

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

#### ADDRESSES.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.777 to read as follows:

#### § 165.777 Security Zone; West Basin, Port Canaveral Harbor, Cape Canaveral, Florida.

(a) *Regulated area.* The following area is a security zone: All waters of the West Basin of Port Canaveral Harbor northwest of an imaginary line between two points: 28°24'57.88" N, 080°37'25.69" W to 28°24'37.48" N, 080°37'34.03" W.

(b) *Requirement.* (1) This security zone will be activated 4 hours prior to the scheduled arrival of a cruise ship at

the West Basin of Port Canaveral Harbor during MARSEC Levels 2 and 3 or when the COTP determines there is a specified credible threat during MARSEC Level 1. This security zone will not be deactivated until the departure of all cruise ships from the West Basin. The zone is subject to enforcement when it is activated.

(2) Under general security zone regulations of 33 CFR 165.33, no vessel or person may enter or navigate within the regulated area unless specifically authorized by the COTP or the COTP's designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any direction given by the COTP or a designated representative and leave the security zone immediately if so ordered.

(3) The public will be notified when the security zone is activated by the display of a red ball on a 50-foot pole located at the east end of Cruise Ship terminal 10. This red ball will be lowered when the security zone is deactivated. To ensure boaters are given sufficient knowledge of the security zone, the Coast Guard will continuously broadcast the activations of the zone and law enforcement vessels will be on scene to inform boaters that the zone has been activated. Vessels encroaching on the security zone will be issued a Public Notice which clearly states the location of the security zone and the times it will be enforced. This will be the boater's first warning prior to enforcement action being taken.

(c) *Definitions.* The following definition applies to this section:

*Designated representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local law enforcement officers designated by or assisting the COTP in the enforcement of the security zone.

(d) *Captain of the Port Contact Information.* If you have questions about this regulation, please contact the Sector Command Center at (904) 564–7513.

(e) *Enforcement periods.* This section will only be subject to enforcement when the security zone described in paragraph (a) is activated as specified in paragraph (b)(1) of this section.

Dated: March 26, 2009.

**Paul F. Thomas,**

*Captain, U.S. Coast Guard, Captain of the Port Jacksonville.*

[FR Doc. E9–7985 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–15–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[FRL–8760–9]

#### Approval and Promulgation of Air Quality Implementation Plans; Kansas; Update to Materials Incorporated by Reference

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** EPA is updating the materials submitted by Kansas that are incorporated by reference (IBR) into the state implementation plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the Regional Office.

**DATES:** *Effective Date:* This action is effective April 8, 2009.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, or at <http://www.epa.gov/region07/programs/artd/air/rules/fedapprv.htm>; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation Docket at (202) 566–1742. For information on the availability of this material at NARA, call (202) 741–6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**FOR FURTHER INFORMATION CONTACT:** Evelyn VanGoethem at (913) 551–7659, or by e-mail at [vangoethem.evelyn@epa.gov](mailto:vangoethem.evelyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** The SIP is a living document which the state revises as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions

containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of Federal Register. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

On February 12, 1999, EPA published a document in the **Federal Register** (64 FR 7091) beginning the new IBR procedure for Kansas. On November 14, 2003 (68 FR 64532), EPA published an update to the IBR material for Kansas.

In this document, EPA is doing the following:

1. Announcing the update to the IBR material as of December 1, 2008.
2. Correcting the date format in the "State effective date" or "State submittal date" and "EPA approval date" columns in § 52.870 paragraphs (c), (d) and (e). Dates are numerical month/day/year without additional zeros.
3. Modifying the **Federal Register** citation in § 52.870 paragraphs (c), (d) and (e) to reflect the beginning page of the preamble as opposed to the page number of the regulatory text.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3), which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by providing notice of the updated Kansas SIP compilation.

#### Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve

state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. This action is simply an announcement of prior rulemakings that have previously undergone notice and comment. Prior EPA rulemaking actions for each individual component of the Kansas SIP compilation previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action.

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 26, 2009.

