

proposed that meet the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with North Dakota's established administrative and legislative procedures.

(y) By September 20, 1994, North Dakota shall submit proposed revisions to NDCC 38-12.1-08 to (1) specifically address the circumstances under which a corporate director, officer, or agent may be individually subject to either civil or criminal penalties in connection with a violation committed by a corporate permittee; and (2) require that, in addition to violations, failure or refusal to comply with orders, as listed in section 518(f) of SMCRA and issued by the North Dakota Industrial Commission, serves as an additional basis for imposing individual civil and criminal penalties upon corporate officers, directors, and agents.

(z) By September 20, 1994, North Dakota shall submit proposed revisions to NDAC 43-02-01-05 to specifically address the circumstances under which a corporate director, officer or agent may be individually subject to civil penalties in connection with a violation committed by a corporate permittee.

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30 CFR Part 934

North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the North Dakota permanent regulatory program (hereinafter referred to as the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to North Dakota's rules in the North Dakota Administrative Code (NDAC) pertaining to preblasting survey requirements and the State's small operator assistance program. The amendment is intended to revise the North Dakota program to be consistent with and incorporate the additional flexibility afforded by SMCRA and the Federal regulations.

EFFECTIVE DATE: July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Guy D. Padgett, Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by the North Dakota Public Service Commission (Commission). General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval of the North Dakota program can be found in the December 15, 1980, *Federal Register* (45 FR 82214). Actions taken subsequent to approval of the North Dakota program are codified at 30 CFR 934.15, 934.16, and 934.30.

II. Proposed Amendment

By letter dated October 22, 1993 (administrative record No. ND-T-01), North Dakota submitted a proposed amendment to its program pursuant to SMCRA. North Dakota submitted the proposed amendment at its own initiative. North Dakota proposed revisions to its performance standards pertaining to the use of explosives and preblasting survey requirements at NDAC 69-05.2-17.02 (1) and (2). North Dakota also proposed revisions to its Small Operator Assistance Program (SOAP) at NDAC 69-05.2-29-01, responsibilities of the Commission; NDAC 69-05.2-29-02, program services; NDAC 69-05.2-29-03, eligibility for assistance; NDAC 69-05.2-29-04, filing for assistance; NDAC 69-05.2-29-05, application approval and notice of denial; NDAC 69-05.2-29-06, data requirements; NDAC 69-05.2-29-07, assistance funding; and NDAC 69-05.2-29-08, applicant liability.

The proposed changes to North Dakota's pre-blast survey and SOAP rules are meant to implement statutory changes to the State's regulatory program pertaining to the use of explosives and SOAP that were enacted by the State legislature in 1993. (For a document relating to the statutory revisions proposed by North Dakota for preblasting surveys and small operator assistance, see an additional final rule *Federal Register* notice for the State of North Dakota published elsewhere in this issue.) North Dakota proposed the statutory and regulatory amendments to its SOAP program in order to implement the changes to the Federal SOAP program at sections 507 (c) and (h) of SMCRA made by the Energy Policy Act of 1992 (Pub. L. 102-486).

OSM announced receipt of the proposed amendment in the November

23, 1993, *Federal Register* (58 FR 61857), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND-T-08). The public comment period ended on December 23, 1993. Because no one requested a public hearing or meeting, none was held.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, finds that the proposed North Dakota program amendment as submitted by North Dakota on October 22, 1993, is not inconsistent with and is no less stringent than SMCRA. Thus, the Director approves the proposed amendment.

1. NDAC 69-05.2-17-02, Performance Standards—Use of Explosives—Preblasting Survey Requirements

North Dakota proposed to revise its rules at NDAC 69-05.2-17-02 (1) and (2) so that the rules will provide as follows:

1. Each operator shall notify in writing, at least thirty days before blasting, all residents and owners of manmade dwellings or structures located within one mile * * * of the permit area how to request a preblasting survey.

