

The EPA does not prescribe the placement of the Ombudsman Office or the office to be charged with the implementation of an SBAP. \* \* \* The critical test for EPA approval, with respect to this element of the PROGRAM [the ombudsman], will be whether (1) the designated office is encumbered with activities that prevent it from performing effectively; (2) sufficient expertise exists to represent small businesses; and (3) no conflicts of interest exist within the office that would prevent the Ombudsman from serving effectively \* \* \* (Section 2.0 of the Guidelines, pp. 14 and 15).

In the spirit of the guidelines, the Agency examined Florida's submission from several perspectives. The State of Florida held public hearings regarding the proposed statutory changes and SIP currently at issue. No one, including trade associations, made an adverse comment either at the hearings or in writing at a later time. The Agency concluded, therefore, every effort had been made to provide the regulated community and other potentially affected parties with an opportunity to craft the PROGRAM in an acceptable form.

The selection of the Ombudsman and the Small Business Section Program Administrator, who has the responsibility of directing the SBAP, is the responsibility of the Chief of the Bureau of Air Regulation. The decision was made to have the current ombudsman also serve as the Program Administrator. Florida has taken the position that the combined functions permit the ombudsman to effect immediate improvements and correct deficiencies in the SBAP through the advocacy responsibilities inherent in the office. The Agency accepts this as the prerogative of the State provided it works as the CAA intended. The CAA does not require that these offices be separate. Should personnel, resources and/or the needs of either the Ombudsman's or the Administrator's office warrant a different approach, the Agency acknowledges that the Bureau Chief can divide the responsibilities accordingly. From its inception, the high quality of Florida's PROGRAM has been recognized by the Agency. Indeed, even the commenter stated: "Our comments are not meant to convey an impression that we feel the Florida program is not working. In fact it seems to be working better than in many other states." The acknowledged fact that Florida's PROGRAM is working well goes to the heart of the issue. The Agency believes the structure of a PROGRAM is secondary to its effectiveness. The Agency has determined the Florida Ombudsman's office has sufficient expertise to

represent small businesses and the Florida SBAP is performing efficiently. Florida's proposed SIP revision, therefore, clearly meets the first two of the required tests identified in the Guidance.

After a thorough review of the PROGRAM in light of the comment, EPA believes the PROGRAM meets the requirements of the CAA. The PROGRAM as conceived by the CAA has an inherent system of checks and balances to guard against this potential likelihood. The Florida PROGRAM does not circumvent or obviate any of them. The Florida Ombudsman has direct access to the Governor of the State should the necessary support of the Department to implement the PROGRAM be deemed wanting. The CAP is responsible for assuring adherence to the SIP and providing a source for small businesses to voice concerns regarding either the ombudsman or the SBAP. The utilization of the SBAP staff to serve and assist the CAP is, in fact, mandated by the CAA. In addition, both Region 4 and the EPA Ombudsman are responsible for monitoring and overseeing the implementation of the SIP in Florida. Should any conflict of interest or any other concern be realized, corrective or remedial action can be taken immediately. The Agency concludes, therefore, the Florida PROGRAM as proposed meets the requisite criteria for approval.

#### Final Action

EPA is approving the PROGRAM SIP revision submitted by the State of Florida through the FDEP for the establishment of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The Agency has reviewed this request for revision of the federally approved SIP for conformance with the CAA, including sections 507 and 110(a)(2).

The Office of Management and Budget 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.

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, EPA is approving a PROGRAM created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The 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.

#### List of Subjects in 40 CFR Part 52

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

Dated: November 8, 1994.

**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 K—Florida

2. Section 52.520, is amended by adding paragraph (c)(80) to read as follows:

#### § 52.520 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(80) The Florida Department of Environmental Regulation has submitted revisions to chapter 403.0852 of the Florida Statutes on February 24, 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. Florida Statutes 403.031(20), 403.0852 (1), (2), (3), (4), 403.0872(10)(b), 403.0873, 403.8051, effective on April 28, 1992.