PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.247 is amended by adding paragraph (h) to read as follows:

§ 52.247 Control strategy and regulations: Fine Particle Matter.

* * * * *

(h) *Determination of Failure to Attain:* Effective December 23, 2016, the EPA has determined that the San Joaquin Valley Serious $PM_{2.5}$ nonattainment area failed to attain the 1997 annual and 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2015. This determination triggers the requirements of CAA sections 179(d) and 189(d) for the State of California to submit a revision to the California SIP for the San Joaquin Valley to the EPA by December 31, 2016. The SIP revision must, among other elements, demonstrate expeditious attainment of the 1997 $PM_{2.5}$ NAAQS within the time period provided under CAA section 179(d) and that provides for annual reduction in the emissions of direct $PM_{2.5}$ or a $PM_{2.5}$ plan precursor pollutant within the area of not less than five percent until attainment.

[FR Doc. 2016–28100 Filed 11–22–16; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 62

[Docket ID: FEMA–2016–0012]

RIN 1660–AA86

National Flood Insurance Program (NFIP): Financial Assistance/Subsidy Arrangement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is issuing this final rule to remove the copy of the Financial Assistance/Subsidy Arrangement (Arrangement) and the summary of the Financial Control Plan from the appendices of the National Flood Insurance Program (NFIP) regulations. It is no longer necessary or appropriate to retain a contract, agreement, or any other arrangement between FEMA and private insurance companies in the Code of Federal Regulations.

DATES: This final rule is effective December 23, 2016.

FOR FURTHER INFORMATION CONTACT: Claudia Murphy, Director, Policyholder Services Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW., Washington, DC 20472, (202) 646–2775.

SUPPLEMENTARY INFORMATION:

I. Background and Regulatory History

The National Flood Insurance Act of 1968 (NFIA), as amended (42 U.S.C. 4001 *et seq.*), authorizes the Administrator of the Federal Emergency Management Agency (FEMA) to establish and carry out a National Flood Insurance Program (NFIP) to enable interested persons to purchase insurance against loss resulting from physical damage to or loss of real or personal property arising from flood in the United States. *See* 42 U.S.C. 4011(a). Under the NFIA, FEMA has the authority to undertake arrangements to carry out the NFIP through the facilities of the Federal government, utilizing, for the purposes of providing flood insurance coverage, insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, as fiscal agents of the United States. *See* 42 U.S.C. 4071. To this end, FEMA is authorized to ''enter into any contracts, agreements, or other arrangements'' with private insurance companies to utilize their facilities and services in administering the NFIP, and on such terms and conditions as may be agreed upon. *See* 42 U.S.C. 4081(a).

Pursuant to this authority, FEMA enters into a standard Financial Assistance/Subsidy Arrangement (Arrangement) with private sector property insurers, also known as Write Your Own (WYO) companies, to sell NFIP flood insurance policies under their own names and adjust and pay claims arising under the Standard Flood Insurance Policy (SFIP). Each Arrangement entered into by a WYO company must be in the form and substance of the standard Arrangement, a copy of which is in Title 44 of the Code of Federal Regulations (CFR) Part 62, Appendix A. *See* 44 CFR 62.23(a). Since the primary relationship between the Federal government and WYO companies is one of a fiduciary nature (that is, to ensure that any taxpayer funds are appropriately expended), FEMA established ''A Plan to Maintain Financial Control for Business Written Under the Write Your Own Program,'' also known as the ''Financial Control Plan.'' *See* 42 U.S.C. 4071; 44 CFR 62.23(f), Part 62, App. B. To ensure financial and statistical control over the NFIP, as part of the Arrangement, WYO companies agree to adhere to the standards and requirements in the Financial Control Plan.

On May 23, 2016, FEMA published a proposed rule (81 FR 32261) proposing to remove the copy of the Arrangement in 44 CFR part 62, Appendix A, and the summary of the Financial Control Plan in 44 CFR part 62, Appendix B. In addition, FEMA proposed to make conforming amendments to remove citations to these appendices in 44 CFR 62.23.

FEMA proposed to remove the Arrangement from the NFIP regulations because it is no longer necessary to include a copy of the Arrangement in the CFR. FEMA originally included the Arrangement in the CFR to inform the public of the procedural details of the WYO Program. *See* 50 FR 16236 (April 25, 1985). There are now more efficient ways to inform the public of the procedural details of the WYO Program, and after more than 30 years of operation, the public is more familiar with the procedural details of the WYO Program and the flood insurance provided through WYO companies. Further, the NFIA does not require FEMA to include a copy of the Arrangement in the CFR. *See* 42 U.S.C. 4081. Finally, it is inappropriate to codify in regulation a contract, agreement, or other arrangement between FEMA and private insurance companies.

With the removal of the copy of the Arrangement from the NFIP regulations, FEMA and its industry partners can have flexibility to make operational adjustments and corrections to the Arrangement more quickly and efficiently. Although the rulemaking process plays an important role in agency policymaking, when this process is not required or necessary, the requirement to undergo rulemaking can unnecessarily slow down the operation of the NFIP by FEMA and its industry partners and can result in the use of alternate, less than ideal measures that result in business and operational inefficiencies.

