

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart GG—New Mexico**

■ 2. Section 52.1620(c) is amended by revising the entries for Parts 74 and 79 under the first table titled “New Mexico Administrative Code (NMAC) Title 20—

Environment Protection Chapter 2—Air Quality”.

The revisions read as follows:

**§ 52.1620 Identification of plan.**

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

**EPA APPROVED NEW MEXICO REGULATIONS**

State citation	Title/subject	State approval/ effective date	EPA approval date	Comments
<b>New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality</b>				
Part 74	Permits—Prevention of Significant Deterioration.	6/3/2011	1/22/2013 [Insert <i>FR</i> page number where document begins].	Revisions to 20.2.74.303(A) NMAC submitted 5/23/2011, effective 6/3/2011, are <i>NOT</i> part of SIP. 20.2.74.303 NMAC submitted 12/1/2010, effective 1/1/2011, remains SIP approved (6/20/2011, 76 FR 43149).
Part 79	Permits—Nonattainment Areas.	6/3/2011	1/22/2013 [Insert <i>FR</i> page number where document begins].	

\* \* \* \* \*  
[FR Doc. 2013–00729 Filed 1–18–13; 8:45 am]  
**BILLING CODE P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R08–OAR–2011–0114; FRL–9771–9]

**Approval, Disapproval and Promulgation of State Implementation Plans; State of Utah; Regional Haze Rule Requirements for Mandatory Class I Areas Under 40 CFR 51.309; Correction**

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

**ACTION:** Final rule; correction.

**SUMMARY:** The EPA is supplementing the preamble to the final rule that appeared in the *Federal Register* on December 14, 2012. This final rule partially approved and partially disapproved a State Implementation Plan (SIP) revision submitted by the State of Utah on May 26, 2011 that addresses regional haze. The final rule preamble inadvertently did not include language pertaining to judicial review, and this document adds that language.

**DATES:** Effective on January 14, 2013.

**FOR FURTHER INFORMATION CONTACT:**

Laurel Dygowski, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6144, [dygowski.laurel@epa.gov](mailto:dygowski.laurel@epa.gov).

**SUPPLEMENTARY INFORMATION:** In *Federal Register* document 2012–29406 published in the *Federal Register* on December 14, 2012 (77 FR 74355), the following corrections are made:

1. On page 74372, in the first column, in section V. *Statutory and Executive Order Reviews*, paragraph L. is added to read as follows: “*L. Judicial Review—* Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 CAA section 307(b)(2).)”

Dated: December 20, 2012.

**James B. Martin,**

*Regional Administrator, Region 8.*

[FR Doc. 2013–01081 Filed 1–18–13; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[EPA–R04–OAR–2011–0316; FRL–9771–1]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Alabama; Redesignation of the Birmingham 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a request submitted on May 2, 2011, from the State of Alabama, through the Alabama Department of Environmental Management (ADEM), Air Division, to redesignate the Birmingham fine particulate matter (PM<sub>2.5</sub>) nonattainment area (hereafter referred to as the “Birmingham Area” or

“Area”) to attainment for the 1997 Annual PM<sub>2.5</sub> national ambient air quality standards (NAAQS). The Birmingham 1997 Annual PM<sub>2.5</sub> nonattainment area is comprised of Jefferson and Shelby Counties in their entireties and a portion of Walker County. EPA’s approval of the redesignation request is based on the determination that the State of Alabama has met the criteria for redesignation to attainment set forth in the Clean Air Act (CAA or Act), including the determination that the Birmingham Area has attained the 1997 Annual PM<sub>2.5</sub> NAAQS. Additionally, EPA is approving a revision to the Alabama state implementation plan (SIP) to include the 1997 Annual PM<sub>2.5</sub> maintenance plan for the Birmingham Area that contains the new 2024 motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and PM<sub>2.5</sub>. This action also approves the 2009 emissions inventory submitted with the maintenance plan.

**DATES:** *Effective Date:* This rule will be effective on February 21, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2011–0316. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. 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.

