(Authority: Sec. 12(c) of the Act; 29 U.S.C. 709(c))

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R10–OW–2008–0826; FRL–8744–8]

Ocean Dumping; Designation of Ocean Dredged Material Disposal Sites Offshore of the Umpqua River, OR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is withdrawing an earlier proposal to designate an ocean dredged material disposal site near the mouth of the Umpqua River, Oregon, and is proposing to designate two new ocean dredged material disposal sites located offshore of the Umpqua River, Oregon. EPA's proposed rule was published at 56 FR 49858 (October 2, 1991). Changes since that time to the single site EPA proposed, as well as changes to the ocean dumping program, including changes to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. 1401 to 1445, give rise to EPA's decision to withdraw the October 2, 1991, proposal and to propose two new sites near the mouth of the Umpqua River. The new sites are needed primarily to serve the long-term need for a location to dispose of material dredged from the Umpqua River navigation channel, and to provide a location for the disposal of dredged material for persons who have received a permit for such disposal. The newly designated sites will be subject to ongoing monitoring and management to ensure continued protection of the marine environment.

DATES: Comments on this proposed rule must be received by December 26, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OW–2008–0826 by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: *Freedman.Jonathan@epa.gov*.
- *Mail*: Jonathan Freedman, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–083), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

Instructions: Direct your comments to Docket ID No. EPA–R10–OW–2008–0826. 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 the Web site, *http://www.regulations.gov*, or through 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 the Web site, *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 or 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*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information may not be 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 during normal business hours at the U.S. Environmental Protection Agency, Region 10, Library, 10th Floor, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. For access to the documents at the Region 10 Library, contact the Region 10 Library Reference Desk at (206) 553–1289, between the hours of 9 a.m. and 11:30 a.m., and between the hours of 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays, for an appointment.

FOR FURTHER INFORMATION CONTACT: Jonathan Freedman, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–083), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, *phone number:* (206) 553–0266, e-mail: *freedman.jonathan@epa.gov*, or contact Jessica Winkler, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–183), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, *phone number:* (206) 553–7369, e-mail: *winkler.jessica@epa.gov*.

SUPPLEMENTARY INFORMATION:

1. Potentially Affected Persons

Persons potentially affected by this proposed action include those who seek or might seek permits or approval by EPA to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. 1401 to 1445. EPA's action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of the Umpqua River, Oregon. Currently, the U.S. Army Corps of Engineers (Corps) would be most affected by this proposed action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal Government	U.S. Army Corps of Engineers Civil Works Projects, and other Federal Agencies.
Industry and General Public	Port Authorities, Marinas and Harbors, Shipyards and Marine Repair Facilities, Berth Owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

2. Background

a. History of Disposal Sites Offshore of the Umpqua River, Oregon

Two ocean dredged material disposal sites, an Interim Site and an Adjusted Site, have been used by the U.S. Army Corps of Engineers (Corps) for disposal of sediments dredged from the Umpqua River navigation project. The Interim Site was included in the list of approved ocean disposal sites for dredged material in the **Federal Register** in 1977 (42 FR 2461). A later realignment of the approach channel to the Umpqua River estuary placed the navigation channel over the Interim Site. In 1991 site, the Adjusted Site was selected by the Corps pursuant to the Corps' authority under Section 103 of the MPRSA. The use of the Interim Site was terminated at that time. Selection of the Adjusted Site was intended to reduce potential hazards associated with navigational conflicts in the channel and associated with mounding of dredged material at the Interim Site. The selection of the Adjusted Site was also intended to increase long-term disposal site capacity near the mouth of the Umpqua River. EPA concurred on the selection of the Adjusted Site and approved the Corps' request to continue to use the site through the end of the 2008 dredging season. The Adjusted Site is not a suitable candidate for designation by EPA pursuant to Section 102 of the MPRSA because use of the Adjusted Site resulted in mounding that severely limited site capacity. In 1996, shoaling and breaking waves associated with mounding at the Adjusted Site were reported. Subsequently a site utilization study was conducted by the Corps in 1998. That study found evidence of mounding sufficient to warrant serious concern regarding impact on the wave environment near the Umpqua River entrance channel. To address that concern the volume of dredged material placed at the Adjusted Site was reduced from an average annual volume of 188,000 cubic yards (cy) prior to 1999 to an average annual volume of 108,000 cy from 1999 to 2007. EPA determined that alternatives to the Adjusted Site would be needed for long-term disposal capacity near the mouth of the Umpqua River.

