PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.733 is temporarily amended by suspending paragraph (b) and adding a new paragraph (k) to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(k) The draw of the Route 35 bridge, mile 1.1 (Manasquan River) at Brielle, shall open on signal from July 17, 1995 through September 4, 1995, except as follows:

(1) From 9 a.m. to 10 p.m., Saturdays, Sundays and Federal holidays, the draw need only open on the hour and half hour.

(2) From 4 p.m. to 7 p.m., Mondays through Thursdays except Federal holidays, and on Fridays from 12 noon to 7 p.m. the draw need only open 15 minutes before and 15 minutes after the hour.

Dated: July 6, 1995.

J.L. Linnon,

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

[FR Doc. 95–17488 Filed 7–14–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS–5–1–6958a; FRL–5250–4]

Approval and Promulgation of Implementation Plans and Section 112(l) Program for the Issuance of Federally Enforceable State Operating Permits; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final action approves a revision to the State Implementation Plan (SIP) submitted by Kansas. The state's revision includes the creation of a class II operating permit program, and revisions and additions to existing SIP rules. The approval of the class II permitting program authorizes Kansas to issue Federally enforceable state operating permits addressing both criteria pollutants (regulated under section 110 of the Clean Air Act) and hazardous air pollutants (regulated under section 112).

DATES: This final rule is effective September 15, 1995 unless by August 16, 1995 adverse or critical comments are received.

ADDRESSES: Comments may be mailed to Wayne A. Kaiser, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

I. Background

Kansas recently restructured its air program rules as a result of the need to develop a major source operating permit program consistent with the requirements of 40 CFR part 70. Consequently, the state created a three-tiered permit program: class I, class II, and class III. Class I permits will be issued to part 70 major sources, class II permits to nonmajor sources and to those willing to take Federally enforceable operating restrictions to limit their potential-to-emit to nonmajor source levels, and class III permits for all other emission sources (i.e., sources with emission levels lower than the class II cutoff levels). This SIP revision includes revisions to existing SIP rules, including the definitions rule and construction permits rules, and new rules which create general permits and class II operating permits, including permits-by-rule. These rule revisions are the result of three state rulemakings, effective in 1993, 1994, and 1995.

On February 17, 1995, the Secretary of the Kansas Department of Health and Environment (designee of the Governor) submitted the SIP revision and supporting information to the EPA Region VII Administrator. In a supplemental letter dated March 8, 1995, the state also requested that EPA approve the class II permitting rules under the authority of section 112(l) for the purpose of conferring Federally enforceable limitations on hazardous air pollutants (HAP). EPA's review and analysis of the entire state submittal is discussed below.

For a more detailed discussion, please refer to the Technical Support Document (TSD) prepared for this document, which is available from the contact listed above.

II. Review of State Submittal

A. Rule Revisions

K.A.R. 28–19–7, Definitions. Over 30 definitions were revised or added. New definitions were necessary due to the adoption of the Title V permitting rules and the related class II permitting rules. Some definitions were simply moved from existing rules to the definitions rule for the purpose of consolidating all definitions in one rule. Other revisions were nonsubstantive grammatical or clarifying revisions. A detailed discussion of each revision to this rule is contained in the TSD.

K.A.R. 28–19–8, Reporting required. This regulation formerly described emission levels which triggered requirements to obtain construction and operating permits and approvals. Revisions were required to remove those provisions relating to operating permits that now appear in regulations relating specifically to the new class I and class II operating permits programs.

K.A.R. 28–19–14, –14a, –14b, pertaining to permits and fees. These were revised because most of these provisions are now contained in new rules. Rule K.A.R. 28–19–14b was revoked in the 1994 revision, and –14a was revised in 1994 and revoked in 1995.

K.A.R. 28–19–204, General provisions, permit issuance and modification; public participation. This new regulation includes general requirements for public participation in the permitting process, including construction permits and class II operating permits.

