

TABLE 1 TO SUBPART W.—GENERAL PROVISIONS APPLICABILITY TO SUBPART W—Continued

Reference	Applies to subpart W			Comment
	BLR	WSR	WSR alternative standard, and BLR equipment leak standard (40 CFR part 63, subpart H)	
§ 63.9(e)	No	No	No.	Separate Notification of Compliance Status requirements are specified for subpart H.
§ 63.9(f)	No	No	No.	
§ 63.9(g)	No	No	No.	
§ 63.9(h)(1)–(3)	Yes	Yes	No	
§ 63.9(h)(4)	N/A	N/A	N/A	Reserved.
§ 63.9(h)(5)–(6)	Yes	Yes	No	Subpart H specifies Notification of Compliance Status requirements.
§ 63.9(i)	Yes	Yes	Yes.	
§ 63.9(j)	Yes	Yes	Yes.	
§ 63.10(a)	Yes	Yes	Yes.	
§ 63.10(b)(1)	Yes	Yes	Yes.	Subparts H and W specify recordkeeping requirements.
§ 63.10(b)(2)	No	No	No	
§ 63.10(b)(3)	Yes	Yes	Yes.	
§ 63.10(c)(1)–(6)	No	No	No.	
§ 63.10(c)(7)–(8)	Yes	Yes	Yes.	Subpart H specifies performance test reporting requirements.
§ 63.10(c)(9)–(15)	No	No	No.	
§ 63.10(d)(1)	Yes	Yes	No	
§ 63.10(d)(2)	Yes	Yes	No	
§ 63.10(d)(3)	No	No	No.	Subpart H specifies performance test reporting requirements.
§ 63.10(d)(4)	Yes	Yes	Yes.	
§ 63.10(d)(5)	Yes	Yes	Yes.	
§ 63.10(e)(1)–(2)	No	No	No.	
§ 63.10(e)(3)	Yes	Yes	No.	Subpart H specifies performance test reporting requirements.
§ 63.10(e)(4)	No	No	No.	
§ 63.10(f)	Yes	Yes	Yes.	
§ 63.11–63.15	Yes	Yes	Yes.	

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BILLING CODE 6560–50–P

40 CFR Part 52

[WA–18–1–5933a; FRL–5151–9]

Approval and Promulgation of Small Business Assistance Program: State of Washington**AGENCY:** Environmental Protection Agency.**ACTION:** Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the State of Washington Implementation Plan (SIP) revision submitted by the State of Washington for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The implementation plan was submitted by the State to satisfy the Federal mandate of the Clean Air Act (CAA or Act), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for

the approval is set forth in this document; additional information is available at the address indicated in the **ADDRESSES** section.

DATES: This final rule is effective on May 8, 1995, unless notice is received by April 7, 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: Montel Livingston, SIP Manager, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, and Washington State Department of Ecology, P.O.Box 47600, PV–11, Olympia, WA 98504–7600.

FOR FURTHER INFORMATION CONTACT:

David J. Dellarco, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–4978.

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 a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally-approved SIP. In addition, the CAA directs the 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 title V of the CAA. In January 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 Washington has submitted a 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 a Small Business Assistance Program (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 to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

Section 507(a) sets forth six requirements¹ 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 of Washington has met this requirement through participation in a Pacific Northwest regional effort designed to ensure collection and development of compliance methods and technologies for small businesses. In addition, Washington's SBAP is comprised of both proactive and reactive components. The proactive component includes aggressive outreach to the business community with information which details their rights and obligations under the Act. The reactive component establishes an information network to respond to questions from small businesses concerning regulatory requirements, appropriate control technologies, and other specific inquiries such as pollution prevention opportunities.

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 by planning to provide direct support for these areas to small businesses. The SBAP can also draw upon the expertise of the Department of Ecology's pollution prevention program—the Washington Department of Ecology's Waste Reduction, Recycling, and Litter Control program (WRRLC). In conjunction with the WRRLC program, the SBAP has the ability to utilize consultation, information distribution, and general engineering assistance to support the pollution prevention needs of small businesses. The SBAP can also draw upon State expertise with Superfund Amendments and Reauthorization Act (SARA) Title III to address small business needs in the area of accidental release detection and prevention.

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 by planning to have trained SBAP and/or local air pollution control agency staff available to help interpret Federal, State, and local air quality requirements, as well as provide permit assistance.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act 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 Act. The State has met this requirement by planning to assure that small businesses receive information regarding their rights through various outreach mechanisms such as mass mailings and workshops. In addition, the SBAP commits to coordinating with regulatory development organizations, including local air pollution control agencies, so that small businesses have sufficient lead time to evaluate compliance methods and applicable requirements.

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 by planning to utilize activities such as on-site consultation/site assessments provided by the SBAP or local air control authority, or provide lists of qualified auditors on request.

The sixth requirement is to develop procedures for consideration of requests from small business stationary sources 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 State has met this requirement through State law (RCW 70.94.181) which establishes these provisions.

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 creating a Small Business Ombudsman position within the Washington Department of Ecology.

3. Compliance Advisory Panel

Section 507(e) 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 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 establishing a Compliance Advisory Panel comprised of these representatives.

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 Act²; (3) to

¹ A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

² Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the

review and assure 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 directing its Compliance Advisory Panel to address these areas of responsibility as their primary function.

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 Washington has established a mechanism 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.

The State of Washington 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 of Washington has 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.