b. Location and Configuration of Proposed Umpqua River Ocean Dredged Material Disposal Sites

Today, EPA withdraws the rule the Agency proposed on October 2, 1991, at 56 FR 49858, to designate an Umpqua River site, and simultaneously proposes to designate two Umpqua River ocean dredged material sites to the north and south, respectively, of the existing Adjusted Site. The coordinates for the two proposed sites are listed below. The figure below shows the location of the Umpqua River ocean dredged material disposal sites (Umpqua River ODMD Sites or Sites) EPA proposes to designate today. The configuration of each Site is expected to allow dredged material disposed in shallower portions of each Site to naturally disperse into the littoral zone without creating mounding conditions that could contribute to adverse impacts to navigation. The proposed configuration will allow EPA to ensure that disposal of dredged material into the Sites will be managed so that as much material as possible is retained in the active littoral drift area to augment shoreline building processes.

The coordinates for the two Umpqua River ODMD Sites, as proposed today, are, in North American Datum 83 (NAD 83):

Proposed North Umpqua ODMD Site	Proposed South Umpqua ODMD Site
43° 41′ 23.09″ N, 124° 14′ 20.28″ W	43° 39′ 32.31″ N, 124° 14′ 35.60″ W.
43° 41′ 25.86″ N, 124° 12′ 54.61″ W	43° 39′ 35.23″ N, 124° 13′ 11.01″ W.
43° 40′ 43.62″ N, 124° 14′ 17.85″ W	43° 38′ 53.08″ N, 124° 14′ 32.94″ W.
43° 40′ 46.37″ N, 124° 12′ 52.74″ W	43° 38′ 55.82″ N, 124° 13′ 08.36″ W.

The two proposed Sites are situated in approximately 30 to 120 feet of water located to the north and south of the entrance to the Umpqua River on the southern Oregon Coast (see Figure 1). The recommended dimensions of each of the proposed ocean disposal sites are 6,300 by 4,000 feet. Each disposal site will contain a drop zone, defined by a 500-foot setback inscribed within all sides of the site boundary, reducing the permissible disposal area to a zone 5,300 feet long by 3,000 feet wide. The drop zone will ensure that dredged material initially stays within each Site. Limited onshore transport of material disposed of at the proposed Sites is expected because of the nature of the prevailing currents and wave transport in the vicinity of the Sites. Net predicted material transport at the proposed Sites is southward in the summer months and northward during the remainder of the year. These transport mechanisms are expected to move material into the active littoral drift area and to significantly decrease or eliminate mounding as an issue for disposal of dredged material near the mouth of the Umpqua River.

