

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 proposed 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. The Administrator of the office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

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

### Environment

We have analyzed this rule under 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 (34)(g), of the Instruction, from further environmental documentation. This rule fits the category from paragraph (34)(g) because it establishes a safety zone.

A preliminary "Environmental Analysis Check List" is available in the docket where indicated under

**ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

### List of Subjects in 33 CFR Part 165

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

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

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

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

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

■ 2. A new temporary section 165.T09–123 is added as follows:

#### § 165.T09–123 Safety zone; Milwaukee River Challenge, Milwaukee River, Milwaukee, WI.

(a) Location: The following area is a temporary safety zone: All waters of the Milwaukee River from the North Water Street Bridge north to the Humboldt Avenue Bridge.

(b) Effective period. This regulation is effective from 10 a.m. (local) until 4:30 p.m. (local), on September 17, 2005.

(c) Enforcement Period. This zone will be enforced from 10 a.m. (local) until 4:30 p.m. (local), on September 17 2005.

(d) Regulations.

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Lake Michigan, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall

contact the Captain of the Port Lake Michigan or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given to them by the Captain of the Port Lake Michigan or his on-scene representative.

Dated: September 9, 2005.

**S.P. LaRochelle,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. 05–18594 Filed 9–16–05; 8:45 am]

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R07–OAR–2005–MO–0003; FRL–7969–6]

#### Approval and Promulgation of Implementation Plans; State of Missouri; Correction

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

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** On July 13, 2005, EPA published a final rule approving revisions to the Missouri State Implementation Plan (SIP). In the July 13, 2005, rule, EPA inadvertently included an incorrect state effective date for the Missouri statewide NO<sub>x</sub> rule. The purpose of this action is to correct the state effective date to August 30, 2003.

**DATES:** This action is effective September 19, 2005.

**FOR FURTHER INFORMATION CONTACT:** Michael Jay at (913) 551–7460, or by e-mail at [jay.michael@epa.gov](mailto:jay.michael@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us," or "our" is used, we mean EPA.

On July 13, 2005 (70 FR 40193), EPA published a final rule approving a SIP revision for Missouri that included a revision to the statewide NO<sub>x</sub> rule, 10 CSR 10–6.350 "Emissions Limitations and Emissions Trading of Oxides of Nitrogen." The purpose of the rule is to reduce the state's contribution to the St. Louis 8-hour ozone nonattainment area. The July 13, 2005, rule inadvertently included an incorrect state effective date for the statewide NO<sub>x</sub> rule of June 23, 2003. Today's action is necessary to correct the state effective date to August 30, 2003.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B),

provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is such good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting our identification of the effective date of a state rule. The correction has no effect on the state rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

**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). Because the agency has made a good cause finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects an incorrect state effective date in a previous action, 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).

For the same reason, this rule also 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, as specified by Executive Order 13175 (65

FR 67249, November 9, 2000). This rule will 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), because it merely corrects an incorrect state effective date in a previous action in a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (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, our 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), we have 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 (CRA), 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. As stated previously, we made such a good cause finding, including the reasons therefore and established an effective date of September 19, 2005. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to the Missouri SIP table is not a "major rule" as defined by 5 U.S.C. 804 *et seq.* (2).

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

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 8, 2005.

**William Rice,**  
*Acting 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 AA—Missouri**

■ 2. In " 52.1320(c) the table is amended under Chapter 6 by revising the entry for rule A10-6.350" to read as follows:

**§ 52.1320 Identification of plan.**

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

**EPA-APPROVED MISSOURI REGULATIONS**

Missouri citation	Title	State effective date	EPA approval date	Explanation
<b>Missouri Department of Natural Resources</b>				
* * * * *				
<b>Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri</b>				
* * * * *				
10-6.350	Emissions Limitations and Emissions Trading of Oxides of Nitrogen.	08/30/03	09/19/05 [insert FR page number where the document begins].	

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R05-OAR-2005-MN-0002; FRL-7969-7]

**Approval and Promulgation of Implementation Plan; MN**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** The EPA is approving State Implementation Plan (SIP) revisions to the sulfur dioxide (SO<sub>2</sub>) requirements for Flint Hills Resources, L.P. (Flint Hills) of Dakota County, Minnesota. Flint Hills operates a petroleum refinery in Rosemont, Minnesota. The requested revision will allow the refinery to begin producing ultra low sulfur diesel fuel. This expansion will add five sources and will increase SO<sub>2</sub> emissions. An analysis was conducted on the new sources. The analysis indicates that the air quality of Dakota County, Minnesota will remain in compliance with the National Ambient Air Quality Standards (NAAQS) for SO<sub>2</sub>. Thus, the public health and welfare in Minnesota will be protected.

**DATES:** This final rule is effective on October 19, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R05-OAR-2005-MN-0002. All documents in the docket are listed in the RME index at <http://docket.epa.gov/rmepub/>, once in the system, select "quick search," then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Region 5, Air and

Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886-6524 before visiting the Region 5 office.

This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, [rau.matthew@epa.gov](mailto:rau.matthew@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. General Information**

*A. Does This Action Apply To Me?*

This action applies to a single source, Flint Hills Resources, L.P. of Dakota County, Minnesota.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. The Regional Office has established an official public rulemaking file for this action that is available both electronically and in hard copy form at the Regional office. The electronic public rulemaking file can be found under RME ID No. R05-OAR-2005-MN-0002. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include CBI or other information whose disclosure is restricted by statute. The hard copy version of the official public rulemaking file is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. 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.

**II. Background**

Minnesota submitted a request to revise its SO<sub>2</sub> State Implementation Plan (SIP) on June 17, 2004. The revision allows Flint Hills to install new equipment at a new production line. EPA published a proposed and a direct final rule to approve the requested revisions in the July 1, 2005 **Federal Register** (70 FR 38025-28, 38071-73). EPA received adverse comment from the Leech Lake Band of Ojibwe. The Band is concerned about the increase in SO<sub>2</sub> emissions from the Flint Hills facility. EPA published a withdrawal of the direct final rule in the August 24, 2005 **Federal Register** (70 FR 49498-99) since an adverse comment was received.

**III. What Is the EPA Approving?**

EPA is approving revisions to the Minnesota SO<sub>2</sub> SIP for the Flint Hills refinery. Flint Hills is installing equipment to begin producing ultra low sulfur diesel fuel. It is adding a Hydrocracker Charge Heater (unit 29H-1), a Hydrocracker Fractionator Heater (29H-2), a charge heater for the #4 Hydrogen Plant (30H-1), an emergency diesel generator (EE-29-401), and an emergency diesel powered cooling water pump (81P 450) to its refinery.

**IV. What Is the EPA's Analysis of the Requested Revisions?**

Flint Hills conducted air dispersion modeling to assess the effect of its proposed new equipment and operating plan on ambient air quality. The modelers used the ISCST3 dispersion model in the regulatory default mode, with five years of meteorological data from the Minneapolis-St. Paul International Airport. The SO<sub>2</sub> emissions from other nearby companies were included. When the modeling was performed, Flint Hills had not finalized the locations of the new boilers and heaters. It modeled the new sources concurrently at three potential locations, with each source at its full emission rate. The modeled results are more conservative because of this