

the extent it includes this kind of records, the OIG Investigative Records system of records is exempt from the following sections of 552a of Title 5 U.S.C.: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g), as well as from the corresponding regulatory subsections.

Section (k)(2) (Title 5 U.S.C. 552a(k)(2)) permits exemption from certain requirements if the system consists of investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2); Provided however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source should be held in confidence. Accordingly, to the extent that it includes these kinds of records, this system of records is also exempt under Section (k)(2) from the following sections of 552a of Title 5 U.S.C.: (c)(3);(d); (e)(1); (e)(4)(G), (H), and (I); and (f), as well as from the corresponding regulatory subsections. This rule, amending 12 CFR 792.34, makes NCUA's regulations consistent with those of the majority of agencies with statutory IG's.

Summary of Comments and Discussion of Issues

The agency received no comments on its proposed rule.

Overview of Final Rule

The final rule is the same as the proposed rule (See 60 FR 18036, April 10, 1995). Two Privacy Act exemptions, 5 U.S.C. 552 (j)(2) and 5 U.S.C. 552a(k)(2) were proposed as discussed above.

Regulatory Procedures

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NCUA certifies that this rule does not have a significant economic impact on a substantial number of small entities. The amendments to 12 CFR are procedural in nature and will aid an NCUA office to perform its criminal law enforcement function.

Paperwork Reduction Act

These amendments contain no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Executive Order 12612

This amendment to NCUA's systems of record notice does not affect state regulation of credit unions.

List of Subjects in 12 CFR Part 792

Criminal penalties, Freedom of Information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

By the National Credit Union Administration Board on June 12, 1995.

Becky Baker,

Secretary of the Board.

Accordingly, the proposed rule adding two new Privacy Act exemptions to the Office of Inspector General system of investigative records to 12 CFR part 792, is adopted by the NCUA Board as a final rule as follows:

PART 792—[AMENDED]

Subpart B—The Privacy Act

1. The authority citation for part 792 is revised to read as follows:

Authority: 12 U.S.C. 1766(a) and 1789(a)(7); 5 U.S.C. App. 3. Subpart B is also issued under 5 U.S.C. 552a.

2. In § 792.34, a new paragraph (b)(3) is added to read as follows:

§ 792.34 Exemptions.

* * * * *

(b) * * *

(3) System NCUA-20, entitled, "Office of Inspector General (OIG) Investigative Records," consists of OIG records of closed and pending investigations of individuals alleged to have been involved in criminal violations. The records in this system are exempted pursuant to Sections (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), from sections (c)(3); (d); (e)(1); (e)(4)(G); (e)(4)(H); (e)(4)(I); and (f). The records in this system are also exempted pursuant to Section (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), from sections (c)(3); (c)(4); (d); (e)(1); (e)(2); (e)(3); and (g).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY-67-1-6130a; FRL-5192-3]

Approval and Promulgation of Implementation Plans; Kentucky: Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through the Kentucky Natural Resources and Environmental Protection Cabinet for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), which was implemented by November 15, 1994. This implementation plan was submitted by the Commonwealth on November 13, 1992, to satisfy the federal mandate to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Clean Air Act as amended in 1990 (CAA).

DATES: This action will be effective August 18, 1995 unless notice is received July 19, 1995 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: Written comments should be addressed to: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by the Commonwealth of Kentucky may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Kentucky Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is (404)347-3555 extension 4195.

SUPPLEMENTARY INFORMATION:

Implementation of the CAA will require small businesses to comply with specific regulations in order for areas to attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a PROGRAM, and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the EPA to oversee the small business assistance program and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA and the EPA guidance document *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*. In order to gain full approval, the state submittal must provide for each of the following PROGRAM elements: (1) the establishment of a Small Business Assistance Program 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. The plan must also determine the eligibility of small business stationary sources for assistance in the PROGRAM. The plan includes the duties, funding and schedule of implementation for the three PROGRAM components.

Section 507 (a) and (e) of the CAA set forth requirements the State must meet to have an approvable PROGRAM. The Commonwealth of Kentucky has addressed these requirements and established a PROGRAM as described below.

