

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 81**

[R08-OAR-2005-SD-0002, FRL-8039-1]

**Designation of Areas for Air Quality Planning Purposes; State of South Dakota; Approval of Redesignation Request****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is approving a September 30, 2005 request from the designee of the Governor of South Dakota to redesignate the "Rapid City Area" under section 107 of the Clean Air Act (CAA) from unclassifiable to attainment for PM-10. EPA is approving the redesignation request because the State has adequately demonstrated that the "Rapid City Area" is in attainment of the PM-10 National Ambient Air Quality Standards (NAAQS) and has committed to the continuation of fugitive dust controls that should help ensure that the area continues to attain the PM-10 NAAQS. The requirements that will apply in the "Rapid City Area" will not change as a result of this action because, for the purposes of the requirements of the CAA, unclassifiable and attainment areas are treated the same. This action is being taken under section 107 of the Clean Air Act.

**DATES:** This final rule is effective April 5, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. R08-OAR-2005-SD-0002. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202-2466. 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, 999 18th Street, Suite 200, MS 8P-AR, Denver, CO 80202, (303) 312-6144, [dygowski.laurel@epa.gov](mailto:dygowski.laurel@epa.gov).

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. Final Action
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**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 *South Dakota* mean the State of South Dakota, unless the context indicates otherwise.

On December 9, 2005 (70 FR 73183), EPA published a notice of proposed rulemaking (NPR) for the State of South Dakota. The NPR proposed approval of a September 30, 2005 request from the designee of the Governor of South Dakota to redesignate the "Rapid City Area" under section 107 of the Clean Air Act (CAA) from unclassifiable to attainment for PM-10. EPA proposed approving the redesignation request because the State has adequately demonstrated that the "Rapid City Area" is in attainment of the PM-10 National Ambient Air Quality Standards (NAAQS) and has committed to the continuation of fugitive dust controls that should help ensure that the area continues to attain the PM-10 NAAQS. A discussion of the State's demonstration of attainment of the PM-10 NAAQS and the fugitive dust control measures is contained in the December 9, 2005, proposed rulemaking. The requirements that will apply in the "Rapid City Area" will not change as a result of this action because, for the purposes of the requirements of the CAA, unclassifiable and attainment areas are treated the same.

**I. Final Action**

We received three comments on our December 9, 2005 NPR which supported the redesignation of Rapid City to attainment of the PM-10 NAAQS. EPA is approving the State of South Dakota's request for redesignation under section 107 of the CAA from unclassifiable to attainment for PM-10.

**II. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves a redesignation to attainment and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107 of the Clean Air Act is an action that affects the attainment status of a geographical area and does not impose any new regulatory requirements on sources. 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 a redesignation to attainment 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 redesignation to attainment 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 is not economically significant.

Section 12(d) of the National Technology Transfer Advancement Act

(NTTAA) of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS. 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. 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. 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 May 5, 2006. 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) of the Clean Air Act.)

#### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 10, 2006.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

■ 40 CFR part 81 is amended to read as follows:

#### PART 81—[AMENDED]

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

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

■ 2. In § 81.342, the table entitled “South Dakota–PM–10” is amended by revising the entry for “Rapid City Area” to read as follows:

#### § 81.342 South Dakota.

\* \* \* \* \*

#### SOUTH DAKOTA–PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	* * *		* * *	
Rapid City Area .....	04/05/06	Attainment.		
* * *	* * *		* * *	

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 030221039–6054–28; I.D. 020606D]

RIN 0648–AN88

#### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

**ACTION:** Temporary rule; extension of temporary area and gear restrictions.

**SUMMARY:** The Assistant Administrator for Fisheries (AA), NOAA, announces

the extension of temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan’s (ALWTRP) implementing regulations. These restrictions will continue to apply to lobster trap and anchored gillnet fishermen in an area totaling approximately 1,569 nm<sup>2</sup> (5,382 km<sup>2</sup>) off southeast of Portland, Maine for an additional 15 days. The purpose of this action is to provide immediate protection to an aggregation of Northern right whales (right whales).

**DATES:** The area and gear restrictions were initially effective 0001 hours February 15, 2006, through 2400 hours March 1, 2006. This notice extends the restricted period from 0001 hours March 2, 2006, through 2400 hours March 16, 2006.

**ADDRESSES:** Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may

also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

#### FOR FURTHER INFORMATION CONTACT:

Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.noaa.gov/whaletrp/>.

##### Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In