requirement imposed by section 307(d)(7)(B). Rather, both cases dealt with a failure of the government agency to follow the notice and comment procedures required for rulemaking under the Administrative Procedure Act (APA). The views of the court on the lack of harmless error under those specific circumstances addressed that violation of the APA, and did not provide a more general rule applicable to any and all other procedural violations or other statutes. Here, EPA fully complied with the rulemaking procedures required under CAA section 307(d). There was no ''utter failure'' to conduct notice and comment rulemaking procedures.

As discussed above, EPA was not required to but did make the proposed rule available to the SAB pursuant to 42 U.S.C. section 4365(c)(1). Under that statute there is no requirement or expectation that the SAB will in fact voluntarily provide advice and comments to EPA and in this case, as discussed above, subsequent SAB action concerning the MY2017–2025 rulemaking proposal to control greenhouse gases indicates just the opposite. The *New Jersey* and *Sugar Cane* cases thus addressed wholly different circumstances, and provide no basis to find that the requirement of CAA section 307(d)(7)(B) does not apply to this rulemaking according to its terms or that the test it sets for reconsideration has been met.

Moreover, the D.C. Circuit recently held with respect to 42 USC section 4365(c)(1) itself that a petitioner ''must sho[w] that this error was 'of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.' '' This was not satisfied when petitioners provided no more of a showing than alleging that EPA had failed to comply with this provision. *Coalition for Responsible Regulation* v. *EPA,* 684 F.3d at 124. The Court applied the test in section 307(d)(8) without drawing any distinction based on the statute that was the source of the procedural requirement. The same applies under section 307(d)(7)(B), and as with section 307(d)(8), more must be shown than simply alleging that EPA failed to comply.

The petitioner's citation of *Small Refiners Lead Phase-Down Task Force* v. *EPA,* 705 F.2d 506, 522–23 (D.C. Cir. 1983) also does not support its argument. The petition argues that the 1977 amendments to the Clean Air Act were intended to supplement the procedural requirements of the Administrative Procedure Act, not replace them. Petition p. 9. Construing section 307(d)(8)'s requirement that a procedural error creates a ''substantial likelihood that the rule would have been significantly changed'', the court stated that ''[a]t a minimum, failure to observe the basic APA procedures, if reversible error under the APA, is reversible error under the Clean Air Act as well.'' The court immediately cautioned, however, ''[o]n the other hand, section 307(d)(8) sets a restrictive tone for our review of procedural errors that would not violate the APA'', citing *Sierra Club* v. *Costle (657* F.2d at 391) for the proposition that ''the essential message of so rigorous a standard for procedural reversal is that Congress was concerned that EPA's rulemaking not be casually overturned for procedural reasons.'' 705 F.2d at 523. Since the APA itself contains a harmless error provision (5 USC section 706), requiring petitioners to show a likelihood that the rule would have changed is not a diminution of the APA but a gloss on it. Thus, the holding in *Small Refiners* was limited to violations of the notice and comment requirements of the APA, and, contrary to PLF's claim, the court did not pronounce a general rule establishing a different test for any and all procedural requirements imposed by other statutes. Rather, in discussing procedural requirements other than the APA, the court indicated that section 307(d)(8) applied and set a restrictive tone for judicial review of such errors.

More basically, the D.C. Circuit has twice held that failure to comply with the requirements of section 4365(c)(1) is not reversible error where petitioners fail to show that the error is of such central relevance to the proceeding that there is a substantial likelihood that the rule would have significantly changed but for the (claimed) procedural violation. *Coalition for Responsible Regulation* v. *EPA,* 684 F.3d at 124; *API* v. *EPA,* 665 F.2d at 1188–89. The fact that the procedural requirement at issue in those cases stems from a statute other than the CAA made no difference and did not change the burden on the petitioner to prevail on their objection. The same applies under section 307(d)(7)(B).

