F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule imposes no regulatory requirements or costs on any tribal government. It does not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early-life exposure to the toxic pollutants for which we are soliciting comments.

H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)

This rule 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 under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) 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 standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 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 rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because (1) New Jersey's, Puerto Rico's, and California's criteria apply to all marine waters in the State, and thus EPA does not believe that this action would disproportionately affect any one group over another, and (2) EPA has previously determined, based on the most current science and EPA's CWA Section 304(a) recommended criteria, that New Jersey's, Puerto Rico's, and California's adopted and EPA-approved criteria are protective of human health and aquatic life.

List of Subjects in 40 CFR Part 131

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 30, 2012.

Lisa P. Jackson,

Administrator.

• For the reasons set out in the preamble title 40, Chapter I, part 131 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.36 [Amended]

2. Section 131.36 is amended as follows:

a. Removing and reserving paragraph (d)(3).

b. Removing and reserving paragraph (d)(4).

c. Revising the table in paragraph (d)(10)(ii) as follows:

(i) Under the heading ''Water and use classification'' add a new first line to read as follows:

Waters of the Sacramento-San Joaquin Delta within Regional Water Board 5

(ii) Under the heading ''Applicable criteria'' add a new first line to read as follows:

These waters are assigned the criteria in:

Column C1—pollutant 14

Column C2—pollutant 14

(iii) Under the heading ''Applicable criteria'', opposite the entry for ''Waters of San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta'', remove ''Column C1—pollutant 14'' and ''Column C2—pollutant 14''.

§ 131.38 [Amended]

3. Section 131.38 is amended as follows:

a. Revise footnote ''r'' in the ''Footnotes to Table in Paragraph (b)(1)'' to read as follows:

r. These criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays or estuaries including the Sacramento-San Joaquin Delta within California Regional Water Board 5, but excluding the San Francisco Bay. This section does not apply instead of the NTR for these criteria.

[FR Doc. 2012–8202 Filed 4–4–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R10–OW–2012–0197; FRL–9654–6]

Ocean Dumping; Designation of Ocean Dredged Material Disposal Sites Offshore of Yaquina Bay, OR

AGENCY: The Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to designate two new ocean dredged material disposal (ODMD) sites offshore of Yaquina Bay, Oregon pursuant to the Marine Protection, Research and Sanctuaries Act (MPRSA), as amended. The new sites are needed primarily to serve the long-term need for a location to dispose of material dredged from the Yaquina 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 no later than May 7, 2012.

ADDRESSES: For more information on this proposed rule, Docket ID No. EPA–R10–OW–2012–0197 use one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for accessing the docket and materials related to this proposed rule.
- *Email: Lohrman.Bridgette@epa.gov.*
- *Mail:* Bridgette Lohrman, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs, Environmental Review and Sediment Management Unit, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, Oregon 97205.

Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy during normal business hours from the regional library at the U.S. Environmental Protection Agency, Region 10 Library, 10th Floor, 1200 Sixth Avenue, 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. to 12 p.m., and between the hours of 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, for an appointment.

FOR FURTHER INFORMATION CONTACT: Bridgette Lohrman, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs, Environmental Review and Sediment Management Unit, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, Oregon 97205; phone number (503) 326–4006; email: *Lohrman.Bridgette@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Persons

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

II. Background

A. History of Disposal Sites Offshore of Yaquina Bay, Oregon

The Corps historically used the general area offshore of Yaquina Bay for dredged material disposal. In 1977, an Interim ODMD site offshore of Yaquina Bay received EPA interim designation and was used by the Corps for dredged material disposal after 1977 and prior to 1986 (Figure 1). However, because of increased mounding in the Interim Site and its potential adverse effect on navigation safety, the Corps selected an alternate ODMD site, the ''Adjusted Site,'' under the authority of section 103 of the MPRSA, with EPA concurrence. The Corps began to use this ''Adjusted Site'' in 1986. By 1990, dredged material had accumulated in the Adjusted Site to an extent that necessitated careful placement of material on specific portions of the Adjusted Site. In 2000, the Corps ceased disposal of material at the Adjusted Site. In 2001, the Corps and the EPA completed an examination of possible new locations for ocean disposal further offshore from the entrance to Yaquina Bay. The recommended locations from that study are the proposed Yaquina North and South Sites.

