

C.V. MOSEBACH, project attorney,
Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Racine on the Lake, Lakefront Airshow will be conducted on Lake Michigan, directly off of Racine Harbor from the 1st of June through the 4th of June 1989. This event will have low flying aircraft demonstrations, high performance aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in the area. Vessels desiring to transit the area may do so only with prior approval of the Patrol Commander (Officer-in-Charge, U.S. Coast Guard Station, Kenosha, Wisconsin).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary section 100.35-0905 to read as follows:

§ 100.35-0905 **Racine on the Lake, Lakefront Airshow, Lake Michigan, Racine, WI.**

The following area will be closed to vessel navigation or anchorage from 1:00 P.M. (local time) until 5:00 P.M. on 1 through 4 June 1989.

(a) *Restricted Area*: That portion of Lake Michigan enclosed by the following corner points:

Southeast Corner—42 degrees, 42.9 minutes, 0.0 seconds North; 87 degrees, 45.8 minutes, 0.0 seconds West

Southwest Corner—42 degrees, 42.9 degrees, 0.0 seconds North; 87 degrees, 46.0 minutes, 0.0 seconds West

Northwest Corner—42 degrees, 45 minutes, 0.0 seconds North
Shoreline

Northeast Corner—42 degrees, 45 minutes, 0.0 seconds North; 87 degrees, 45.8 minutes, 0.0 seconds West

(b) *Special Local Regulations*:

(1) The above area will be closed to navigation or anchorage from 1:00 P.M. (local time) until 5:00 P.M. on 1 through 4 June 1989.

(2) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(7) This section is effective from 1:00 P.M. on 1 June 1989 to 5:00 P.M. on 4 June 1989.

Dated: April 24, 1989.

R.A. Appelbaum,
RADM, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 89-10617 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD 05-89-01]

Regulated Navigation Area, Hampton Roads, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the regulated navigation area in 33 CFR 165.501 for Hampton Roads, Virginia, to provide special operating requirements for the Elizabeth River ferries using a dock to be constructed at the foot of High Street in Portsmouth, Virginia. The regulations are designed to ensure the safety of the passengers, the ferries, and other vessels navigating the area.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant D.T. Ormes, Port and Vessel Safety Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia, 23704-5004, (804) 398-6388.

SUPPLEMENTARY INFORMATION: On January 26, 1989, the Coast Guard published a notice of proposed rulemaking in the *Federal Register* for these regulations (54 FR 3789). Interested persons were requested to submit comments and ten comments were received.

Drafting Information

The drafters of this notice are Lt. D.T. Ormes, Project Officer, Port and Vessel Safety Branch, Fifth Coast Guard District, and LCDR R. K. Kutz, Project Attorney, Fifth Coast Guard District Legal Staff.

Discussion of Comments

Three comments requested that the ferries be allowed to remain moored at the dock, enabling them to adhere to a fixed schedule. The Coast Guard recognizes that passengers depend upon the ferry operator to adhere to a fixed schedule, but the Coast Guard believes that the interest of passenger safety far outweighs the convenience of adhering to a fixed arrival and departure schedule. Due to the location of the dock, as well as the size and density of

passing vessel traffic, the Coast Guard believes that the operator can maintain a schedule by adjusting the ferries' arrival times. This is a safer alternative since it limits the time when the ferries would be at the dock, which is immediately adjacent to the confined channel.

Two comments requested that the Coast Guard modify the regulations to allow a harbor tour vessel to use the new dock. The Coast Guard does not agree with this proposal.

The original permit application to the U.S. Army Corps of Engineers stated that the proposed dock would be used by the existing Elizabeth River ferries. The engineering drawings, as well as considerations of safety and local vessel traffic, were viewed expressly with those vessels in mind.

The Notice of Proposed Rulemaking also was predicated on an understanding that the existing ferries were the vessels to be used. Allowing the proposed ferry dock to be used by any or all vessels would be inconsistent with the original permit application and the scope of this rulemaking effort.

The remaining two comments agreed with the proposed rulemaking as written.

The Coast Guard also received three letters voicing support for the establishment of the ferry dock, but did not address the notice of proposed rulemaking.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. These regulations impose minimum restrictions on how the ferry will operate at the new dock being constructed at the foot of High Street, and should not have any effect on the economic viability of its operation.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they do not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This action has been thoroughly reviewed by the Coast Guard and it has been determined to be excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction (COMDTINST) M16475.1B.