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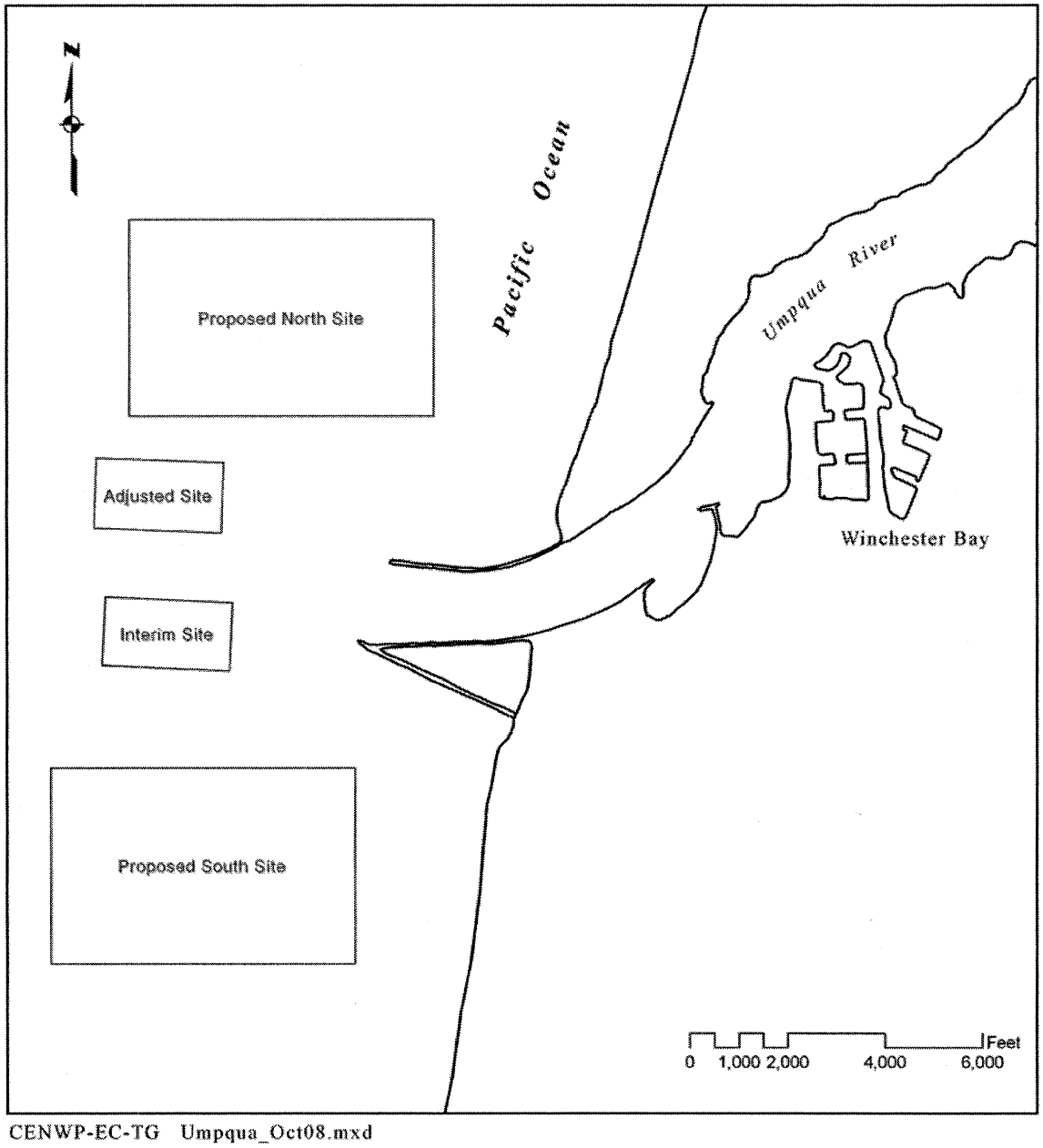

Figure 1 is a diagram of the Proposed Section 102 Sites (North and South), the existing Section 103 Adjusted Site, and the historical Interim Site

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c. Management and Monitoring of the Proposed Sites

The proposed Umpqua River ODMD Sites are expected to receive sediments dredged by the Corps to maintain the federally authorized navigation project at the Umpqua River, Oregon and dredged material from other persons who have obtained a permit for the disposal of dredged material at the Sites. There are no existing Corps permits issued to other entities for use of the 103-Selected site (the Adjusted Site); therefore no permit modifications are required as a result of this action. All persons using the Sites are required to follow the Site Management and Monitoring Plan (SMMP) for the Umpqua River ODMD Sites. The SMMP is available as a draft document for review and comment by the public as of today's action proposing the designation of the Umpqua River ODMD Sites. The draft SMMP includes management and monitoring requirements to ensure that dredged materials disposed at the Sites are suitable for disposal, addresses management of the Sites to ensure mounding does not occur, and addresses the timing of disposal events to minimize interference with other uses of ocean waters in the vicinity of the proposed Sites.

d. MPRSA Criteria

In proposing to designate the Umpqua River ODMD Sites, EPA assessed the proposed action against the criteria of the MPRSA, with particular emphasis on the general and specific regulatory criteria of 40 CFR Part 228, to determine if designation of the proposed sites satisfies those criteria.

General Criteria (40 CFR 228.5)

(1) Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).

EPA's assessment of information available at the time of this proposed rule included a review of the potential for interference with navigation, recreation, shellfisheries, aquatic resources, commercial fisheries, protected geologic features, and cultural and/or historically significant areas. The proposed Sites are located away from the approach to the Umpqua River entrance channel and are unlikely to cause interference with navigation near the mouth of the Umpqua River. Commercial crab and salmon fishing have the potential to take place in the proposed Sites because of overlapping disposal and fishing seasons, but conflicts are not anticipated based on past history of fishing and disposal operations. Other recreational users, for example, surfers, boarders, and divers, may use the near-shore area in the vicinity of the proposed Sites. These recreationists are not expected to generate heavy recreational navigation use with the potential to conflict with disposal operations at the proposed South Site.