**FOR FURTHER INFORMATION CONTACT:** Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Joel Huey may be reached by phone at (404) 562–9104 or via electronic mail at [huey.joel@epa.gov](mailto:huey.joel@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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- I. What is the background for the actions?
- II. What are the actions EPA is taking?
- III. Why is EPA taking these actions?
- IV. What are the effects of these actions?
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**I. What is the background for the actions?**

As stated in our proposed approval notice published on November 10, 2011 (76 FR 70078), this redesignation action addresses the Birmingham Area’s status solely with respect to the 1997 Annual PM<sub>2.5</sub> NAAQS, for which designations were finalized on January 5, 2005 (70 FR 944) and April 14, 2005 (70 FR 19844). On May 2, 2011, the State of Alabama, through ADEM, submitted a request to redesignate the Birmingham Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS and for EPA approval of the Alabama SIP revisions containing a maintenance plan for the Area. In the November 10, 2011, notice, EPA proposed to take the following three separate but related actions, some of which involve multiple elements: (1) To redesignate the Birmingham Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS, provided EPA approves the emissions inventory submitted with the maintenance plan; (2) to approve into the Alabama SIP, under section 175A of the CAA, Alabama’s 1997 Annual PM<sub>2.5</sub> NAAQS maintenance plan, including the associated MVEBs; and (3) to approve, under CAA section 172(c)(3), the emissions inventory submitted with the maintenance plan. No comments

were received on the proposed action. EPA is now taking final action on the three actions identified above.

Additional background for today’s action, and other details regarding the proposed redesignation, is set forth in EPA’s November 10, 2011, proposal and is summarized below. The following information also: (1) Affirms that the most recent available ambient monitoring data continue to support this redesignation action, (2) summarizes the NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the year 2024 for the Birmingham Area, and (3) provides additional information on events that have occurred since the November 10, 2011, proposal.

With regard to the data, EPA has reviewed the most recent ambient monitoring data, which indicate that the Birmingham Area continues to attain the 1997 Annual PM<sub>2.5</sub> NAAQS beyond the 3-year attainment period of 2008–2010, which was provided with Alabama’s May 2, 2011, submittal and request for redesignation. As stated in EPA’s November 10, 2011, proposal notice, the 3-year design value of 13.7 µg/m<sup>3</sup> for 2008–2010 meets the NAAQS of 15.0 µg/m<sup>3</sup>. Quality assured and certified data now in EPA’s Air Quality System (AQS) for 2011 provide a 3-year design value of 12.9 µg/m<sup>3</sup> for 2009–2011. Furthermore, preliminary monitoring data for 2012 indicate that the Area is continuing to attain the 1997 Annual PM<sub>2.5</sub> NAAQS. The 2012 preliminary data are available in AQS although are not yet quality assured and certified.

The MVEBs, specified in tons per year (tpy), included in the maintenance plan are as shown in Table 1 below. In the November 10, 2011, proposed action, EPA noted that the period for public comment on the adequacy of these MVEBs (as contained in Alabama’s submittal) began on March 24, 2011, and closed on April 25, 2011. No comments were received during the public comment period. Through this final action, EPA is finding the 2024 NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs adequate for transportation conformity purposes and finalizing the approval of the budgets.

**TABLE 1—BIRMINGHAM AREA PM<sub>2.5</sub> NO<sub>x</sub> MVEBS**  
[tpy]

	PM <sub>2.5</sub>	NO <sub>x</sub>
2024 On-road Mobile Emissions .....	335.70	8,738.39
Safety Margin Allocated to MVEBs .....	106.37	7,243.11
2024 Conformity MVEBs .....	442.07	15,981.50