In October 2000, these disposal sites were authorized to be used by the Corps, with EPA concurrence, under Section 103 of the MPRSA as selected sites. The Yaquina North Site has been the preferred site for disposal. The authorization to use the Yaquina North Site under section 103 of the MPRSA expired at the end of the 2011 dredge season and is unavailable for future dredge seasons unless designated as proposed in this action. Since the Yaquina South Site has never been used for disposal of dredged material due to prevailing southwest winds, it is currently available for use as a selected site under section 103. To provide for sufficient disposal capacity over the long term, the EPA proposes to designate both a Yaquina North Site and a Yaquina South Site under section 102 of the MPRSA, for the ocean disposal of dredged material offshore of Yaquina Bay using the footprints of the section 103 selected sites.

The proposed designation of the two ocean disposal sites for dredged material does not mean that the Corps or the EPA has approved the use of the Sites for open water disposal of dredged material from any specific project. Before any person can dispose dredged material at either of the proposed Sites, the EPA and the Corps must evaluate the project according to the ocean dumping regulatory criteria (40 CFR part 227) and authorize the disposal. The EPA independently evaluates proposed dumping and has the right to restrict and/or disapprove of the actual disposal of dredged material if the EPA determines that environmental requirements under the MPRSA have not been met.

B. Location and Configuration of Yaquina North and South Ocean Dredged Material Disposal Sites

This action proposes the designation of two ocean dredged material sites to the north and south, respectively, offshore of Yaquina Bay. The location of the two proposed ocean dredged material disposal sites (Yaquina North and South ODMD Sites, North and

South Sites, or Sites) are bounded by the coordinates, listed below, and shown in Figure 1. The proposed designation of these two Sites will allow the EPA to adaptively manage the Sites to maximize their capacity, minimize the potential for mounding and associated safety concerns, and minimize the potential for any long-term adverse effects to the marine environment.

The coordinates for the two Sites are, in North American Datum 83 (NAD 83):

Yaquina North ODMD Site	Yaquina South ODMD Site
44°38′17.98″ N, 124°07′25.95″ W	44°36′04.50″ N, 124°07′52.66″ W
44°38′12.86″ N, 124°06′31.10″ W	44°35′59.39″ N, 124°06′57.84″ W
44°37′14.33″ N, 124°07′37.57″ W	44°35′00.85″ N, 124°08′04.27″ W
44°37′09.22″ N, 124°06′42.73″ W	44°34′55.75″ N, 124°07′09.47″ W

The two proposed Sites are located in approximately 112 to 152 feet of water, and are located to the north and south of the entrance to Yaquina Bay on the central Oregon Coast. The proposed Yaquina North Site would be located about 1.7 nautical miles northwest of the entrance to Yaquina Bay and the proposed Yaquina South Site would be located about 2.0 nautical miles southwest of the bay's entrance. Both ocean disposal sites would be 6,500 feet long by 4,000 feet wide, about 597 acres each.