Federalism Assessment

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulations

In consideration of the foregoing, the Coast Guard is amending Part 165 of Title 33, Code of Federal Regulations as follows:

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. Section 165.501 is amended by adding paragraphs (d)(11)(iv), (d)(12)(v), and (d)(13) to read as follows:

§ 165.501 Chesapeake Bay Entrance and Hampton Roads, Virginia and Adjacent Waters—Regulated Navigation Area.

(d) Regulations: * * *

(11) *Restrictions on Vessel Operations During Aircraft Carrier and Other Large Naval Vessel Transits of the Elizabeth River.* * * *

(iv) Notwithstanding paragraph (d)(11)(i) of this section, a vessel may not remain moored at the Elizabeth River Ferry dock at the foot of High Street in Portsmouth, Virginia, when the dock is within a safety zone for a naval aircraft carrier or other large naval vessel.

(12) *Restrictions on Vessel Operations During Liquefied Petroleum Gas Carrier Movements on the Chesapeake Bay and Elizabeth River.* * * *

(v) Notwithstanding paragraph (d)(12)(i) of this section, a vessel may not remain moored at the Elizabeth River Ferry dock at the foot of High Street in Portsmouth, Virginia, when the dock is within a safety zone for a liquefied petroleum gas carrier.

(13) *Restrictions on the Use of the Elizabeth River Ferry Dock at the Foot of High Street, Portsmouth, Virginia.*

(i) No vessels, other than those being operated as ferries for the Tidewater Transportation District Commission, may embark or disembark passengers or otherwise moor at the Elizabeth River Ferry dock at the foot of High Street, Portsmouth, Virginia.

(ii) Any vessel being operated for the Tidewater Transportation District Commission may not moor at the dock longer than necessary to embark passengers awaiting transportation or disembark passengers already aboard the vessel.

(iii) The matter or another authorized licensed officer must remain in the pilothouse and be prepared to get the vessel underway immediately or take other actions necessary to ensure the safety of the vessel's passengers, whenever a vessel is moored at the dock.

Dated: March 21, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-10618 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3553-1]

Approval and Promulgation of Implementation Plans

In the matter of Kentucky: 401 KAR 61:020, Existing Process Operations, 401 KAR 59:010, New Process Operations, 401 KAR 50:015, Documents Incorporated by Reference, [KY-040].

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 24, 1980 (45 FR 84999), EPA conditionally approved the State Implementation Plan (SIP) revisions which Kentucky developed for total suspended particulate (TSP) nonattainment areas pursuant to Part D of Title I of the Clean Air Act. On December 4, 1986 (51 FR 43742), EPA removed seven of the nine conditions attached to its approval of these revisions. EPA today is removing the remaining two conditions on the approval of Kentucky's Part D TSP SIP. The removal of these last two conditions will render Kentucky's Part D SIP for TSP fully approved. Regulation 401 KAR 50:015 is also being amended to incorporate several test methods referenced in other State and federal regulations. The EPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. [The revised standard is expressed in term of particulate matter with a nominal diameter of 10 micrometers or less

(PM₁₀).) However, at the State's option, EPA was to continue to process TSP SIP revisions which were in process at the time the new PM₁₀ standard was promulgated. In the policy published on July 1, 1987 (52 FR 24679, column 2), EPA stated that it would regard existing TSP SIP's as necessary interim particulate matter plans during the period preceding the approval of state plans specifically aimed at PM₁₀.

EFFECTIVE DATE: This action will be effective July 3, 1989 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the State submittal and other relevant documents are available for public inspection during normal business hours at the following locations:

Public Information Reference Unit,
Environmental Protection Agency, 401
M Street SW., Washington, DC 20460
U.S. Environmental Protection Agency,
Air Programs Branch, 345 Courtland
Street NE., Atlanta, Georgia 30365
Commonwealth of Kentucky Natural
Resources and Environmental
Protection Cabinet, Division of Air
Pollution Control, Frankfort Office
Plaza, 18 Reilly Road, Frankfort,
Kentucky 40601

Comments should be addressed to
Richard A. Schutt at the EPA address
above.

FOR FURTHER INFORMATION CONTACT:
Richard A. Schutt, U.S. Environmental
Protection Agency, Region IV, Air
Programs Branch, at the above address
or telephone (404) 347-2864 or FTS 257-
2864.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 (43 FR 8962 at 8996), and September 11, 1978 (43 FR 40412 at 40425), EPA designated several areas in the Commonwealth of Kentucky as nonattainment for certain national ambient air quality standards (NAAQS). Under the Clean Air Act (CAA) amendments of 1977, Kentucky was obligated to establish Part D (nonattainment) SIP revisions for its nonattainment areas. On June 15, 1979, the Kentucky Department for Natural Resources and Environmental Protection adopted the necessary SIP revisions and submitted them to EPA. EPA proposed conditional approval of Kentucky's TSP Part D SIP revisions in the November 15, 1979, *Federal Register* (44 FR 65781).

