

**FOR FURTHER INFORMATION CONTACT:** John McDonald, Project Officer, First Coast Guard District, at (617) 223-8364.

**SUPPLEMENTARY INFORMATION:** The US2 Bridge, across Lake Champlain, mile 91.8, between North Hero Island and Grand Isle (South Hero Island), Vermont, has a vertical clearance in the closed position of 13 feet at mean high lake elevation and 16 feet at mean low lake elevation. The existing drawbridge operation regulations are listed at 33 CFR 117.993(b).

The owner of the bridge, the Vermont Agency of Transportation (VTrans), requested a temporary deviation to facilitate rehabilitation repairs at the bridge.

Under this temporary deviation, in effect from October 22, 2007 through February 1, 2008, the US2 Bridge need not open for the passage of vessel traffic.

The US2 Bridge rarely opens during the time period this temporary deviation will be in effect. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operation schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

Dated: October 4, 2007.

**Gary Kassof,**

*Bridge Program Manager, First Coast Guard District.*

[FR Doc. E7-20482 Filed 10-16-07; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD08-07-026]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Upper Mississippi River, Clinton, IA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operations of the Clinton Railroad Drawbridge, Mile 518.0, Clinton, Iowa across the Upper Mississippi River. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given from 12:01 a.m. December 15, 2007 until 9 a.m., March 15, 2008. The deviation is necessary to allow time for performing needed maintenance and repairs to the bridge.

**DATES:** This temporary deviation is effective from 12:01 a.m. December 15, 2007 until 9 a.m., March 15, 2008.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at Room 2.107F in the Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103-2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Wiebusch, Bridge Administrator, (314) 269-2378.

**SUPPLEMENTARY INFORMATION:** The Union Pacific Railroad Company requested a temporary deviation for the Clinton Railroad Drawbridge, mile 518.0, at Clinton, Iowa across the Upper Mississippi to open on signal if at least 24 hours advance notice is given in order to facilitate needed bridge maintenance and repairs. The Clinton Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart. In order to facilitate the needed bridge work, the drawbridge must be kept in the closed-to-navigation position. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given from 12:01 a.m. December 15, 2007 until 9 a.m., March 15, 2008.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Clinton Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 18.7 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. These interests will not be significantly impacted due to the reduced navigation in winter months. This temporary deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge shall return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 5, 2007.

**Roger K. Wiebusch,**

*Bridge Administrator.*

[FR Doc. E7-20494 Filed 10-16-07; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2005-KY-0004-200733, FRL-8482-5]

#### Approval and Promulgation of Implementation Plans Kentucky: Performance Testing and Open Burning

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the Kentucky State Implementation Plan (SIP), submitted by the Kentucky Department of Air Quality (KDAQ) on September 6, 2005. The revisions include modifications to Kentucky's Administrative Regulations (KAR) Title 401, Chapters 50:045 and 63:005, which pertain to Kentucky's performance testing and open burning provisions, respectively. These revisions are part of Kentucky's strategy to meet the national ambient air quality standards (NAAQS) by reducing emissions of volatile organic compounds and nitrogen oxides, which are the precursors to ozone formation. Open burning creates smoke that contains fine particles (PM2.5) and precursors to ozone. The approved rules are intended to help control levels of PM2.5 and ozone precursors that contribute to high ozone and PM2.5 levels. This action is being taken pursuant to section 110 of the Clean Air Act (CAA). This final rule also addresses a comment made on EPA's proposed rulemaking for this action published on January 17, 2007.

**EFFECTIVE DATE:** This rule will be effective November 16, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2005-KY-0004. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., Confidential

Business Information 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

[www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you 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 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9074. Ms LeSane can also be reached via electronic mail at [lesane.heidi@epa.gov](mailto:lesane.heidi@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Today's Action**

EPA is taking final action to approve revisions to the Kentucky SIP incorporating changes made to two Kentucky regulations: 401 KAR 50:045 and 401 KAR 63:005. These revisions pertain to performance testing requirements and open burning, respectively, and are part of the Commonwealth's strategy to meet the NAAQS by reducing emissions of PM<sub>2.5</sub> and ozone precursors. This final action also includes a response to a comment made on EPA's proposed rulemaking for this action, published January 17, 2007 (72 FR 1954).

