

her entire account is sold and repurchased to reflect the new percentages. In fact only the difference between the original percentage and the new percentage is traded, and that is netted against all other participant activity. The investment manager is then given a single dollar amount for each fund each day.

Some participants commented that there is a problem with the contract with Barclays, the investment manager, or that the fund should be managed by a firm better able to control the fees. The Barclays contract is extremely competitive. All of the costs related to the administration of that contract are included in the TSP's 1.5 basis point net administrative expense ratio. Every manager, who participated in the request for proposal process to manage the Funds of the TSP, charges trading costs back to their clients' funds, just as Barclays does for the TSP Funds.

A participant noted that he could not find information on the Vanguard Web site that Vanguard funds could not be repurchased within 60 days of redemption. On the site, in the search function, typing "frequent trading policy" will display that information.

The Agency appreciated the opportunity to review and respond to comments from participants who take an active interest in the TSP and wish to offer suggestions. The comment process allowed the Agency to address any misunderstandings about the proposed interfund transfer change, to learn if there are unanticipated legal or policy impediments to the proposed change, and to hear suggestions about how better to implement the proposed change. Although the comments received did not cause the Executive Director to make any changes to the proposed interfund transfer rule, he did carefully consider all comments received. Therefore, the Agency is publishing the proposed rule as final without change.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. It will affect only Thrift Savings Plan participants and beneficiaries. To the extent that limiting interfund transfers is necessary to curb excessive trading, very few, if any, "small entities," as defined in 5 U.S.C. 601(6), will be affected by the final rule. This is because the Thrift Savings Plan is sponsored by the U.S. Government and because the interfund transfer limitations are likely to affect primarily Federal employees, members of the uniformed services, and an insubstantial

number of financial advisors who may provide advice in connection with the TSP.

#### Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

#### Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 1532 is not required.

#### Submission to Congress and the Government Accountability Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted 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 before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

#### List of Subjects in 5 CFR Part 1601

Government employees, Pensions, Retirement.

#### Gregory T. Long,

*Executive Director, Federal Retirement Thrift Investment Board.*

For the reasons set forth in the preamble, the Agency is amending 5 CFR chapter VI as follows:

#### PART 1601—PARTICIPANTS' CHOICES OF TSP FUNDS

- 1. The authority citation for part 1601 continues to read as follows:

**Authority:** 5 U.S.C. 8351, 8438, 8474(b)(5) and (c)(1).

- 2. Amend § 1601.32, by revising paragraph (b) to read as follows:

#### § 1601.32 Timing and posting dates.

\* \* \* \* \*

(b) *Limit.* There is no limit on the number of contribution allocation requests. A participant may make two unrestricted interfund transfers (account rebalancings) per account (e.g., civilian or uniformed services), per calendar month. An interfund transfer will count toward the monthly total on the date posted by the TSP and not on the date requested by a participant. After a participant has made two interfund

transfers in a calendar month, the participant may make additional interfund transfers only into the G Fund until the first day of the next calendar month.

[FR Doc. E8–8957 Filed 4–23–08; 8:45 am]

BILLING CODE 6760–01–P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R08–OAR–2007–0367; FRL–8552–4]

#### Approval and Promulgation of Air Quality Implementation Plans; Montana; Whitefish PM<sub>10</sub> Nonattainment Area Control Plan

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the Governor of Montana on June 26, 1997, and June 13, 2000. (Portions of the June 26, 1997 submittal were withdrawn by the Governor of Montana on February 8, 1999). These revisions contain an inventory of emissions for Whitefish and establish and require continuation of all control measures adopted and implemented for reductions of particulate aerodynamic diameter less than or equal to 10 micrometers (PM<sub>10</sub>) in order to attain the PM<sub>10</sub> National Ambient Air Quality Standards (NAAQS) in Whitefish. Using the PM<sub>10</sub> clean data areas approach, we are approving the control measures and the emissions inventory that were submitted as part of the PM<sub>10</sub> nonattainment area SIP for Whitefish. This action is being taken under section 110 of the Clean Air Act (CAA or Act).

