

Subpart X—Michigan

■ 2. In § 52.1170(c) the table is amended as follows:

- a. Under Part 6 by revising entry “R336.1627”.
- b. Under Part 10 by revising entries “R336.2004” and “R336.2005”.

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Part 6. Emission Limitations and Prohibitions—Existing Sources of Volatile Organic Compound Emissions				
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
R336.1627	Delivery Vessels; Vapor Collection Systems	2/22/06	8/3/07, [Insert page number where the document begins].	
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Part 10. Intermittent Testing and Sampling				
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
R336.2004	Appendix A; reference test methods; adoption of federal reference test methods.	2/22/06	8/3/07, [Insert page number where the document begins].	
R336.2005	Reference test methods for state-requested tests of delivery vessels.	2/22/06	8/3/07, [Insert page number where the document begins].	
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

* * * * *

[FR Doc. E7–15011 Filed 8–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 81**

[EPA–R04–OAR–2006–0362–200702; FRL–8449–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky: Redesignation of Boyd County, Kentucky Portion of the Huntington-Ashland 8-Hour Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a request, submitted on September 29, 2006, from the Commonwealth of Kentucky (Kentucky), through the Kentucky Division for Air Quality (KDAQ), to redesignate the Kentucky portion of the bi-state Huntington-Ashland 8-hour ozone nonattainment area to attainment

for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Kentucky portion of the bi-state Huntington-Ashland 8-hour ozone nonattainment area (hereafter referred to as “Boyd County”) is comprised of one county in Kentucky (Boyd County) and two counties in West Virginia (Cabell and Wayne Counties). EPA’s approval of Kentucky’s redesignation request is based upon the determination that Kentucky has demonstrated that Boyd County has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire (including both the Kentucky and West Virginia counties) bi-state Huntington-Ashland 8-hour ozone nonattainment area has attained the 8-hour ozone standard. Additionally, EPA is approving a revision to the Kentucky State Implementation Plan (SIP) including the 8-hour ozone maintenance plan for Boyd County that contains the new 2018 motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_x) and volatile organic compounds (VOCs). Through this action, EPA is also finding the 2018 MVEBs adequate for the purposes of transportation conformity. On May 17, 2006, the State of West Virginia submitted a redesignation

request and maintenance plan through a separate action. The final rulemaking approving the West Virginia submittal was published in the **Federal Register** on September 15, 2006. MVEBs for Cabell and Wayne Counties in West Virginia were approved through EPA’s September 15, 2006, action.

DATES: *Effective Date:* This rule will be effective September 4, 2007.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2006–0362. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA

requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT:

Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Ms. LeSane can be reached via telephone number at (404) 562-9074 or electronic mail at LeSane.Heidi@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What is the Background for the Actions?
- II. What Actions are EPA Taking?
- III. Why Are We Taking These Actions?
- IV. What Are the Effects of These Actions?
- V. Final Action
- VI. Statutory and Executive Order Reviews

I. What is the Background for the Actions?

On September 29, 2006, Kentucky, through the KDAQ, submitted a request to redesignate Boyd County to attainment for the 8-hour ozone standard, and for EPA approval of the Kentucky SIP revision containing a maintenance plan for Boyd County. In an action published on May 11, 2007 (72 FR 26759), EPA proposed to approve the redesignation of Boyd County to attainment. EPA also proposed approval of Kentucky's plan for maintaining the 8-hour NAAQS as a SIP revision, and proposed to approve the 2018 state¹ MVEBs for Boyd County that were contained in the maintenance plan. EPA received no comments on the May 11, 2007, proposal. Today's rule is EPA's final action following the May 11, 2007, proposed rule.

Today, EPA is also providing information on the status of the Agency's transportation conformity adequacy determination for the new

state MVEBs for the year 2018 that are contained in the maintenance plan for Boyd County. The maintenance plan establishes the following state MVEBs for Boyd County.

BOYD COUNTY 2018 MVEBs

[Tons per day]

	2018
VOCs	1.18
NO _x	1.30

EPA's adequacy public comment period on these budgets (as contained in Kentucky's submittal) began on June 21, 2006, and closed on July 23, 2006. No comments were received during EPA's adequacy public comment period. Through this **Federal Register** notice, EPA is finding the 2018 state MVEBs, as contained in Kentucky's submittal, adequate. These MVEBs meet the adequacy criteria contained in the Transportation Conformity Rule. The new state MVEBs must be used for future transportation conformity determinations.

