

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. We offered small businesses, organizations, or governmental jurisdictions affected by this rule or with questions concerning its provisions or options for compliance, to contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132. Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded 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 (32)(e), of the Instruction, from further environmental documentation. Under figure 2-1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05-1(g); Section 117.255 also issued under authority of Pub. L. 102-587, 106 Stat. 5039.

■ 2. Section 117.324 is added to read as follows:

#### § 117.324 Rice Creek.

The CSX Railroad Swingbridge, mile 0.8, in Putnam County, shall open on signal from 8 a.m. to 4 p.m., daily. From 4:01 p.m. to 7:59 a.m., daily, the bridge shall open with a 24-hour advance notice to CSX at 1-800-232-0142.

Dated: December 31, 2003.

**Fred M. Rosa**

*Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.*  
[FR Doc. 04-589 Filed 1-12-04; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[KS 202-1202; FRL-7608-9]

#### Approval and Promulgation of Implementation Plans; State of Kansas

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is announcing the approval of a revision to the maintenance plan prepared by Kansas to maintain the 1-hour national ambient air quality standard (NAAQS) for ozone in the Kansas portion of the Kansas City maintenance area through the year 2012. This plan is applicable to Johnson and Wyandotte Counties. This revision is required by the Clean Air Act. A similar final rulemaking pertaining to the Missouri portion of the Kansas City maintenance area is being done in

conjunction with this rulemaking. The effect of this approval is to ensure Federal enforceability of the state air program plan and to maintain consistency between the state-adopted plan and the approved SIP.

**DATES:** This rule is effective on February 12, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Leland Daniels, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or by e-mail at [daniels.leland@epa.gov](mailto:daniels.leland@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we”, “us”, or “our” is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this document? Have the requirements for approval of a SIP revision been met?

What action is EPA taking?

**What Is a SIP?**

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

**What Is the Federal Approval Process for a SIP?**

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled “Approval and Promulgation of Implementation Plans.” The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are “incorporated by reference,” which means that we have approved a given state regulation with a specific effective date.

**What Does Federal Approval of a State Regulation Mean to Me?**

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

**What Is Being Addressed in This Document?**

For the past ten years, Kansas has had a plan in place to maintain the 1-hour ozone standard in the Kansas portion of the Kansas City maintenance area through 2002. The CAA requires that the maintenance plan be revised. Kansas’ submittal of January 9, 2003, contained a revised plan that describes what will be done during the next ten-year period to maintain the ozone standard in the Kansas portion of the Kansas City maintenance area through 2012.

Our proposed approval of Kansas’ revised maintenance plan for the Kansas portion of the Kansas City 1-hour ozone maintenance area was published September 16, 2003 (68 FR 54190). No comments regarding the proposed approval were received.

**Have the Requirements for Approval of a SIP Revision Been Met?**

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51,

appendix V. In addition, as explained in this final rule and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

**What Action Is EPA Taking?**

Our review of the material submitted indicates that the state has revised the maintenance plan in accordance with the requirements of the CAA. A detailed discussion of our rationale for this determination is contained in the September 16, 2003, proposal. For the reasons stated in the proposal, we are fully approving Kansas’ revised maintenance plan for maintaining the 1-hour ozone standard for the second ten-year period in the Kansas portion of the Kansas City maintenance area.

**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 (Pub. L. 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.

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 State 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 March 15, 2004. 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).)

**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: December 31, 2003.

**James B. Gulliford**,  
*Regional Administrator, Region 7.*

■ 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 *et seq.*

**Subpart R—Kansas**

■ 2. In § 52.870(e) the table is amended by adding an entry at the end of the table to read as follows:

**§ 52.870 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

**EPA-APPROVED KANSAS NONREGULATORY PROVISIONS**

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(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	01/09/03	01/13/04.	

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[MO 201-1201; FRL-7608-8]

**Approval and Promulgation of Implementation Plans; State of Missouri**

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is announcing the approval of a revision to the maintenance plan prepared by Missouri

to maintain the 1-hour national ambient air quality standard (NAAQS) for ozone in the Missouri portion of the Kansas City maintenance area through the year 2012. This maintenance plan is applicable to Clay, Jackson and Platte Counties. This revision is required by the Clean Air Act. A similar final action pertaining to the Kansas portion of the Kansas City maintenance area is being done in conjunction with this rulemaking. The effect of this approval is to ensure Federal enforceability of the State air program plan and to maintain consistency between the State-adopted plan and the approved SIP.

**DATES:** This rule is effective on February 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Leland Daniels, Environmental

Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or by e-mail at [daniels.leland@epa.gov](mailto:daniels.leland@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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