FEMA also proposed to remove the summary of the Financial Control Plan in Appendix B, because this information is contained in either FEMA's Financial

Control Plan,[1] or in 44 CFR Section 62.23. Reprinting these requirements elsewhere in the CFR is duplicative and unnecessary.

Finally, FEMA proposed to make conforming amendments to the language in 44 CFR 62.23 where FEMA references Appendix A and Appendix B of 44 CFR part 62, because those appendices will be removed.

II. Public Comments on the Proposed Rule

FEMA received five comments in response to the proposed rule, one from a WYO company (Allstate/FEMA–2016–0012–0003), one from a member of the public, two from organizations representing agents and brokers (Independent Insurance Agents & Brokers of America, Inc./FEMA–2016–0012–0004; National Association of Professional Insurance Agents/FEMA–2016–0012–0005), and one collective comment from four organizations representing insurance companies (The American Insurance Association (AIA), The Financial Services Roundtable (FSR), The National Association of Mutual Insurance Companies (NAMIC), The Property and Casualty Insurers Association of America (PCIAA)/FEMA–2016–0012–0006). FEMA responds to these comments below.

With this regulatory action, FEMA finalizes the proposed rule, with one revision made in response to the comments received. FEMA is adding a requirement to 44 CFR 62.23 that FEMA must publish the Arrangement in the **Federal Register** at least 6 months prior to the effective date of the Arrangement.

A. Notice to WYO Companies of Changes to the Arrangement

Under the terms of the Arrangement, FEMA must publish in the **Federal Register** each year, and make available to the WYO companies, the terms for subscription or re-subscription to the Arrangement. WYO companies must notify FEMA of their intent to re-subscribe or not re-subscribe within 30 days of the publication of the notice in the **Federal Register**. *See* Financial Assistance/Subsidy Arrangement, Article V(B).

FEMA received two comments requesting FEMA to provide WYO companies sufficient notice prior to the effective date of a revised Arrangement (FEMA–2012–2016–0003/FEMA–2012–2016–0006). The commenters said this would provide time for WYO companies to assess the impact to their business (FEMA–2012–2016–0003), and provide time for the marketplace to assess the impact of changes, thereby allowing WYO companies to determine what, if any, changes would be necessary (FEMA–2012–2016–0006). They stated that this would also provide WYO companies time to decide whether to continue in or withdraw from the NFIP (FEMA–2012–2016–0003; FEMA–2012–2016–0006). One commenter suggested this notice be at least 1 year prior to the effective date of the revised Arrangement (FEMA–2012–2016–0003).

The current Arrangement does not specify how far in advance FEMA must publish the Arrangement in the **Federal Register**. Typically, FEMA publishes the Arrangement in the **Federal Register** in August, and the Arrangement becomes effective October 1.[2] As a result, WYO companies typically have less than a month to decide whether to subscribe, because they must notify FEMA of their intent to re-subscribe or not re-subscribe within 30 days of the publication of the Arrangement in the **Federal Register**. WYO companies commented that they accepted this short timeline because they knew that they would receive notice of substantive changes to the Arrangement as part of the notice-and-comment rulemaking process. (FEMA–2016–0012–0006).

FEMA agrees it should provide sufficient notice to WYO companies prior to the effective date of a revised Arrangement. Therefore, FEMA is adding a requirement to paragraph (a) of Section 63.23 which states that each year, FEMA must publish the Arrangement at least 6 months before the effective date of the Arrangement. FEMA adds this 6-month notice requirement to the NFIP regulations to provide the WYO companies time to assess the impact of any changes to the Arrangement, including whether to re-subscribe. In addition, by placing this requirement in the CFR, FEMA will preserve certainty and protect the ability of WYO companies to adjust to any changes to the Arrangement. FEMA believes the 6-month notice provision is an appropriate balance between the 1-year notice proposed by the commenter, and the language of the current Arrangement, which does not specify how much notice FEMA must provide WYO companies, other than it must publish it each year.

Much like how WYO companies need time to adjust to changes to the Arrangement, FEMA needs time to evaluate the need for changes to the Arrangement. A 6-month notice period will enable FEMA, working with WYO companies, to incorporate lessons learned from the performance of the previous year's Arrangement into the next year's Arrangement. With a 1-year notice period, FEMA would have to publish the Arrangement for the next Arrangement Year the same day the current year's Arrangement takes effect. Accordingly, if stakeholders requested a change to the Arrangement based on experience for the current year, FEMA could not implement the change until nearly two years later. A 1-year notice period would also hinder FEMA's ability, in partnership with WYO companies, to make these operational adjustments and corrections to the Arrangement more quickly and efficiently, which is one of the stated purposes of this rule.

FEMA believes the 6-month notice provision is appropriate because it aligns with the amount of notice FEMA typically provides when it makes changes, for example, through bulletins announcing program changes or changes to the Flood Insurance Manual. Finally, FEMA believes the notice provision provides flexibility to both FEMA and WYO companies, because the 6-month notice is the minimum notice; FEMA may provide more notice than 6 months as necessary.

In addition to providing notice in the **Federal Register** 6 months prior to the effective date of the Arrangement, FEMA will continue to engage WYO companies, as it does currently, before it makes any changes to the Arrangement.