K.A.R. 28–19–212, General provisions; approved test methods and emission compliance determination procedures. This rule includes most test methods required by other rules, including adoption by reference of methods in 40 CFR parts 51, 60, 61, and 63. In 58 FR 54677 (October 22, 1993), the EPA announced that SIP calls pursuant to section 110(k)(5) of the Act would be issued in order to implement the monitoring requirements of section 114(a)(3), including the periodic monitoring requirements for operating permits pursuant to sections 502(b)(2) and 504. This SIP call is required, because existing SIPs are inadequate in that they may be interpreted to limit the types of testing or monitoring data that may be used for determining compliance and establishing violations.

On May 6, 1994, the EPA notified the Governor of Kansas that an SIP revision was necessary to meet the

aforementioned requirements of the Act. Submission of this rule revision fulfills this requirement. This revision provides that any credible evidence may be used for the purpose of establishing whether a violation has occurred at the source.

K.A.R. 28–19–300 through 304. These regulations establish the procedures applicable to the issuance of permits and approvals to construct or modify new air sources. Major portions of these provisions were formerly contained in K.A.R. 28–19–8 and K.A.R. 28–19–14. The threshold criteria pollutant emission levels for obtaining a construction permit (K.A.R. 28–19–300(a)(1)) have been increased to make them consistent with prevention of significant deterioration (PSD) levels. Changing these threshold emission levels will not threaten maintenance of the ambient air quality standards in the state. Air quality modeling for criteria pollutants has been performed in connection with new and modified source permit applications over the past 10 years. The modeling results demonstrate that sources with a potential-to-emit of less than the PSD significance levels have not threatened the maintenance of air quality in Kansas.

K.A.R. 28–19–300(b)(1) establishes the emissions thresholds for a construction approval. These thresholds are unchanged from K.A.R. 28–19–8 with the exception of particulate matter for nonagricultural operations. That threshold has been changed from one or more pounds of particulate matter, including but not limited to PM_{10}, during any one hour of operation, to the potential-to-emit either five pounds per hour of particulate matter or two pounds per hour of PM_{10}. Based on prior modeling of sources of this size, Kansas has determined that this change does not threaten maintenance of the National Ambient Air Quality Standards.

K.A.R. 28–19–302 provides for a construction permit to include a Federally enforceable operational restriction or permit conditions regarding air pollution control equipment in order to reduce the potential-to-emit. This allows sources to take Federally enforceable permit restrictions to reduce their potential-to-emit at the construction stage. The restrictions must meet the state's requirements for Federally enforceable operating permits in K.A.R. 28–19–501(b), discussed below.

K.A.R. 28–19–400 through 404. These regulations establish procedures and conditions for the state to develop and issue general construction permits and class II general operating permits covering numerous similar sources. Sources that qualify for a general permit would then apply for coverage under the terms of the general permit. Under the Kansas regulations, general construction permits must be approved by EPA as SIP revisions before any source may construct under the permit.

K.A.R. 28–19–500 through 502. These rules establish the general framework for eligibility of a source for a class I or class II operating permit.

K.A.R. 28–19–540 through 546. These rules establish the class II operating permit procedures available for sources that would otherwise be required to obtain a class I permit.

K.A.R. 28–19–561 through 563. These rules establish the conditions for issuance of a permit-by-rule to specific source categories. These source categories may limit their potential-to-emit to a level that removes them from the class I program, provided that the source meets the criteria established in these regulations and complies with the recordkeeping and reporting provisions, if applicable. The three source categories for which permit-by-rule are available are: reciprocating engines, organic solvent evaporative sources, and hot mix asphalt facilities.

B. Class II Operating Permit Program

For many years, Kansas has been issuing permits for major new sources and for major modifications of existing sources. Throughout this time, Kansas has also been issuing permits establishing limitations on the potential emissions from new sources so as to avoid major source permitting requirements. This latter type of permitting has been the subject of various guidance from EPA, most notably the memorandum entitled ''Guidance on Limiting Potential to Emit in New Source Permitting'' dated June 13, 1989.