**William Rice,**

*Acting Regional Administrator, Region 7.*

■ 40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

- 1. The authority for citation for part 52 continues to read as follows:

*Authority:* 42 U.S.C. 7401 *et seq.*

#### Subpart R—Kansas

- 2. In § 52.870 paragraphs (b), (c), (d) and (e) are revised to read as follows:

#### § 52.870 Identification of plan.

\* \* \* \* \*

(b) *Incorporation by reference.*

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to December 1, 2008, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA

approval dates after December 1, 2008, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 7 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the SIP as of December 1, 2008.

(3) Copies of the materials incorporated by reference may be

inspected at the Environmental Protection Agency, Region 7, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; at the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460; or at the National Archives and Records Administration (NARA). If you wish to obtain material from the EPA Regional Office, please call (913)

551-7659; for material from a docket in EPA Headquarters Library, please call the Office of Air and Radiation Docket at (202) 566-1742. For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(c) EPA-approved regulations.

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Explanation
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**Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control**

**General Regulations**

K.A.R. 28-19-6 .....	Statement of Policy .....	1/1/72	5/31/72, 37 FR 10867 .....	Kansas revoked this rule 5/1/82.
K.A.R. 28-19-8 .....	Reporting Required .....	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28-19-9 .....	Time Schedule for Compliance.	5/1/84	12/21/87, 52 FR 48265.	
K.A.R. 28-19-10 .....	Circumvention of Control Regulations.	1/1/71	5/31/72, 37 FR 10867.	
K.A.R. 28-19-11 .....	Exceptions Due to Breakdowns or Scheduled Maintenance.	1/1/74	11/8/73, 38 FR 30876.	
K.A.R. 28-19-12 .....	Measurement of Emissions.	1/1/71	5/31/72, 37 FR 10867.	
K.A.R. 28-19-13 .....	Interference with Enjoyment of Life and Property.	1/1/74	11/8/73, 38 FR 30876.	
K.A.R. 28-19-14 .....	Permits Required .....	1/24/94	7/17/95, 60 FR 36361.	
K.A.R. 28-19-15 .....	Severability .....	1/1/71	5/31/72, 37 FR 10867.	

**Nonattainment Area Requirements**

K.A.R. 28-19-16 .....	New Source Permit Requirements for Designated Non-attainment Areas.	10/16/89	1/16/90, 55 FR 1420.	The EPA deferred action on the state's current definition of the terms "building, structure, facility, or installation"; "installation"; and "reconstruction."
K.A.R. 28-19-16a .....	Definitions .....	10/10/97	1/11/00, 65 FR 1545.	
K.A.R. 28-19-16b .....	Permit Required .....	10/16/89	1/16/90, 55 FR 1420.	
K.A.R. 28-19-16c .....	Creditable Emission Reductions.	10/16/89	1/16/90, 55 FR 1420 .....	
K.A.R. 28-19-16d .....	Fugitive Emission Exemption.	10/16/89	1/16/90, 55 FR 1420.	
K.A.R. 28-19-16e .....	Relaxation of Existing Emission Limitations.	10/16/89	1/16/90, 55 FR 1420.	
K.A.R. 28-19-16f .....	New Source Emission Limits.	10/16/89	1/16/90, 55 FR 1420.	
K.A.R. 28-19-16g .....	Attainment and Maintenance of National Ambient Air Quality Standards.	10/16/89	1/16/90, 55 FR 1420.	
K.A.R. 28-19-16h .....	Compliance of Other Sources.	10/16/89	1/16/90, 55 FR 1420.	
K.A.R. 28-19-16i .....	Operating Requirements.	10/16/89	1/16/90, 55 FR 1420.	
K.A.R. 28-19-16j .....	Revocation and Suspension of Permit.	10/16/89	1/16/90, 55 FR 1420.	
K.A.R. 28-19-16k .....	Notification Requirements.	10/16/89	1/16/90, 55 FR 1420.	
K.A.R. 28-19-16l .....	Failure to Construct .....	10/16/89	1/16/90, 55 FR 1420.	