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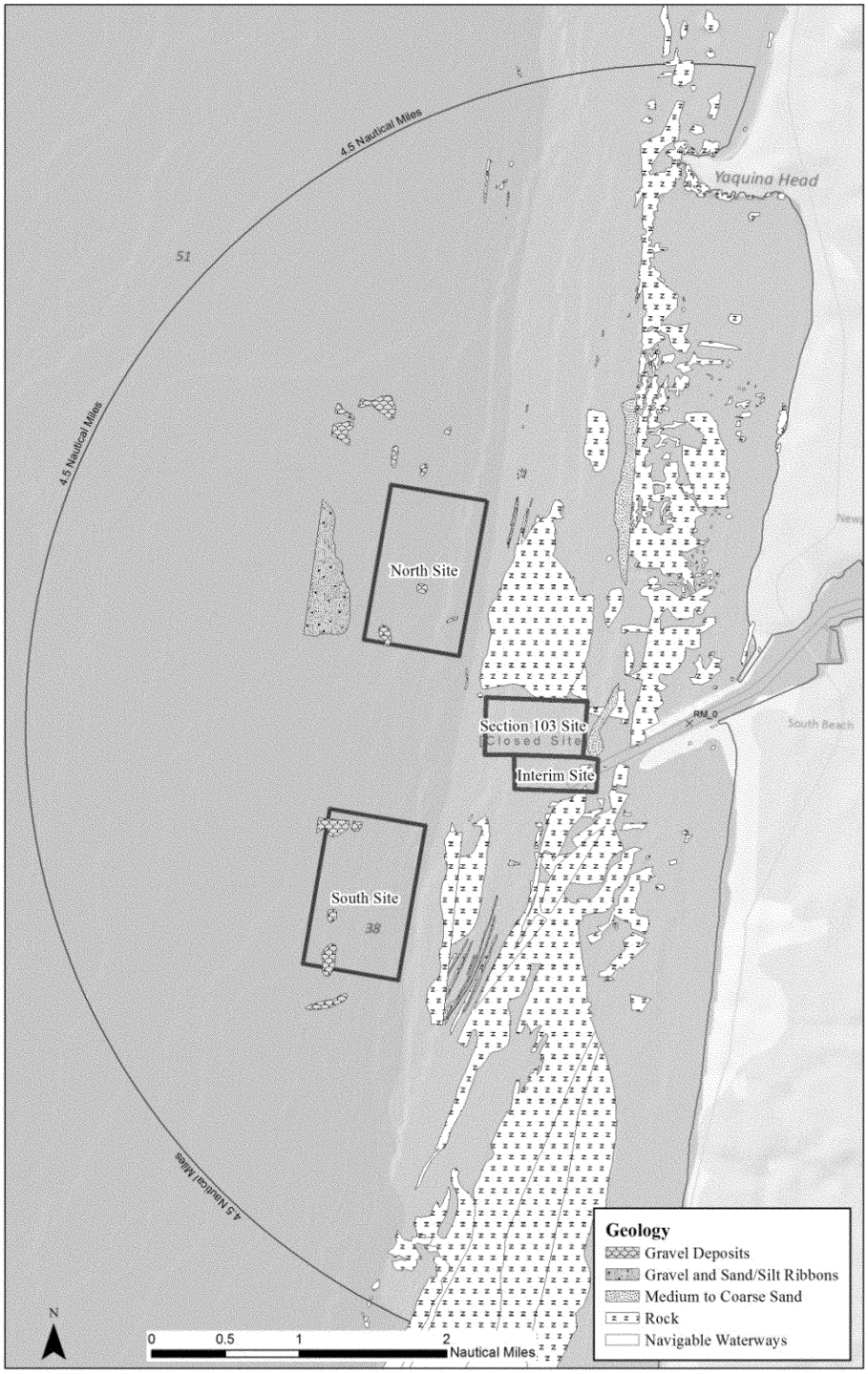

Figure 1. Proposed Yaquina North and South ODMD Sites

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C. Management and Monitoring of the Sites

The proposed Sites are expected to receive sediments dredged by the Corps to maintain the federally authorized navigation project at Yaquina Bay, Oregon and dredged material from other persons who have obtained a permit for the disposal of dredged material at the Sites. All persons using the Sites are required to follow a Site Management and Monitoring Plan (SMMP) for the Sites. The SMMP includes management and monitoring requirements to ensure that dredged materials disposed at the Sites are suitable for disposal in the ocean and that adverse impacts of disposal, if any, are addressed to the maximum extent practicable. The SMMP for the Yaquina North and South Sites, in addition to the aforementioned, also addresses management of the Sites to ensure adverse mounding does not occur and to ensure that disposal events minimize interference with other uses of

ocean waters in the vicinity of the proposed Sites. The SMMP is available as a draft document for review and comment at this time. The public is encouraged to take advantage of this opportunity to read and submit comments on the draft SMMP.

D. MPRSA Criteria

In proposing to designate these Sites, the EPA assessed the proposed Sites according to the criteria of the MPRSA, with particular emphasis on the general and specific regulatory criteria of 40 CFR part 228, to determine whether the proposed site designations satisfy those criteria. The EPA's draft *Yaquina Bay, Oregon Ocean Dredged Material Disposal Sites Evaluation Study and Environmental Assessment, [February 2012]* (EA), provides an extensive evaluation of the criteria and other related factors for the designation of these Sites. The EA is available as a draft document for review and comment at this time. The public is encouraged to take advantage of this opportunity to read and submit comments on the draft EA.