The operating permit provisions in Title V of the Clean Air Act Amendments of 1990 have created interest in mechanisms for limiting sources' potential-to-emit, thereby allowing the sources to avoid being defined as ''major'' with respect to Title V operating permit programs. A key mechanism for such limitations is the use of Federally enforceable state operating permits (FESOP). EPA issued guidance on FESOPs in the **Federal Register** of June 28, 1989 (54 FR 27274). On February 17, 1995, Kansas submitted its newly adopted class II permitting rules to provide for FESOPs in Kansas. This rule would supplement the preexisting mechanism for establishing Federally enforceable limitations on potential-to-emit (i.e., new source permits). This rulemaking evaluates whether Kansas has satisfied the requirements for this type of Federally enforceable limitation on potential-to-emit.

As specified in the **Federal Register** of June 28, 1989, there are five criteria that a state must meet in order to achieve a Federally enforceable operating permit program which is approved into the SIP. These criteria apply to both the class II program and to the request for approval under section 112(l), discussed below. The state of Kansas has met this criteria by: (1) Submitting this program for approval; (2) imposing a legal obligation that operating permit holders adhere to the terms and limitations of their permits (K.A.R. 28–19–501); (3) requiring that all emissions limitations, controls, and other requirements imposed by permits will be at least as stringent as any other applicable limitations and requirements contained in or enforceable under the SIP (K.A.R. 28–19–501(b)(1) and (2); (4) further requiring the limitations, controls, and requirements of the permits to be permanent, quantifiable, and otherwise enforceable as a practical matter (K.A.R. 28–19–501(b)(3)); and (5) providing that the permits issued are subject to public participation and EPA review (K.A.R. 28–19–501(e)).

The June 28, 1989, **Federal Register** document also states that EPA may deem permit restrictions not to be Federally enforceable if the criteria are not met. Although the Kansas regulation does not expressly provide for this, EPA is including a provision in the rulemaking portion of this document clarifying that nonconforming permit requirements may be deemed not Federally enforceable.

The reader may consult the TSD for a fuller description of how the state has met these criteria.

C. Section 112(l) Authority

Kansas has also requested that EPA authorize Federally enforceable limitations on potential-to-emit both pollutants regulated under section 110 of the Act (''criteria pollutants'') and pollutants regulated under section 112 (HAPs). As discussed above, the June 28, 1989, **Federal Register** document provided five specific criteria for approval of state operating permit programs for the purpose of establishing Federally enforceable limits on a source's potential-to-emit. This 1989 document, because it was written prior to the 1990 Amendments, addressed only SIP programs to control criteria pollutants. Federally enforceable limits on criteria pollutants (especially volatile organic compounds (VOC) and

particulate matter) may have the incidental effect of limiting certain HAPs listed pursuant to section 112(b). This situation would occur when a pollutant classified as an HAP is also classified as a criteria pollutant (e.g., benzene).[1] As a legal matter, no additional program approval by EPA is required in order for these criteria pollutant limits to be recognized for this purpose.

EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** document, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989, document does not address HAPs because it was written prior to the 1990 Amendments to section 112, and not because it establishes requirements unique to criteria pollutants. Hence, the five criteria discussed above are applicable to FESOP approvals under section 112(l) as well as under section 110.

In addition to meeting the criteria in the June 28, 1989, document, an FESOP program for HAPs must meet the statutory criteria for approval under section 112(l)(5). This section allows EPA to approve a program only if it: (1) Contains adequate authority to ensure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for ensuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

EPA plans to codify the approval criteria for programs limiting potential-to-emit HAPs in subpart E of part 63, the regulations promulgated to implement section 112(l) of the Act. EPA currently anticipates that these criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989, document, with the addition that the state's authority must extend to HAPs instead of, or in addition to, VOCs and particulate matter. EPA currently anticipates that FESOP programs that are approved pursuant to section 112(l) prior to the subpart E revisions will have had to meet these criteria and, hence, will not be subject to any further approval action.

EPA believes it has authority under section 112(l) to approve programs to limit potential-to-emit HAPs directly under section 112(l) prior to this revision to subpart E. Section 112(l)(5) requires EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address all instances of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy this requirement. Given the severe timing problems posed by impending deadlines under section 112 and Title V, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential-to-emit prior to issuance of a rule specifically addressing this issue.