2. On request to the commission by a resident or owner of a dwelling or structure located within one mile * * * of any part of the permit area, the operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly submit a report of the survey to the commission and requestor. Any preblasting survey requested more than ten days before blasting must be completed before blasting is initiated. Additions or renovations to a surveyed structure must be surveyed upon request to the commission.

In this amendment, North Dakota proposed to increase from one-half mile [0.85 kilometers] to one mile [1.61 kilometers], the distance from the permit area within which dwellings or structures must be situated before the owners or residents of such dwellings and structures are entitled to the notice specified at NDAC 69-05.2-17-02(1) and can require the operator to conduct a pre-blast survey in accordance with NDAC 69-05.2-17-02(2). North Dakota proposed these regulatory revisions in order to implement the statutory changes proposed by the State in "Amendment XVIII" (administrative record No. ND-Q-1, April 21, 1993) pertaining to pre-blast surveys. (For a discussion of the proposed statutory provisions, see the additional final rule *Federal Register* notice for North Dakota published elsewhere in this issue.)

The distance standard in the counterpart Federal regulations at 30 CFR 816.62(a) and (b) regarding preblast surveys is one-half mile of the permit area. North Dakota's proposed revisions at NDAC 69-05.2-29-02 (1) and (2) would thus allow a potentially larger group of residents or owners within the vicinity of the mine to require the operator to conduct a preblasting survey than is provided for by the Federal regulations at 30 CFR 816.62(a) and (b).

In accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations for which no Federal counterpart exists. Section 505(b) of SMCRA and 30 CFR 730.11(b) dictate that such State provisions shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving the revisions proposed by North Dakota at NDAC 69-05.2-17-02 (1) and (2).

2. NDAC 69-05.2-29-01 Through 69-05.2-29-08, Small Operator Assistance Program

In this amendment, North Dakota proposed several changes to its rules pertaining to its SOAP program in order to implement the statutory revisions the State proposed in a separate amendment. (For a discussion of the proposed statutory SOAP provisions, see the additional final rule notice for North Dakota published elsewhere in this issue.) North Dakota proposed these regulatory revisions in order to implement the statutory changes proposed by the State in "Amendment XVIII" (administrative record No. ND-Q-1, April 21, 1993).

a. NDAC 69-05.2-29-01(2), 69-05.2-29-02(1), 69-05.2-29-04(6)(b), 69-05.2-29-05(1)(b), 69-05.2-29-06(2) and 06(4), and 69-05.2-29-08(1)(b), Small Operator Assistance—Responsibilities of the Commission—Qualified Public and Private Entities

North Dakota proposed to revise NDAC 69-05.2-29-01(2) to provide that the Commission will develop and maintain a list of "qualified public or private entities" as required by 30 CFR 795.10 and pay them for services rendered. In this amendment, North

Dakota proposed to substitute the phrase "qualified public or private entities" for the previous reference to "qualified laboratories." North Dakota also proposed to change the term "laboratory" (or "laboratories") to "public or private entity" (or "entities") in its rules at NDAC 69-05.2-29-02(1), 69-05.2-29-04(6)(b), 69-05.2-29-05(1)(b), 69-05.2-29-06 (2) and (4), and 69-05.2-29-08(1)(b).

North Dakota's proposed terminology change is not inconsistent with section 507(c)(1) of SMCRA which provides that the activities to be performed under SOAP shall be performed by a "qualified public or private laboratory or such other public or private qualified entity designated by the regulatory authority." Therefore, the Director finds that the proposed terminology change at NDAC 69-05.2-29-01(2), 69-05.2-29-02(1), 69-05.2-29-04(6)(b), 69-05.2-29-05(1)(b), 69-05.2-29-06 (2) and (4), and 69-05.2-29-08(1)(b) is not inconsistent with section 507(c)(1) of SMCRA or the Federal regulations regarding SOAP at 30 CFR Part 795, as recently revised (59 FR 28136, May 31, 1994), and the Director is approving the proposed rules.