## EPA-APPROVED KANSAS REGULATIONS—Continued

Kansas citation	Title	State effective date	EPA approval date	Explanation
K.A.R. 28–19–16m ....	Compliance with Provisions of Law Required.	10/16/89	1/16/90, 55 FR 1420.	
<b>Attainment Area Requirements</b>				
K.A.R. 28–19–17 .....	Prevention of Significant Deterioration of Air Quality.	11/22/02	2/26/03, 68 FR 8845 .....	K.A.R. 28–19–17a through 28–19–17q revoked. Provision moved to K.A.R. 28–19–350.
<b>Stack Height Requirements</b>				
K.A.R. 28–19–18 .....	Stack Heights .....	5/1/88	4/20/89, 54 FR 15934 .....	The state regulation has stack height credit. The EPA has not approved that part.
K.A.R. 28–19–18b ....	Definitions .....	5/1/88	4/20/89, 54 FR 15934.	
K.A.R. 28–19–18c ....	Methods for Determining Good Engineering Practice Stack Height.	5/1/88	4/20/89, 54 FR 15934.	
K.A.R. 28–19–18d ....	Fluid Modeling .....	5/1/88	4/20/89, 54 FR 15934.	
K.A.R. 28–19–18e ....	Relaxation of Existing Emission Limitations.	5/1/88	4/20/89, 54 FR 15934.	
K.A.R. 28–19–18f ....	Notification Requirements.	5/1/88	4/20/89, 54 FR 15934.	
<b>Continuous Emission Monitoring</b>				
K.A.R. 28–19–19 .....	Continuous Emission Monitoring.	6/8/92	1/12/93, 58 FR 3847.	
<b>Processing Operation Emissions</b>				
K.A.R. 28–19–20 .....	Particulate Matter Emission Limitations.	10/16/89	1/16/90, 55 FR 1420.	
K.A.R. 28–19–21 .....	Additional Emission Restrictions.	10/16/89	1/16/90, 55 FR 1420.	
K.A.R. 28–19–23 .....	Hydrocarbon Emissions—Stationary Sources.	12/27/72	11/8/73, 38 FR 30876.	
K.A.R. 28–19–24 .....	Control of Carbon Monoxide Emissions.	1/1/72	11/8/73, 38 FR 30876.	
<b>Indirect Heating Equipment Emissions</b>				
K.A.R. 28–19–30 .....	General Provisions .....	1/1/72	5/31/72, 37 FR 10867.	
K.A.R. 28–19–31 .....	Emission Limitations ...	11/8/93	10/18/94, 59 FR 52425.	
K.A.R. 28–19–32 .....	Exemptions—Indirect Heating Equipment.	11/8/93	10/18/94, 59 FR 52425.	
<b>Incinerator Emissions</b>				
K.A.R. 28–19–40 .....	General Provisions .....	1/1/71	5/31/72, 37 FR 10867.	
K.A.R. 28–19–41 .....	Restriction of Emission	12/27/72	11/8/73, 38 FR 30876.	
K.A.R. 28–19–42 .....	Performance Testing ...	1/1/72	11/8/73, 38 FR 30876.	
K.A.R. 28–19–43 .....	Exceptions .....	1/1/71	5/31/72, 37 FR 10867.	
<b>Air Pollution Emergencies</b>				
K.A.R. 28–19–55 .....	General Provisions .....	1/1/72	5/31/72, 37 FR 10867.	
K.A.R. 28–19–56 .....	Episode Criteria .....	10/16/89	1/16/90, 55 FR 1420.	
K.A.R. 28–19–57 .....	Emission Reduction Requirements.	1/1/72	5/31/72, 37 FR 10867.	
K.A.R. 28–19–58 .....	Emergency Episode Plans.	1/1/72	5/31/72, 37 FR 10867.	
<b>Volatile Organic Compound Emissions</b>				
K.A.R. 28–19–61 .....	Definitions .....	10/7/91	6/23/92, 57 FR 27936.	
K.A.R. 28–19–62 .....	Testing Procedures .....	10/7/91	6/23/92, 57 FR 27936.	
K.A.R. 28–19–63 .....	Automobile and Light Duty Truck Surface Coating.	11/8/93	10/18/94, 59 FR 52425.	