Since extensive comments were received in response to the November 15, 1979, notice, EPA presented its position in the September 18, 1980, *Federal Register* (45 FR 62163),

Reproposal and Reopening of Comment Period for Kentucky's Particulate Part D Plan Revisions. In that notice, EPA: (1) Responded to comments received in response to the November 15, 1979, notice that related directly to deficiencies found to exist in Kentucky's TSP plan revisions; (2) clarified those deficiencies noted in the November 15, 1979, notice; and (3) described additional deficiencies discovered in the Kentucky revision after publication of the November 15, 1979, notice. On December 24, 1980, EPA conditionally approved Kentucky's SIP revisions developed for TSP nonattainment areas pursuant to Part D of Title I of the Clean Air Act, addressing all comments received in response to the September 18, 1980, proposal notice.

Nine conditions were specified in the December 24, 1980, notice as conditions for full EPA approval of Kentucky's plan. Seven of those nine conditions were proposed to be removed in the October 16, 1985, *Federal Register* notice. No comments were received in response to that proposal. Removal of seven of the nine approval conditions was published as a final rule in the December 4, 1986, *Federal Register* notice. The remaining two conditions are being removed today.

Remaining Conditions

The first of the two remaining conditions specifies that Kentucky should revise Regulation 401 KAR 50:055, Section 2(3), to specify a method other than Method 9 of Appendix A, 40 CFR Part 60, for determining opacity for sources with intermittent emissions. The State attempted to meet this condition by revising the following regulations: 401 KAR 61:075, Steel Plants Using Existing Electric Arc Furnaces; 401 KAR 61:080, Steel Plants Using Existing Basic Oxygen Process Furnaces; 401 KAR 61:140, Existing By-Product Coke Manufacturing Plants; and 401 KAR 60:020, Existing Process Operations. The State also developed 401 KAR 61:170, Existing Blast Furnace Casthouses to meet this condition. While these applicable iron/steel industry regulations satisfy this condition for the iron/steel industry, the intent of this condition was to require Kentucky to adopt appropriate opacity determining procedures for all intermittent source types for which Method 9 was inappropriate. The applicable iron/steel regulations were proposed for approval in the October 16, 1985, *Federal Register* notice. Final approval was published in the December 4, 1986, *Federal Register* notice. Kentucky attempted to satisfy this approval condition for other source types by revising Regulation 401 KAR

61:020 at Section 4(6) as follows: "(6) For intermittent emissions, the method to determine opacity shall be a method promulgated by U.S. EPA and subsequently adopted by the Department pursuant to the requirements of KRS Chapter 13." This commitment did not satisfy the present requirement for Reasonably Available Control Technology (RACT) in nonattainment areas. Therefore, action on this condition was deferred until today.

The regulatory changes being approved today to 401 KAR 61:020, Existing Process Operations, are designed to ensure that RACT is installed and consistently maintained in all particulate nonattainment areas. The provisions of 401 KAR 61:020 as amended which apply to existing affected facilities or sources located in nonattainment areas apply to those affected facilities or sources if the area's attainment status changes unless a State Implementation Plan which provides for alternate provisions is approved by EPA. Regulation 401 KAR 61:020, Section 2, Definitions, is amended by adding definitions of both "continuous emissions" and "intermittent emissions" as well as specifying test methods to be used for measuring opacity for the two types of emissions. While Reference Method 9 will still be used to determine opacity of continuous emissions, Kentucky Method 150(F-1) will now be used to measure opacity of intermittent emissions. Regulation 401 KAR 61:020, Section 4, Test Methods and Procedures, is amended by adding Kentucky Method 150(F-1). This method is filed by reference in the current revisions to 401 KAR 50:015 which are being proposed for approval today. Specifically, this test method will require that opacity readings taken every fifteen seconds for three minutes, rather than six minutes, be averaged if the emission being observed persists for less than, or equal to, twelve consecutive observations. Therefore, 401 KAR 61:020, Existing Process Operations, does, in its current amended form, satisfy approval condition (i) on Kentucky's Part D TSP SIP. Since this condition is now satisfied, EPA is removing it. Kentucky has also amended Regulation 401 KAR 59:010 to incorporate the same requirements for new sources as 61:020 does for existing sources. EPA also is approving 59:010.