b. NDAC 69-05.2-29-02(1) (a) and (b), Small Operator Assistance—Program Services

North Dakota proposed to expand its regulatory provisions governing SOAP program services at NDAC 69-05.2-29-02(1) (a) and (b) in accordance with the statutory changes at North Dakota Century Code (NDCC) 38-14.1-37 (2) through (5) proposed by the State in "Amendment XVIII" (administrative record No. ND-Q-1, April 21, 1993). (For a discussion of the proposed statutory provisions, see the additional final rule for North Dakota published elsewhere in this issue.) Specifically, North Dakota proposed to revise NDAC 69-05.2-29-02(1) so that it will provide as follows:

To the extent possible with available funds, the commission will for qualified small operators who request assistance:

1. Select and pay a qualified public or private entity to perform the activities described under [NDCC 38-14.1-37(2)] including:

a. A determination of the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area according to section 69-05.2-29-06.

c. The preparation of a statement of the results of test borings or core samplings according to section 69-05.2-29-06.

Thus, as amended, NDAC 69-05.2-29-02(1) (a) and (b) will provide coverage of all program services detailed

in North Dakota's statute at NDCC 38-14.1-37(2).

The State proposal is substantively similar to its Federal counterpart regulations at 30 CFR 795.9 (a), (b), (b)(1) and (b)(2), as revised on May 31, 1994 (59 FR 28136), with one exception. While the Federal regulations at 30 CFR 795.9 (b)(1) through (b)(6) specifically identify each activity that may be funded pursuant to SOAP, the State proposal specifically identifies only two activities that may be funded by SOAP. However, as noted above, the State proposal does encompass all activities described under proposed NDCC 38-14.1-37(2). The activities described under proposed NDCC 38-14.1-37(2), in turn, correspond to the activities described in the Federal program at sections 507 (c)(1)(A) through (c)(1)(F) of SMCRA and 30 CFR 795.9 (b)(1) through (b)(6). (For a discussion of the proposed statutory provision, see the additional final rule notice for North Dakota published elsewhere in this issue.)

Therefore, the Director finds that proposed NDAC 69-05.2-29-02(1) (a) and (b) are no less stringent than SMCRA and no less effective in meeting SMCRA's requirements than the corresponding Federal regulations. Accordingly, the Director approves the proposed rules.

c. NDAC 69-05.2-29-03(2), Small Operator Assistance—Eligibility for Assistance (Introductory Text)

North Dakota proposed to revise the introductory text of NDAC 69-05.2-29-03(2) by increasing the amount of probable total annual production allowed for SOAP applicants from one hundred thousand tons [90,718.47 metric tons] to three hundred thousand tons [272,155.41 metric tons]. The proposed change would make NDAC 69-05.2-29-03(2) consistent with proposed statutory changes to NDCC 38-14.1-37 (see "Amendment XVIII" dated April 21, 1993, administrative record No. ND-Q-1), as well as the requirements of SMCRA at section 507(c)(1) and the recently revised Federal counterpart regulation at 30 CFR 795.6(2). (For a discussion of the proposed statutory provision, see the additional final rule for North Dakota published elsewhere in this issue.) Therefore, the Director is approving proposed NDAC 69-05.2-29-03(2) (introductory text).

d. NDAC 69-05.2-29-03(5), Small Operator Assistance—Eligibility for Assistance

North Dakota proposed to create new NDAC 69-05.2-29-03(5) to provide that

an applicant is eligible for SOAP assistance if, among other things:

[The applicant] will be required to pay reclamation fees under the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87; 91 Stat. 445; U.S.C. 1201 *et seq.*)

Proposed NDAC 69-05.2-29-03(5) is meant to implement the statutory provision of NDCC 38-14.1-37(5) (see "Amendment XVIII" dated April 21, 1993, administrative record No. ND-Q-1). (For a discussion of the proposed statutory provision, see the additional final rule for North Dakota published elsewhere in this issue.)

North Dakota's proposed limitation of SOAP assistance to operators required to pay reclamation fees under SMCRA does not render NDAC 69-05.2-29-03(5) inconsistent with SMCRA because section 507(c)(1) of SMCRA only requires that SOAP assistance be made available to a qualified "coal surface mining operator." As discussed in the additional final rule for North Dakota published elsewhere in this issue, the operators who will be deemed ineligible for SOAP assistance under the North Dakota proposal would not qualify for such assistance under SMCRA.