(2) Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

Based on EPA's review of modeling, monitoring data, analysis of sediment quality, and history of use, no detectable contaminant concentrations or water quality effects, e.g., suspended solids, would be expected to reach any beach, shoreline, or other area outside of the proposed Sites. All dredged material proposed for disposal will be evaluated according to 40 CFR 227.13 and only suitable material can be disposed of at the site. Modeling work performed by the Corps demonstrates that water column turbidity would be expected to dissipate for an anticipated 97% of the coarser material within a few minutes of disposal, while the remaining 3% of the material, which would be classified as fine-grained, would be expected to dissipate within a half hour. Over time, some of the suitable disposed material would be expected to migrate into the littoral system, and potentially to coastal shorelines. Bottom movement of material, based on historic trends near the mouth of the Umpqua River, is expected to show a net movement to the north at the depth of the disposal sites with rapid dispersion after movement.

(3) If Site designation studies show that any interim disposal sites do not meet the site selection criteria, use of such sites shall be terminated as soon as any alternate site can be designated (40 CFR 228.5(c)).

Use of the Interim Site near the proposed Umpqua River Sites was terminated upon selection of the 103-selected site, the Adjusted Site, by the Corps. Use of the Adjusted Site terminated at the end of the 2008 dredging season. There are no selected or designated sites remaining near the mouth of the Umpqua River. The designation of the proposed Sites is necessary because no location for the disposal of dredged material exists in the vicinity of the proposed Sites at this time.

(4) The sizes of disposal sites will be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

EPA sized the proposed Sites to meet this criterion. The proposed Sites tend to be moderately dispersive in the near-shore area and less dispersive farther from shore. The Sites were designed to be large enough to minimize the potential for adverse mounding and to allow for a minimum twenty-year capacity. Effective monitoring of the proposed Sites is necessary and annual bathymetric surveys are anticipated for each Site. Those surveys are expected to be used to document the fate of the dredged material disposed at the Sites and to provide information for active management of the Sites.

(5) EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).

The proposed Sites would be located near where historic disposal has occurred with only minimal impact to the environment. Locations off the continental shelf in the Pacific Ocean as a general rule are inhabited by stable benthic and pelagic ecosystems on steeper gradients that are not well adapted to the type of frequent disturbance events that would occur if disposal of dredged material took place. Monitoring and surveillance of a site located beyond the edge of the continental shelf would be challenging and would present safety concerns for crew transporting the material to be disposed and monitoring the site. In addition, dredged material disposed at a location beyond the continental shelf would not be available to the littoral system. The loss of material would potentially have a negative impact the mass balance of the system with a resulting negative impact on erosion/accretion patterns along this limited area of coastline near the Umpqua River.

Specific Criteria (40 CFR 228.6)

(1) Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1)).

Based on the data available at the time of this proposal, the geographical position, including the depth of the

proposed Sites, bottom topography, and distance from the coastline in the vicinity of the proposed Sites, will not cause adverse effects to the marine environment. Based on EPA's understanding of the currents at the proposed Sites and their influence on the movement of material in the area, there is a high likelihood that much of the material disposed at the Sites will be transported to the littoral system. This movement is expected to allow for long-term disposal without creation of adverse mounding conditions at either of the proposed Sites.

To help avoid adverse mounding at either of the proposed Sites, the site management strategy will include placing the majority of dredged material in shallower portions of the Sites closer to shore, where the material can quickly return to the regional littoral sediment system. Disposal runs will be managed to avoid multiple dumps in any location to further minimize mounding. Management is likely to include establishing ''cells'' along the nearshore boundary and assigning numbers of ''dumps'' to each cell to minimize material accumulation and avoid excessive or persistent mounding. Disposal will also be offset between the two proposed Sites to allow for maximum dispersal of material and minimal impact to each Site. In the shallower portion of the Sites, it is anticipated that disposal would still lead to the formation of temporary mounds on the bottom. Material placed in the deeper portions of the Sites (the outer, or seaward third) is expected to remain within Site boundaries for a longer time (a few years depending on depth and storm events) and could form more persistent, but still temporary, features.

(2) Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).

The proposed Sites are not located in exclusive breeding, spawning, nursery or feeding areas for adult or juvenile phases of living resources. Many near-shore pelagic organisms are found in the water column over the proposed Sites, but these organisms are found in the water column off most of the Pacific coast and are not unique to the proposed Sites. Benthic fauna common to near-shore, sandy, wave-influenced regions that are found along the Pacific coast are also found at the proposed Sites, and are generally well-suited to survive in this dynamic environment and have been found to adapt well to natural and human perturbations. Benthic communities are expected to rapidly recolonize in the event of burying after disposal. Near the proposed Sites, a variety of pelagic and demersal fish species, as well as shellfish, are found. Anadromous salmonids are found at all seasons in the near-shore area off the mouth of the Umpqua River. Seals and sea lions also inhabit the lower Umpqua River and coastal area. Habitat in the near-shore area and shoreline of the Umpqua River entrance channel supports a variety of avian species. Whales and sea turtles are present seasonally offshore of the coastline in this area, but are generally observed further offshore than the proposed Sites. Modeling of the water column over the proposed Sites indicates that turbidity from a disposal event would be expected to dissipate rapidly and that avoidance behavior by any species in the proposed Sites, or in the surrounding area, at the time of a disposal event would be short-term.