Various aspects of EPA's Phase 1 8-hour ozone implementation rule were challenged in court and on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit Court) vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS, remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8th decision affirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New

Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. The June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour MVEBs until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

For the reasons set forth in the proposal action for Boyd County, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of Boyd County to attainment. Even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

With respect to the requirement for transportation conformity under the 1-hour standard, the Court in its June 8th decision clarified that for those areas with 1-hour MVEBs in their 1-hour maintenance plans (in this instance, Boyd County), anti-backsliding requires only that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must continue to comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

II. What Actions are EPA Taking?

EPA is taking final action to approve Kentucky's redesignation request and to change the legal designation of Boyd County from nonattainment to attainment for the 8-hour ozone NAAQS. The entire bi-state Huntington-Ashland 8-hour ozone nonattainment area is comprised of one county in Kentucky (Boyd County) and two West Virginia Counties (Cabell and Wayne Counties). This final action addresses

¹ The term "state" with regard to MVEBs refers to the portion of the area, in a multi-state area, for which the MVEBs apply. In this case, the term "state" indicates that the MVEBs cover Boyd County, and also indicates to transportation conformity implementers in this area that there are separate MVEBs for the West Virginia portion of this area. EPA's Companion Guidance for the July 1, 2004, Final Transportation Conformity Rule: Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards explains more about the possible geographical extent of an MVEB, how these geographical areas are defined, and how transportation conformity is implemented in these different geographical areas. For the purposes of today's final action, the term "state MVEBs" refers to the Boyd County MVEBs being approved as part of the Boyd County maintenance plan.

only Boyd County. EPA has already taken action on the redesignation request and maintenance plan for the West Virginia portion of this area in a separate action. EPA is also approving Kentucky's 8-hour ozone maintenance plan for Boyd County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep Boyd County in attainment for the 8-hour ozone NAAQS through 2018. These approval actions are based on EPA's determination that Kentucky has demonstrated that Boyd County has met the criteria for redesignation to attainment specified in the CAA, including a demonstration that the entire bi-state Huntington-Ashland Area has attained the 8-hour ozone standard. EPA's analyses of Kentucky's 8-hour ozone redesignation request and maintenance plan are described in detail in the proposed rule published May 11, 2007 (72 FR 26759).

Consistent with the CAA, the maintenance plan that EPA is approving today also includes 2018 state MVEBs for NO_x and VOCs for Boyd County. In this action, EPA is approving these 2018 MVEBs. For regional emission analysis years that involve years prior to 2018, the applicable budgets, for the purpose of conducting transportation conformity analyses, are the 1-hour ozone maintenance plan state MVEBs. For regional emission analysis years that involve the year 2018 and beyond, the applicable budgets, for the purpose of conducting transportation conformity analyses, are the new 2018 MVEBs. EPA is finding adequate and approving the Boyd County MVEBs for NO_x and VOCs in this action. MVEBs for Cabell and Wayne Counties in West Virginia were found adequate and approved through a separate action.

III. Why Are We Taking These Actions?

EPA has determined that the entire bi-state Huntington-Ashland Area has attained the 8-hour ozone standard and has also determined that Kentucky has demonstrated that all other criteria for the redesignation of Boyd County from nonattainment to attainment of the 8-hour ozone NAAQS have been met. See, section 107(d)(3)(E) of the CAA. EPA is also taking final action to approve the maintenance plan for Boyd County as meeting the requirements of sections 175A and 107(d) of the CAA. Furthermore, EPA is finding adequate and approving the new 2018 state MVEBs contained in Kentucky's maintenance plan because these MVEBs are consistent with maintenance for the entire bi-state Huntington-Ashland Area. In the May 11, 2007, proposal to

redesignate Boyd County, EPA described the applicable criteria for redesignation to attainment and its analysis of how those criteria have been met. The rationale for EPA's findings and actions is set forth in the proposed rulemaking and summarized in this rulemaking.

IV. What Are the Effects of These Actions?

Approval of the redesignation request changes the official designation of Boyd County, Kentucky for the 8-hour ozone NAAQS, found at 40 CFR Part 81. The approval also incorporates into the Kentucky SIP a plan for maintaining the 8-hour ozone NAAQS in Boyd County through 2018. The maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS, and establishes state MVEBs for the year 2018 for Boyd County. In a separate action, EPA has already approved 8-hour ozone MVEBs for the West Virginia portions (Cabell and Wayne Counties) of this area.

V. Final Action

After evaluating Kentucky's redesignation request, EPA is taking final action to approve the redesignation and change the legal designation of Boyd County, Kentucky from nonattainment to attainment for the 8-hour ozone NAAQS. Through this action, EPA is also approving into the Kentucky SIP the 8-hour ozone maintenance plan for Boyd County, which includes the new state 2018 MVEBs of 1.18 tpd for VOCs, and 1.30 tpd for NO_x. Within 24 months from the publication date for this final rule, the Kentucky transportation partners will need to demonstrate conformity to these new MVEBs pursuant to 40 CFR 93.104(e) as effectively amended by section 172(c)(2)(E) of the CAA as added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005. EPA has taken action on the West Virginia SIP through a separate rulemaking, and the transportation partners are currently using the West Virginia 8-hour ozone MVEBs.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources or allow a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the Commonwealth to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews

a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it

is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA.)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

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

Dated: July 25, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

40 CFR part 52 and 81 are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart S—Kentucky

■ 2. Section 52.920 is amended by adding a new entry at the end of the table for “Huntington-Ashland 8-hour Ozone Maintenance Plan” to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
Huntington-Ashland 8-hour Ozone Maintenance Plan.	Boyd County	09/29/06	08/03/07 [Insert first page of publication].	