1. Small Business Assistance Program (SBAP)

Kentucky has established a mechanism to implement the following six requirements set forth in section 507 of title V of the CAA:

A. The establishment of 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 comply with the CAA;

B. The establishment of 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;

C. The development of a compliance and technical assistance program for small business stationary sources which assist small businesses in determining applicable permit requirements under the CAA in a timely and efficient manner;

D. The development of adequate mechanisms to assure that small business stationary sources receive notice of their rights under the CAA in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the CAA;

E. The development of adequate mechanisms for informing small business stationary sources of their obligations under the CAA, 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 CAA; and

F. The development of procedures for consideration of requests from a small business stationary source for modification of (A) any work practice or technological method of compliance, or (B) 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 Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet has charged the Kentucky Division for Air Quality with the responsibility of implementing the Small Business Assistance Program (SBAP). The division will contract several of the assistance activities with the University of Kentucky. The Division has identified specific employees to serve as contact points between the University, other Division programs, the office of the ombudsman, and the Compliance Advisory Panel. The Division assures that the SBAP will have computerized access to EPA sponsored electronic bulletin boards and hotlines such as EPA's Control

Technology Center, Office of Pollution Prevention, and Technology Transfer Network.

The Division will provide information concerning compliance methods and technologies for small business stationary sources to operators and owners of small businesses. This will be accomplished through cooperation and interaction with the Kentucky Economic Development Cabinet, the Chamber of Commerce, various trade associations, and other appropriate groups. An information clearinghouse will be established to provide information concerning pollution prevention and/or accidental release detection and prevention programs which include information regarding alternative technologies, process changes, products, and methods of operation that reduce air pollution. Small businesses will be able to access information regarding their rights under the CAA, permitting procedures, applicable fees, when and where to apply for permits, enforcement processes, etc.

The Division is responsible for maintaining a Toll-Free hotline accessible to small businesses during normal business hours and will develop easily understood brochures describing rights and obligations under the CAA and new regulatory requirements and developments which might affect a small source. In addition, the SBAP will distribute information to small businesses through industry groups, trade associations, local chambers of commerce, and other organizations involved with small businesses. An on-site audit program will be developed in cooperation with the University of Kentucky to be utilized at the request of sources to evaluate work practices, compliance monitoring procedures and record keeping procedures. The Division will also develop procedures for consideration of requests from a source with regards to modification of work practices, compliance methods or implementation schedules.

2. Ombudsman

Section 507(a)(3) of the CAA requires the designation of a state office to serve as the Ombudsman for small business stationary sources. Kentucky has appointed a Small Business Ombudsman and established the Office of the Ombudsman in the Secretary's Office of the Natural Resources and Environmental Protection Cabinet. The Ombudsman will serve as an advocate to represent the interests of small businesses as they come under the regulation of the CAA. The Ombudsman's position was established in the Secretary's office in order to

allow the Ombudsman to have direct access to the Secretary, the Governor's office, and other agencies within state government.

3. Compliance Advisory Panel

Section 507(e) of the CAA requires the state to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses. Four members will be selected by the state legislature who are owners, or represent owners, of small businesses; the majority and minority leadership in both the house and the senate shall each appoint one member. One member will be selected by the head of the agency in charge of the Air Pollution Permit Program. Kentucky chose to establish a nine member CAP with a membership consistent with the aforementioned CAA requirements with the following modification: the Secretary of the Natural Resources and Environmental Protection Cabinet shall select two members instead of one and the Secretary of the Economic Development Cabinet shall select one panel member to represent that agency. The SBAP will serve as the secretariat to the CAP in the development and dissemination of reports, advisory opinions, and other information.

The duties of the CAP include: providing for ensuring the overall effectiveness of the PROGRAM; rendering advisory opinions regarding the effectiveness of the state PROGRAM, the difficulties encountered, and the degree and severity of enforcement; reviewing information for small business stationary air pollution sources to assure such information is understandable by the layperson; and to make periodic reports to the Administrator of the Environmental Protection Agency in accordance with the requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act.

4. Source Eligibility

Kentucky has incorporated section 507(c)(1) and defined a Small Business Stationary Source as a source that:

- (1) Is owned or operated by a person who employs 100 or fewer individuals;
- (2) is a small business concern as defined in the Small Business Act;
- (3) is not a major stationary source as defined in Titles I and III of the CAA;
- (4) emits less than 50 tons per year (tpy) of any regulated pollutant; and
- (5) emits less than 75 tpy of all regulated pollutants.

Kentucky has established the following mechanisms as required by section 507: (1) A process for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c) (1) of the CAA; (2) A process 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; and (3) A process 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 Department determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

Final Action

In this action, EPA is approving the PROGRAM SIP revision submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective August 18, 1995 unless, within 30 days of its publication, adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 18, 1995.

Under Section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 18, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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, 42 U.S.C. 7607 (b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a 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.

By today's action, the U.S. EPA is approving a State program created for the purpose of assisting small business stationary sources in complying with existing statutory and regulatory requirements. The program being approved today does not impose any new regulatory burden on small business stationary sources; it is a program under which small business stationary sources may elect to take advantage of assistance provided by the State. Therefore, because the U.S. 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.