## EPA-APPROVED KANSAS REGULATIONS—Continued

Kansas citation	Title	State effective date	EPA approval date	Explanation
K.A.R. 28-19-64 .....	Bulk Gasoline Terminals.	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28-19-65 .....	Volatile Organic Compounds (VOC) Liquid Storage in Permanent Fixed Roof Type Tanks.	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28-19-66 .....	Volatile Organic Compounds (VOC) Liquid Storage in External Floating Roof Tanks.	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28-19-67 .....	Petroleum Refineries ...	5/1/86	1/2/87, 52 FR 53.	
K.A.R. 28-19-68 .....	Leaks from Petroleum Refinery Equipment.	5/1/86	1/2/87, 52 FR 53.	
K.A.R. 28-19-69 .....	Cutback Asphalt .....	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28-19-70 .....	Leaks from Gasoline Delivery Vessels and Vapor Collection Systems.	5/15/98	1/11/00, 65 FR 1545.	
K.A.R. 28-19-71 .....	Printing Operations .....	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28-19-72 .....	Gasoline Dispensing Facilities.	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28-19-73 .....	Surface Coating of Miscellaneous Metal Parts and Products and Metal Furniture.	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28-19-74 .....	Wool Fiberglass Manufacturing.	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28-19-76 .....	Lithography Printing Operations.	10/7/91	6/23/92, 57 FR 27936.	
K.A.R. 28-19-77 .....	Chemical Processing Facilities That Operate Alcohol Plants or Liquid Detergent Plants.	10/7/91	6/23/92, 57 FR 27936.	

## General Provisions

K.A.R. 28-19-200 .....	General Provisions; definitions.	10/10/97	1/11/00, 65 FR 1545 .....	New rule. Replaces K.A.R. 28-19-7 definitions.
K.A.R. 28-19-201 .....	General Provisions; Regulated Compounds List.	10/10/97	1/11/00, 65 FR 1545 .....	New rule. Replaces Regulated Compounds in K.A.R. 28-19-7.
K.A.R. 28-19-204 .....	Permit Issuance and Modification; Public Participation.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28-19-210 .....	Calculation of Actual Emissions.	11/22/93	1/11/00, 65 FR 1545.	
K.A.R. 28-19-212 .....	Approved Test Methods and Emission Compliance Determination Procedures.	1/23/95	7/17/95, 60 FR 36361.	

## Construction Permits and Approvals

K.A.R. 28-19-300 .....	Applicability .....	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28-19-301 .....	Application and Issuance.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28-19-302 .....	Additional Provisions; Construction Permits.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28-19-303 .....	Additional Provisions; Construction Approvals.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28-19-304 .....	Fees .....	1/23/95	7/17/95, 60 FR 36361.	