**DATES:** This rule is effective on June 23, 2008 without further notice, unless EPA receives adverse comment by May 27, 2008. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2007–0367, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail:* [dygowski.laurel@epa.gov](mailto:dygowski.laurel@epa.gov) and [ostrand.laurie@epa.gov](mailto:ostrand.laurie@epa.gov).
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER**

**INFORMATION CONTACT** if you are faxing comments).

- *Mail:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- *Hand Delivery:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-OAR-2007-0367.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the <http://>

[www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Laurel Dygowski, EPA Region 8, 1595 Wynkoop, Denver, CO 80202-1129, (303) 312-6144; [dygowski.laurel@epa.gov](mailto:dygowski.laurel@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Contents**

- I. General Information
- II. Summary of SIP Revision
- III. Analysis of Requirements to Use Clean Data Areas Approach
- IV. Final Action
- V. Statutory and Executive Order Reviews

##### **Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

##### **I. General Information**

###### *A. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a

copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

##### **II. Summary of SIP Revision**

###### *A. Background*

The Whitefish area was designated nonattainment for PM<sub>10</sub> and classified as moderate under section 107(d)(3) of the Clean Air Act on October 19, 1993 (see 58 FR 36908 (July 9, 1993), 58 FR 53886 (October 19, 1993), and 40 CFR 81.327 (Flathead County (part))). The Whitefish designation became effective on November 18, 1993. The air quality planning requirements for moderate PM<sub>10</sub> nonattainment areas are set out in subparts 1 and 4 of Title I of the Act. Subpart 1 applies to nonattainment areas generally and subpart 4 applies to PM<sub>10</sub> nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. We have attempted to clarify the relationship among these provisions in guidance entitled the "General Preamble" (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)) and, as appropriate, in today's notice.

###### *B. What Requirements Do States Need To Follow in Developing PM<sub>10</sub> Nonattainment Area SIPs?*

Our "General Preamble" describes our preliminary views on how we will

review SIPs and SIP revisions submitted under Title I of the Act, including State-submitted SIPs for moderate PM<sub>10</sub> nonattainment areas (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). In this document, we are applying our interpretations considering the specific factual issues presented.

A State containing a moderate PM<sub>10</sub> nonattainment area designated after the 1990 Amendments is normally required to submit several provisions within 18 months of the effective date of the designation. These provisions were due for the Whitefish area by May 18, 1995. They include an emissions inventory, control measures, an attainment demonstration, quantitative milestones for reasonable further progress (RFP), and contingency measures. Requirements for the control measures include: provisions to assure that reasonably available control measures (RACM), including reasonably available control technologies (RACT), shall be implemented no later than four years after designation, which was November 18, 1997 for Whitefish. However, under the PM<sub>10</sub> clean data areas approach that we are proposing to use here, we are only proposing to require the control measures, the provisions for enforcing those measures, and the emissions inventory for Whitefish.

#### 1. Clean Data Areas Approach

The air quality planning requirements for PM<sub>10</sub> nonattainment areas are set out in subparts 1 and 4 of title I of the Act. EPA has issued a General Preamble<sup>1</sup> and Addendum to the General Preamble<sup>2</sup> describing our preliminary views on how the Agency intends to review state implementation plans (SIPs) submitted to meet the CAA's requirements for PM<sub>10</sub> plans. These documents provide detailed discussions of our interpretation of the title I requirements.

In nonattainment areas where monitored data demonstrate that the NAAQS have already been achieved, EPA has determined that certain requirements of part D, subparts 1 and 2 of the Act do not apply. Therefore we do not require certain submissions for an area that has attained the NAAQS. These include reasonable further

progress (RFP) requirements, attainment demonstrations, RACM, and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS.

This interpretation of the CAA is known as the Clean Data Policy and is the subject of two EPA memoranda. EPA also finalized the statutory interpretation set forth in the policy in a final rule, 40 CFR 51.918, as part of its "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2" (Phase 2 Final Rule). See discussion in the preamble to the rule at 70 FR 71612, 71645–46 (November 29, 2005).

EPA believes that the legal bases set forth in detail in our Phase 2 Final rule, our May 10, 1995 memorandum from John S. Seitz, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," and our December 14, 2004 memorandum from Stephen D. Page entitled "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards" are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM<sub>10</sub>. Our interpretation that an area that is attaining the standards is relieved of obligations to demonstrate RFP and to provide an attainment demonstration, RACM and contingency measures pursuant to part D of the CAA, pertains whether the standard is PM<sub>10</sub>, ozone or PM<sub>2.5</sub> (see 71 FR 40954–40955).