The second of the two remaining approval conditions specifies that Kentucky should revise Regulation 401 KAR 61:020, Existing Process Operations, Section 3, Standard for Particulate Matter, such that the

regulation has a specific requirement of reasonably available control technology (RACT) applicable to sources of process fugitive emissions. The State attempted to meet this condition by revising 401 KAR 61:020 at Section 3(2)(c) to read as follows: "(c) Fugitive emissions of particulate matter from any affected facility located in any area designated nonattainment for particulate matter under 401 KAR 51:010 shall be subject to reasonably available control technology requirements as set forth in conditions appearing on the operating permit." EPA determined in the October 16, 1985, Federal Register notice that the State's revision to 401 KAR 61:020 does not satisfy this approval condition. In order for this revision to satisfy the approval condition, the State would have to submit approvable (enforceable) permits to EPA for all sources that have a significant impact on the nonattainment areas. Alternatively, the State could satisfy the approval condition by revising 61:020 or adopting new regulations to provide enforceable RACT procedures in regulatory form. EPA decided in the October 16, 1985, Federal Register notice to defer action on this condition until Kentucky corrected its SIP to meet it. Action is being taken on this condition today.

Regulation 401 KAR 61:020 Section 3, Standard for Particulate Matter has been amended to prohibit any continuous or intermittent fugitive emission from equalling or exceeding twenty (20) percent opacity or remaining visible beyond the lot line of the property on which the emission originates. The opacity limitation is a tightening of the previous forty (40) percent opacity limitation. Section 3 is also amended by adding a provision stating that variation from the opacity standard will be considered by the Cabinet when case-by-case circumstances warrant consideration only if such a variance has been approved by the U.S. EPA. This amendment to 401 KAR 61:020 satisfies the condition that Kentucky have a specific requirement of RACT applicable to sources of process fugitive emissions. RACT would, in this case, be defined as those control techniques and equipment necessary to meet the twenty (20) percent opacity standard. Therefore, EPA is removing this second approval condition, condition (v).

Effect of Removal of Conditions

The effect of the approval of Kentucky's amendments to 401 KAR 61:020, 401 KAR 59:010, and 401 KAR 50:015, is to fully approve Kentucky's Part D State Implementation Plan (SIP) as adequate to achieve and maintain the

National Ambient Air Quality Standards for particulate matter.

Only with a fully approved Part D SIP can nonattainment areas which have adequate air quality data be redesignated to attainment, thereby facilitating any expansion of existing sources and the construction or modification of new sources in these areas.

Other Revisions

Regulation 401 KAR 50:015 is also being amended today to incorporate by reference the following reference methods from 40 CFR Part 60 Appendix A: Method 5E, Determination of Particulate Emissions from the Wool Fiberglass Insulation Manufacturing Industry; Method 7B, Determination of Nitrogen Oxide Emissions from Stationary Sources (Ultraviolet Spectrophotometry); and Method 16A, Determination of Total Reduced Sulfur Emissions from Stationary Sources (Impinger Technique). In addition, 401 KAR 50:015 is being amended to incorporate by reference Performance Specification 4, Specifications and test procedures for carbon monoxide continuous emission monitoring systems in stationary sources, from 40 CFR Part 60, Appendix B. The following document from the appropriate "Book of ASTM Standards" from the American Society for Testing and Materials in which the standard appears is also incorporated by reference in the current revisions to 401 KAR 50:015: D 2584-68(79), Standard Test Method for Ignition Loss of Cured Reinforced Resins. These methods and specifications are required in federal New Source Performance Standards (NSPS) which Kentucky is adopting by reference. Regulation 401 KAR 50:015 is also being amended to adopt Methods 209A and 209C from the Standard Methods for the Examination of Water and Wastewater, 15th Edition 1980, and to delete Method 209B. Method 209A will be used to determine compliance with the federal NSPS regulation for new wool fiberglass insulation manufacturing plants. Method 209C will replace Method 209B and will be used to measure total dissolved solids (TDS) in the make-up in by-product coke manufacturing plants. It differs from Method 209B in that the temperature of the drying oven is maintained at 103 °C to 105 °C, instead of 180 °C. Regulation 401 KAR 50:015 in its current amended form, is being approved today.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective July 3, 1989, unless, within 30 days of its publication, notice is received that

adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 3, 1989.

Final Action: EPA is today approving the revisions to 401 KAR 61:020, Existing Process Operations; 401 KAR 59:010, New Process Operations; and 401 KAR 50:015, Documents Incorporated by Reference, as discussed above. These revisions were submitted to EPA on September 19, 1986, after a public hearing to receive comments on the regulations was conducted on August 28, 1986. Approval of these amended regulations removes conditions necessary for full approval of Kentucky's Part D SIP for TSP, which previously was only conditionally approved. Kentucky now has a fully approved Part D SIP for TSP.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 1989. This action may not be challenged later in proceedings to enforce its requirements. [See Section 307(b)(2)].