## EPA-APPROVED KANSAS REGULATIONS—Continued

Kansas citation	Title	State effective date	EPA approval date	Explanation
K.A.R. 28–19–350 .....	Prevention of Significant Deterioration (PSD) of Air Quality.	6/30/06	5/29/07, 72 FR 29429 .....	Kansas did not adopt subsections with references to the clean unit exemptions, pollution control projects and the recordkeeping provisions for the actual-to-projected-actual emissions applicability test because of the June 24, 2005, decision of the United States Court of Appeals for the District of Columbia Circuit relating to the Clean Unit Exemption, Pollution Control Projects and the recordkeeping provisions for the actual-to-projected-actual emissions applicability test.
<b>General Permits</b>				
K.A.R. 28–19–400 .....	General Requirements	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–401 .....	Adoption by the Secretary.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–402 .....	Availability of Copies; Lists of Sources to Which Permits Issued.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–403 .....	Application to Construct or Operate Pursuant to Terms of General Permits.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–404 .....	Modification, Revocation.	1/23/95	7/17/95, 60 FR 36361.	
<b>Operating Permits</b>				
K.A.R. 28–19–500 .....	Applicability .....	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–501 .....	Emissions Limitations and Pollution Control Equipment for Class I and Class II Operating Permits; Conditions.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–502 .....	Identical Procedural Requirements.	1/23/95	7/17/95, 60 FR 36361.	
<b>Class II Operating Permits</b>				
K.A.R. 28–19–540 .....	Applicability .....	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–541 .....	Application Timetable and Contents.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–542 .....	Permit-by-Rule .....	9/23/05	2/8/08, 73 FR 7468.	
K.A.R. 28–19–543 .....	Permit Term and Content; Operational Compliance.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–544 .....	Modification of Sources or Operations.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–545 .....	Application Fee .....	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–546 .....	Annual Emission Inventory.	9/23/05	2/8/08, 73 FR 7468.	
K.A.R. 28–19–561 .....	Permit-by-Rule; Reciprocating Engines.	9/23/05	2/8/08, 73 FR 7468.	
K.A.R. 28–19–562 .....	Permit-by-Rule; Organic Solvent Evaporative Sources.	9/23/05	2/8/08, 73 FR 7468.	
K.A.R. 28–19–563 .....	Permit-by-Rule; Hot Mix Asphalt Facilities.	9/23/05	2/8/08, 73 FR 7468.	
K.A.R. 28–19–564 .....	Permit-by-Rule; Sources with Actual Emissions Less Than 50 Percent of Major Source Thresholds.	10/4/02	3/26/03, 68 FR 14540.	

EPA-APPROVED KANSAS REGULATIONS—Continued

Kansas citation	Title	State effective date	EPA approval date	Explanation
<b>Open Burning Restrictions</b>				
K.A.R. 28–19–645 .....	Open Burning Prohibited.	3/1/96	10/2/96, 61 FR 51366.	
K.A.R. 28–19–646 .....	Responsibility for Open Burning.	3/1/96	10/2/96, 61 FR 51366.	
K.A.R. 28–19–647 .....	Exceptions to Prohibition on Open Burning.	3/1/96	10/2/96, 61 FR 51366.	
K.A.R. 28–19–648 .....	Agricultural Open Burning.	3/1/96	10/2/96, 61 FR 51366.	
K.A.R. 28–19–650 .....	Emissions Opacity Limits.	1/29/99	1/11/00, 65 FR 1545 .....	New rule. Replaces K.A.R. 28–19–50 and 28–19–52.
<b>Volatile Organic Compound Emissions</b>				
K.A.R. 28–19–714 .....	Control of Emissions from Solvent Metal Cleaning.	9/1/02	10/30/02, 67 FR 66058.	
K.A.R. 28–19–717 .....	Control of Volatile Organic Compound (VOC) Emissions from Commercial Bakery Ovens in Johnson and Wyandotte Counties.	12/22/00	12/12/01, 66 FR 64148.	
K.A.R. 28–19–719 .....	Fuel Volatility .....	4/27/01	2/13/02, 67 FR 6655.	
<b>Conformity</b>				
K.A.R. 28–19–800 .....	General Conformity of Federal Actions.	3/15/96	10/2/96, 61 FR 51366.	

(d) EPA-approved State source-specific permits.

EPA-APPROVED KANSAS SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
(1) Board of Public Utilities, Quindaro Power Station.	2090048	10/20/93	10/18/94, 59 FR 52425.	
(2) Board of Public Utilities, Kaw Power Station ...	2090049	10/20/93	10/18/94, 59 FR 52425.	

(e) EPA-approved nonregulatory provisions and quasi-regulatory measures.

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or Nonattainment area	State submittal date	EPA approval date	Explanation
(1) Implementation Plan for Attainment and Maintenance of the National Air Quality Standards.	Statewide .....	1/31/72 .....	5/31/72, 37 FR 10867.	
(2) Comments on the Plan in Response to EPA Review.	Kansas City .....	3/24/72 .....	6/22/73, 38 FR 16550	Correction notice published 3/2/76.
(3) Emergency Episode Operations/Communications Manual.	Kansas City .....	4/6/72 .....	11/8/73, 38 FR 30876	Correction notice published 3/2/76.
(4) Emergency Episode Operations/Communications Manual.	Statewide except Kansas City.	2/15/73 .....	11/8/73, 38 FR 30876	Correction notice published 3/2/76.
(5) Letter Concerning Attainment of CO Standards.	Kansas City .....	5/29/73 .....	11/8/73, 38 FR 30876	Correction notice published 3/2/76.