B. Uniformity of the Arrangement After Removal From the CFR

Two commenters stated that removing the copy of the Arrangement from the NFIP regulations might lead to significant variation among agreements executed between FEMA and the various WYO companies, including disparity in the obligations and expectations between entities not party to, but affected by, the Arrangement (FEMA–2016–0012–0003; FEMA–2016–0012–0006). Currently, 44 CFR 62.23(a) requires that arrangements between the NFIP and private insurance companies as part of the WYO Program be in the ''form and substance'' of the copy of the Arrangement found in Appendix A of Part 62. This final rule maintains this requirement. However, the rule no longer requires that the copy of the Arrangement be found in the CFR. As a result, FEMA will continue to enter into the same standard Arrangement with each WYO company or other insurer. Any changes FEMA makes to the Arrangement will be uniformly reflected

[1] *See* National Flood Insurance Program, The Write Your Own Program Financial Control Plan Requirements and Procedures (1999), *http://bsa.nfipstat.fema.gov/manuals/fcp99jc.pdf* (last accessed April 8, 2016).

[2] *See, e.g.,* 81 FR 51460 (Aug. 4, 2016).

in each arrangement entered into by WYO companies in a particular year.

C. Publication in the CFR or the ***Federal Register*** *as a Condition of Participation*

One commenter stated that in 1983, as a condition of private insurance companies returning to the NFIP, FEMA agreed to propose and implement the Arrangement through the **Federal Register** so that it could not be changed quickly (FEMA–2016–0012–0003). The commenter stated that the current regulatory structure creates an incentive for FEMA to work with the WYO companies to avoid surprises, which promotes the sharing of information and helps prevent unintended consequences. A second commenter stated that the condition of the return of the private insurance companies to the NFIP in 1983 was that the Arrangement would be codified in the CFR (FEMA–2016–0012–0006). The second commenter echoed the statement of the first commenter, stating that since 1983, both FEMA and the companies operate in an atmosphere of trust and certainty, as the regulatory process ensures that any issues or proposed changes will be adequately aired before implementation. The second commenter stated that if FEMA removes the Arrangement from the CFR, FEMA must provide a clear, consistently followed, and easily enforced alternative notice requirement.

FEMA is not aware of an agreement between FEMA and WYO companies that, as a condition of the WYO companies returning to the flood program, FEMA agreed to place the Arrangement in the appendices of the NFIP regulations. The WYO Program began in 1983, and FEMA added a copy of the WYO Arrangement to the appendices of the NFIP regulations in 1985 for the stated purpose of informing the public of the procedural details of the WYO Program. *See* 50 FR 16236 (April 25, 1985).

Two commenters mentioned FEMA's past failure to provide sufficient notice of the Arrangement offer prior to the new Arrangement year (FEMA–2016–0012–0003 and FEMA–2016–0012–0006). Article V.B of the Arrangement requires that a WYO company currently subject to the Arrangement inform FEMA of its intent to re-subscribe or not re-subscribe within 30 days of receiving the offer for the upcoming Arrangement Year. The provision is intended to help FEMA determine whether a current WYO company intends to continue participating or if they intend to not participate again, thus triggering the transition process described in Article V.C. No other similar deadlines or other timelines exist in statute, regulation, or in the Arrangement.

In practice, the Article V.B requirement has led FEMA to aim to provide the annual offer more than 30 days prior to the beginning of the next Arrangement Year to ensure clear program continuity. FEMA believes that the addition of the 6-month notice requirement in the **Federal Register** provides a clearer timeline going forward and will give WYO companies much greater notice before deciding whether to subscribe for the upcoming Arrangement Year.

Although FEMA is removing the copy of the Arrangement from the NFIP regulations, FEMA is committed to maintaining an atmosphere of trust and certainty with WYO companies. As discussed, FEMA is adding language to the NFIP regulations in Section 63.23(a) providing that each year, FEMA will publish the Arrangement in the **Federal Register** at least 6 months before the effective date of the Arrangement. However, FEMA intends to work with WYO companies through the NFIP's Industry Management Branch well before publication of the Arrangement in the **Federal Register**. FEMA believes that the 6-month notice requirement and ongoing collaboration efforts will encourage a more responsive Arrangement-modification process than what is possible through the formalities of the notice-and-comment rulemaking process.

D. Applicability of Government Contract Laws to the Arrangement

One commenter asked whether WYO companies would be subject to government contract laws if FEMA takes the Arrangement out of the regulatory process and WYO companies sign individual contracts with FEMA (FEMA–2016–0012–0003).

Since 1983, the first year of the WYO program, FEMA has not utilized contracting to effectuate its arrangement with the WYO companies and it has no intention of doing so in the future.

The NFIA authorizes FEMA to ''enter into any contracts, agreements, *or* other arrangements'' with private insurance companies to utilize their facilities and services in administering the NFIP, and on such terms and conditions as may be agreed upon. 42 U.S.C. 4081(a) (emphasis added). FEMA interprets section 4081(a) as distinguishing ''contracts'' from ''agreements'' and ''other arrangements.'' Accordingly, FEMA has relied upon section 4081(a)'s authority to enter into appropriate arrangements with private insurance companies.

