

reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not 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. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of \$100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 15, 2004.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1270

RIN 3095–AB40

Presidential Records Act Procedures

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: In response to a petition for rulemaking, NARA proposes to amend our rules concerning Presidential records to lengthen the time from 10 working days to 35 calendar days to appeal denial of access. This proposed rule will affect the public.

DATES: Submit comments on or before November 30, 2004.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Please include “Attn: 3095–AB40” and your name and mailing address in your comments. Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-Mail: Send comments to comments@nara.gov. If you do not receive a confirmation that we have received your e-mail message, contact Jennifer Davis Heaps at 301–837–1850.
- Fax: Submit comments by facsimile transmission to 301–837–0319.
- Mail: Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- Hand Delivery or Courier: Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at 301–837–1801.

SUPPLEMENTARY INFORMATION: On June 4, 2004, NARA received a petition to extend the timeframe in which a person may appeal the denial of a request for access to Presidential records made under the Presidential Records Act (44 U.S.C. 2201–2207). The petitioners stated that the current timeframe of 10 working days from the date of NARA’s

denial letter was not long enough to allow requesters to respond and that this limited timeframe served to discourage people from appealing denial decisions. The petitioners requested that the timeframe be extended to 35 calendar days to match the timeframe NARA allows to appeal denials for access to records made under the provisions of the Freedom of Information Act (FOIA) (*see* 36 CFR 1250.72 (a)) and the Privacy Act (*see* 36 CFR 1202.56 (a)).

To conform to the requirements under the FOIA, the proposed change also requires that NARA *must receive* the written appeal within 35 calendar days of the date of NARA's denial letter, instead of the *requester filing* an appeal no later than 10 working days after receiving NARA's denial. The proposed change is more equitable, as the time in which a requester may receive NARA's denial may fluctuate. We agree with the petitioners that the change from 10 working days to 35 calendar days, corresponding with the length of time to make appeals under the FOIA, will be a service to researchers.

We also propose to change the appeal official to the appropriate Presidential library director and to have the director respond to the appeal within 30 working days.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this rule applies to individual researchers. This proposed rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1270

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1270 of title 36, Code of Federal Regulations, as follows:

PART 1270—PRESIDENTIAL RECORDS

1. The authority citation for part 1270 is revised to read as follows:

Authority: 44 U.S.C. 2201–2207.

2. Amend § 1270.42 by revising paragraphs (a), (b), and (d) to read as follows:

Subpart D—Access to Presidential Records

§ 1270.42 Denial of access to public; right to appeal.

(a) Any person denied access to a Presidential record (hereinafter *the requester*) because of a determination that the record or a reasonable segregable portion of the record was (1) properly restricted under 44 U.S.C. 2204(a), and (2) not placed in the public domain by the former President or his agent, may file an administrative appeal with the appropriate Presidential library director at the address cited in part 1253 of this chapter.

(b) All appeals must be received by NARA within 35 calendar days of the date of NARA's denial letter.

(d) Upon receipt of an appeal, the appropriate Presidential library director has 30 working days from the date an appeal is received to consider the appeal and respond in writing to the requester. The director's response must state whether or not the Presidential records requested are to be released and the basis for this determination. The director's decision to withhold release of Presidential records is final and not subject to judicial review.

Dated: September 27, 2004.

John W. Carlin,

Archivist of the United States.

[FR Doc. 04–22051 Filed 9–30–04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT57

Endangered and Threatened Wildlife and Plants; Notice of Availability of the Draft Economic Analysis on the Proposed Designation of Critical Habitat for the Santa Ana Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis and reopening of the public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis on the proposed designation of critical habitat for the Santa Ana sucker (*Catostomus santaanae*), and the reopening of the public comment period on the proposed rule to designate

critical habitat for the Santa Ana sucker. The comment period will provide the public, Federal, State, and local agencies, and Tribes with an opportunity to submit written comments on this proposal and its respective draft economic analysis. Comments previously submitted for this proposed rule need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decision.

DATES: The public comment period on the proposed designation and draft economic analysis is now reopened until October 12, 2004. We will accept comments and information until 5 p.m. PST on that date.

ADDRESSES: Written comments and materials may be submitted to us by one of the following methods:

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009.

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address, or fax your comments to (760) 431–9618.

3. You may send comments by electronic mail (e-mail) to fw1sasu@r1.fws.gov. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule for the Santa Ana sucker will be available for public inspection, by appointment, during normal business hours at the above address. Any comments received after the closing date may not be considered in the final decisions on this action. You may obtain copies of the proposed critical habitat designation by contacting the Carlsbad Fish and Wildlife Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone (760) 431–9440; facsimile (760) 431–9618).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We solicit comments or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning our proposed designation of critical habitat for the Santa Ana sucker and our draft economic analysis for the proposed