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. Environmental Protection Agency, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Sections 7410(a)(2) and 7410(k).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Small business stationary source technical and environmental assistance program.

Dated: April 10, 1995.

Patrick M. Tobin,
Acting Regional Administrator.

Part 52 of chapter I, title 40, *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 S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(71) to read as follows:

§ 52.920 Identification of plan.

* * * *

(c) * * *

(71) The Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet submitted revisions to the Kentucky State Implementation Plan on January 15, 1993. These revisions address the requirements of section 507 of title V of the CAA and establish the Small Business Stationary Source Technical and Environmental Assistance Program (PROGRAM).

(i) Incorporation by reference.

(A) Revision to the Kentucky State Implementation Plan to incorporate document titled "Kentucky Small Business Stationary Source Technical Environmental Assistance Program" which was approved by the Kentucky Natural Resources and Environmental Protection Cabinet effective on July 15, 1993.

(ii) Additional Material. None.

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40 CFR Part 52

[TX-37-1-6323a; FRL-5161-9]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Alternative Emission Control Plan For Shell Oil Company, Deer Park, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, the EPA is approving the alternative emission reduction (bubble) plan for the Shell Oil Company's Deer Park manufacturing complex as a revision to the Texas State Implementation Plan (SIP). The bubble plan uses the emission reduction credit (ERC) from volatile organic compound (VOC) reductions at an analyzer vent in

lieu of controlling VOC emissions from three vacuum vents. The bubble plan was reviewed for consistency with the EPA's Emissions Trading Policy Statement (ETPS) published in the **Federal Register** on December 4, 1986.

DATES: This action will become effective on August 18, 1995 unless adverse or critical comments are received by July 19, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Guy Donaldson, Acting Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, TX 75202-2733.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, S.W., Washington, DC 20460. Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Leila Yim Surratt or Mr. Herb Sherrow, Planning Section (6T-AP), Air Programs Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7214.

SUPPLEMENTARY INFORMATION:

I. Background

On July 26, 1993, the Governor of Texas submitted a request to revise the Texas SIP to include an alternative emission reduction plan for the Shell Oil Manufacturing Complex located in Deer Park, Texas.

Due to VOC Reasonably Available Control Technology (RACT) fix-up changes required by the 1990 Clean Air Act (CAA), the Texas Air Control Board (TACB), which is now known as the Texas Natural Resource Conservation Commission, adopted revisions to its Regulation V on May 10, 1991, eliminating the exemption of sources with emissions of less than 100 pounds per day from RACT requirements. As a result of this action, Shell was required to install a 90 percent control technology on three vacuum vents. These vents emit a total of 36 pounds of VOC per year (0.018 tons per year (TPY)). The vast majority of the vent

stream emissions are composed of steam and air. Instead of controlling emissions from these three vents, Shell proposed to use an emission reduction from an analyzer vent located at its Alkylation Plant. The analyzer vent reduction is not required by any State or Federal rule, regulation, permit condition, board order, or court order. 1.05 TPY of VOC emission reduction was achieved from the analyzer vent by physically limiting the maximum flow rate through the vent from 4.2 TPY of VOC to 3.15 TPY. The reduced flow was made permanent by replacing the metering valves and adding flow restrictors.

II. Applicable EPA Policies

On December 4, 1986 (51 FR 43814), the EPA issued the final ETPS, containing the criteria by which emissions trades will be evaluated. As indicated in the ETPS, it is the policy of the EPA to encourage emissions trades to achieve more flexible, rapid, and efficient attainment of the National Ambient Air Quality Standards. It describes emissions trading, sets out general principles that the EPA uses to evaluate emissions trades under the CAA, and expands opportunities for States and industry to use these less costly control approaches. A source may secure ERCs by meeting each of the applicable requirements of the final ETPS. Generally, only reductions which are surplus, enforceable, permanent, and quantifiable can qualify as ERCs. In addition, the ETPS lays out more stringent baseline and additional 20 percent emission reduction requirements if the trade occurs in a nonattainment area needing but lacking an approved attainment demonstration.

On April 7, 1994 (59 FR 16710), the EPA issued the final Economic Incentive Program (EIP) rule which sets forth general principles for a broad range of EIPs which States may pursue. Through the EIP rule, the Agency encourages the development of EIPs that will assist States in meeting air quality management goals through flexible approaches which allow for less costly control strategies, and which provide stronger incentives for the development and implementation of innovative emission reduction technology. In the preamble to the EIP rule (59 FR 16690), the EPA addresses the relationship between the EIP and the ETPS. The preamble clarifies that the provisions of the ETPS which apply to trading between existing sources represent one particular model for how States could design an EIP. Therefore, an application for an emissions trade or bubble that meets the requirements of the ETPS,