On these grounds, FEMA has never utilized a contracting mechanism for the arrangements entered into between private insurance companies and FEMA as part of the WYO program. As this rule only changes the manner in which the Arrangement is published, FEMA does not intend to alter the Agency's longstanding interpretation of the NFIA and does not foresee any changes to the legal status of arrangements between FEMA and WYO companies.

E. Judicial Deference to FEMA's Interpretation of the Arrangement

One commenter noted that while the NFIA does not require the Arrangement to be codified in the CFR and be subject to public notice and comment, it has been so since the Arrangement's inception, and as a result, FEMA is entitled to the highest *Chevron*[3] deference in any judicial challenges to its interpretations of the NFIA under the Administrative Procedure Act. The commenter stated that once the Arrangement is removed from the CFR, FEMA would be entitled to only weaker *Skidmore*[4] deference, and that undoubtedly future judicial challenges to FEMA's interpretations of the Arrangement will raise the fact that FEMA sponsored the Arrangement's removal from the CFR and understood the negative impact on the deference given to its interpretations (FEMA–2016–0012–0006).

FEMA acknowledges the commenter's concern. However, FEMA believes that the effects of this change will be minimal given that the Arrangement is a largely technical document that does little to interpret or expand upon statute. Rather, the NFIP's regulations, particularly 44 CFR part 62, contain the substantive policies and statutory interpretations relevant to the WYO Program. FEMA does not expect the level of deference owed to these regulations to change due to this rule.

F. Notice to and Involvement of Non-WYO Companies

Three commenters expressed concern that by removing the Arrangement from the rulemaking process, interested persons not a party to the Arrangement will not have an opportunity to comment on proposed changes (FEMA–2016–0012–0003; FEMA–2016–0012–0004; FEMA–2016–0012–0006). One of these commenters stated that the removal of the Arrangement would prejudice third-party stakeholders (FEMA–2016–0012–0006). The

[3] *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.* 467 U.S. 837 (1984).

[4] *Skidmore* v. *Swift & Co.,* 323 U.S. 134 (1944).

commenter suggested that FEMA establish an alternative mechanism that would allow for meaningful stakeholder and public consultation.

Another commenter stated that the removal of the Arrangement would exclude independent insurance agents from the NFIP purchasing process at an unacceptable detriment to consumers, and that independent insurance agents, through their interactions with consumers, play a pivotal role in educating property owners about their flood insurance purchasing options and providing information vital to the NFIP's current and potential future policy holders (FEMA–2016–2012–0005). This commenter pointed out how the notice of proposed rulemaking stated that removing the Arrangement and the summary of the Financial Control Plan from regulation would keep the Arrangement between FEMA and WYO companies, and thus FEMA's position seemed to be that excluding ''the multitude of others involved in the program would improve the complex NFIP process.'' The commenter noted that in reality, consumers depend on the wisdom, experience, and access to information provided by independent insurance agents in navigating the program. The commenter acknowledged that the Arrangement is technically between FEMA and the WYO companies, but asserted that other stakeholders including independent insurance agents and members of the public, while not technically direct parties to the contract, are equally affected by the terms of the Arrangement and therefore must be included in any discussions about changes to it. The commenter pointed out that while the notice of proposed rulemaking asserts that removing the Arrangement would allow FEMA and its ''industry partners'' to be flexible in negotiating changes to the Arrangement, FEMA should be aware that its ''industry partners'' include more than just the WYO companies.

This commenter expressed ''grave concerns'' about the appearance of a lack of transparency that would be engendered in the removal of the Arrangement and the summary of the Financial Control Plan, and that NFIP stakeholders and members of the public who hope to see the NFIP reauthorized and improved over the next 18 months will be shut out of any changes being made to these documents if they are removed from regulation, and the essential input the stakeholders and public provide in the regulatory process would be lost. The commenter referred to FEMA's statement in the notice of proposed rulemaking that FEMA has carried out the regulatory process 21 times when seeking changes to the Arrangement, and the regulatory process is necessary and vital to the credibility of both FEMA as a Federal agency and the NFIP as a Federal program.

This commenter noted how, although the notice of proposed rulemaking characterized the removal of the Arrangement as nonsubstantive, FEMA's ''description of the benefits of the removal belies FEMA's intent to make substantive changes to the Arrangement upon its removal from regulation.'' The commenter stated that once removed from the CFR, changes to the Arrangement would no longer be subject to the valuable input of many parties affected by the terms of the Arrangement, such as independent agents, consumers, adjusters, State insurance regulators, and others.

A third commenter echoed this commenter's concerns that the flexibility and efficiencies that may be gained by removing the Arrangement from the rulemaking process will compromise the current transparent process where interested persons such as adjusters, consumers, or insurance agents who are not a party to the Arrangement but are impacted by the Arrangement are afforded an opportunity to comment on proposed changes (FEMA–2016–0004). This commenter stated that although the notice of proposed rulemaking stated that FEMA will continue to post the Arrangement online and in the **Federal Register**, it did not provide information on how the Arrangement negotiation process is intended to work, including how interested persons who are not a party to the Arrangement but impacted by it can comment on proposed changes or participate in the negotiation process. The commenter asked that FEMA continue to provide an avenue for interested persons to be informed and involved when changes to the Arrangement are considered.