Kansas' satisfaction of the criteria published in the **Federal Register** of June 28, 1989, has been discussed above. In addition, Kansas' FESOP program meets the statutory criteria for approval under section 112(l)(5). EPA believes that Kansas has adequate authority to ensure compliance with section 112 requirements since the third criteria of the June 28, 1989, document is met (that is, since the program does not provide for waiving any section 112 requirement). Nonmajor sources would still be required to meet applicable section 112 requirements.

Regarding adequate resources, Kansas has included in its request for approval under section 112(l) a commitment to provide adequate resources to implement and enforce the program, which will be obtained from fees collected under Title V. EPA believes that this mechanism will be sufficient to provide for adequate resources to implement this program, and will monitor the state's implementation of the program to ensure that adequate resources continue to be available.

Kansas' FESOP program also meets the requirement for an expeditious schedule for ensuring compliance. A source seeking a voluntary limit on potential-to-emit is probably doing so to avoid a Federal requirement applicable on a particular date. Nothing in this program would allow a source to avoid or delay compliance with the Federal requirement if it fails to obtain the appropriate Federally enforceable limit by the relevant deadline.

Finally, Kansas' FESOP program is consistent with the objectives of the section 112 program, since its purpose is to enable sources to obtain Federally enforceable limits on potential-to-emit to avoid major source classification under section 112. EPA believes this purpose is consistent with the overall intent of section 112. Accordingly, EPA finds that Kansas' program satisfies applicable criteria for establishing Federally enforceable limitations on potential to emit both criteria and hazardous air pollutants.

III. Rulemaking Action

EPA finds that the criteria for Kansas to be able to issue FESOPs are essentially met, and is today approving its rules pertaining to its class II permitting program, as well as approving those rules under the authority of section 112(l). EPA is also approving the additional rules submitted for approval in the SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a

[1] EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential-to-emit of HAPs to below section 112 major source levels.

significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

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 September 15, 1995. 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).)

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this SIP, the state and any affected local governments have elected to adopt the program provided for under section 110 of the Clean Air Act. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

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

Dated: June 21, 1995.

Dennis Grams,

Regional Administrator.

Part 52, 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. 7401–7671q.

Subpart R—Kansas

2. Section 52.870 is amended by adding paragraph (c)(30) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(30) On February 17, 1995, the Secretary of the Kansas Department of Health and Environment (KDHE) submitted for approval numerous rule revisions which add and revise definitions, revise the Kansas construction permit program, and create a class II operating permit program.

(i) Incorporation by reference.

(A) Revised rules K.A.R. 28–19–7 effective November 22, 1993; K.A.R. 28–19–8 effective January 23, 1995; K.A.R. 28–19–14 effective January 24, 1994; and the revocation of K.A.R. 28–19–14a effective January 23, 1995; and the revocation of K.A.R. 28–19–14b effective January 24, 1994.

(B) New rules K.A.R. 28–19–204, 212, 300, 301, 302, 303, 304, 400, 401, 402, 403, 404, 500, 501, 502, 540, 541, 542, 543, 544, 545, 546, 561, 562, and 563 effective January 23, 1995.

3. Section 52.872 is added to read as follows:

§ 52.872 Operating permits.

Emission limitations and related provisions which are established in Kansas operating permits as Federally enforceable conditions shall be enforceable by EPA. EPA reserves the right to deem permit conditions not Federally enforceable. Such a determination will be made according to appropriate procedures and be based upon the permit, permit approval procedures, or permit requirements which do not conform with the operating permit program requirements or the requirements of EPA underlying regulations.

[FR Doc. 95–17214 Filed 7–14–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 071095H]

Pacific Halibut Fisheries; Central Oregon Sport Fishery; Southwest Washington Sport Fishery; and Non-treaty Area 2A Commercial Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason actions.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes inseason actions pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATES: Closures: 11:59 p.m., July 4, 1995, through December 31, 1995. Opening: 8 a.m. July 5, 1995, through 6 p.m. July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued these inseason actions pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, these inseason actions are published in the **Federal Register** to provide additional notice of their effectiveness, and to inform persons subject to the inseason actions of the restrictions and requirements established therein.

Inseason Actions

1995 Halibut Landing Report Number 8

Central Oregon Sport Fishery Closes July 4, 1995

The preliminary catch estimate for the 1995 sport halibut fishery inside the 30-