In the November 10, 2011, proposed redesignation of the Birmingham Area,

EPA proposed to determine that the emission reduction requirements that

contributed to attainment of the 1997 Annual PM<sub>2.5</sub> standard in the

nonattainment area could be considered permanent and enforceable. See 76 FR at 70092, 70097–70099. At the time of proposal, EPA noted that the requirements of the Clean Air Interstate Rule (CAIR),<sup>1</sup> which had been in place since 2005, were to be replaced, starting in 2012, by the requirements in the then recently promulgated Cross-State Air Pollution Rule (CSAPR), 76 FR 48208 (August 8, 2011). CSAPR included regulatory changes to sunset (i.e., discontinue) the CAIR requirements for control periods in 2012 and beyond. See 76 FR at 48322. Although Alabama's redesignation request and maintenance plan included reductions associated with CAIR, EPA proposed to approve the request based in part on the fact that CSAPR achieved similar or greater reductions in the relevant areas in 2012 and beyond. See 76 FR at 70092, 70097–70099. Because CSAPR requirements were expected to replace the CAIR requirements starting in 2012, EPA considered the impact of CSAPR related reductions on the Birmingham Area. On this basis, EPA proposed to determine that, pursuant to CAA section 107(d)(3)(E)(iii), the pollutant transport part of the reductions that led to attainment in the Birmingham Area could be considered permanent and enforceable. See 76 FR at 70079, 70084–70086.

On December 30, 2011, shortly after EPA's proposed approval of the Birmingham redesignation, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City Generation, L.P. v. EPA* (No. 11–1302 and consolidated cases), also referred to as *EME Homer City*. The court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed. Subsequently, on August 21, 2012, the D.C. Circuit issued a decision in *EME Homer City* to vacate and remand CSAPR and to keep CAIR in place. Specifically, the court ordered EPA to

continue administering CAIR pending the promulgation of a valid replacement. *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit has not yet issued the final mandate in *EME Homer City* as EPA (as well as several intervenors) petitioned for rehearing *en banc*, asking the full court to review the decision. While rehearing proceedings are pending, EPA intends to act in accordance with the panel opinion in the *EME Homer City* opinion.

Subsequent to the *EME Homer City* opinion, EPA published several proposals to redesignate both particulate matter and ozone nonattainment areas to attainment. These proposals explained the legal status of CAIR and CSAPR, and provided a basis on which EPA would consider emissions reductions associated with CAIR to be permanent and enforceable for redesignation purposes, pursuant to CAA section 107(d)(3)(D)(iii). In those actions, EPA explained that in light of the August 21, 2012, order by the D.C. Circuit, CAIR remains in place and enforceable until substituted by a “valid” replacement rule. See, e.g., 77 FR 69409 (November 19, 2012); 77 FR 68087 (November 15, 2012).

Alabama's May 2, 2011, SIP submittal supporting its redesignation request includes CAIR as a control measure, which became state-effective on April 3, 2007, and was approved by EPA on October 1, 2007, for the purpose of reducing SO<sub>2</sub> and NO<sub>x</sub> emissions. See 72 FR 55659. Due to the legal status of CSAPR at the time that EPA proposed approval of Alabama's May 2, 2011, redesignation submittal, EPA was able to rely on CSAPR related reductions. EPA also recognized that the monitoring data used to demonstrate the Birmingham Area's attainment of the 1997 Annual PM<sub>2.5</sub> NAAQS included reductions associated with CAIR. Due to the uncertainty regarding the legal status of CAIR when Alabama provided its submittal on May 2, 2011, the State's analysis assumed that no additional reductions in SO<sub>2</sub> or NO<sub>x</sub> emissions from utilities would occur above and beyond those achieved through 2012 as a result of CAIR. To the extent that the Alabama submittal relies on CAIR reductions that occurred through 2012, the recent directive from the D.C. Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period for purposes of CAA section 107(d)(3)(E)(iii). EPA has been ordered by the court to develop a new rule, and the opinion makes clear that after promulgating that new rule EPA must provide states an

opportunity to draft and submit SIPs to implement that rule. CAIR thus cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process; states have had an opportunity to draft and submit SIPs; EPA has reviewed the SIPs to determine if they can be approved; and EPA has taken action on the SIPs, including promulgating a Federal Implementation Plan, if appropriate. The court's clear instruction to EPA is that it must continue to administer CAIR until a “valid replacement” exists, and thus CAIR reductions may be relied upon until the necessary actions are taken by EPA and states to administer CAIR's replacement. Furthermore, the court's instruction provides an additional backstop; by definition, any rule that replaces CAIR and meets the court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in deciding to vacate CSAPR and to require EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR “might be more severe now in light of the reliance interests accumulated over the intervening four years.” *EME Homer City*, 696 F.3d at 38. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR, which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed.

