

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 final 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 considered the environmental impact of this final rule and concluded that, under figure 2-1, paragraph (32)(e), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For 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; 49 CFR 1.46; 33 CFR 1.05-1(g); Section 117.255 also issued under authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.829 is revised to read as follows:

§ 117.829 Northeast Cape Fear River.

(a) The draw of the Isabel S. Holmes Bridge, at mile 1.0, at Wilmington, North Carolina will operate as follows:

(1) The draw will be closed to pleasure craft from 6 a.m. to 6 p.m. every day except at 10 a.m. and 2 p.m. when the draw will open for all waiting vessels.

(2) The draw will open on signal for Government and commercial vessels at all times.

(3) The draw will open for all vessels on signal from 6 p.m. to 6 a.m.

(b) The draw of the Seaboard System Railroad Bridge across the Northeast Cape Fear River, mile 27.0, at Castle Hayne, North Carolina shall open on signal if at least 4 hours notice is given.

Dated: November 12, 2002.

James D. Hull,

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

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP No. MT23-1-6402; FRL-7412-2]

Approval and Promulgation of Air Quality Implementation Plans; Montana; State Implementation Plan Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: On September 19, 1975, we approved the East Helena Sulfur Dioxide (SO₂) State Implementation Plan (SIP). Additionally, on May 1, 1984, we approved revisions to the East Helena SO₂ SIP. Finally, on January 27, 1995, we approved additional revisions to the East Helena SO₂ SIP. The East Helena SO₂ SIP approved on January 27, 1995, superceded the East Helena SO₂ SIP approved on September 19, 1975, and terminated the East Helena SO₂ SIP approved on May 1, 1984. However, when we approved the SIP revision on January 27, 1995, we did not indicate that it superceded and terminated earlier SIP approvals. EPA is making a correction to the regulatory language to clarify that the earlier East Helena SO₂ SIP revisions have been superceded or terminated by the East Helena SO₂ SIP approved on January 27, 1995.

DATES: This rule is effective on December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312-6437

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we" or "our" is used it means EPA.

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 procedure 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 good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting incorrect text in previous rulemakings. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

I. Correction

When we approved the East Helena Sulfur Dioxide (SO₂) State Implementation Plan (SIP) on January 27, 1995 (60 FR 5313) (codified at 40 CFR 52.1370(c)(37)), we should have indicated that our September 19, 1975 (40 FR 43216) (currently codified at 40 CFR 52.1370(c)(5)), approval of the East Helena SO₂ SIP was superceded and that effective after November 15, 1995, our May 1, 1984 (49 FR 18482) (codified at 40 CFR 52.1370(c)(16)), approval of a revision to the East Helena SO₂ SIP was terminated. The Board Order issued on March 18, 1994, by the Montana Board of Health and Environmental Sciences, and incorporated by reference at 40 CFR 52.1370(c)(37)(i)(B), indicates that the SIP supercedes all requirements contained in the existing provisions of the SIP relating to sulfur dioxide in East Helena * * * except the provisions that relate to catalyst screening which terminated effective after November 15, 1995. We approved the East Helena SO₂ SIP on January 27, 1995, that contained an attainment demonstration and a control strategy for the primary SO₂ NAAQS. Therefore, pursuant to section 110(k)(6) of the Clean Air Act, we are clarifying 40 CFR 52.1370(c)(37) to indicate that the East Helena SO₂ SIP revision submitted on March 30, 1994, supercedes the East Helena SO₂ SIP approved in paragraph (c)(5) and, effective after November 15, 1995, terminates the East Helena SO₂ SIP approved in paragraph (c)(16).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May

22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. 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), nor will it 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 rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance

with these statutes and Executive Orders for the underlying rules are discussed in the September 19, 1975, May 1, 1984, and January 27, 1995, actions approving revisions to the East Helena SO₂ SIP.

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. 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. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of December 26, 2002. 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**. These corrections to the identification of plan for Montana is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 14, 2002.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart BB—Montana

2. Section 52.1370 is amended by revising the introductory text of paragraph (c)(37) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(37) The Governor of Montana submitted a State Implementation Plan (SIP) revision meeting the requirements for the primary SO₂ NAAQS SIP for the

East Helena, Montana nonattainment area with a letter dated March 30, 1994. The submittal was to satisfy those SO₂ nonattainment area SIP requirements due for East Helena on May 15, 1992. The East Helena SO₂ SIP revision submitted on March 30, 1994, supercedes the East Helena SO₂ SIP approved in paragraph (c)(5) of this section and, effective after November 15, 1995, terminates the East Helena SO₂ SIP approved in paragraph (c)(16) of this section.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 272-0376; FRL-7412-9]

Withdrawal of Direct Final Rule Revising the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On October 7, 2002 (67 FR 62385), EPA published a direct final approval of a revision to the Bay Area Air Quality Management District (BAAQMD) State Implementation Plan (SIP). This revision concerned BAAQMD Rule 9-10, Nitrogen Oxides and Carbon Monoxide from Boilers, Steam Generators, and Process Heaters in Petroleum Refineries. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The direct final rule stated that if adverse comments were received by November 6, 2002, EPA would publish a timely withdrawal in the **Federal Register**. EPA received timely adverse comments and is, therefore, withdrawing the direct final approval. EPA will address the comments in a subsequent final action based on the parallel proposal also published on October 7, 2002 (67 FR 62427). As stated in the parallel proposal, EPA will not institute a second comment period on this action. The interim final determination also published on October 7, 2002 and also regarding BAAQMD Rule 9-10 is not affected by this withdrawal.

EFFECTIVE DATE: The direct final rule published on October 7, 2002, is withdrawn as of November 25, 2002.