If an area meets the following requirements, the state will no longer be required to develop an attainment demonstration, contingency measures or a RFP demonstration. The area must meet the following requirements:

(a) The area must be attaining the PM<sub>10</sub> NAAQS with the three most recent years of quality-assured air quality data.

(b) The state must continue to operate an appropriate PM<sub>10</sub> air quality monitoring network, in accordance with 40 CFR part 58, in order to verify the attainment status of the area.

(c) The control measures for the area, which were responsible for bringing the area into attainment, must be approved by EPA as meeting the CAA requirements for RACM/RACT.

(d) A PM<sub>10</sub> emissions inventory must be completed for the area.

### III. Analysis of Requirements to Use Clean Data Areas Approach

#### A. Attainment of the PM<sub>10</sub> NAAQS

Whether an area has attained the PM<sub>10</sub> NAAQS is based exclusively upon

measured air quality levels over the most recent and complete three calendar year period (see 40 CFR part 50 and 40 CFR 50, appendix K). On November 1, 2001 (66 FR 55102), we published a final rulemaking action declaring that the Whitefish PM<sub>10</sub> nonattainment area was in attainment of the PM<sub>10</sub> standard based on 2003–2005 monitoring data and that the area had attained the standard by its attainment date. The applicable attainment date as required by the CAA for Whitefish was December 31, 2000. If you wish to obtain more information regarding our attainment determination, please see our November 1, 2001, **Federal Register** document.

To use the PM<sub>10</sub> clean data areas approach, an area must be attaining with the three most recent years of quality assured data at the time of this notice. In this case, the three most recent years are 2003–2005. During the 2003–2005 period, data was collected at the Dead End monitoring station (AQS identification #30–029–0009). The regulatory requirement for data capture in 40 CFR part 50, Appendix K, is 75 percent on a quarterly basis. The 2003–2005 monitoring data shows no exceedances of either the 24-hour or annual PM<sub>10</sub> NAAQS during this period, and data capture met the 75 percent criterion.

#### B. Continued Operation of PM<sub>10</sub> Monitoring Network

The Montana Department of Environmental Quality (MDEQ) shall continue to operate its PM<sub>10</sub> air quality monitoring network in accordance with 40 CFR, part 58, in order to verify the attainment status of the area. We approved Montana's state-wide air quality monitoring program on March 9, 1981 (see 46 FR 15686). This approval established the state and local air monitoring station (SLAMS) network, the maintenance requirements for the monitoring stations, and the method of data reporting and annual review for the stations. The stations are to monitor ambient levels of criteria pollutants (for which NAAQS have been established). All SLAMS are to be operated in accordance with the criteria established in 40 CFR 58, subpart B, and are to be sited according to 40 CFR 58, appendix E. Reference or equivalent monitors are to be used as defined in 40 CFR 50.1 and the quality assurance procedures are to be followed as outlined in 40 CFR 58, appendix A. On December 21, 1993 (see 58 FR 67324), we approved revisions to the state-wide monitoring SIP to update the existing monitoring SIP.

Monitoring in Whitefish for PM<sub>10</sub> is currently performed at the Dead End

<sup>1</sup> "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992), as supplemented at 57 FR 18070 (April 28, 1992).

<sup>2</sup> "State Implementation Plans for Serious PM<sub>10</sub> Nonattainment Areas, and Attainment Date Waivers for PM<sub>10</sub> Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994).

monitoring station (AQS identification #30-029-0009). EPA Region VIII conducts periodic reviews of Montana's ambient air network, which includes the Whitefish site. Based on these reviews, our monitoring staff has approved this location of this monitoring station.

### C. Control Measure Requirements

Moderate PM<sub>10</sub> nonattainment areas, designated after the 1990 Amendments, must submit provisions to ensure that RACM is implemented no later than 4 years after designation, which was November 18, 1997 for Whitefish (see sections 172(c)(1) and 189(a)(1)(C) of the Act). The General Preamble contains a detailed discussion of our interpretation of the RACM requirements (see 57 FR 13539-13545 and 13560-13561).

The State should identify available control measures to make sure they are reasonable and that they meet the area's attainment needs, (see 57 FR 13540-13544). A State may reject an available control measure if it is technologically infeasible or unreasonably expensive. In addition, RACM doesn't require controls on emissions from sources that are insignificant (de minimis) and doesn't require an area to use all available control measures if it demonstrates timely attainment and if using additional controls wouldn't expedite attainment.

