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

<table>
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<tr>
<th>State citation</th>
<th>Title/subject</th>
<th>State approval/effective date</th>
<th>EPA approval date</th>
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<td>Part 79 .................</td>
<td>Permits—Nonattainment Areas.</td>
<td>6/3/2011</td>
<td>1/22/2013 [Insert FR page number where document begins].</td>
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</table>


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.

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).)”


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

[FR Doc. 2013–01081 Filed 1–18–13; 8:45 am]
BILLING CODE 6560–50–P
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) 562–1094 or via electronic mail at huey.joel@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

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?
V. Final Action
VI. Statutory and Executive Order Reviews

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\textsubscript{2.5} NAAQS, for which designations were finalized on January 5, 2005 (70 FR 944) and April 14, 2005 (70 FR 19444). 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\textsubscript{2.5} 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\textsubscript{2.5} 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\textsubscript{2.5} 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\textsubscript{X} and PM\textsubscript{2.5} 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\textsubscript{2.5} 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 \text{\mu g/m}^3\text{ } for 2008–2010 meets the NAAQS of 15.0 \text{\mu g/m}^3. Quality assured and certified data now in EPA’s Air Quality System (AQS) for 2011 provide a 3-year design value of 12.9 \text{\mu g/m}^3\text{ } for 2009–2011. Furthermore, preliminary monitoring data for 2012 indicate that the Area is continuing to attain the 1997 Annual PM\textsubscript{2.5} NAAQS. The 2012 preliminary data are available in AQS although they 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\textsubscript{X} and PM\textsubscript{2.5} MVEBs adequate for transportation conformity purposes and finalizing the approval of the budgets.

<table>
<thead>
<tr>
<th>MVEBs</th>
<th>tpy</th>
<th>PM\textsubscript{2.5}</th>
<th>NO\textsubscript{X}</th>
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<td>2024 On-road Mobile Emissions</td>
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<td>335.70</td>
<td>8,738.39</td>
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<td>Safety Margin Allocated to MVEBs</td>
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<td>7,243.11</td>
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<td>2024 Conformity MVEBs</td>
<td></td>
<td>442.07</td>
<td>15,981.50</td>
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</table>

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\textsubscript{2.5} 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), 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 CAIR 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, 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, EPA would continue administering CAIR permanent 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 effective on April 3, 2007, and was approved by EPA on October 1, 2007, for the purpose of reducing SO2 and NOx 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, SIP submittal relying on CAIR 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 SO2 or NOx 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 that 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 entireties and a portion of Walker County in Alabama, including Alabama’s plan for maintaining attainment of the 1997 Annual PM2.5 NAAQS in the Birmingham Area. EPA

\[^1\] On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of sulfur dioxide (SO2) and NOx from electric generating units to limit the interstate transport of these pollutants 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, 550 F.3d 1176, 1178 (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, 531 F.3d 896 (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 SO2 and NOX emissions. The monitoring data used to demonstrate the Area’s attainment of the 1997 Annual PM2.5 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 PM2.5 NAAQS; (2) under CAA section 175A, Alabama’s 1997 Annual PM2.5 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 PM2.5 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 PM2.5 NAAQS as demonstrated by the emissions inventory, and maintenance plan are described in detail in the May 2001 proposed rule (66 FR 19885).

Consistent with the CAA, the maintenance plan that EPA is approving also includes 2024 NOX and PM2.5 MVEBs for the Birmingham Area. In this action, EPA is approving these NOX and PM2.5 MVEBs for the Birmingham Area for the purposes of transportation conformity. For required regional emissions analyses that involve multiple elements: (1) The redesignation of the Birmingham Area to attainment for the 1997 Annual PM2.5 NAAQS; (2) under CAA section 175A, Alabama’s 1997 Annual PM2.5 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 PM2.5 maintenance plan for the Birmingham Area includes the new 2024 NOX and PM2.5 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 NOX and PM2.5 MVEBs pursuant to 40 CFR 93.104(e).

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 10885, 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

2 The adequacy finding becomes effective upon the date of publication of this notice in the Federal Register. 40 CFR 93.110(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 prior to publication of the rule 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.

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.

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

§ 81.301 Alabama.

2. In § 81.301, the table entitled “Alabama—PM2.5 (Annual NAAQS)” is amended under “Birmingham, AL” by revising the entry for “Jefferson County, Walker County (part)” to read as follows:

ALABAMA—PM2.5 (ANNUAL NAAQS)

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<td>Shelby County</td>
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<tr>
<td>Walker County (part)</td>
<td>1/22/13</td>
<td>Attainment.</td>
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* * * * *

Includes Indian Country located in each county or area, except as otherwise specified.

This date is 90 days after January 5, 2005, unless otherwise noted.

EPA-APPROVED ALABAMA NON-REGULATORY PROVISIONS

<table>
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<th>Name of nonregulatory SIP provision</th>
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<th>State submittal date/effective date</th>
<th>EPA approval date</th>
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<td>1997 Annual PM2.5 Maintenance Plan for the Birmingham Area.</td>
<td>Birmingham Area. PM2.5 Nonattainment</td>
<td>5/2/11</td>
<td>1/22/13 [Insert citation of publication].</td>
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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 PM2.5 Maintenance Plan for the Birmingham Alabama Area” at the end of the table to read as follows:

§ 52.50 Identification of plan.

(e) * * * * *

40 CFR 81
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 (TAC) 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.


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 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.