In light of these unique circumstances and for the reasons explained above, EPA is approving the redesignation request and the related SIP revision for Jefferson and Shelby Counties in their entirety and a portion of Walker County in Alabama, including Alabama's plan for maintaining attainment of the 1997 Annual PM<sub>2.5</sub> NAAQS in the Birmingham Area. EPA

<sup>1</sup> On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of sulfur dioxide (SO<sub>2</sub>) and NO<sub>x</sub> from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. See 70 FR 25162. The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

continues to implement CAIR in accordance with current direction from the court, and thus CAIR is in place and enforceable, and will remain so, until substituted by a valid replacement rule. Alabama's SIP revision lists CAIR as a control measure, which became state-effective on April 3, 2007, and was approved by EPA on October 1, 2007, for the purpose of reducing SO<sub>2</sub> and NO<sub>x</sub> emissions. The monitoring data used to demonstrate the Area's attainment of the 1997 Annual PM<sub>2.5</sub> NAAQS by the April 2010 attainment deadline was impacted by CAIR.

## II. What are the actions EPA is taking?

In today's rulemaking, EPA is approving: (1) A change to the legal designation of the Birmingham Area from nonattainment to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS; (2) under CAA section 175A, Alabama's 1997 Annual PM<sub>2.5</sub> NAAQS maintenance plan, including the associated MVEBs; and (3) under CAA section 172(c)(3), the emissions inventory submitted with the maintenance plan for the Area. The maintenance plan is designed to demonstrate that the Birmingham Area will continue to attain the 1997 Annual PM<sub>2.5</sub> NAAQS through 2024. EPA's approval of the redesignation request is based on EPA's determination that the Birmingham Area meets the criteria for redesignation set forth in CAA, sections 107(d)(3)(E) and 175A, including EPA's determination that the Birmingham Area has attained the 1997 Annual PM<sub>2.5</sub> NAAQS. EPA's analyses of Alabama's redesignation request, emissions inventory, and maintenance plan are described in detail in the November 10, 2011, proposed rule (76 FR 70078).

Consistent with the CAA, the maintenance plan that EPA is approving also includes 2024 NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the Birmingham Area. In this action, EPA is approving these NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the Birmingham Area for the purposes of transportation conformity. For required regional emissions analysis years that involve 2024 or beyond, the applicable budgets will be the new 2024 NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs.

## III. Why is EPA taking these actions?

EPA has determined that the Birmingham Area has attained the 1997 Annual PM<sub>2.5</sub> NAAQS and has also determined that all other criteria for the redesignation of the Birmingham Area from nonattainment to attainment of the 1997 Annual PM<sub>2.5</sub> NAAQS have been met. See CAA section 107(d)(3)(E). One of those requirements is that the

Birmingham Area has an approved plan demonstrating maintenance of the 1997 Annual PM<sub>2.5</sub> NAAQS. EPA is also taking final action to approve the maintenance plan for the Birmingham Area as meeting the requirements of sections 175A and 107(d)(3)(E) of the CAA. In addition, EPA is approving the new NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the year 2024 for the Birmingham Area as contained in Alabama's maintenance plan because these MVEBs are consistent with maintenance of the 1997 Annual PM<sub>2.5</sub> standard in the Birmingham Area. Finally, EPA is approving the emissions inventory as meeting the requirements of section 172(c)(3) of the CAA. The detailed rationale for EPA's determinations and actions are set forth in the proposed rulemaking and in other discussion in this final rulemaking.

## IV. What are the effects of these actions?

Approval of the redesignation request changes the legal designation of the Birmingham Area from nonattainment to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS. EPA is modifying the regulatory table in 40 CFR 81.301 to reflect a designation of attainment for these full and partial counties. EPA is also approving, as a revision to the Alabama SIP, Alabama's plan for maintaining the 1997 Annual PM<sub>2.5</sub> NAAQS in the Birmingham Area through 2024. The maintenance plan includes contingency measures to remedy possible future violations of the 1997 Annual PM<sub>2.5</sub> NAAQS and establishes NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the year 2024 for the Birmingham Area. Additionally, this action approves the emissions inventory for the Birmingham Area pursuant to section 172(c)(3) of the CAA.