(3) Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).

The proposed Sites, although located in close proximity to the Umpqua River navigation channel, are located a sufficient distance offshore to avoid adverse impacts to beaches and other amenity areas. The local beaches support tourism, and recreational and commercial fishing. Transportation of dredges or barges to and from the proposed Sites to dispose of dredged material is expected to be coordinated so as to avoid disturbance of other activities near the Umpqua River entrance channel. Dredged material disposed of at the proposed Sites is expected to disperse into the littoral system, with a possible positive effect over time of reducing erosion of coastal beaches. The proposed North ODMD Site is 3,100 feet from the north jetty and 3,000 feet from the nearest beach. The proposed South ODMD Site is 2,400 feet from the south jetty and 2,100 feet from the nearest beach. There are no rocks or pinnacles in the vicinity of either site. The Oregon Dunes National Recreation Area, a part of the Siuslaw National Forest, is located on the beach adjacent to the proposed South ODMD Site, but does not extend into the water. The dunes in the Recreation Area are used for off-highway vehicle use, hiking, photography, fishing, canoeing, horseback riding and camping. Use of the proposed South ODMD Site is not expected to interfere with any of those upland uses.

The ocean area north and south of the south jetty is utilized for wave-dependent near shore recreation, such as surfing, diving, kayaking, boogie-boarding, skim boarding, and body surfing. It is possible that some of these uses may overlap with the proposed Sites, resulting in temporary usage conflict during disposal activities. The proposed Umpqua River ODMD Sites were sized and located in order to provide long-term capacity for the disposal of dredged material without causing any impacts to the wave environment at, or near, the proposed Sites. Site monitoring and adaptive management, as described the draft SMMP, will address possible future mounding. The use of the proposed Sites is not expected to change the wave conditions for any of the recreational uses referenced above.

(4) Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)).

Dredged material found suitable for ocean disposal pursuant to the regulatory criteria for dredged material or characterized by chemical and biological testing and found suitable for disposal into ocean waters will be the only material allowed to be disposed of at the proposed Sites. No material defined as ''waste'' under the MPRSA will be allowed to be disposed of at the proposed Sites. The dredged material expected to be disposed of at the Sites will be predominantly marine sand, far removed from known sources of contamination. The physical and chemical analyses of material from the Umpqua River Navigation Channel and boat basin access channel indicate both are suitable for open water disposal. The material from the boat basin access channel contains a higher percentage of fines than the material from the navigation channel, however, the material has been found suitable for disposal at the proposed Sites.

With respect to proposed methods of releasing material at the proposed Sites, material will be released just below the surface from hopper dredges or dump barges. The dredges will be required to be under power and to slowly transit the disposal location during disposal. This method of release is expected to spread material at the Sites to minimize mounding and to minimize impacts to the benthic community and other species in the Sites at the time of a disposal event.

(5) Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).

Monitoring and surveillance at the proposed Sites are expected to be feasible and readily performed from small surface research vessels. The proposed Sites are accessible for bathymetric and side-scan sonar surveys. At a minimum, it is expected that annual bathymetric surveys will be

conducted at each of the proposed Sites to confirm that no unacceptable mounding is taking place within either Site or its immediate vicinity. Routine monitoring is expected to concentrate on examining how the distribution of material in the near-shore portions of the Sites is working to minimize mounding of material and to examine how the distribution of material augments littoral processes.

(6) Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6)).

Dispersal, horizontal transport and vertical mixing characteristics of the area at and in the vicinity of the proposed Sites indicate that the marine sands and fluvial gravels from the Umpqua River distribute away from the river mouth rapidly. The beaches do not show significant accretion or loss, suggesting the system is in equilibrium and that littoral transport is in balance. The bottom current records suggest a bias in transport to the north. Fine grained material tends to remain in suspension and to experience rapid offshore transport compared to other sediment sizes. Sediment transport of sand-sized material or coarser tends to be moved directly as bedload but is occasionally suspended by wave action near the seafloor.

(7) Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)).