PART 81—[AMENDED]

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

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

■ 4. In § 81.318, the table entitled “Kentucky-Ozone (8-Hour Standard)” is amended by revising the entry for

“Huntington-Ashland, WV-KY:”, “Boyd County” to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY-OZONE (8-HOUR STANDARD)

Designated area	Designation ^a		Category/classification	
	Date ¹	Type	Date ¹	Type
* * *	* * *	* * *	* * *	* * *
Huntington-Ashland, WV-KY: Boyd County	09/04/07	Attainment.		
* * *	* * *	* * *	* * *	* * *

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

¹ This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. E7-14982 Filed 8-2-07; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 222 and 223****[Docket No. 070712318-7318-01; I.D. 110306A]****RIN 0648-AU81****Sea Turtle Conservation; Observer Requirement for Fisheries**

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

ACTION: Final rule.

SUMMARY: Pursuant to its authority under the Endangered Species Act of 1973 (ESA), NMFS issues this final regulation to require fishing vessels subject to the jurisdiction of the United States that are identified through the annual determination process specified in the rule to take observers upon NMFS' request. The purpose of this measure is to learn more about sea turtle interactions with fishing operations, to evaluate existing measures to reduce sea turtle takes, and to determine whether additional measures to address prohibited sea turtle takes may be necessary. NMFS and/or interested cooperating entities will pay the direct costs of the observer. Through this rule, NMFS also extends the number of days from 30 to 180 (with a possible 60-day extension) that the agency may place observers in response to a determination by the Assistant Administrator that the unauthorized take of sea turtles may be likely to jeopardize their continued existence under existing regulations. This extension will help the agency address immediate observer needs in response to an emergency sea turtle-related event.

DATES: Effective September 4, 2007.

ADDRESSES: Requests for copies of the Environmental Assessment and Final Regulatory Impact Review (EA/RIR) prepared for this final rule should be addressed to the Chief, Marine Mammal and Turtle Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Tanya Dobrzynski (ph. 301-713-2322, fax 301-427-2522, email Tanya.Dobrzynski@noaa.gov or Therese

Conant (ph. 301-713-2322, fax 301-427-2522, email Therese.Conant@noaa.gov).

SUPPLEMENTARY INFORMATION:**Purpose**

Under the ESA, 16 U.S.C. 1531 *et seq.*, NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened.

All sea turtles that are found in U.S. waters are listed as either endangered or threatened under the ESA. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of green sea turtles in Florida and on the Pacific coast of Mexico and breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take, or bycatch, in fishing gear is one of the main sources of sea turtle injury and mortality nationwide. Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Section 11 of the ESA authorizes the issuance of regulations to enforce the prohibitions against take. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to section 7 or 10, respectively, of the ESA. To do so, NMFS must determine that the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. In some cases, NMFS has been able to make this determination because the fishery is conducted with a modified gear or modified fishing practice that NMFS has been able to evaluate. However, for some Federal fisheries and most state fisheries, NMFS has not granted an exception primarily because we lack information about fishery-turtle interactions. Therefore, any incidental take of sea turtles in those fisheries is

unlawful as it has not been exempted from the ESA prohibition on take.

The most effective way for NMFS to learn more about sea turtle-fishery interactions is to place observers aboard fishing vessels. NMFS issues this regulation to establish procedures through which each year NMFS will identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers. NMFS and/or interested cooperating entities will pay the direct costs for observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be eligible to be observed for five years without further action by NMFS. This will enable NMFS to develop an appropriate sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; to evaluate whether existing measures are minimizing or preventing interactions; and to determine whether additional measures are needed to implement ESA take prohibitions and conserve turtles.

Other Procedures for Observer Placement

Prior to this final rule, NMFS established a regulatory procedure to place observers on vessels contingent upon a determination by the NMFS Assistant Administrator that the unauthorized take of sea turtles may be likely to jeopardize their continued existence (50 CFR 223.206(d)(4)). In that regulation, NMFS limited observer coverage requirements within a fishery to 30 days, with the possibility of renewal for additional periods of 30 days each. NMFS has used this procedure to address immediate observer needs, such as when fishery activity and relatively high sea turtle strandings have occurred simultaneously in a particular area. However, these temporary observer requirements are designed to respond to acute problems, and not to implement monitoring programs that yield statistically rigorous information, which is one of the purposes of this rule. Further, because 30 days does not always provide the opportunity to investigate the cause of an event, such as elevated sea turtle strandings, and renewing the measure for additional 30-day periods can be time-consuming and result in lost opportunities to monitor a critical event, through this rule, NMFS is extending the number of days the observer coverage requirements under 50 CFR 223.206(d)(4) may remain