## EPA-APPROVED KANSAS NONREGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or Nonattainment area	State submittal date	EPA approval date	Explanation
(6) Amendment to State Air Quality Control Law Dealing with Public Access to Emissions Data.	Statewide .....	7/27/73 .....	11/8/73, 38 FR 30876	Correction notice published 3/2/76.
(7) Analysis and Recommendations Concerning Designation of Air Quality Maintenance Areas.	Statewide .....	2/28/74 .....	3/2/76, 41 FR 8956.	
(8) Ozone Nonattainment Plan .....	Kansas City .....	9/17/79 .....	4/3/81, 46 FR 20164.	
(9) Ozone Nonattainment Plan .....	Douglas County .....	10/22/79 .....	4/3/81, 46 FR 20164.	
(10) TSP Nonattainment Plan .....	Kansas City .....	3/10/80 .....	4/3/81, 46 FR 20164.	
(11) Lead Plan .....	Statewide .....	2/17/81 .....	10/22/81, 46 FR 51742.	
(12) CO Nonattainment Plan .....	Wichita .....	4/16/81 .....	12/15/81, 46 FR 61117.	
(13) Air Monitoring Plan .....	Statewide .....	10/16/81 .....	1/22/82, 47 FR 3112.	
(14) Letter and Supporting Documentation Relating to Reasonably Available Control Technology for Certain Particulate Matter Sources.	Kansas City .....	9/15/81 .....	6/18/82, 47 FR 26387	Correction notice published 1/12/84.
(15) Letter Agreeing to Follow EPA Interim Stack Height Policy for Each PSD Permit Issued Until EPA Revises the Stack Height Regulations.	Statewide .....	6/20/84 .....	12/11/84, 49 FR 48185.	
(16) Letters Pertaining to Permit Fees .....	Statewide .....	3/27/86, 9/15/87 .....	12/21/87, 52 FR 48265.	
(17) Revisions to the Ozone Attainment Plan	Kansas City .....	7/2/86, 4/16/87, 8/18/87, 8/19/87, 1/6/88.	5/18/88, 53 FR 17700.	
(18) Revised CO Plan .....	Wichita .....	3/1/85, 9/3/87 .....	10/28/88, 53 FR 43691.	
(19) Letter Pertaining to the Effective Date of Continuous Emission Monitoring Regulations.	Statewide .....	1/6/88 .....	11/25/88, 53 FR 47690.	
(20) Letters Pertaining to New Source Permit Regulations, Stack Height Regulations, and Stack Height Analysis and Negative Declarations.	Statewide .....	3/27/86, 12/7/87, 1/6/88.	4/20/89, 54 FR 15934.	
(21) PM <sub>10</sub> Plan .....	Statewide .....	10/5/89, 10/16/89 .....	1/16/90, 55 FR 1420.	
(22) Ozone Maintenance Plan .....	Kansas City .....	10/23/91 .....	6/23/92, 57 FR 27936.	
(23) Letter Pertaining to PSD NO <sub>x</sub> Requirements.	Statewide .....	9/15/92 .....	1/12/93, 58 FR 3847.	
(24) Small Business Assistance Plan .....	Statewide .....	1/25/94 .....	5/12/94, 59 FR 24644.	
(25) Letter Regarding Compliance Verification Methods and Schedules Pertaining to the Board of Public Utilities Power Plants.	Kansas City .....	12/11/92 .....	10/18/94, 59 FR 52425.	
(26) Emissions Inventory Update Including a Motor Vehicle Emissions Budget.	Kansas City .....	5/11/95 .....	4/25/96, 61 FR 18251.	
(27) Air monitoring plan .....	Statewide .....	1/6/02 .....	8/30/02, 67 FR 55726.	
(28) Maintenance Plan for the 1-hour ozone standard in the Kansas portion of the Kansas City maintenance area for the second ten-year period.	Kansas City .....	1/9/03 .....	1/13/04, 69 FR 1919.	
(29) Revision to Maintenance Plan for the 1-hour ozone standard in the Kansas portion of the Kansas City maintenance area for the second ten-year period.	Kansas City .....	2/10/06 .....	6/26/06, 71 FR 36213.	
(30) CAA 110(a)(2)(D)(i) SIP—Interstate Transport.	Statewide .....	1/7/07 .....	3/9/07, 72 FR 10608.	
(31) Maintenance Plan for the 8-hour ozone standard in the Kansas portion of the Kansas City area.	Kansas City .....	5/23/07 .....	8/9/07, 72 FR 44781.	This plan replaces numbers (28) and (29).