The two Sites proposed in today's action have not been used before for any type of disposal activity. The Interim and Adjusted Sites experienced significant adverse mounding which decreased capacity and suitability for designation. EPA's evaluation of historical data and modeling conducted by the Corps concluded that past disposal operations have not resulted in unacceptable environmental degradation. Future disposal of dredged material is not expected to result in unacceptable environmental degradation at the proposed Sites or in the vicinity of the proposed Sites. Although mounding is a potential effect, bathymetric surveys will be conducted at the proposed Sites. The draft SMMP includes requirements, including preventative steps, for managing the proposed Sites to address any potential mounding issues.

(8) Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).

Designation of the proposed Sites is not expected to interfere with shipping, fishing, recreation or other legitimate uses of the ocean. Disposals at the new Sites will be managed according to the SMMP to minimize interference with other legitimate uses of the ocean through careful timing and staggering of disposals in the near-shore portion of the proposed Sites. Commercial and recreational fishing and commercial navigation are the primary uses for which such timing will be needed. No plans for mineral extraction offshore of the Umpqua River are planned or proposed for this area. Wave-dependent near-shore recreation, such as surfing, diving, kayaking, boogie-boarding, skim boarding, and body surfing, may possibly overlap with the proposed Sites, resulting in temporary usage conflict during disposal activities. The proposed Sites will be managed to minimize such potential conflicts. The use of the proposed Sites is not expected to change the wave conditions for any of the recreational uses referenced above. Two wave energy projects are in the preliminary permitting phases near the proposed Sites. One wave energy project, referred to as the Reedsport Wave Energy Project, is proposed for installation approximately 5 miles north of the Umpqua River. The Reedsport Wave Energy Project is north of the proposed North Umpqua River ODMD Site and no conflicts between that project and the use of the North site are expected. A second project, the Douglas County Wave and Tidal Energy Project, is proposed to be located both in the ocean waters near the proposed Sites and on the south jetty structure at the mouth of the Umpqua River. Final dimensions and configuration for the Douglas County project are not yet known, therefore, it is unknown whether the proposed project would present any usage conflicts with the proposed Umpqua River ODMD Sites. Project proponents for both of these wave energy projects have received a preliminary permit and filed a notice of intent to file a license application with FERC. Fish and shellfish culture operations are not under consideration for the area. There are no known areas of scientific importance in the vicinity of the proposed Site.

(9) The Existing Water Quality and Ecology of the Sites as Determined by Available Data or Trend Assessment of Baseline Surveys (40 CFR 228.6(a)(9)).

EPA has not identified any adverse water quality impacts from ocean disposal of dredged material based on water and sediment quality analyses conducted in the study area of the proposed Sites and based on experience with past disposals near the mouth of the Umpqua River. Fisheries and benthic data show the ecology of the area to be that of a mobile sand community typical of the Oregon Coast.

(10) Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10)).

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been observed at, or in the vicinity of, the proposed Sites. Material expected to be disposed at the proposed Sites has been classified as uncontaminated marine sands similar to the sediment present at the Sites. Some fine-grained material, finer than natural background, may also be disposed. While this finer-grained material could have the potential to attract nuisance species to the proposed Sites, no such recruitment has occurred in the past at either the Interim or the Adjusted Site. The draft SMMP includes specific biological monitoring requirements, which will act to identify any nuisance species, and management requirements, allowing EPA to direct special studies and/or operational changes to address the issue if it arises.

(11) Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11))

No significant cultural features have been identified at, or in the vicinity of, the proposed Sites. As discussed further below, EPA coordinated with Oregon's State Historic Preservation Officer and with Tribes in the vicinity of the proposed Sites to identify any cultural features. None were identified. No shipwrecks were observed or documented within the proposed Sites or their immediate vicinity.

e. National Environmental Policy Act (NEPA); Magnuson-Stevens Act (MSA); Marine Mammal Protection Act (MMPA); Coastal Zone Management Act (CZMA); Endangered Species Act (ESA); National Historic Preservation Act (NHPA)

(1) NEPA

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires that Federal agencies prepare an Environmental Impact Statement (EIS) for major Federal actions significantly affecting the quality of the human environment. NEPA does not apply to EPA designations of ocean disposal sites under the MPRSA because the courts have exempted EPA's actions under the MPRSA from the procedural

requirements of NEPA through the functional equivalence doctrine. Under that doctrine, as EPA discussed most recently in the Agency's final rule revising the NEPA regulations, the courts reasoned that actions under the MPRSA are functionally equivalent to the analysis required under NEPA because such actions are undertaken with full consideration of environmental impacts and with opportunities for public involvement. See 72 FR 53653, September 19, 2007. EPA has, by policy, determined that the preparation of non-EIS NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, is appropriate. EPA's ''Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents,'' (Voluntary NEPA Policy), 63 FR 58045, (October 29, 1998), sets out both the policy and procedures EPA uses when preparing such environmental review documents. EPA's 2007 revisions to 40 CFR Part 6 provided the framework EPA used to prepare the voluntary NEPA documents for this proposed action.