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)).

The EPA reviewed the potential for the Sites to interfere with navigation, recreation, shellfisheries, aquatic resources, commercial fisheries, protected geologic features, and cultural and/or historically significant areas and found low potential for conflicts. The proposed Sites spatially overlap with recreational activities such as boating and whale watching, recreational and commercial finfish or Dungeness crab fishing, tow lane agreements between tow boat operations and Dungeness crab fishermen, and recreational and commercial navigation. However, the Sites are unlikely to cause interference with these or other uses provided close communication and coordination is maintained among users, vessel traffic control and the U.S. Coast Guard. Recreational users are expected to more heavily use areas that are shoreward of the Sites and to focus their activities on Yaquina Reef. Commercial fishing, including that for salmon and Dungeness crab, is expected to occur at the Sites, but the EPA does not expect disposal operations at the Sites to conflict with this use because of the limited space and time during which disposal occurs. The draft SMMP outlines site management objectives, including minimizing interference with other uses of the ocean. Should a site use conflict be identified, site use could be modified according to the SMMP to minimize that conflict.

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 the EPA's review of modeling, monitoring data, 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 or shoreline from disposal activities at the Sites. The primary impact of disposal activities on water quality is expected to be temporary turbidity caused by the physical movement of sediment through the water column. All dredged material proposed for disposal will be evaluated according to the ocean dumping regulations at 40 CFR 227.13 and guidance developed by the EPA and the Corps. In general, dredged material which meets the criteria under 40 CFR 227.13(b) is deemed environmentally acceptable for ocean dumping without further testing. Dredged material which does not meet the criteria of 40 CFR 227.13(b) must be further tested as required by 40 CFR 227.13(c).

Disposal of suitable material meeting the regulatory criteria and deemed environmentally acceptable for ocean dumping will be allowed at the proposed Sites. Most of the dredged material (approximately 95%) to be disposed at the Sites is expected to be sandy material, while a small amount of material (up to 5% of the material) would be classified as fine-grained. Hopper dredges, which are typically used for the Corps' annual navigation dredging, are not capable of removing debris from the dredge site. However, specific projects may utilize a clamshell dredge, in which case there is the potential for the occasional placement of naturally occurring debris at the disposal Sites.

3. 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)).

To ensure that site managers can be responsive to the specifics of each dredging season based on dredge schedules, weather, and bathymetry at the Sites, the EPA proposes to designate both the North and South Sites. The footprints of the proposed Sites are designed to maximize their capacity, helping to assure minimal mounding and minimize any adverse affects to the wave climate. The presence of Yaquina Reef, close to shore at shallow depths, prevents nearshore designation and dredged material disposal in dispersive locations at depths less than 60 feet. The North Site will be the preferred placement area for disposal of dredged material as was the case when the Site was used as a Section 103 selected site. During some periods, disposal may be alternated between the two Sites. The use of the South Site is more dependent upon wind and wave conditions, particularly in April and May when the typical dredge season starts, and for this reason will tend to be used less frequently than the North Site. Effective monitoring of the Sites is necessary and required. The EPA will require annual bathymetric surveys for each Site to track site capacity and to assess the potential for mounding concerns. These surveys will inform the active management of the proposed Sites.

4. 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)).

Disposal areas located off of the continental shelf would be at least 20 nautical miles offshore. This distance is well beyond the 4.5 nautical mile haul distance determined to be feasible by the Corps for maintenance of their Yaquina Bay project. Additional disadvantages to off-shelf ocean disposal would be the unknown environmental impacts of disposal on deep-sea, stable, fine-grained benthic communities and the higher cost of monitoring sites in deeper waters and further offshore.

Historic disposal has occurred at the proposed location for these Sites. The substrate of the proposed Sites is similar grain size to the disposal material and the placement avoids the unique habitat features of Yaquina Reef.