## V. Final Action

EPA is taking final action to approve three separate but related actions, some of which involve multiple elements: (1) The redesignation of the Birmingham Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS; (2) under CAA section 175A, Alabama's 1997 Annual PM<sub>2.5</sub> NAAQS maintenance plan, including the associated MVEBs; and (3) under CAA section 172(c)(3), the emissions inventory submitted with the maintenance plan for the Area. The 1997 Annual PM<sub>2.5</sub> maintenance plan for the Birmingham Area includes the new 2024 NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs of 15,981.50 tpy and 442.07 tpy, respectively. Within 24 months from the effective date of EPA's adequacy determination, the transportation partners will need to demonstrate

conformity to the new NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs pursuant to 40 CFR 93.104(e).<sup>2</sup>

## VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, these actions:

- Are not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National

<sup>2</sup> The adequacy finding becomes effective upon the date of publication of this notice in the **Federal Register**. 40 CFR 93.118(f)(2)(iii).

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,

- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Reporting and recordkeeping requirements, and Particulate matter.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks.

Dated: January 9, 2013.

**Gwendolyn Keyes Fleming**,  
*Regional Administrator, Region 4.*

40 CFR parts 52 and 81 are amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart B—Alabama**

- 2. Section 52.50(e) is amended by adding a new entry for “1997 Annual PM<sub>2.5</sub> Maintenance Plan for the Birmingham Alabama Area” at the end of the table to read as follows:

**§ 52.50 Identification of plan.**

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

**EPA-APPROVED ALABAMA NON-REGULATORY PROVISIONS**

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
1997 Annual PM <sub>2.5</sub> Maintenance Plan for the Birmingham Area.	Birmingham PM <sub>2.5</sub> Nonattainment Area.	5/2/11	1/22/13 [Insert citation of publication].	

**PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

- 1. The authority citation for part 81 continues to read as follows:

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

- 2. In § 81.301, the table entitled “Alabama—PM<sub>2.5</sub> (Annual NAAQS)” is amended under “Birmingham, AL” by revising the entry for “Jefferson County,

Shelby County, Walker County (part)” to read as follows:

**§ 81.301 Alabama.**

\* \* \* \* \*

**ALABAMA—PM<sub>2.5</sub> (ANNUAL NAAQS)**

Designated area	Designation <sup>a</sup>	
	Date <sup>1</sup>	Type
Birmingham, AL:		
Jefferson County .....	This action is effective 1/22/13 .....	Attainment.
Shelby County .....	This action is effective 1/22/13 .....	Attainment.
Walker County (part) The area described by U.S. Census 2000 block group identifiers 01-127-0214-5, 01-127-0215-4, and 01-127-0216-2.	This action is effective 1/22/13 .....	Attainment.
* * * * *	* * * * *	* * * * *

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

<sup>1</sup> This date is 90 days after January 5, 2005, unless otherwise noted.

\* \* \* \* \*

[FR Doc. 2013-00954 Filed 1-18-13; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 111207737-2141-2]

RIN 0648-XC452

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Trawl Gear in the Western Regulatory Area of the Gulf of Alaska**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher/processors (C/Ps) using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2013 Pacific cod total allowable catch apportioned to C/Ps using trawl gear in the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), January 20, 2013, through 1200 hours, A.l.t., September 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone

according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2013 Pacific cod total allowable catch (TAC) apportioned to C/Ps using trawl gear in the Western Regulatory Area of the GOA is 188 metric tons (mt), as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012) and inseason adjustment to the final 2013 harvest specifications for Pacific cod (78 FR 267, January 3, 2013).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2013 Pacific cod TAC apportioned to C/Ps using trawl gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt, and is setting aside the remaining 188 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by C/Ps using trawl gear in the Western Regulatory Area of the GOA. After the effective date of this closure the

maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod for C/Ps using trawl gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 15, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: January 16, 2013.

**Kara Meckley,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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