**II. Background**

On September 6, 2005, KDAQ submitted to EPA proposed SIP revisions for review and approval into the Kentucky SIP. The proposed revisions include changes made by Kentucky to its performance testing and open burning regulations, found at 401 KAR 50:045 and 401 KAR 63:005, respectively. Both sets of rules were

already incorporated into the SIP and the September 6, 2005, revisions were updates to such rules. The rule changes proposed for inclusion in the SIP became state effective on July 13, 2005. 401 KAR 50:045, "Performance Tests," provide guidelines for the methodology, testing conditions, and reporting requirements for sources required to undertake performance testing. The proposed revisions to 401 KAR 50:045 are essentially a recodification/renumbering in order to maintain necessary performance testing requirements currently found in 401 KAR 50:016, which is being repealed. Since 401 KAR 50:016 was never incorporated into the Kentucky SIP, neither the September 6, 2005, SIP revision, nor this action is addressing the repeal; however, this action is approving those provisions that are being incorporated into 401 KAR 50:045 as a result of the repeal of 401 KAR 50:016. In addition to the recodification/renumbering, some minor changes were made to 401 KAR 50:045. Minor changes made to 401 KAR 50:045 include: the option of submitting alternate Compliance Test Protocol forms, and correction of federal reference citations and typographical errors. These actions were taken as a result of comments received by Kentucky during the public hearing.

401 KAR 63:005, "Open Burning," was first incorporated into the Kentucky SIP on July 12, 1982 (47 FR 30059). The rule is structured such that open burning in general is prohibited unless certain conditions are met. These conditions are specified under Sections 4 and 5 of 401 KAR 63:005. The proposed revisions, submitted on September 6, 2005, were initiated because as written, the current regulation allowed open burning of garbage in backyard environments. Kentucky amended the rule to address the problems involving the disposal of debris from storms and of other similar items and the open burning of mixed household garbage, and clarified those instances when open burning is permitted. Additionally, the changes explicitly allow fires set by county or municipal governments to dispose of wood waste or clean lumber, which was implied in the previous rule. Restrictions to open burning still exist for those counties, or portions of counties, which are, or were previously designated nonattainment for the 1-hour ozone, 8-hour ozone, PM<sub>10</sub>, or PM<sub>2.5</sub> NAAQS. The changes to Kentucky's open burning rule also assist in the clarity and enforceability of the rule. The amendments to this rule clarify the

types of materials that can be burned and the time and places that open burning can occur to minimize the impact on human health and the environment. The amendment also provides added flexibility for local and county governments in disposing of vegetative matter.

The changes to both the performance testing and open burning rule are approvable into the Kentucky SIP pursuant to section 110 of the CAA.

**III. Response to Comments**

EPA received comments from one commenter regarding the proposed revisions to the Kentucky SIP published on January 17, 2007 (72 FR 1954). A summary of the adverse comments received on the proposed rule and EPA's response to the comments, is presented below.

*Comment:* EPA should add the Credible Evidence Rule, either via a Federal Implementation Plan or a SIP Call, at the same time that EPA finalizes this SIP revision.

*Response:* The September 6, 2005, SIP revision is specifically related to Kentucky rules regarding performance tests and open burning. The comment is not directly related to the Kentucky rules at issue in the September 6, 2005, SIP submittal. Nonetheless, on June 29, 2007, EPA issued a letter responding to a Petition for Rulemaking filed by the commenter regarding credible evidence and the Kentucky SIP. The June 29, 2007, letter denied commenter's petition for rulemaking and explained why EPA is not taking action, at this time, to require a revision to the Kentucky SIP regarding credible evidence.

*Comment:* The **Federal Register** notice must include the complete text of the proposed SIP revision in order to allow for meaningful public participation.

*Response:* EPA disagrees with commenter's position on the content of the **Federal Register** notice. Neither the CAA nor the Administrative Procedure Act mandates that the **Federal Register** notice of proposed rulemaking, or final rulemaking action, include the complete text of the proposed SIP revision. The January 17, 2007 (72 FR 1954) proposal satisfies the notice requirements by providing citations to the rules at issue, offering the SIP revision for public review, and describing the subjects and issues involved in the SIP revision. Publication in the **Federal Register** is costly and resource intensive; EPA makes every effort to provide key information in proposal notices while at the same time using Agency resources efficiently. EPA drafts rulemaking notices so as to enable public

understanding of the subjects and issues at hand. Should a member of the public wish to review the complete text of the SIP revision, instructions are provided in the notice of proposed rulemaking for how the SIP revision may be accessed. In addition, the public may also contact the listed contact for any further information or questions.