Specific Criteria (40 CFR 228.6)

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

The EPA does not anticipate that the geographical position of the proposed Sites, including the depth, bottom

topography and distance from the coastline, will unreasonably degrade the marine environment. To help avoid adverse mounding at the Sites, site management will generally include uniform placement, i.e., spreading disposal material throughout the Sites in a manner that will result in a relatively uniform accumulation of disposed material on the bottom over the long-term. Site management will include creating dump plans for each Site where disposal will occur. Dump plans establish cells within the Site to ensure uniform placement. In addition to minimizing mounding, the uniform placement is expected to minimize the thickness of disposal accumulations which is expected to be less disruptive to benthic communities and aquatic species, such as crabs, that might be present at the Sites during disposal events. Because the proposed Sites are relatively deep, to avoid the nearshore Yaquina Reef, they are not considered dispersive. Material placed in the Sites is not expected to move from the Sites except during large storm events.

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, feeding or passage areas for adult or juvenile phases of living resources. At and in the immediate vicinity of the proposed Sites, a variety of pelagic and demersal fish species, including salmon, green sturgeon, and flatfish, as well as Dungeness crab, are found. Studies conducted by the EPA and the Corps at the proposed Sites found the benthic infaunal and epifaunal community to be dominated by organisms that are adapted to a sandy environment. The benthic species, densities and diversities collected during these studies were typical of the nearshore sandy environment along the Oregon coast.

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

The proposed Sites are approximately 2 nautical miles off the beach in water depths greater than 100 feet and beyond the ecologically and economically important Yaquina Reef. Given the depth of these Sites, the material is not expected to disperse from the Sites except during infrequent large storm events. Thus, impacts to beaches or the reef will be avoided. The sand removed from the Newport littoral cell is not expected to affect Newport's beaches because Pacific Northwest beaches tend to respond strongly to storm effects, the episodic nature of which would mask any long-term discrete changes such as disposal at these Sites. Site monitoring and adaptive management are components of the proposed SMMP to ensure beaches and other amenity areas are not adversely impacted.

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 at the Sites. No material defined as ''waste'' under the MPRSA will be allowed to be disposed at the Sites. The dredged material to be disposed at the Sites will be predominantly marine sand. Generally, disposal is expected to occur from a hopper dredge, in which case, material will be released just below the surface while the disposal vessel remains under power and slowly transits the disposal location. This method of release is expected to spread material at the Sites to minimize mounding, while minimizing impacts to the benthic community and to aquatic species present at the Sites at the time of a disposal event.

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

The EPA expects monitoring and surveillance at the Sites to be feasible and readily performed from small, surface research vessels. The EPA will ensure monitoring of the sites for physical, biological and chemical attributes. Bathymetric surveys will be conducted annually, contaminant levels in the dredged material will be analyzed prior to dumping, and the benthic infauna and epibenthic organisms will be monitored every 5 years, as funding allows.

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)).

Disposal at the proposed Sites will not degrade the existing wave environment within or outside the Sites. The placement of dredged material may have a minor effect on circulation within or outside the site boundaries. Due to the size of the mound resulting from the accumulated dredged material (10–14 feet high covering 597 acres) over 20 years, it is possible the currents in the vicinity of the Sites may be affected. Any potential effect would not be expected to occur until a substantial amount of dredged material has been placed at the site (4–6 million cubic yards). At that time, the EPA plans to re-assess these assumptions and associated potential effects. Currently, disposal has occurred at the North Site for 10 years with a total disposal volume of approximately 2.2 million cubic yards.

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

The proposed North Site was used for disposal of dredged material from 2001 to 2011. The seafloor elevation at the Site has risen 12 feet in a few locations. Annual bathymetric surveys will continue to be conducted to monitor mounding at the North Site. To date disposal of dredged material has not changed the benthic infaunal nor epifaunal species expected to inhabit nearshore sandy substrates at this location. The South Site, selected by the Corps under their Section 103 authority under the MPRSA, has never been used. Preferential use of the North Site is expected at this time, but capacity and other factors may result in more frequent use of the South Site in the future. The proposed SMMP includes monitoring and adaptive management measures to address 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)).