5. Technical Assistance Visits

Washington submitted RCW 70.94.035, the statute authorizing Washington's PROGRAM as part of its SBAP submittal. Washington has another statute, RCW 43.21A.087, which also authorizes technical assistance visits which was not submitted as part of Washington's SBAP submittal. Importantly, each of these statutes places certain limits on the State's authority to bring enforcement actions for violations observed during technical assistance visits. RCW 70.94.035, which

was enacted in 1991 and specifically applies to the air program, prohibits enforcement action "unless and until the facility owner or operator has been provided a reasonable time to correct the violation." According to an opinion of the Washington Attorney General, this provision does not prevent a permitting authority from commencing an enforcement action for a violation observed during a technical assistance visit, but merely requires the permitting authority to give the source a reasonable opportunity to comply before deciding whether enforcement action is appropriate. The Attorney General similarly interprets RCW 43.21A.087, enacted in 1992, which allows the permitting authority to reinspect the facility and take enforcement action "[i]f the owner or operator of the facility does not correct the violation."³ The Attorney General also states that because RCW 70.94.035 applies specifically to the air program and specifically requires that the technical assistance program be consistent with the Federal Clean Air Act, this provision would prevail in the event of any conflict with RCW 43.21A.087, which applies to technical assistance visits under all of Ecology's environmental programs. EPA agrees that RCW 70.94.035 would allow enforcement action in such a case provided the enforcement action was commenced after the source had an opportunity to comply. EPA also believes that RCW 70.94.035, and not RCW 43.21A.087, applies in the case of technical assistance visits under the air program. EPA therefore believes that Washington's technical assistance statutes, as interpreted by the Attorney General, do not bar approval of Washington's SBAP PROGRAM.

III. This Action

In this action, EPA approves the SIP revision submitted by the State of Washington. Based on the Attorney General's opinion discussed above that RCW 70.94.035 is the statute that applies in the case of technical assistance visits under the Washington's SBAP PROGRAM, EPA is approving RCW 70.94.035 as part of Washington's SBAP SIP revision. The State of Washington has submitted a SIP revision implementing each of the PROGRAM elements required by section 507 of the CAA. At this time, the Small Business Assistance Program, the Ombudsman, and the Compliance

Advisory Panel are all in place and functioning. EPA is therefore approving this submittal.

IV. Administrative Review

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.

By this action, the 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 in this action 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 business entities affected.

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 May 8, 1995 unless, by April 7, 1995, 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 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 May 8, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

³ Both statutes allow Ecology to commence immediate enforcement action for any violation that places anyone in imminent danger of death or substantial bodily harm or causes substantial property damage.

CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

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.

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), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

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 May 8, 1995. 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), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: February 1, 1995.

Chuck Clarke,
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 WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(45) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(45) On November 16, 1992 the Director of the Washington State

Department of Ecology submitted "State Implementation Plan for the Washington State Business Assistance Program," adopted November 13, 1992, as a revision to the Washington SIP.

(i) Incorporation by reference.

(A) November 13, 1992 letter from the Director of the Washington State Department of Ecology submitting "State Implementation Plan for the Washington State Business Assistance Program" to EPA.

(B) *State Implementation Plan for the Washington State Business Assistance Program*, including Appendix B, Revised Code of Washington (RCW) 70.94.035; Appendix D, Washington Administrative Code 173-400-180; Appendix E, RCW 70.94.181; and Appendix F, Business Assistance Program Guidelines (and excluding Appendices A, C, and G), dated November 1992, and adopted November 13, 1992.

* * * * *

[FR Doc. 95-5447 Filed 3-7-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 52

[GA-15-1-6285a; GA-21-4-6514a: FRL-5153-3]

Approval and Promulgation of Implementation Plans Georgia: Approval of Part D New Source Review (NSR) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On December 15, 1986, and November 13, 1992, the Georgia Department of Natural Resources, Environmental Protection Division (EPD) submitted to EPA amendments to Georgia Air Quality Control Rules for Definitions and Permits. Georgia's definitions rule was amended to incorporate and adopt by reference definitions in Federal rules for application in designated nonattainment areas. Georgia's permit rule was amended to add new paragraphs to meet the requirements of the Clean Air Act (Act) as amended in 1977 and 1990. The New Source Review (NSR) revisions of the Georgia submittal fully meet the NSR requirements of the amended Act. Therefore, EPA is approving the submitted revisions.

DATES: This final rule is effective on May 8, 1995 unless adverse or critical comments are received by April 7, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Dick Schutt, 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 documents relevant to this final action are available for public inspection 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.

Region 4 Air Programs Branch, Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30365.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Please contact Dick Schutt of the EPA Region 4 Air Programs Branch at 404-347-3555, extension 4206, and at the above address.

SUPPLEMENTARY INFORMATION: On December 15, 1986, the Georgia Department of Natural Resources (DNR) submitted changes to Chapter 391-3-1 of their rules, Rules for Air Quality Control. Among the revisions were amendments to Georgia Air Quality Control Rules 391-3-1-.01, Definitions, and 391-3-1-.03, Permits. EPA proposed to approve these revisions in the June 3, 1988 **Federal Register** document (53 FR 20347).

In response to the 1990 Clean Air Act Amendments (CAAA), the DNR submitted on November 13, 1992, additional changes to the Air Quality rules. This submittal, along with the 1986 submittal, satisfies the new source review requirements for nonattainment areas in Georgia. Georgia Rule 391-3-1-.01, Definitions, was amended to incorporate and adopt by reference the definitions contained in 40 CFR 51.165(a)(1) (i)-(xix) for application in designated nonattainment areas. The definitions contained in the Federal rules include definitions for the following: stationary source, major stationary source, potential to emit, major modification, net emissions increase, emissions unit, secondary emissions, fugitive emissions, significant, allowable emissions, actual emissions, lowest achievable emission rate, federally enforceable, begin actual construction, commence, necessary