Finally, PLF points to *Kennecott Corp.* v. *EPA,* 684 F.2d 1007 (D.C. Cir. 1982) as support for its claim that EPA's alleged failure to comply with this statutory provision satisfies the requirements of section 307(d)(8). As noted above, this same claim was recently rejected in *Coalition for Responsible Regulation* v. *EPA,* 684 F.3d at 124. Here, PLF does no more than describe the purpose of this provision, with no showing of any likelihood of an impact or change on the rulemaking. As discussed above, all of the indications point the other way and indicate no such likelihood, even if one assumes a procedural error was committed.

V. Conclusion

The objections or claims raised in PLF's petition could have been presented to EPA during the comment period for the rulemaking, and the grounds for the objections did not arise after the period for public comment but within the time specified for judicial review. In addition, PLF has failed to demonstrate that its objection provides substantial support for the argument that the promulgated regulation should be revised and therefore has failed to demonstrate that its objection is of central relevance to the outcome of the rulemaking. Based on this, EPA is denying the request for reconsideration.

Dated: January 14, 2013.

Lisa P. Jackson,

Administrator.

[FR Doc. 2013–01415 Filed 1–24–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–R01–RCRA–2012–0944; FRL–9771–6]

Adequacy of Massachusetts Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA Region 1 proposes to approve Massachusetts's modification of its approved Municipal Solid Waste Landfill Program. On March 22, 2004, EPA issued final regulations allowing research, development, and demonstration (RD&D) permits to be issued to certain municipal solid waste landfills by approved states. On December 7, 2012 Massachusetts submitted an application to EPA Region 1 seeking Federal approval of its RD&D requirements.

DATES: Comments on this proposed action must be received in writing on or before March 26, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2012–0944, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Hsieh.juiyu@epa.gov.*
- *Fax:* (617) 918–0646, to the attention of Juiyu Hsieh.

• *Mail:* Send written comments to Juiyu Hsieh, RCRA Waste Management and UST Section, Office of Site Remediation and Restoration (OSRR07–1), EPA New England—Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912

• *Hand Delivery or Courier:* Deliver your comments to: Juiyu Hsieh, RCRA Waste Management and UST Section, Office of Site Restoration and Remediation (OSRR07–1), EPA New England—Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. Such deliveries are only accepted during the Office's normal hours of operation.

For detailed instructions on how to submit comments, please see the direct final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Juiyu Hsieh at (617) 918–1646 or by email at *hsieh.juiyu@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving Massachusetts's Research Development and Demonstration (RD&D) permit program through a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments to this action. Unless we get written adverse comments which oppose this approval during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. For additional information, see the direct rule which is located in the Rules section of this **Federal Register**.

Dated: January 4, 2013.

Ira W. Leighton,

Acting Regional Administrator, EPA New England, Region 1.

[FR Doc. 2013–01440 Filed 1–24–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2013–0002; 4500030114]

RIN 1018–AZ23

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Zuni Bluehead Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate critical habitat for the Zuni bluehead sucker. If we finalize this rule as proposed, it would extend the Act's protections to this subspecies' critical habitat. The effect of these regulations will be to protect the Zuni bluehead sucker's habitat under the Act.

DATES: We will accept comments received or postmarked on or before March 26, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by March 11, 2013.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2013–0002, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0002; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

The coordinates or plot points or both from which the critical habitat maps are generated are included in the administrative record for this rulemaking and are available at *http://www.fws.gov/southwest/es/NewMexico/, http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0002, and at the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this rulemaking will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Wally ''J'' Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, NM 87113, by telephone 505–346–2525 or by facsimile 505–346–2542. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, once a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Additionally, critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Designations and revisions of critical habitat can only be completed by issuing a rule. Elsewhere in today's **Federal Register**, we propose to list the Zuni bluehead sucker as an endangered species under the Act.

This rule consists of: A proposed rule for designation of critical habitat for the Zuni bluehead sucker. The Zuni bluehead sucker has been proposed for listing under the Act. This rule proposes designation of critical habitat necessary for the conservation of the species.

The basis for our action. Under the Act, when a species is proposed for listing, to the maximum extent prudent and determinable, we must designate critical habitat for the species. The species has been proposed for listing as endangered, and therefore, we also propose to designate approximately 472 km (293 mi) of stream habitat as critical habitat in Apache County, Arizona, and