The Director notes that there is a typographical error in the SMCRA citation given in proposed NDAC 69-05.2-29-03(5). That is, the reference to "U.S.C. 1201 *et seq.*" should be "30 U.S.C. 1201 *et seq.*" North Dakota's Attorney General, in a legal opinion dated October 1, 1993, and included with this proposed amendment, noted the typographical error, but stated that the reference to the United States Code at NDAC 69-05.2-29-03(5) should read "30 U.S.C. 1202 *et seq.*" OSM notes that the correct reference to SMCRA should be "30 U.S.C. 1201 *et seq.*"

Accordingly, the Director finds North Dakota's proposed rule at NDAC 69-05.2-29-03(5) is not inconsistent with SMCRA and the Director is approving it with the understanding that North Dakota will revise the aforementioned typographical error so that the correct citation to SMCRA is referenced.

e. NDAC 69-05.2-29-06(1)(a), Small Operator Assistance—Data Requirements

North Dakota proposed to revise NDAC 69-05.2-29-06(1)(a) so that it will provide as follows:

The commission will determine the minimum data collection requirements for each applicant or group of applicants. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans. The data requirements will be based on:

- a. The extent of currently available hydrologic, geologic, and other information described under [NDCC 38-14.1-37(2)].
- b. The data collection and analysis guidelines developed and provided by the commission.

In this amendment, North Dakota proposed to expand the basis upon which the requirements will be based, as outlined at NDAC 69-05.2-29-06(1)(a). Specifically, as proposed, NDAC 69-05.2-29-06(1)(a) will now require that the data requirements be based upon all information described at proposed NDCC 38-14.1-37(2). (For a discussion of the proposed statutory provision, see the additional final rule for North Dakota published elsewhere in this issue.)

Proposed NDAC 69-05.2-29-06(1)(a) is consistent with the recently revised Federal regulation at 30 CFR 795.9(b), which lists the specific technical services authorized for the SOAP and provides, among other things, that "[t]he program administrator shall determine the data needed for each applicant or group of applicants."

Accordingly, the Director finds that NDAC 69-05.2-29-06(1)(a) is consistent with and no less effective than the Federal regulations at 30 CFR 795.9(b) and is approving the proposed rule.

f. NDAC 69-05.2-29-07(1), Small Operator Assistance—Assistance Funding

North Dakota proposed to delete the portion of NDAC 69-05.2-29-07(1) that prohibits the use of SOAP funds to cover the costs of test boring or core sampling. The proposed revision is consistent with section 507(c)(1)(C) of SMCRA and the recently revised Federal counterpart regulation at 30 CFR 795.9(b)(2), which allow the use of SOAP funds to cover the cost of geologic drilling and statement of results of test borings and core samplings required by section 507(b)(15) of SMCRA. Accordingly, the Director is approving the proposed revision at NDAC 69-05.2-29-07(1).

g. NDAC 69-05.2-29-08(1)(a) Through (e), Small Operator Assistance—Applicant Liability

North Dakota proposed to revise NDAC 69-05.2-29-08(1)(a) through (e), the regulatory provisions that outline the circumstances under which an applicant must reimburse the commission for the cost of SOAP services.

1. NDAC 69-05.2-29-08, Introductory Text

The introductory text at NDAC 69-05.2-29-08(1) provides:

The applicant shall reimburse the commission for the cost of all services rendered under this chapter [i.e., NDAC 69-05.2-29] if * * *.

Section 507(h) of SMCRA and 30 CFR 795.12(a) require, under specified circumstances, that a small operator reimburse the regulatory authority for the cost of all SOAP services, which, in accordance with section 507(c)(2) of SMCRA, includes the cost of training assistance.