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Intergovernmental relations, Incorporation by reference, Reporting and recordkeeping requirements.

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

Date: March 23, 1989.

Lee A. DeHihns, III,

Action Regional Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follow:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7642.

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(60) to read as follows:

§ 52.920 Identification of plan.

(c) * * *

(60) Corrections in Part D TSP SIP and other revisions submitted on September 19, 1986, by the Kentucky Department for Environmental Protection. The removal of these last two conditions renders the Kentucky's Part D SIP for TSP fully approved.

(i) Incorporation by reference.

(A) Revisions in Regulation 401 KAR—

50:015. Documents Incorporated by Reference.

Section 1. Code of Federal Regulations.
Section 3. American Society for Testing and Materials,
Section 8. Kentucky Division of Air Pollution,
Section 10. American Public Health Association, and
Section 11. Availability.

59:010. New process operations.

Section 1. Applicability.
Section 2. Definitions,
Section 3. Standard for Particulate Matter, and
Section 4. Test Methods and Procedures.

61:020. Existing process operations.

Section 1. Applicability
Section 2. Definitions;
Section 3. Standard for Particulate Matter, and
Section 4. Test Methods and Procedures.

These changes were effective September 4, 1986.

(B) Letter of September 19, 1986, from the Kentucky Natural Resources and Environmental Protection Cabinet to EPA.

(ii) Other material—none.

§ 52.935 [Removed and Reserved]

3. Section 52.935, Control strategy: Particulate matter, is removed and reserved.

[FR Doc. 89-8508 Filed 5-3-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3564-7; EPA Docket No. AM051 PA]

Approval of Stack Height Declarations; Philadelphia & Allegheny County, Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Notice of Approval of Stack Height Declarations.

SUMMARY: EPA is approving the declarations by Philadelphia and Allegheny County in Pennsylvania that there are no source emission limits which need to be revised because of the good engineering practice (GEP) stack height regulations.

EFFECTIVE DATE: This approval will become effective on June 5, 1989.

ADDRESSES: Copies of the documentation supporting the declarations are available for public inspection during normal business hours at: U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Joseph Kunz (3AM11).

FOR FURTHER INFORMATION CONTACT: Mr. Denis Lohman (3AM11) at the address above or call (215) 597-8375.

SUPPLEMENTARY INFORMATION: On January 26, 1988 (53 FR 2086), EPA published a Notice proposing to approve the declarations by Philadelphia and Allegheny County concerning emission limitations affected by dispersion techniques. Following the promulgation of the revised stack height regulations on July 8, 1985 (50 FR 27892), all states were required to review all existing emission limitations to determine which, if any, were affected by prohibited dispersion techniques. The January 26, 1988, Notice invited public comment on the declarations that there were no affected sources in Philadelphia or Allegheny County. No comments in response to that invitation were received.

Stack Height Remand

The EPA's stack height regulations were challenged in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983 within-formula stack height increases from demonstration requirements [40 CFR-51.100(kk)(2)];
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and
3. Grandfathering pre-1979 use of the refined H + 1.5L formula [40 CFR 51.100(ii)(2)].

The EPA is not acting on the declaration for the Philadelphia Electric Company's Schuylkill plant and the Duquesne Light Company Phillips plant, because they currently receive credit under one of the provisions remanded to the EPA in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). The Philadelphia Department of Public Health, the Allegheny County Bureau of Air Pollution Control and EPA will review the sources for compliance with any revised requirements when the EPA completes rulemaking to respond to the *NRDC* remand. No other sources in Allegheny County or Philadelphia are affected by the remand.

Conclusion: Allegheny County and Philadelphia have satisfied the requirement under Section 406 of the Clean Air Act to review sources and determine that no emission limits have been affected by prohibited dispersion techniques as defined in the July 8, 1985, stack height regulation. EPA has reviewed the declarations submitted by Allegheny County and Philadelphia and, with the exceptions of the Philadelphia Electric Schuylkill plant and the Duquesne Light Company Phillips plant identified above as affected by the remanded provisions, finds that the declarations are justified. Therefore, EPA is approving the declarations as proposed with the two exceptions.

The Office of Management and Budget has exempted this notice from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). 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

Air pollution control, Reporting and recordkeeping requirements. Sulfur dioxide.

Authority: 42 U.S.C. 7401-7462.

Date: April 10, 1989.

Stanley L. Laskowski,
Acting Regional Administrator.

[FR Doc. 89-10400 Filed 5-3-89; 8:45 am]

BILLING CODE 6560-50-M