The proposed Sites are not expected to interfere with shipping, fishing, recreation or other legitimate uses of the ocean. Commercial and recreational fishing and commercial navigation are the primary activities that may spatially overlap with disposal at the Sites. This overlap is more likely at the South Site given the South Site's proximity to the commercial shipping lane and a more direct alignment with the entrance channel to Yaquina Bay. The likelihood of direct interference with these activities is low, provided there is close communication and coordination among users, vessel traffic control and the U.S. Coast Guard. The EPA is not aware of any plans for mineral extraction, desalination plants, or fish and shellfish culture operations near the proposed Sites at this time. The proposed Sites are not located in areas of special scientific importance. They are located to the south of the Newport Hydrographic line, south of the proposed Northwest National Marine Renewable Energy Center's nearshore test facility, and west of the Yaquina Reef.

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)).

The EPA has not identified any potential adverse water quality impacts from the proposed ocean disposal of dredged material at the Sites based on water and sediment quality analyses conducted in the study area of the Sites, and based on past disposal experience at the proposed North Site when it was used as a Section 103 selected site. Benthic grabs and trawl data show the ecology of the area to be that associated with sandy nearshore substrate 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 Sites will be 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 Sites, no such recruitment is known to have taken place at the proposed North Site while the Site was used as a Section 103 selected site. The proposed SMMP includes benthic infaunal and epifaunal monitoring requirements, which will act to identify any nuisance species and allow the EPA to direct special studies and/or operational changes to address the issue if it arises.

1. 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 at this time. The EPA is coordinating with Oregon's State Historic Preservation Officer and with Tribes in the vicinity of the Sites to identify any cultural features. The EPA expects to complete that coordination effort before making a final decision on the proposed Sites. No shipwrecks have been observed or documented within the proposed Sites or their immediate vicinity.

III. Environmental Statutory Review—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)

A. NEPA

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires Federal agencies to 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 the EPA's actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. The EPA has, by policy, determined that the preparation of NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, is appropriate. The 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 the EPA uses when preparing such environmental review documents. The EPA's primary voluntary NEPA document for designating the Sites is the draft *Yaquina Bay, Oregon Ocean Dredged Material Disposal Sites Evaluation Study and Environmental Assessment, [February 2012]* (EA), jointly prepared by the EPA and the Corps. The draft EA and its Technical Appendices, which are part of the docket for this action, provide the threshold environmental review for designation of the two Sites. The information from the proposed EA is used above, in the discussion of the ocean dumping criteria.

B. MSA and MMPA

The EPA prepared an essential fish habitat (EFH) assessment pursuant to Section 305(b), 16 U.S.C. 1855(b)(2), of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1801 to 1891d, and submitted that assessment to the National Marine Fisheries Service (NMFS) on December 19, 2011. NMFS is reviewing the EPA's EFH assessment and an Endangered Species Act (ESA) Biological Assessment and addendum thereto for purposes of the Marine Mammal Protection Act of 1972, as amended (MMPA), 16 U.S.C. 1361 to 1389. The EPA will not take final action on the proposed Sites until the NMFS review is complete.

C. CZMA

The Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. 1451 to 1465, requires Federal agencies to determine whether their actions will be consistent to the extent practicable with the enforceable policies of approved state programs. The EPA prepared a consistency determination for the Oregon Coastal Management Program (OCMP), the approved state program in Oregon, to meet the requirements of the CZMA and submitted that determination to the Oregon Department of Land Conservation and Development (DLCD) for review on February 17, 2012. The EPA will not take final action on the proposed Sites until the DLCD review of EPA's consistency determination is complete.

D. ESA

The Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, requires Federal agencies to consult with NMFS and the U.S. Fish and Wildlife Service (USFWS) to ensure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of any critical habitat. The EPA prepared a Biological Assessment (BA) to assess the potential effects of designating the two proposed Sites on aquatic and wildlife species and submitted that BA to the NMFS and USFWS on December 19, 2011. The EPA found that site designation does not have a direct impact on any of the identified ESA species, and also found that indirect impacts associated with reasonably foreseeable future disposal activities had to be considered. These anticipated indirect impacts from disposal included a short-term increase in suspended sediment, short-term disruption in avian foraging behavior, modification of bottom topography, loss of benthic prey species from burial, and loss of pelagic individuals during disposal of material through the water column. The EPA concluded that its action may affect, but is not likely to adversely affect 18 ESA-listed species and is not likely to adversely affect designated critical habitat for southern green sturgeon (*Acipenser medirostris*) but is likely to adversely affect Oregon Coast coho salmon (*Oncorhynchus kisutch*). The USFWS concurred on EPA's finding that the proposed action is not likely to adversely affect listed endangered or threatened species under the

jurisdiction of the USFWS. The EPA will not take final action on the proposed Sites until consultation with NMFS under the ESA is complete.