By comparison, North Dakota's proposed statutory change at NDCC 38-14.1-37(4), proposed by the State in "Amendment XVIII" did not include training costs as an obligation for reimbursement by the operator. (For a discussion of the proposed statutory provision, see the additional final rule for North Dakota published elsewhere in this issue). Moreover, the proposed introductory text to NDAC 69-05.2-29-08 only refers to "services rendered under [NDAC 69-05.2-29]" which do not include training assistance.

However, as discussed in the additional final rule for North Dakota published elsewhere in this issue, section 507(c)(2) of SMCRA specifically references only "the Secretary." OSM currently interprets "the Secretary" to mean the Secretary of the Interior, and not State regulatory authorities. Therefore, at the current time North Dakota is not obligated to provide training under SOAP. Accordingly, North Dakota's proposed introductory text at NDAC 69-05.2-29-08 is no less stringent than section 507(h) of SMCRA and no less effective than the recently revised Federal regulations at 30 CFR 795.12(a)(2).

2. NDAC 69-05.2-29-08(1)(a), (b), and (c)

North Dakota proposed to revise NDAC 69-05.2-29-08(1)(a), (b), and (c) to require that the applicant shall reimburse the Commission for the cost of all SOAP services rendered under the NDAC 69-05.2-29 if the applicant submits false information, the applicant fails to submit a permit application within one year after receiving the approved report from the qualified public or private entity, or the applicant fails to mine after obtaining the permit. North Dakota's proposed revision of its rules at NDAC 69-05.2-29-08(1)(a), (b), and (c) are substantively similar to and no less effective in meeting SMCRA's requirements than the corresponding Federal provisions at 30 CFR 795.12(a)(1).

3. NDAC 69-05.2-29-08(1)(d)

North Dakota also proposed to revise NDAC 69-05.2-29-08(1)(d) to provide

that the applicant shall reimburse the Commission for the cost of all services provided under NDAC 69-05.2-29 if the Commission finds that the operator's actual and attributed annual coal production for all locations exceeds three hundred thousand tons during the 12 months immediately following the date the operator is issued a surface coal mining and reclamation permit. North Dakota proposed this revision of its rule in order to implement the proposed statutory provisions of NDCC 38-14.1-37(4) (see "Amendment XVIII" dated April 21, 1993, administrative record No. ND-Q-1). (For a discussion of the proposed statutory provision, see the additional final rule for North Dakota published elsewhere in this issue.)

North Dakota's proposed revision of its rule at NDAC 69-05.2-29-08(1)(d) is substantively similar to section 507(h) of SMCRA and the recently revised Federal counterpart regulation at 30 CFR 795.12(a)(2).

4. NDAC 69-05.2-29-08(1)(e)

Finally, North Dakota proposed to revise NDAC 69-05.2-29-08(1)(e) to provide that the applicant shall reimburse the Commission for the cost of all services provided under NDAC 69-05.2-29 if the applicant sells, transfers, or assigns the permit to another person and the transferee's total actual and attributed production exceeds the three hundred thousand tons [272,155.41 metric tons] annual production limit during any consecutive twelve-month period of the remaining permit term, and that the applicant and successor are jointly and severally obligated to reimburse the Commission.

Proposed NDAC 69-05.2-29-08(1)(e) is more stringent than the recently revised corresponding Federal regulation at 30 CFR 795.12(a)(3). North Dakota's provision serves to impose reimbursement liability based upon the annual production rates for the entire term of the permit, whereas the Federal regulation only takes into account the production rate for the twelve months immediately following the date on which the permit was originally issued.

Therefore, the Director finds that NDAC 69-05.2-29-08(1)(e) is more stringent than the Federal regulation at 30 CFR 795.12(a)(3). In accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Section 505(b) of SMCRA and 30 CFR 730.11(b) dictate that such State

provisions shall not be construed to be inconsistent with SMCRA or the Federal regulations. Accordingly, the Director is approving proposed NDAC 69-05.2-29-08(1)(e).