### Whitefish Control Measures

The Whitefish PM<sub>10</sub> Control Plan contains control measures for particulate emissions of fugitive dust that have been incorporated into the Flathead County Air Pollution Control Program. The measures adopted in the plan include control of fugitive dust from paved roads, parking lots, construction and demolition activities, and land clearing. In addition, the measures include requirements for street sweeping and flushing. Whitefish adopted the provisions for this control program as local regulations (Rule 701-707) and they were adopted as part of the Flathead County Air Pollution Control Program on June 24, 1997. In addition, the Flathead County Air Pollution Control Program contains county wide open burning regulations that are applicable to Whitefish. Each of the regulations specific to Whitefish are explained below.

#### *Rule 701—Material To Be Used on Roads and Parking Lots—Standards*

Rule 701 pertains to the types of sanding material that can be used for sanding roads and parking lots. This rule requires the application of sanding material with a material content passing a number 200 mesh screen to be no

more than 4.0 percent oven dry weight and have a durability rating, as defined by the Montana Modified L.A. Abrasion test, of less than or equal to 9.0 percent wear loss.

#### *Rule 702—Construction and Demolition Activity*

The construction and demolition rule requires owners or operators of such activities to obtain a permit that describes the project and contains a dust control plan that constitutes RACT. RACT is the use of techniques to prevent the emission and/or airborne transport of dust and dirt from the site and includes the application of water or other liquid, limiting access to the site, securing loads, cleaning vehicles, and scheduling projects for optimum meteorological conditions.

#### *Rule 703—Pavement of Roads Required and Rule 704—Pavement of Parking Lots Required*

Rule 703 and Rule 704 require a plan and schedule of implementation to improve existing unpaved roads and parking lots by paving, routine application of dust suppressants, or other reasonable control measures, as determined in a compliance plan that must be filed with the Flathead County Health Department. In addition, the paving regulations require new streets, roads, or alleys that are greater than fifty feet in length and have an average projected traffic volume greater than 200 vehicles per day be paved. The rule also requires that new parking lots greater than 5,000 square feet, or with a parking capacity greater than fifteen vehicles, or with a traffic volume of more than fifty vehicles per day be paved.

#### *Rule 705—Street Sweeping and Flushing*

Rule 705 requires a prioritized street sweeping and flushing program that commences on the first working day after any streets become temporarily or permanently ice-free and temperatures are expected to remain above thirty-five degrees for a 24-hour period. Prioritized street sweeping and flushing applies during November through April. Streets with the highest traffic volume are cleaned first. During May through October, street sweeping and flushing occurs on an as needed basis.

#### *Rule 706—Clearing of Land Greater than 1/4 Acre in Size*

The owner or operator of any land greater than 0.25 acre in size that has been cleared or excavated is required to use RACT to control dust emissions. In this case, RACT means techniques to prevent the emission or transport of

dust and dirt from any disturbed or exposed land. RACT includes, but is not limited to, vegetative cover, synthetic cover, water or chemical stabilization, and installing wind breaks.

#### *Rule 707—Contingency Plan*

Rule 707 provides that in the event EPA provides notification to the State that the SIP for the Whitefish area failed to timely attain the PM<sub>10</sub> NAAQS or make reasonable further progress, contingency measures will be required. The contingency measures require that de-icing agents will be used on roads or parking lots.

### D. Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. MDEQ submitted an emissions inventory for Whitefish on June 26, 1997, withdrew that inventory on February 28, 1999, and resubmitted it on June 13, 2000. MDEQ chose January 1, 1993 through December 31, 1993 as the base year for the emission inventory due to the occurrence of PM<sub>10</sub> violations during the preceding year. The results of the emissions inventory indicate that crustal particulate matter was the major contributor to PM<sub>10</sub> concentrations in the Whitefish area during 1993. Crustal particulate matter accounted for 92.1% of the PM<sub>10</sub> emissions during that time, with the majority of the PM<sub>10</sub> emissions occurring in the spring quarter. The major source of PM<sub>10</sub> was identified as road dust. The major contributors to road dust were re-entrained road dust generated from road sanding material and vehicle carry-on of mud and dirt from unpaved roads, alleys, and parking lots.