*Comment:* The Kentucky SIP cannot allow waiving of performance testing; 401 KAR 50:045 Section 4(1)(d), (2)(d), and (3)(c) cannot be added into the Kentucky SIP.

*Response:* The rule changes now being included into the Kentucky SIP regarding performance testing (401 KAR 50:045) are consistent with federal rules found at 40 CFR Part 63. The current changes are minimal; the rules previously included in the SIP contained the waiver provisions discussed by the commenter, so they are not new rules being proposed for inclusion into the SIP for the first time. Generally, rules are necessary to ensure compliance with any emission limitations included in the SIP. The waiver provisions noted by commenter are also included in the federal rule at 40 CFR 63.7(h). The waiver provisions in 40 CFR 63.7(h) are delegable to states pursuant to 40 CFR 63.91(g). EPA Region 4 has delegated the part 63 waiver authorities to the Commonwealth of Kentucky. Kentucky is authorized to implement the waiver provisions described in 401 KAR 50:045, consistent with the federal rules. Kentucky's rules require that both the Cabinet and EPA approve any waivers. As a result, Kentucky's rule has two layers of review and protection. With regard to 401 KAR 50:045(3)(c), this provision applies to sources that are not subject to standards promulgated under 40 CFR 60, 61, or 63. As a result, Kentucky has flexibility to implement its own waiver program, to the extent allowed by federal law, with regard to such sources. Notably, these waiver provisions apply only to performance testing and not to the underlying emissions limits—regulated entities must comply with emissions limits irrespective of any waivers for performance testing.

#### IV. Final Action

EPA is taking final action to approve the proposed revisions including changes to 401 KAR 50:045 and 401 KAR 63:045. These revisions pertain to performance testing requirements and open burning, respectively, and are part of the Commonwealth's strategy to meet the NAAQS by reducing emissions of PM<sub>2.5</sub> and ozone precursors. This final rule also addresses a comment made on

EPA's proposed rulemaking for this action published January 17, 2007 (72 FR 1954).

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk

that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the Commonwealth to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2007. 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) of the CAA.)

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 28, 2007.

J. I. Palmer, Jr.,  
Regional Administrator, Region 4.

■ 40 CFR part 52 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 *et seq.*

**Subpart S—Kentucky**

■ 2. Section 52.920(c), Table 1 is amended by revising the entries for

“401 KAR 50:045” and “401 KAR 63:005” to read as follows:

**§ 52.920 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

TABLE 1.—EPA-APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter 50 Division for Air Quality; General Administrative Procedures				
* * * * *				
401 KAR 50:045	Performance tests	07/13/05	10/17/07 [Insert citation of publication].	*
* * * * *				
Chapter 63 General Standards of Performance				
* * * * *				
401 KAR 63:005	Open burning	07/13/05	10/17/07 [Insert citation of publication].	*
* * * * *				

\* \* \* \* \*  
[FR Doc. E7-20334 Filed 10-16-07; 8:45 am]  
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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**46 CFR Part 67**

[USCG-2007-28098]

RIN 1625-AB18

**Vessel Documentation; Recording of Instruments**

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; confirmation of effective date.

**SUMMARY:** On August 2, 2007, we published a direct final rule. The direct final rule notified the public of our intent to amend vessel documentation regulations to eliminate the requirement to provide certain original documents to the National Vessel Documentation Center (NVDC) for recording, and to eliminate the additional fee for filing by facsimile. We have not received an adverse comment, or notice of intent to submit an adverse comment, on the rule. Therefore, the rule will go into effect as scheduled.

**DATES:** The effective date of the direct final rule published at 72 FR 42310, August 2, 2007, is confirmed as October 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas L. Willis, Director, National

Vessel Documentation Center, U.S. Coast Guard, telephone (304) 271-2506.

**SUPPLEMENTARY INFORMATION:** We undertook this rulemaking to conform our business practices with similar functions provided by other governmental entities and to allow our customers to avail themselves of better service through electronic filing. This rulemaking is expected to improve efficiency at the NVDC and permit the use of improved information collection technology.

Dated: October 11, 2007.

**Stefan G. Venckus,**  
Chief, Office of Regulations and Administrative Law, United States Coast Guard.

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