5. Summary

Based upon the above discussion, the Director finds that North Dakota's proposed revisions at NDAC 69-05.2-29-08(1) (a) through (e) are not inconsistent with section 507(h) or SMCRA and no less effective in meeting SMCRA's requirements than the Federal regulations at 30 CFR 795.12(a) (1) through (3) and is approving the proposed rules.

h. NDAC 69-05.2-29-08(2), Small Operator Assistance—Applicant Liability—Good Faith Waiver of Liability for Reimbursement.

North Dakota proposed to revise NDAC 69-05.2-29-08(2) to limit the circumstances under which the Commission can waive the reimbursement obligation of an operator who receives SOAP assistance. Prior to this amendment, NDAC 69-05.2-29-08(2) allowed the Commission to waive a SOAP applicant's obligation to reimburse the Commission for assistance whenever it found that the applicant at all times acted in good faith. North Dakota now proposes to limit the Commission's discretion by revising NDAC 69-05.2-29-08(2) so that it provides as follows:

The commission may waive the reimbursement obligation under the conditions described in [NDAC 69-05.2-08(1) (b) and (c)] if it finds that the applicant at all times acted in good faith.

The State regulations at NDAC 69-05.2-08(1) (b) and (c) describe the following two situations that can trigger an applicant's obligation for reimbursement of the cost of SOAP assistance:

b. The applicant fails to submit a permit application within one year after receiving the approved report from the qualified public or private entity [performing SOAP services].

c. The applicant fails to mine after obtaining a permit.

Thus, under the State proposal, the commission may allow a "good-faith waiver" of a SOAP applicant's reimbursement obligation only if the applicant's obligation was triggered by the situations described at NDAC 69-05.2-29-08(1) (b) or (c). No such good-faith waiver is allowed if the applicant's reimbursement obligation was triggered by something other than those specified situations.

The Federal regulation at 30 CFR 795.12(b) allows the program

administrator [regulatory authority] to waive the reimbursement obligation if he or she finds that the applicant at all times acted in good faith. Since waiver of the applicant's reimbursement obligation is a matter left within the discretion of the State regulatory authority under the current Federal regulations, North Dakota's proposed change at NDAC 69-05.2-29-08(2) is not inconsistent with the Federal regulation at 30 CFR 795.12(b). Therefore, the Director is approving the proposed rule.

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at the public hearing, no hearing was held.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), the Director solicited comments on North Dakota's proposed amendment from the U.S. Environmental Protection Agency (EPA), the U.S. Department of Agriculture, and various other Federal agencies with an actual or potential interest in the North Dakota program.

By letter dated November 10, 1993, the Bureau of Reclamation stated it had no comments on the proposed amendment (administrative record No. ND-T-04).

By letter dated November 16, 1993, the Soil Conservation Service stated it had no specific comments pertaining to this amendment (administrative record No. ND-T-06).

By letter dated November 19, 1993, the Mine Safety and Health Administration (MSHA) stated that the amendment did not conflict with any of MSHA's current regulations (30 CFR parts 0-199), and therefore, it had no comments concerning the proposed changes (administrative record No. ND-T-07).

By undated letter received November 29, 1993, the Bureau of Indian Affairs stated it had no objections to the proposed amendment because it did not affect Indian lands (administrative record No. ND-T-09).

By letter dated November 30, 1993, the Bureau of Mines stated it had no comments (administrative record No. ND-T-10).

By letter dated December 1, 1993, the U.S. Fish and Wildlife Service stated it did not anticipate any significant impacts to fish and wildlife resources as

a result of the proposed amendment and, therefore, did not have any substantive comments to offer (administrative record No. ND-T-11).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that North Dakota proposed to make in its rules pertain to air or water quality standards. However, OSM still requested EPA's concurrence with the proposed amendment (administrative record No. ND-T-03).