As discussed, FEMA enters into arrangements with insurance companies to utilize their facilities and services in administering the NFIP, and on such terms and conditions as may be agreed upon. *See* 42 U.S.C. 4081(a). These insurance companies are fiscal agents of the United States, and through the terms of the Arrangement, sell NFIP flood insurance policies under their own names and adjust and pay claims arising under the SFIP. *See* 42 U.S.C. 4071. As discussed in the proposed rule, FEMA is removing the copy of the Arrangement from the NFIP regulations, because the NFIA does not require FEMA to include a copy of the Arrangement in the CFR and it is inappropriate to codify in regulation a contract, agreement, or other arrangement between FEMA and private insurance companies.

While FEMA appreciates the input of other stakeholders such as adjusters, consumers, and insurance agents, FEMA does not believe it is necessary to establish a formal alternative mechanism to allow for stakeholder and public consultation on the Arrangement. All members of the public have opportunities to comment on proposed rulemakings affecting the NFIP. Such regulations reflect the overarching policies and structures of the NFIP.

In addition to comments made as part of a rulemaking, FEMA encourages the public to comment on any other aspect of the NFIP. The NFIP Office of the Flood Insurance Advocate provides an excellent avenue for voicing comments, questions, or concerns. Members of the public can contact the Office via email at *insurance-advocate@fema.dhs.gov.* Members of the public can also send inquiries to Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW., Washington, DC 20472.

G. Consistency Within the NFIP

Two commenters stated the current structure, with the copy of the Arrangement in the NFIP regulations, helps to promote consistent policies, procedures, and claims handling, and helps to shield FEMA from political pressures (FEMA–2016–2012–0003; FEMA–2016–2012–0006). FEMA believes the NFIP regulations, including the SFIP, help to promote consistent policies and claims handling. The copy of the Arrangement in the NFIP regulations is a copy of an arrangement between FEMA and private insurance companies acting as fiscal agents of the United States. As such, FEMA believes removing a copy of the Arrangement from the CFR will not have an impact on NFIP policies, procedures, and claims handling. The public will still have an opportunity to comment on proposed changes to the NFIP, including claims handling, whenever FEMA makes changes to its NFIP regulations.

H. Technical Changes

One commenter asked whether FEMA intended to repeal any portion of 44 CFR Section 63.23(a), which requires the Arrangement to be in the form and substance of the standard arrangement, a copy of which is included in Appendix A (FEMA–2016–2012–0003). In the proposed rule, FEMA proposed to remove reference to Appendix A in paragraph (a) of Section 62.23, because

FEMA was proposing to remove Appendix A. As a result, FEMA will remove reference to Appendix A in the last sentence of paragraph (a) of Section 62.23 which will then read: ''Arrangements entered into by WYO companies or other insurers under this subpart must be in the form and substance of the standard arrangement, titled 'Financial Assistance/Subsidy Arrangement.' ''

I. Comments Outside the Scope of the Rulemaking

FEMA received two comments outside the scope of this rulemaking. One comment was on an individual's observation of a flood event, which is outside the scope of this rulemaking (FEMA–2016–2012–0002). Another comment recommended changes to the existing Arrangement (FEMA–2016–2012–0006). As noted in this final rule, FEMA is adding a requirement to the regulations that FEMA will publish the Arrangement in the **Federal Register** at least 6 months before the effective date of the Arrangement. FEMA will continue to engage WYO companies, as it does currently, before it makes any changes to the Arrangement. In accordance with the process in the current Arrangement, FEMA published notice for the Fiscal Year 2017 Arrangement on August 4, 2016 (81 FR 51460), but FEMA will consider the commenter's recommendations for future possible revisions to the Arrangement.

III. Regulatory Analysis

A. Executive Order 12866, as Amended, Regulatory Planning and Review; Executive Order 13563, Improving Regulation and Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this rule.

FEMA is issuing a final rule removing Appendix A and B from Part 62 of 44 CFR. These Appendices contain a copy of the WYO Financial Assistance/Subsidy Arrangement (Arrangement) and a summary of the ''Plan to Maintain Financial Control for Business Written Under the Write Your Own Program'' (Financial Control Plan), respectively. In addition, FEMA makes conforming amendments to remove citations to these appendices in 44 CFR 62.23.

Since 1983, FEMA has entered into a standard Arrangement with WYO companies to sell NFIP insurance policies under their own names and adjust and pay SFIP claims.[5] Since 1985, FEMA has included a copy of the Arrangement in the CFR. In order to maintain the Arrangement, FEMA has undertaken rulemaking approximately 21 times to update the copy of the Arrangement in the regulations. The NFIA does not require FEMA to place the Arrangement in the CFR. Accordingly, undergoing such rulemakings is an unnecessary requirement.

FEMA is removing the copy of the Arrangement in 44 CFR part 62, Appendix A, because the NFIA does not require FEMA to include a copy of the Arrangement in the CFR. Therefore, its inclusion is no longer necessary. In 1985, FEMA added a copy of the Arrangement to the regulations to inform the public of the procedural details of the WYO Program. However, since that time, there have been technological advances for disseminating information to the public, and there are now more efficient ways to inform the public of the procedural details of the WYO Program. For example, FEMA now posts a copy of the Arrangement on its Web site. This serves the purpose of promoting awareness and disseminating program information, without needing to go through the rulemaking process. This rulemaking does not impose any changes to the current Arrangement with WYO companies. As such, FEMA believes there will not be any costs imposed on participating WYO companies because of this final rule.