E. NHPA

The EPA initiated consultation with the State of Oregon's Historic Preservation Officer (SHPO) on February 27, 2012, to address the 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. The EPA determined that no historic properties were affected, or would be affected, by designation of the Sites. The EPA did not find any historic properties within the geographic area of the Sites. This determination was based on a review of the National Register of Historic Districts in Oregon, the Oregon National Register list and an assessment of potential cultural resources near the Sites. The EPA will not take final action on the proposed Sites until the coordination with the SHPO is complete.

IV. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

In this proposed site designation, the EPA does not reasonably anticipate collection of information from ten or more people based on the historic use of designated sites. Consequently, the proposed action is not subject to the Paperwork Reduction Act.

C. 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 this rule on small entities, small entity is defined as: A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; 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 a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The EPA determined that this proposed 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 this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This proposed 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.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. 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 various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 because the designation of the two ocean 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 action. Although Executive Order 13175 does not apply to this proposed action the EPA consulted with tribal officials in the development of this action, particularly as the action relates to potential impacts to historic or cultural resources. The EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885) 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 proposed 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 ocean dredged material disposal sites and only has the effect of providing designated locations to use for ocean disposal of dredged material pursuant to Section 102(c) of the MPRSA. We welcome comments on this proposed action related to this Executive Order.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355) because it is not a ''significant regulatory action'' as defined under Executive Order 12866. We welcome comments on this proposed action related to this Executive Order.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272), directs the 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 the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed action includes environmental monitoring and measurement as described in EPA's proposed SMMP. The EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the designated Sites. 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 proposed SMMP. The 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 proposed action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629) 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. The EPA 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. The EPA has assessed the overall protectiveness of designating the disposal Sites against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable. We welcome comments on this proposed action related to this Executive Order.

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: March 20, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

For the reasons set out in the preamble, The EPA proposes to amend chapter I, title 40 of the Code of Federal Regulations as follows:

PART 228—[AMENDED]

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)(15) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(15) Yaquina Bay, OR—North and South Ocean Dredged Material Disposal Sites.

(i) North Site.

(A) *Location:* 44°38′17.98″ N, 124°07′25.95″ W, 44°38′12.86″ N, 124°06′31.10″ W, 44°37′14.33″ N, 124°07′37.57″ W, 44°37′09.22″ N, 124°06′42.73″ W.

(B) *Size:* Approximately 1.07 nautical miles long and 0.66 nautical miles wide (0.71 square nautical miles); 597 acres (242 hectares).

(C) *Depth:* Ranges from approximately112 to 152 feet (34 to 46 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 Yaquina Bay and 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 Site

(A) *Location:* 44°36′04.50″ N, 124°07′52.66″ W, 44°35′59.39″ N, 124°06′57.84″ W, 44°35′00.85″ N, 124°08′04.27″ W, 44°34′55.75″ N, 124°07′09.47″ W.

(B) *Size:* Approximately 1.07 nautical miles long and 0.66 nautical miles wide (0.71 square nautical miles); 597 acres (242 hectares).

(C) *Depth:* Ranges from approximately 112 to 152 feet (34 to 46 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 Yaquina Bay and 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. 2012–8193 Filed 4–4–12; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203, 204, 205, 209, 211, 212, 219, 225, 226, 227, 232, 237, 243, 244, 246, 247, and 252

[DFARS Case 2011–D056]

RIN 0750–AH63

Defense Federal Acquisition Regulation Supplement: Solicitation Provisions and Contract Clauses for Acquisitions of Commercial Items

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to simplify prescriptions for provisions and clauses that are applicable to the acquisition of commercial items and to specify flowdown of clauses to commercial subcontracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 4, 2012, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011–D056, using any of the following methods: