

IV. What action is EPA taking?

EPA is proposing to approve a portion of Ohio's December 4, 2015, submission certifying that the current Ohio SIP is sufficient to meet the required infrastructure requirements under CAA section 110(a)(2)(D)(i)(I), specifically prongs one and two, as set forth above. EPA is requesting comments on the proposed approval.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: November 17, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2017-26291 Filed 12-6-17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0211 FRL-9971-60-Region 5]

Air Plan Approval; Indiana; Regional Haze Five-Year Progress Report State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Indiana regional haze progress report under the Clean Air Act as a revision to the Indiana State Implementation Plan (SIP). Indiana has satisfied the progress report requirements of the Regional Haze Rule. Indiana has also met the requirements for a determination of the adequacy of its regional haze plan with its negative declaration submitted with the progress report.

DATES: Comments must be received on or before January 8, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2016-0211 at <http://www.regulations.gov>, or via email to Aburano.Douglas@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov),

follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Michelle Becker, Life Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-3901, Becker.Michelle@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. Background
- II. EPA's Analysis of Indiana's Regional Haze Progress Report and Adequacy Determination
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

I. Background

States are required to submit a progress report every five years that evaluates progress towards the Reasonable Progress Goals (RPGs) for each mandatory Class I Federal area within the State and in each mandatory Class I Federal area outside the State which may be affected by emissions from within the State. See 40 CFR 51.308(g). States are also required to submit, at the same time as the progress report, a determination of the adequacy of the State's existing regional haze SIP. See 40 CFR 51.308(h). The first progress report is due five years after the submittal of the initial regional haze SIP.

Indiana initially submitted its regional haze plan on January 14, 2011. The final corrected version was submitted on March 10, 2011. EPA finalized a limited approval of Indiana's regional haze plan into its SIP on June 11, 2012. 77 FR 32418. As part of the action, EPA also approved limits for the aluminum fabricating facility owned and operated by Alcoa, Inc. and located in Warrick County, Indiana, which were determined by EPA to satisfy the requirements for best available retrofit technology (BART).

Indiana submitted its five-year progress report on March 30, 2016. This is a report on progress made in the first implementation period towards RPGs for Class I areas outside of Indiana. Indiana does not have any Class I areas within its borders. This progress report SIP included a determination that Indiana's existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018. EPA is proposing to approve Indiana's progress report on the basis that it satisfies the applicable requirements of the rule at 40 CFR 51.308.

II. EPA's Analysis of Indiana's Regional Haze Progress Report and Adequacy Determination

On March 30, 2016, Indiana submitted a revision to its regional haze SIP to address progress made in the first planning period towards RPGs for Class I areas that are affected by emissions from Indiana's sources. This progress report also included a determination of the adequacy of the state's existing regional haze SIP.

Even though Indiana has no Class I areas within its borders, the State reviewed technical analyses conducted by the Midwest Regional Planning Organization (MRPO) and other regional planning organizations (RPOs) to determine which Class I areas are affected by Indiana's emissions. The five relevant RPOs are the Mid-Atlantic and Northeastern Visibility Union (MANE-VU) for the Northeastern states, the Visibility Improvement State and Tribal Association of the Southeast (VISTAS), MRPO, the Central Regional Air Planning Association (CENRAP), and Western Regional Air Partnership (WRAP). The following Class I areas in other states were identified as possibly being impacted by Indiana sources (77 FR 3975, January 26, 2012):

Southeastern U.S. (VISTAS)—Sipsey Wilderness Area, AL; Mammoth Cave National Park, KY; Great Smoky Mountains National Park, NC and TN; James River Face Wilderness Area,

VA; Shenandoah National Park, VA; and Dolly Sods/Otter Creek Wilderness Areas, WV
Eastern U.S. (MANE-VU)—Acadia National Park, ME; Moosehorn Wilderness Area, ME; Great Gulf Wilderness Area, NH; Brigantine Wilderness Area, NJ; and Lye Brook Wilderness Area, VT
Northern U.S. (MRPO and CENRAP)—Isle Royale National Park, MI; Seney National Wildlife Refuge, MI; Boundary Waters Canoe Area Wilderness Area, MN; and Voyageurs National Park, MN
South Central U.S. (CENRAP)—Hercules-Glades Wilderness Area, MO; Mingo Wilderness Area, MO; Caney Creek Wilderness Area, AR; and Upper Buffalo Wilderness Area, AR

A. Regional Haze Progress Report SIPs

The following section includes EPA's analysis of Indiana's progress report submittal and an explanation of the basis of our proposed approval.

1. Status of Implementation of All Measures Included in the Regional Haze SIP

In its progress report, Indiana summarized the implementation status of the control strategies that were included in its 2011 regional haze SIP, specifically, the status of the on-the-books emissions reduction measures in addition to reductions from federal regulatory programs such as: Tier 2 Vehicle Emissions and Gasoline Standards Rule; Heavy-Duty Diesel Engine and Highway Diesel Fuel Rule; Non-road Engine Diesel Fuel Rule (Tier 4); and Maximum Achievable Control Technology. In its regional haze strategy, Indiana did not rely on additional emissions controls from other states. Indiana also noted the following additional controls measures, which are expected to result in emissions reductions between 2011 and 2018, but were not relied upon in Indiana's Regional Haze SIP: 2010 SO₂ National Ambient Air Quality Standard (75 FR 35519, June 22, 2010); Mercury and Air Toxics Standard Rule (79 FR 68777, November 19, 2014); and Tier 3 Vehicle Emissions and Fuel Standard Program (79 FR 23414, April 28, 2014).

In its regional haze SIP, Indiana relied on the Clean Air Interstate Rule (CAIR) to meet the sulfur dioxide (SO₂) and nitrogen oxides (NO_x) BART requirements for its electric generating units (EGUs) as well as to ensure reasonable progress. Indiana's progress report describes the litigation regarding CAIR and Cross-State Air Pollution Rule (CSAPR) that has had a substantial

impact on EPA's review of the regional haze SIPs of many states.

In 2005, EPA issued regulations allowing states to rely on CAIR to meet certain requirements of the Regional Haze Rule. See 70 FR 39104 (July 6, 2005).¹ A number of states, including Indiana, submitted regional haze SIPs consistent with these regulatory provisions. CAIR, however, was remanded (without vacatur) to EPA in 2008, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008), and replaced by CSAPR. 76 FR 48208 (August 8, 2011). Implementation of CSAPR was scheduled to begin on January 1, 2012, when CSAPR would have superseded the CAIR program. However, numerous parties filed petitions for review of CSAPR, and at the end of 2011, the D.C. Circuit issued an order staying CSAPR pending resolution of the petitions and directing EPA to continue to administer CAIR. Order of December 30, 2011, in *EME Homer City Generation, L.P. v. EPA*, D.C. Cir. No. 11–1302.

EPA finalized a limited approval of Indiana's regional haze SIP on June 11, 2012. 77 FR 39177. In a separate action, published on June 7, 2012, EPA finalized a limited disapproval of the Indiana regional haze SIP because of the state's reliance on CAIR to meet certain regional haze requirements, and issued a Federal Implementation Plan (FIP) to address the deficiencies identified in the limited disapproval of Indiana and other states' regional haze plans. 77 FR 33642. The FIP relied on CSAPR to meet certain regional haze requirements, notwithstanding that CSAPR was stayed at the time. Following additional litigation and the lifting of the stay, EPA began implementation of CSAPR on January 1, 2015.

Regarding the status of BART and reasonable progress control requirements for non-EGU sources in the state, one non-EGU source, the Alcoa facility in Warrick County, was identified as BART-eligible and shown to contribute significantly to visibility impairment at Class I areas in other states. EPA approved Indiana's alternative BART strategy of controlling emissions from a non-BART boiler unit in our June 11, 2012, limited approval of Indiana's regional haze SIP. 77 FR 34218.

EPA proposes to conclude that Indiana has adequately addressed the

¹ CAIR required certain states like Indiana to reduce emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) that significantly contribute to downwind nonattainment of the 1997 National Ambient Air Quality Standard (NAAQS) for fine particulate matter (PM_{2.5}) and ozone. See 70 FR 25162 (May 12, 2005).

status of control measures in its regional haze SIP. Indiana describes the implementation status of measures from its regional haze SIP, including the status of control measures to meet BART and reasonable progress requirements, the status of measures from on-the-book controls and the status of federal regulatory programs.

2. Summary of Emissions Reductions Achieved in the State Through Implementation of Measures

In its progress report, Indiana discusses the emissions reductions resulting from the control strategies included in its 2011 regional haze SIP. As described above, throughout the litigation surrounding CAIR and CSAPR, EPA continued to implement CAIR. Thus, CAIR was in effect through the end of 2014.

Indiana listed its EGUs' emissions of SO₂ and NO_x for 2005, 2009, and 2013,

along with its CSAPR budgets. In the progress report, Indiana showed that 2013 state-wide SO₂ emissions from EGUs were 268,217 tons, below the CSAPR budget of 285,424 tons. Indiana also showed that 2013 state-wide NO_x emissions from EGUs were 103,048 tons, below the CSAPR budget of 109,726 tons. Indiana's SO₂ and NO_x EGU emissions for 2013 were 6% lower than the 2013 CSAPR budgets for both pollutants. Table 1 below summarizes the emission reductions reported by Indiana.

TABLE 1—INDIANA EGU EMISSIONS REPORTED TO THE CLEAN AIR MARKETS PROGRAM DIVISION (CAMD)

| Year | NO _x (tons) | NO _x budget (tons) | SO ₂ (tons) | SO ₂ budget (tons) |
|------|------------------------|-------------------------------|------------------------|-------------------------------|
| 2005 | 210,646 | | 870,812 | |
| 2009 | 113,601 | | 413,726 | |
| 2013 | 103,048 | 109,726 | 268,217 | 285,424 |

3. Assessment of Visibility Conditions and Changes for Each Mandatory Class I Federal Area in the State

Indiana noted in its progress report that it does not have any Class I areas within its boundaries, and as the applicable provisions pertain only to states containing Class I areas, no further discussion is necessary. EPA concurs, and proposes to conclude that Indiana has adequately addressed the applicable provisions of 40 CFR 51.308(g).

4. Analysis Tracking Emissions Changes of Visibility-Impairing Pollutants

In its progress report, Indiana tracked changes in emissions of visibility-impairing pollutants using its 2005 base emissions and projected 2018 emissions in its regional haze plan submitted in 2011. The progress report gives current annual emissions for SO₂ and NO_x that can be compared to the base emissions and 2018 projected emissions. Base emissions of SO₂ in 2005 were 956,031 tons, with a 64 percent reduction to 346,429 tons in 2014. Indiana reported 2011 SO₂ total emissions of 425,786 tons. The NO_x base emissions in 2005 were 283,059 tons, with a 42 percent reduction to 164,520 tons in 2014. Indiana reported 2011 NO_x emissions of 180,674 tons.

Indiana noted that SO₂ emissions have been reduced considerably between 2005 and 2014, based on actual reported emissions. These reductions were due primarily to regulations focused on reducing SO₂ emissions from coal-burning power plants and other large sources, such as various types of boilers and incinerators, which are the largest emitters of SO₂.

The actual decrease in NO_x emissions was not as substantial as the decrease in SO₂ emissions between 2005 and 2014. This is because the NO_x SIP call which significantly reduced NO_x emissions took place in 2004 (before the examined timeframe of 2005–2014), and NO_x emissions from sources other than EGUs combined are much higher than NO_x emissions from EGUs alone. Actual NO_x emissions reported from contributing sources in Indiana decreased incrementally over the first five-year timeframe (2005–2009) by 38%. The NO_x emissions reduction between 2010 and 2014 decreased by only 13%, due to increases in NO_x emissions from point, mobile, and non-road sources in 2010 and 2011; but total NO_x emissions decreased by 42% between 2004 and 2014. These reductions show that Indiana is in line with improvements predicted by the modeling for 2012 and will likely exceed visibility improvements anticipated by 2018. Table 2 below summarizes the actual SO₂ and NO_x emission from contributing sources in Indiana between 2005 and 2014.

TABLE 2—ACTUAL (REPORTED) SO₂ AND NO_x EMISSIONS FROM CONTRIBUTING SOURCES IN INDIANA

| Year | SO ₂ (tons) | NO _x (tons) |
|------|------------------------|------------------------|
| 2005 | 956,031 | 283,059 |
| 2006 | 920,251 | 260,810 |
| 2007 | 797,900 | 276,402 |
| 2008 | 669,936 | 273,903 |
| 2009 | 480,884 | 174,828 |
| 2010 | 480,628 | 187,988 |
| 2011 | 425,786 | 180,674 |
| 2012 | 343,124 | 171,136 |

TABLE 2—ACTUAL (REPORTED) SO₂ AND NO_x EMISSIONS FROM CONTRIBUTING SOURCES IN INDIANA—Continued

| Year | SO ₂ (tons) | NO _x (tons) |
|------|------------------------|------------------------|
| 2013 | 340,786 | 165,778 |
| 2014 | 346,429 | 164,520 |

EPA concurs and proposes to conclude that Indiana has adequately addressed the applicable provisions of 40 CFR 51.308.

5. Assessment of Any Significant Changes in Anthropogenic Emissions

In its progress report, Indiana indicated that no significant changes in anthropogenic emissions have impeded progress in reducing emissions and improving visibility in Class I areas impacted by Indiana sources. As mentioned above, Indiana acknowledges in its progress report that there was an increase in total NO_x emissions from contributing sources in Indiana in 2010 and 2011. To address this potential concern, Indiana points out that NO_x emissions began to decrease once again in 2012, and continued to decrease every subsequent year through 2014. Indiana also states that the decrease in SO₂ and NO_x emissions between from 2005 and 2009 was so significant that the slight increase of NO_x in 2010 and 2011 had no actual impact in the overall progress made from 2005 to 2014. For these reasons, Indiana does not consider the increase of NO_x emission in 2010 and 2011 a problem that has or will impede future visibility progress in

states with Class I areas potentially impacted by Indiana sources.

EPA concurs and proposes to conclude that Indiana has adequately addressed the applicable provisions of 40 CFR 51.308.

6. Assessment of Whether the Implementation Plan Elements and Strategies Are Sufficient To Enable Other States To Meet RPGs

In its progress report, Indiana states that it has implemented, or expects to implement by 2018, all controls from its regional haze plan. The state noted in the progress report that its emissions are on track for the 2018 goals, including reductions that are ahead of pace for the key pollutants, SO₂ and NO_x. Indiana assessed each of the areas identified in the MRPO report as being impacted by Indiana sources using information provided by the MRPO, technical documents from the other RPOs, and letters received from other states indicating their decisions regarding reasonable progress goals.

Indiana's long term strategy relied on the emission reductions from CAIR, a program that has now been replaced by CSAPR. At the present time, the requirements of CSAPR apply to sources in Indiana under the terms of a FIP. The Regional Haze Rule requires an assessment of whether the current "implementation plan" is sufficient to enable the states to meet all established reasonable progress goals. 40 CFR 51.308(g). The term "implementation plan" is defined for purposes of the Regional Haze Rule to mean "any [SIP], [FIP], or Tribal Implementation Plan." 40 CFR 51.301. EPA is considering measures in any applicable FIP, as well as those in a state's regional haze SIP, in assessing the adequacy of the "existing implementation plan" under 40 CFR 51.308(g)(6) and (h).

EPA applies this requirement as an assessment of emissions and visibility trends and other readily available information. Indiana determined that its regional haze SIP is sufficient to enable other States to meet the RPGs for the Class I areas impacted by the State's emissions. EPA proposes to conclude that Indiana has adequately addressed the applicable provisions of 40 CFR 51.308.

7. Review of the State's Visibility Monitoring Strategy

Indiana's progress report states there are no Class I areas within its borders and thus finds that the State is not required to have a visibility monitoring strategy in place. EPA concurs, and proposes to conclude that Indiana has adequately addressed the requirements

for a monitoring strategy for regional haze and propose to determine no further modifications to the monitoring strategy are required.

B. Determination of Adequacy of Existing Regional Haze Plan

In its progress report, Indiana submitted a negative declaration to EPA regarding the need for additional actions or emission reductions in Indiana beyond those already in place and those to be implemented by 2018 according to Indiana's regional haze plan.

Indiana determined that its regional haze plan is adequate to meet the Regional Haze Rule requirements and expects Class I areas affected by Indiana to achieve the reasonable progress goals. EPA finds that the state is on track to meet the visibility improvement and emission reduction goals.

Because monitored visibility values and emission trends indicate that Class I areas impacted by Indiana's sources are meeting or exceeding the RPGs for 2018, and are expected to continue to meet or exceed the RPGs for 2018, EPA proposes to conclude that Indiana has adequately addressed the provisions under 40 CFR 51.308(h).

C. Public Participation

On January 14, 2016, Indiana provided an opportunity for Federal Land Managers (FLMs) to review the revision to Indiana's SIP reporting on progress made during the first implementation period toward RPGs for Class I areas outside the state that are affected by emissions from Indiana's sources. Comments were received from the U.S. Forest Service and National Park Service. Indiana's progress report, in Appendix D, includes the FLM comments and the State's responses to the comments.

On February 19, 2016, Indiana published notification for a request for public hearing and solicitation for full public comment on the draft progress report in widely distributed publications. A public hearing was not requested, and no comments were received.

EPA proposes to find that Indiana has addressed the applicable requirements in 51.308(i) regarding FLM consultation.

III. What action is EPA taking?

EPA is proposing to approve Indiana's Regional Haze five-year progress report, submitted March 30, 2016, as meeting the applicable regional haze requirements as set forth in 40 CFR 51.308(g) and 51.308(h).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land

or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 17, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2017-26304 Filed 12-6-17; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2017-0089; FXES1113090000C6-178-FF09E42000]

Endangered and Threatened Wildlife and Plants; Possible Effects of Court Decision on Grizzly Bear Recovery in the Conterminous United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Regulatory review; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are seeking public comment on a recent D.C. Circuit Court of Appeals ruling, *Humane Society of the United States, et al. v. Zinke et al.*, 865 F.3d 585 (D.C. Cir. 2017), that may impact our June 30, 2017, final rule delisting the Greater Yellowstone Ecosystem (GYE) grizzly bear Distinct Population Segment (DPS). In *Humane Society of the United States, et al. v. Zinke et al.*, the court opined that the Service had not evaluated the status of the remainder of the listed entity of wolves in light of the Western Great Lakes (WGL) wolf DPS delisting action and what the effect of lost historical range may have on the status of the WGL wolf DPS. We also describe in this notice our strategy to recover grizzly bears (*Ursus arctos horribilis*) in the lower 48 States of the United States and provide a brief recovery update for each ecosystem.

DATES: We will accept comments received or postmarked by the end of the day on January 8, 2018.

ADDRESSES: *Comment submission:* You may submit comments by one of the following methods:

- *U.S. mail or hand-delivery:* Public Comments Processing, ATTN: FWS-R6-ES-2017-0089, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, Virginia 22041-3803.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R6-ES-2017-0089.

FOR FURTHER INFORMATION CONTACT:

Hilary Cooley, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room 309, Missoula, MT 59812; by telephone (406) 243-4903. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Background

In 1975, the Service listed the grizzly bear (*Ursus arctos horribilis*) under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) as threatened in the lower 48 United States (40 FR 31734, July 28, 1975). On June 30, 2017, the Service published a final rule (82 FR 30502, June 30, 2017; RIN 1018-BA41) designating the GYE population of grizzly bears as a DPS, finding that the DPS was recovered, and removing that DPS from the Federal List of Endangered and Threatened Wildlife. The final rule became effective on July 31, 2017, and remains in effect. Grizzly bears in the remaining area of the lower 48 States remain listed as threatened under the ESA as amended. The status of any grizzly bear population may be changed only through formal rulemaking.

On August 1, 2017, the Court of Appeals for the District of Columbia Circuit issued a ruling, *Humane Society of the United States, et al. v. Zinke et al.*, 865 F.3d 585 (D.C. Cir. 2017), that affirmed the prior judgement of the district court vacating the 2011 delisting rule for wolves in the Western Great Lakes (WGL) (76 FR 81666, December 28, 2011). The 2011 rule designated the gray wolf population in Minnesota, Wisconsin, and Michigan, as well as portions of six surrounding States, as the WGL DPS, determined that the WGL DPS was recovered, and delisted the WGL as a DPS.

This court opinion may impact the GYE final rule, which also designated a portion of an already-listed entity as a DPS and then revised the listed entity

by removing the DPS due to recovery. Therefore, we are reviewing the potential implications for the GYE final rule in light of the *Humane Society* ruling. We are seeking public comment on this subject (see Request for Public Comments). Below we summarize our recovery strategy to assist the public in providing public comment on the impacts that *Humane Society* might have on grizzly bear.

Recovery Strategy

The grizzly bear was originally distributed in various habitats throughout Western North America from Central Mexico to the Arctic Ocean. Current distribution in the lower 48 States consists of five small populations with an estimated total population of 1,800 bears. The 1993 Grizzly Bear Recovery Plan (USFWS 1993, p. 15) identified seven grizzly bear ecosystems, including five with either self-perpetuating or existing populations and two additional areas, the Bitterroot Mountains in Idaho and the San Juan Mountains in Colorado, where grizzly bears are known to have existed in the recent past. While no resident population currently exists in the Bitterroot Ecosystem, that ecosystem contains adequate habitat to sustain a population. The Recovery Plan suggests that further evaluation is needed on the status of the San Juan Mountains, where no grizzly bears exist today (USFWS 1993, p.16).

The Service's overarching vision for recovery of grizzly bears in the lower 48 States, to recover and delist populations individually in each of the ecosystems as recovery is achieved, was outlined in the Recovery Plan (USFWS 1993, pp. 16, 33) and further discussed in our 2011 5-year status review (USFWS 2011, pp. 12-14). The review also found that the lower-48-State listing is consistent with our 1996 DPS Policy and recommended that the current entity, on the whole, should retain its threatened status (USFWS 2011, p. 104). We recognized that sufficient evidence exists to support multiple DPSs within the lower-48-State listing, but indicated that further subdivision of the lower-48-State listing was unnecessary at the time (USFWS 2011, p. 14). Prior to the 5-year status review, the Service had attempted to delist the GYE grizzly bear population as a DPS (72 FR 14866, March 29, 2007). That determination was subsequently vacated by the Federal District Court for the District of Montana (*Greater Yellowstone Coalition v. Servheen et al.*, 672 F.Supp. 2d 1105 (D. Mont. 2009), and the vacatur was upheld by the Ninth Circuit in *Greater*