FEMA received a public comment highlighting that ''circumventing'' the rulemaking process could permit FEMA to more easily make changes to the Arrangement. Changes to the Arrangement would not necessarily occur more frequently or be any more impactful in nature than they had been thus far. The pattern of changes seen in the history of the Arrangement, with relatively frequent minor changes and the occasional substantive adjustment, is expected to continue into the future and will not change due to this rule. FEMA will continue to enter into the Arrangement with WYO companies, and make available the Arrangement, as well as the terms for subscription or re-subscription, through **Federal Register** notice. FEMA will also publish the Arrangement at least 6 months prior to it becoming effective.

One of the benefits associated with this final rule is enhanced flexibility for FEMA and WYO companies to make operational adjustments to the Arrangement more quickly and efficiently in order to be more responsive to the needs of WYO companies and the operation of the NFIP. FEMA received two public comments requesting that FEMA provide WYO companies notice prior to the effective date of a revised Arrangement. FEMA agrees it should provide notice to the WYO companies and will publish the Arrangement in the **Federal Register** at least 6 months before the effective date of the Arrangement. This 6-month notice requirement will provide the marketplace time to assess the impact of any changes to the Arrangement, including whether to re-subscribe. FEMA believes that the primary benefits will be reinforced as FEMA, working with WYO companies, is able to make operational adjustments and corrections to the Arrangement more quickly and efficiently incorporating lessons learned from the performance of the previous year's Arrangement into the next year's Arrangement. These revisions, both the removal from the CFR as well as the 6-month advance notice, will preserve certainty, maintain transparency, and protect the ability of WYO companies to adjust to any changes to the Arrangement.

As discussed in the proposed rule, although the rulemaking process plays an important role in agency policymaking, when this process is not required or necessary, the requirement to undergo rulemaking can unnecessarily slow down the operation of the NFIP and can result in the use of alternate, less than ideal measures that result in business and operational inefficiencies. The elimination of the administrative burden that accompanies repeated updates to the CFR and the use of alternative, less than ideal measures are an additional benefit. FEMA believes there will be no economic impact associated with implementing the final rule.

Additionally, FEMA will remove a summary of the Financial Control Plan. FEMA removed the plan itself in 1985

[5] As of August 2016, 73 private property or casualty insurance companies participate in the Write Your Own program. Federal Emergency Management Agency, Write Your Own Flood Insurance Company List, *http://www.fema.gov/wyo_company* (last accessed August 25, 2016).

thus FEMA does not anticipate any economic impacts from removing the summary.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agency review of proposed and final rules to assess their impact on small entities. When an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency must prepare a final regulatory flexibility assessment (FRFA) or have the head of the agency certify pursuant to 5 U.S.C. 605(b) that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Having conducted and published an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule, and having received no public comments on that analysis, FEMA does not believe this final rule will have a significant economic impact on a substantial number of small entities.

NFIA authorizes FEMA to ''enter into any contracts, agreements, or other arrangements'' with private insurance companies to utilize their facilities and services in administering the NFIP, and on such terms and conditions as may be agreed upon. *See* 42 U.S.C. 4081. Pursuant to this authority, FEMA enters into a standard Arrangement with private sector property insurers, also known as WYO companies, to sell NFIP flood insurance policies under their own names and adjust and pay claims arising under the policy. Since the primary relationship between the Federal government and WYO companies is one of a fiduciary nature, FEMA established the Financial Control Plan. The NFIA does not require FEMA to include a copy of the Arrangement or a summary of the Financial Control Plan in the CFR.

''Small entity'' is defined in 5 U.S.C. 601. The term ''small entity'' can have the same meaning as the terms ''small business'', ''small organization'' and ''small governmental jurisdiction.'' Section 601(3) defines a ''small business'' as having the same meaning as ''small business concern'' under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) defines a ''small organization'' as any not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. Section 601(5) defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000. No small organizations or governmental jurisdictions participate in the WYO Program and therefore will not be affected.

The Small Business Administration (SBA) stipulates in its size standards [6] the largest an insurance firm that is ''for profit'' may be and still be classified as a ''small entity.'' The small business size standards for North American Industry Classification System (NAICS) code 524126 (direct property and casualty insurance carriers) is 1,500 employees. The size standard for the four remaining applicable codes of 524210 (Insurance Agencies and Brokerages), 524113 (Direct Life Insurance Carriers), 524292 (Third Party Administration of Insurance and Pension Funds) and 524128 (Other Direct Insurance) is $7.0 million in revenue as modified by the SBA, effective February 26, 2016.

This final rule directly affects all WYO companies. There are currently 73 companies participating in the WYO Program; these 73 companies are subject to the terms of the Arrangement and the standards and requirements in the Financial Control Plan. FEMA researched each WYO company to determine the NAICS code, number of employees, and revenue for the individual companies. FEMA used the open-access database, *www.manta.com,* as well as *www.cortera.com* to find this information for the size determination. Of the 73 WYO companies, FEMA found a majority of 50 firms were under code 524210 (Insurance Agencies and Brokerages), of which 19 firms or 38 percent were found to be small (with only one lacking full data but presumed to be small). The second largest contingent of 13 firms were under code 524126 (direct property and casualty insurance carriers), of which 9 firms or 69 percent were found to be small (with only one missing data points but presumed to be small). Of the other three aforementioned industry codes, 524113, 524292 and 524128, there was one firm under each and none were small. Finally, six firms were missing industry classifications, and FEMA believes that all but one are likely to be small. In total, we found that 33 of the 73 companies are below these thresholds, and therefore will be considered small entities. Consequently, small entities comprise 45 percent of participating companies.

FEMA believes that the final rule will impose no direct cost on any participating company because it is removing a *copy* of the Arrangement and a *summary* of the Financial Control Plan from the CFR, and is not making substantive changes to the Arrangement or the Financial Control Plan itself.

During the proposed rule public comment period, FEMA did not receive any comments discussing the IRFA. Pursuant to the RFA (5 U.S.C. 605 (b)), the administrator of FEMA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although a substantial number of these small entities will be affected by the final rule, none of these entities will be significantly impacted.

C. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The final rule will not result in such an expenditure, and thus preparation of such a statement is not required.

D. National Environmental Policy Act of 1969 (NEPA)

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.* an agency must prepare an environmental assessment and environmental impact statement for any rulemaking that significantly affects the quality of the human environment. FEMA has determined that this rulemaking does not significantly affect the quality of the human environment and consequently has not prepared an

[6] U.S. Small Business Administration, Table of Small Business Size Standards, February 26, 2016. *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

environmental assessment or environmental impact statement. Although rulemaking is a major Federal action subject to NEPA, the list of exclusion categories within DHS Instruction 023–01–001–01 includes a categorical exclusion for rules that are of a strictly administrative or procedural nature (A3). This is a rulemaking related to an administrative function. An environmental assessment will not be prepared because a categorical exclusion applies to this rulemaking and no extraordinary circumstances exist.

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501–3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. *See* 44 U.S.C. 3506, 3507. This final rule does not call for a new collection of information under the PRA. The removal of the Arrangement from the regulation will not impact any existing information collections in that it would not substantively change any of the information collection requirements, because the information collection requirements still exist in the regulations. The existing information collections listed include citations to 44 CFR part 62 Appendices A and B. FEMA will update these citations in the next information collection renewal cycle. FEMA will continue to expect WYO companies to comply with each of the information collection requirements associated with the WYO Program.

The collections associated with this regulation are as follows: (1) OMB Control Number 1660–0038, Write Your Own Company Participation Criteria, 44 CFR 62 Appendix A, which establishes the criteria to return to or participate in the WYO Program; (2) OMB control number 1660–0086, the National Flood Insurance Program—Mortgage Portfolio Protection Program (MPPP), 44 CFR part 62.23 (l)(2) and Appendix B, which is a program lenders can use to bring their mortgage loan portfolios into compliance with flood insurance purchase requirements; and (3) OMB control number 1660–0020, WYO Program, 44 CFR 62.23 (f) and Appendix B, the Federal Insurance and Mitigation Administration program that requires each WYO company to submit financial data on a monthly basis into the National Flood Insurance Program's Transaction Record Reporting and Processing Plan (TRRPP) system as referenced in 44 CFR 62.23(h)(4). Part 62 still requires each of these collections. The removal of the Arrangement from the regulation will not impact these information collections because the existing information collections cover requirements in the regulations, not requirements in the Appendices.

F. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a regulation will result in a system of records. A record is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. *See* 5 U.S.C. 552a(a)(4). A system of records is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual. A Privacy Threshold Analysis was completed. This rule does not require a Privacy Impact Analysis or System of Records Notice.

G. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects 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. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

This rule does not have Tribal implications. Currently, Indian Tribal governments cannot participate in the WYO Program as WYO companies, and thus are not affected by this rule. To participate in the WYO Program, a company must be a licensed property or casualty insurance company and meet the requirements in FEMA regulations at 44 CFR 62.24.

H. Executive Order 13132, Federalism

Executive Order 13132, Federalism, 64 FR 43255, August 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

As noted in the notice of proposed rulemaking, FEMA has determined that this rulemaking 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, and therefore does not have federalism implications as defined by the Executive Order. No commenters disagreed with this determination. This rule does not have federalism implications because participation as a WYO company is voluntary and does not affect State policymaking discretion. Moreover, States cannot participate in the WYO Program as WYO companies, and thus are not affected by this regulatory action. To participate in the WYO Program, a company must be a licensed

property or casualty insurance company and must meet the requirements in FEMA regulations at 44 CFR 62.24.

I. Executive Order 11988, Floodplain Management

Pursuant to Executive Order 11988, each agency is required to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) Acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the regulations will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation in order to minimize potential harm to or within the floodplain, consistent with the agency's floodplain management regulations and prepare and circulate a notice containing an explanation of why the action is to be located in the floodplain. The changes in this rule would not have an effect on land use, floodplain management, or wetlands.

J. Executive Order 11990, Protection of Wetlands

Pursuant to Executive Order 11990, each agency must provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) Acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in the Executive Order, each agency must consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses. The changes in this rule would not have an effect on land use or wetlands.

K. Executive Order 12898, Environmental Justice

Pursuant to Executive Order 12898, —Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, as amended by Executive Order 12948, 60 FR 6381, February 1, 1995, FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

This rulemaking will not have a disproportionately high or adverse effect on human health or the environment. Therefore, the requirements of Executive Order 12898 do not apply to this rule.

L. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule, a concise general statement relating to the rule, including whether it is a major rule, the proposed effective date of the rule, a copy of any cost-benefit analysis, descriptions of the agency's actions under the RFA and the Unfunded Mandates Reform Act, and any other information or statements required by relevant executive orders.

FEMA will send this rule to the Congress and to GAO pursuant to the CRA. The rule is not a major rule within the meaning of the CRA. It will not have an annual effect on the economy of $100,000,000 or more, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 44 CFR Part 62

Claims, Flood insurance, and Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Emergency Management Agency amends 44 CFR Chapter I as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

■ 2. Amend § 62.23 by:
■ a. Removing the last sentence of paragraph (a) and adding two sentences in its place;
■ b. Revising the second sentence of paragraph (f);
■ c. Revising paragraph (i)(1); and

■ d. Revising the last sentence of paragraph (l)(2).

The revisions read as follows:

§ 62.23 WYO companies authorized.

(a) * * * Arrangements entered into by WYO companies or other insurers under this subpart must be in the form and substance of the standard arrangement, titled ''Financial Assistance/Subsidy Arrangement.'' Each year, at least six months before the effective date of the ''Financial Assistance/Subsidy Arrangement,'' FEMA must publish in the **Federal Register** and make available to the WYO companies the terms for subscription or re-subscription to the ''Financial Assistance/Subsidy Arrangement.''

* * * * *

(f) * * * In furtherance of this end, the Federal Insurance Administrator has established ''A Plan to Maintain Financial Control for Business Written Under the Write Your Own Program.''

* * * * *

(i) * * *

(1) WYO companies will adjust claims in accordance with general company standards, guided by NFIP Claims manuals. The Arrangement provides that claim adjustments shall be binding upon the FIA.

* * * * *

(l) * * *

(2) * * * Participating WYO companies must also maintain evidence of compliance with paragraph (l)(3) of this section for review during the audits and reviews required by the WYO Financial Control Plan.

* * * * *

Appendix A to Part 62 [Removed]

■ 3. Remove Appendix A to Part 62.

Appendix B to Part 62 [Removed]

■ 4. Remove Appendix B to Part 62.

Dated: November 17, 2016.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–28224 Filed 11–22–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160620545–6999–02]

RIN 0648–XE696

Atlantic Highly Migratory Species; 2017 Atlantic Shark Commercial Fishing Season

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

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule establishes the opening date for all Atlantic shark fisheries, including the fisheries in the Gulf of Mexico and Caribbean. This final rule also establishes the quotas for the 2017 fishing season based on over- and/or underharvests experienced during 2016 and previous fishing seasons. The large coastal shark (LCS) retention limit for directed shark limited access permit holders will start at 45 LCS other than sandbar sharks per trip in the Gulf of Mexico region and at 25 LCS other than sandbar sharks per trip in the Atlantic region. These retention limits for directed shark limited access permit holders may decrease or increase during the year after considering the specified inseason action regulatory criteria to provide, to the extent practicable, equitable fishing opportunities for commercial shark fishermen in all regions and areas. These actions could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

DATES: This rule is effective on January 1, 2017. The 2017 Atlantic commercial shark fishing season opening dates and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Guý DuBeck or Karyl Brewster-Geisz at 301–427–8503.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established, among other things, commercial shark retention limits, commercial quotas for species and management groups, accounting measures for under- and overharvests for the shark fisheries, and adaptive management measures such as flexible opening dates for the fishing season and inseason adjustments to shark trip limits, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

On August 29, 2016 (81 FR 59167), NMFS published a rule proposing the 2017 opening dates for the Atlantic commercial shark fisheries, commercial shark fishing quotas based on shark landings information reported as of July 15, 2016, and the commercial shark retention limits for each region and sub-region. The August 2016 proposed rule (81 FR 59167; August 29, 2016) for the 2017 season contains details that are not repeated here. The comment period on the proposed rule ended on September 28, 2016.

During the comment period, NMFS received approximately 300 written and oral comments on the proposed rule. Those comments, along with the Agency's responses, are summarized below. As further detailed in the Response to Comments section below, after considering all the comments, NMFS is opening the fishing seasons for all shark management groups except the blacktip, aggregated LCS, and hammerhead shark management groups in the western Gulf of Mexico sub-region on January 1, 2017, as proposed in the August 29, 2016, proposed rule. The blacktip, aggregated LCS, and hammerhead shark management groups in the western Gulf of Mexico sub-region will open on February 1, 2017, which is a change from the proposed rule. For directed shark limited access permit holders, the blacktip, aggregated LCS, and hammerhead management groups in the entire Gulf of Mexico region will start the fishing season with a retention limit of 45 LCS other than sandbar sharks per vessel per trip. The aggregated LCS and hammerhead shark management groups in the Atlantic region will start the fishing season with a retention limit of 25 LCS other than sandbar sharks per vessel per trip for directed shark limited access permit holders, which is a change from the proposed rule. The retention limit for incidental shark limited access permit