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2008-0479; FRL-8775-5]

#### Determination of Attainment of the One-Hour Ozone Standard for the Southern New Jersey Portion of the Philadelphia Metropolitan Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is determining that the one-hour ozone nonattainment area in Southern New Jersey, that is, the New Jersey portion of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD area, attained the one-hour ozone standard, is not subject to the imposition of penalty fees under section 185 of the Clean Air Act and does not need to implement contingency measures. Areas that EPA classified as severe ozone nonattainment areas for the one-hour National Ambient Air Quality Standard and did not attain the Standard by the applicable attainment date of November 15, 2005 may be subject to these penalty fees. However, since the air quality in the Philadelphia-Wilmington-Trenton area attained the ozone standard as of November 15, 2005, this area will not need to implement this fee program. This is not a redesignation of attainment for this area, only a fulfillment of a Clean Air Act obligation to determine if an area attained the ozone standard by its applicable attainment date.

**DATES:** *Effective Date:* This rule is effective on May 8, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R02-OAR-2008-0479. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Programs Branch, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor,

New York, New York 10007-1866. To make your visit as productive as possible, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone number (212) 637-4249, fax number (212) 637-3901, e-mail [kelly.bob@epa.gov](mailto:kelly.bob@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

EPA has determined that the New Jersey portion of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD one-hour ozone nonattainment area (the "Philadelphia metropolitan" nonattainment area) attained the one-hour ozone National Ambient Air Quality Standard (NAAQS) by its attainment date, November 15, 2005. (The Philadelphia metropolitan nonattainment area consists of the following counties: Cecil County, Maryland; Kent and New Castle Counties in Delaware; Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem Counties in New Jersey; and, Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania.) As a result, EPA finds that this area is not subject to the imposition of the section 185 penalty fees and does not need to implement contingency measures. In a separate final rule at 73 FR 43360, EPA's Region 3 office found that the balance of the Philadelphia metropolitan nonattainment area attained the one-hour ozone NAAQS by its applicable attainment date and is not subject to the imposition of section 185 penalty fees. Other specific requirements of the determination and the rationale for EPA's proposed action are explained in the Proposed Rulemaking published on July 23, 2008 (73 FR 42727). The proposal was based on three years of complete, quality-assured ambient air quality monitoring data for 2003 through 2005 ozone seasons. This determination of attainment is not a redesignation to attainment for this area. Persons seeking more information on this action should access EPA's docket for this action at <http://www.regulations.gov>, docket number EPA-R02-OAR-2008-0479. EPA received no comments on the proposed action.

##### II. Final Action

Based upon EPA's review of the air quality data for the 3-year period 2003 to 2005, EPA has determined that the New Jersey portion of the Philadelphia metropolitan area has attained the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005. EPA also has determined that this area is not subject to the imposition of the section 185 penalty fees. In addition, because the area has attained the one-hour ozone NAAQS by the applicable attainment date, the area is not subject to the requirement to implement contingency measures for failure to attain the one-hour ozone NAAQS by its attainment date. Since the area has met its attainment deadline, even if the area subsequently lapses into nonattainment, it would not be required to implement the contingency measures for failure to attain the one-hour ozone NAAQS by its attainment date.

##### III. Statutory and Executive Order Reviews

This final action determines that an area has attained a previously-established NAAQS based on an objective review of measured air quality data. Accordingly, this action merely affirms that state actions are meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National