EPA's primary voluntary NEPA document for designating the proposed Sites is the Draft *Umpqua River, Oregon Ocean Dredged Material Disposal Sites Evaluation Study and Environmental Assessment, 2008* (EA), jointly prepared by EPA and the Corps. The EA and its Technical Appendices, which are part of the docket for today's proposed action, provide the threshold environmental review for the proposed designation of the two Sites. The information from the EA is used extensively, above, in the discussion of the ocean dumping criteria. Because EPA's Voluntary NEPA Policy does not require the preparation of an EIS for this proposed action, the EA prepared for designating the two proposed Sites is available for public comment and a final EA will be made available at the time of final rulemaking. Persons interested in commenting on this EA should do so at this time. There may not be another opportunity to comment.

(2) MSA and MMPA

In the spring of 2008, EPA initiated consultation with the National Marine Fisheries Service (NMFS) concerning essential fish habitat and protected marine mammals. EPA prepared an essential fish habitat (EFH) assessment pursuant to Section 305(b), 16 U.S.C. 1855(b), of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1801 to 1891d. NMFS is also reviewing EPA's EFH assessment and ESA Biological Assessment for purposes of the Marine Mammal Protection Act of 1972, as amended (MMPA), 16 U.S.C. 1361 to 1389. Consultation under both MMPA and MSA is still underway, but is expected to conclude before EPA takes any action to finalize today's proposed rule. Persons interested in commenting on this issue should do so at this time. There may not be another opportunity to comment.

(3) CZMA

EPA initiated consultation with the state of Oregon on coastal zone management issues in June and July of 2008. EPA prepared a consistency determination for the Oregon Ocean and Coastal Management Program (OCMP) to meet the requirements of the Coastal Zone Management Act, as amended, (CZMA), 16 U.S.C. 1451 to 1465, and will submit that determination formally to the Oregon Department of Land Conservation and Development (DLCD) for review.

(4) ESA

EPA initiated informal consultation with NMFS and the U.S. Fish and Wildlife Service on its action to designate the Umpqua River ODMD Sites beginning in the spring of 2008. EPA prepared a Biological Assessment to assess the potential effects of designating the two Umpqua River Sites on aquatic and wildlife species to determine whether or not its action might adversely affect species listed as endangered or threatened and/or adversely modify or destroy their designated critical habitat. EPA found that its action would not be likely to adversely affect aquatic or wildlife species listed pursuant to the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, or the critical habitat of such species. EPA found that site designation does not have a direct impact on any of the identified ESA species but also found that indirect impacts associated with reasonably foreseeable future disposal activities had to be considered. These indirect impacts included a short-term increase in suspended solids and turbidity in the water column when dredged material was disposed at the new Sites and an accumulation of material on the ocean floor when material was disposed at the Sites. EPA concluded that while its action may affect ESA-listed species, the action would not be likely to adversely affect ESA-listed species or critical habitat.

The U.S. Fish and Wildlife Service (USFWS) concurred with EPA's finding that EPA's action to designate the proposed Umpqua River ODMD Sites would not likely adversely affect listed species or critical habitat. Consultation with the USFWS for this proposed action is complete. The National Marine Fisheries Service (NMFS) is still reviewing the proposed action, but consultation with NMFS is expected to be completed before EPA takes any action to finalize today's proposed rule. EPA specifically requests that any comments concerning ESA be made at this time. This may be the only opportunity for interested persons to comment on this issue.

(5) NHPA

EPA initiated consultation with the State of Oregon's Historic Preservation Officer (SHPO) to address National Historic Preservation Act, as amended (NHPA), 16 U.S.C. 470 to 470a–2, which requires Federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register. EPA determined that no historic properties were affected, or would be affected, by the proposed designation of the Sites. EPA did not find any historic properties within the geographic area of the proposed Sites. This determination was based on an extensive review of the National Register of Historic Districts in Oregon, the Oregon National Register list and an assessment of cultural resources near the proposed Sites. Side scan sonar of the proposed Sites did not reveal the presence of any shipwrecks or other cultural or historic properties. This consultation is expected to be completed before EPA takes any action to finalize today's proposed rule. EPA specifically requests that any comments concerning NHPA be made at this time. This may be the only opportunity for interested persons to comment on this issue.

3. Statutory and Executive Order Reviews

This rule proposes to designate two ocean dredged material disposal sites pursuant to Section 102 of the MPRSA. This rule complies with applicable executive orders and statutory provisions as follows:

(1) Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy,

productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

(2) Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed rule does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to authorize the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR are listed in 40 CFR Part 9.

(3) Regulatory Flexibility

The Regulatory Flexibility Act (RFA), generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant economic impact on small entities because the proposed rule will only have the effect of regulating the location of sites to be used for the disposal of dredged material in ocean waters. After considering the economic impacts of today's rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

(4) Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for state, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

(5) Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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 various levels of government.'' This rule does not have federalism implications. It will 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 various levels of government, as specified in Executive Order 13132. This rule proposes to designate two sites for the disposal of dredged material in ocean waters. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

(6) Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications, as specified in Executive Order 13175 because the designation of the two dredged material disposal Sites will not have a direct effect on 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. Thus, Executive Order 13175 does not apply to this rule. Although Executive Order 13175 does not apply to this proposed rule, EPA consulted with tribal officials in the development of this rule, particularly as the proposed rule relates to potential impacts to historic or cultural resources. EPA specifically solicits additional comment on this proposed rule from tribal officials.

(7) Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The proposed action concerns the designation of two Sites and would only have the effect of providing designated locations to use for ocean disposal of

dredged material pursuant to section 102(c) of the MPRSA.

(8) Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

(9) National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The proposed action includes environmental monitoring and measurement as described in EPA's draft SMMP. EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the proposed Sites once designated. Rather, the Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the SMMP. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

(10) Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA has assessed the overall protectiveness of designating the proposed disposal Sites against the criteria established pursuant to the MPRSA to ensure that any adverse impact on the environment will be mitigated to the greatest extent practicable.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: November 14, 2008.

Elin D. Miller,

Regional Administrator, Region 10.

PART 228—[AMENDED]

For the reasons set out in the preamble, Chapter I of title 40 is proposed to be amended as set forth below:

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418

2. Section 228.15 is amended by adding paragraph (n)(7) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(7) Umpqua River, OR—North and South Dredged Material Disposal Sites.

(i) North Umpqua River Site.

(A) *Location:* 43°41′23.09″ N, 124°14″20.28″ W; 43°41′25.86″ N, 124°12′54.61″ W; 43°40′43.62″ N, 124°14′17.85″ W; 43°40′46.37″ N, 124°12′52.74″ W.

(B) *Size:* Approximately 1.92 kilometers long and 1.22 kilometers wide, with a drop zone which is defined as a 500-foot setback inscribed within all sides of the site boundary, reducing the permissible disposal area to a zone 5,300 feet long by 3,000 feet wide.

(C) *Depth:* Ranges from approximately 9 to 37 meters

(D) *Primary Use:* Dredged material

(E) *Period of Use:* Continuing Use

(F) *Restrictions:* (*1*) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13, from the Umpqua River navigation channel and adjacent areas;

(*2*) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(*3*) Monitoring, as specified in the SMMP, is required.

(ii) South Umpqua River Site

(A) *Location:* 43°39′32.31″ N, 124°14′35.60″ W; 43°39′35.23″ N, 124°13′11.01″ W; 43°38′53.08″ N, 124°14′32.94″ W; 43°38′55.82″ N, 124°13′08.36″ W.

(B) *Size:* Approximately 1.92 kilometers long and 1.22 kilometers wide, with a drop zone which is defined as a 500-foot setback inscribed within all sides of the site boundary, reducing the permissible disposal area to a zone 5,300 feet long by 3,000 feet wide.

(C) *Depth:* Ranges from approximately 9 to 37 meters

(D) *Primary Use:* Dredged material

(E) *Period of Use:* Continuing Use

(F) *Restrictions:* (*1*) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13, from the Umpqua River navigation channel and adjacent areas;

(*2*) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(*3*) Monitoring, as specified in the SMMP, is required.

* * * * *

[FR Doc. E8–27967 Filed 11–24–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R05–RCRA–2008–0712; FRL–8744–9]

Wisconsin: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Wisconsin has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Wisconsin's application and has preliminarily determined that these changes satisfy all requirements needed to qualify for final authorization, and is