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

met this requirement. The IDNR, with assistance from the IWRC, will be responsible for this activity.

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 committed to meet this requirement. A state agency, possibly the existing State Ombudsman, will be designated the Ombudsman or State Liaison for small business assistance. The agency will be outside the IDNR but will have experience in the environmental field and in representing small businesses. The head of the Agency will have direct access to the Governor, the Director of the IDNR, and the Attorney General. An interagency agreement between the selected agency and the IDNR will be entered, and renewed annually, to set forth the relationship between the agencies and their respective responsibilities. The State Ombudsman will be funded initially from the temporary air toxics fee collected by the IDNR, and then by the operating permit fee. The State Ombudsman functions will be implemented prior to November 15, 1994.

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 met this requirement by committing that the makeup of the panel will be consistent with the requirements 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. The state has met these requirements by committing the CAP to perform these functions.

Legislative authority for the CAP was obtained during the 1993 legislative session and is contained in House Bill 331, Section 7, and is promulgated in Iowa Code 455B.150. The CAP will be funded in the same manner as the State Ombudsman.

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.

The state of Iowa has established a mechanism for ascertaining the eligibility of a source to receive assistance under the SBAP, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA. The staff of the IWRC will make eligibility determinations to the best of its ability, based on information provided by the sources and through site visits and direct contacts. Number of employees will be the primary criteria for eligibility determination. Emissions information is often not available for small sources, so this will be a secondary criteria. Outreach will be targeted only to eligible sources to minimize assistance requests from noneligible sources.

The state of Iowa 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 by providing for a petition process for such sources.

The state of Iowa has elected to not provide for exclusion from the small business stationary source definition 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. Summary

In this action, EPA is approving the SIP revision submitted by the state of Iowa. The state of Iowa has submitted an SIP revision implementing or committing to implement each of the required SBAP elements required by section 507 of the CAA. The IDNR has selected the IWRC at the UNI to implement the small business stationary source technical and environmental compliance assistance program effective

August 1993. The Ombudsman (State Liaison) will be established within an existing state agency and will be functioning by November 15, 1994. The CAP will be established by November 15, 1994. EPA is therefore approving this submittal.

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.

EPA is approving a state program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved 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.

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.

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 November 26, 1993 unless by October 27, 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 November 26, 1993.

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 November 26, 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).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations.

Dated: September 7, 1993.

Susan C. Gordon,

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 Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(58) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(58) A plan for implementation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program was submitted by the Iowa Department of Natural Resources as a revision to the Iowa SIP on December 22, 1992.

(i) Incorporation by reference.

(A) Revisions to the Iowa State Implementation Plan for the Small Business Stationary Source Technical and Environmental Compliance

Assistance Program dated December 1992.
[FR Doc. 93-23521 Filed 9-24-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 52

[CO19-1-5571; FRL-4735-3]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; New Source Review and Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: In this document, EPA is approving revisions to the State of Colorado's regulations for new source review (NSR) and prevention of significant deterioration (PSD) permitting, which were submitted by the Governor as a revision to the State Implementation Plan (SIP) on April 9, 1992. Specifically, EPA is approving revisions to the Common Provisions Regulation and Regulation No. 3. These revisions were primarily made to address outstanding deficiencies in the State's NSR and PSD permitting programs. Other minor revisions were also included in this submittal. EPA is approving these revisions because they provide for consistency with the corresponding Federal requirements. EPA is also deleting a disapproval of the State provision that previously allowed sources greater than 6 months to comply with its permit, since the State deleted this provision in the April 1992 submittal.

EFFECTIVE DATES: This action will become effective on November 26, 1993, unless notice is received by October 27, 1993, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State submittal for this action are available for public inspection during normal business hours at the following locations:

Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466.

Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530.

Jerry Kurtzweg, ANR 443, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART-AP, U.S.

Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466, (303) 293-1765.

SUPPLEMENTARY INFORMATION:

I. Background

EPA has previously identified many deficiencies in the State's NSR and PSD permitting regulations. On June 28, 1985, EPA disapproved certain provisions in the State's NSR rules (see 50 FR 26734), and on February 13, 1987, EPA disapproved specific provisions in the State's PSD rules (see 52 FR 4622). In addition, after completing a thorough evaluation of the State's NSR and PSD regulations, EPA notified the State on February 17, 1988 of various other deficiencies in Regulation No. 3 and the Common Provisions Regulation.

On May 26, 1988, EPA issued a SIP call to the State due to the failure of many areas to attain the National Ambient Air Quality Standards (NAAQS) for ozone and carbon monoxide. Pursuant to the SIP call, EPA required the State to correct all of the deficiencies in its PSD and NSR permitting rules.

The State subsequently adopted some of the required NSR and PSD rule revisions on August 17, 1988. These revisions were submitted to EPA for approval in the SIP on November 17, 1988. However, EPA found in its review of the State submittal that many of the previously identified deficiencies had not been corrected.

Thus, on March 26, 1991, EPA again notified the State of all outstanding deficiencies and disapprovals in its NSR and PSD regulations and required that the State provide EPA with a commitment and a schedule for correcting these deficiencies. On April 29, 1991, Colorado responded with a list of the deficiencies that the Air Quality Control Commission (AQCC) had the existing authority to address and a list of deficiencies that would require changes in the State statute before the State regulations could be revised. The State committed in that letter to adopt the revisions for which they had the existing authority to correct by October of 1991. The State also committed to present the statutory revisions necessary to correct the remaining NSR and PSD deficiencies to the Colorado legislature in January of 1992 and to revise the regulations subsequent to the enactment of the statutory revisions. EPA subsequently approved the November 1988 revisions on June 17, 1992 (57 FR 27000), based on the State's April 29, 1991 letter of commitments.

On October 17, 1991, the State adopted the revisions to its NSR and

PSD rules for which the State had the existing authority to correct. In addition, the State adopted other revisions to its NSR and PSD rules to provide for consistency with the corresponding Federal NSR and PSD rules and within the State regulation itself, as well as to make other minor changes. The Governor of Colorado subsequently submitted the revisions to EPA for approval on April 9, 1992.

The State also enacted legislation in August of 1992 which, among other things, addressed the remaining NSR and PSD statutory deficiencies. Subsequently, the State adopted regulatory revisions addressing the remaining deficiencies on November 19, 1992 and submitted those revisions, along with other revisions necessary to bring the State's NSR regulations up-to-date with the amended Clean Air Act (Act), on January 14, 1993. EPA will be taking action on this submittal separately.

II. Evaluation of Submittal

EPA initially reviewed the State's submittal for conformance with the completeness criteria in 40 CFR part 51, appendix V. After requesting and receiving additional information from the State, EPA determined that the submittal was administratively and technically complete on June 19, 1992.

EPA evaluated the State's submittal against its April 29, 1991 letter of commitments and found that the State had adequately corrected all of the deficiencies it had the existing authority to address, consistent with its commitments.

The revisions included correction of a deficiency which EPA had previously disapproved at 40 CFR 52.329(a)(3). Specifically, the State's regulations previously allowed a source more than six months to comply with the terms of its permit. This provision has been deleted from the State's regulations, and EPA is therefore deleting its disapproval of this provision in 40 CFR part 52.

The State's revisions also addressed one of the amended NSR provisions in section 173 of the Act. The 1977 Act required new and modified major stationary sources proposing to locate in ozone and carbon monoxide nonattainment areas to complete an alternative siting analysis to demonstrate that the benefits of the proposed source significantly outweighed the environmental and social costs that could occur as a result of its location in a nonattainment area. The 1990 Act amended this provision to require alternative siting analyses for new and modified major stationary sources proposing to locate in any