EPA is proposing to approve the emission inventory for Whitefish because it is accurate and comprehensive, and consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the CAA. In addition to the above requirements for the use of the clean data areas approach, any requirements that depend solely on designation or classification, such as new source review (NSR) and RACM/RACT, will remain in effect. New source review requirements have been approved as part of the Administrative Rules of Montana, title 17, chapter 8, subchapters 8 and 9 and were approved as part of the SIP on August 13, 2001 (see 66 FR 42427). (Administrative and clerical changes have been made to the rule on January 24, 2006 (see 71 FR 3770 and 3776) and July 19, 2006 (see

71 FR 40922)). New source review requirements that were approved into the SIP will continue to be in effect.

However, the requirements under CAA section 172(c) for developing attainment demonstrations, RFP demonstrations, and contingency measures are waived due to the fact that the areas which are eligible under this approach have already attained the PM<sub>10</sub> NAAQS and have met RFP. Any sanctions clocks that may be running for an area due to failure to submit, or disapproval of, any attainment demonstration, RFP or contingency measure requirements, are stopped. In addition, areas are still required to demonstrate transportation conformity using the build/no-build test, or the no-greater-than-1990 test. The emissions budget test would not be required because the requirements for an attainment demonstration and RFP, which establish the budgets, no longer apply. The applicable tests for general conformity still apply. The use of the clean data areas approach doesn't act as a CAA section 107(d) redesignation, but only serves to approve nonattainment area SIPs required under part D of the CAA.

#### IV. Final Action

EPA is approving State Implementation Plan (SIP) revisions submitted by the Governor of Montana on June 26, 1997 and June 13, 2000. The June 26, 1997 submittal revises the SIP by adding the Whitefish PM<sub>10</sub> Control Plan and an emissions inventory for the Whitefish area. On February 28, 1999, the Governor of Montana withdrew all chapters of the Whitefish PM<sub>10</sub> Control Plan submitted on June 26, 1997, except chapters 15.2.7, 15.12.8, and 15.12.10. The June 13, 2000 submittal contains corrections to chapter 15.12.8. Chapters 15.2.7, 15.12.8, and 15.12.10 contain the PM<sub>10</sub> control measures, control demonstration, and enforceability sections of the plan. We are approving the emissions inventory for Whitefish and chapters 15.2.7, 15.12.8, and 15.12.10 of the Whitefish PM<sub>10</sub> Control Plan using the PM<sub>10</sub> clean areas data approach.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the Proposed Rules section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective June 23, 2008 without further notice unless the Agency receives adverse comments by May 27,

2008. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### V. Statutory and Executive Order Review

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). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, 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).

This rule also does not have tribal implications because it will 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 action also does not have Federalism implications because it does 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). This action merely approves 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. 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 approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has 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 Clean Air Act. 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, 5 U.S.C. section 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 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**. 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. section 804(2).

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 June 23, 2008. 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).)

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

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

Dated: March 27, 2008.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

40 CFR part 52 is amended to read 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 adding paragraph (c)(66) to read as follows:

#### § 52.1370 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(66) On June 26, 1997, the Governor of Montana submitted the Whitefish OM<sub>10</sub> Control Plan and on June 13, 2000, the Governor submitted revisions to the June 26, 1997 submittal. On February 28, 1999, the Governor of Montana withdrew all sections of the Whitefish PM<sub>10</sub> Control Plan submitted on June 26, 1997, except sections 15.2.7, 15.12.8, and 15.12.10. EPA is approving sections 15.2.7, 15.12.8, and 15.12.10 of the Whitefish PM<sub>10</sub> Control Plan.

(i) Incorporation by reference.

(A) Sections 15.2.7, 15.12.8, and 15.12.10 of the Whitefish PM<sub>10</sub> Control Plan.

(ii) Additional Material.

(A) Flathead County Air Pollution Control Program as of June 20, 1997.

[FR Doc. E8-8862 Filed 4-23-08; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 071106671-8010-02]

RIN 0648-XH35

#### Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in 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 species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), April 21, 2008, through 1200 hrs, A.l.t., July 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 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.

The second seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 300 metric tons as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008), for the period 1200 hrs, A.l.t., April 1, 2008, through 1200 hrs, A.l.t., July 1, 2008.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the

deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery include sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder. This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central 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 closure of the deep-water species fishery by vessels using trawl gear in 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 April 17, 2008.

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 § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: April 18, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 08-1179 Filed 4-21-08; 1:43 pm]

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