By letter dated November 10, 1993, EPA responded that it had no comments on the proposed amendment. EPA also stated it did not believe that there would be any impacts to water quality standards promulgated under the authority of the Clean Water Act (administrative record No. ND-T-05).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), the Director provided the proposed amendment to the SHPO and ACHP for comment. Neither SHPO nor ACHP provided any comments to OSM.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by North Dakota on October 22, 1993. The Director approves the rules as proposed by North Dakota with the provision that they be promulgated in identical form to the rules submitted to and reviewed by OSM and the public. Approval of these rules by the Director does not prevent OSM from requiring North Dakota to make additional revisions to its program pending the promulgation of final Federal regulations at 30 CFR Part 795 to implement the changes to SMCRA, as amended, regarding the SOAP program.

The Federal regulations at 30 CFR part 934, codifying decisions concerning the North Dakota program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since 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)).

4. 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.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined 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 that 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. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. 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.

VII. List of Subjects in 30 CFR 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 15, 1994.

Richard E. Dawes,
Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.15 is amended by adding paragraph (s) to read as follows:

§ 934.15 Approval of regulatory program amendments.

* * * * *

(s) Revisions to the following provisions of the North Dakota Administrative Code, as submitted to OSM on October 22, 1993 [Amendment XIX], are approved effective July 22, 1994.

NDAC 69-05.2-17-02, Performance standards-use of explosives-pre-blasting survey requirements; NDAC 69-05.2-29-01(2), small operator assistance-responsibilities of the commission-qualified public and private entities; NDAC 69-05.2-29-02(1) (a) and (b), small operator assistance-program services; NDAC 69-05.2-29-03 (2) and (5), small operator assistance-eligibility for assistance; NDAC 69-05.2-29-04, small operator assistance-filing for assistance; NDAC 69-05.2-29-05, small operator assistance-application approval-notice of denial; NDAC 69-05.2-29-06(1)(a), small operator assistance-data requirements; NDAC 69-05.2-29-07(1), small operator assistance-assistance funding; NDAC 69-05.2-29-08(1) (a) through (e), small operator assistance-applicant liability; and NDAC 69-05.2-29-08(2), small operator assistance-applicant liability-

good faith waiver of liability for reimbursement.

[FR Doc. 94-17883 Filed 7-21-94; 8:45 am]

BILLING CODE 4310-05-M

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 606, 610, 611, 612, 613, 614, 630, 640, 641, 650, 671, 672, and 689

AGENCY: National Science Foundation.

ACTION: Final rule with a request for comments.

SUMMARY: The National Science Foundation (NSF) is amending various regulations to delete unneeded provisions, update titles of NSF officials and organizations, correct clerical errors, and incorporate a new address for the Foundation.

DATES: This rule is effective July 22, 1994.

Comments, however, are welcome at any time and will be considered in making future revisions.

ADDRESSES: All comments should be addressed to: John Chester, Assistant General Counsel, Office of the General Counsel, Room 1265, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: John Chester on (703) 306-1060 (voice) and (703) 306-0149 (facsimile)—those are not toll-free numbers—or by electronic mail as jchester@nsf through BITNET or jchester@nsf.gov through INTERNET.

SUPPLEMENTARY INFORMATION: The National Science Foundation's nonprocurement regulations are contained in chapter VI of title 45 of the Code of Federal Regulations. This volume is republished as of October 1 each year. This rule makes clerical corrections, deletes unnecessary provisions, corrects nomenclature, reassigns internal responsibilities to reflect organizational and nomenclature changes, and changes addresses to reflect the Foundation's relocation so the 1994 volume will be correct.

The only change of any substance is deletion of two parts—"Procedures and criteria for resolving questions involving moral character or loyalty of applicants for and holders of National Science Foundation Fellowships" (Part 610) and "Fellowship Review Panel" (Part 630). These were adopted because prior to 1988 section 15(c) of the National Science Foundation Act NSF to obtain a loyalty oath and statement as to criminal convictions from persons receiving NSF Fellowships. Those requirements were repealed by section

105(b) of the National Science Foundation Authorization Act of 1988 (102 Stat. 2865, 2868) and implementing regulations are no longer needed.

Determinations

I have determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Information and Regulatory Affairs. I also certify, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612, that none of the clerical corrections and nomenclature and address changes made by this rule will have a significant economic impact on any small entities. Finally, I have reviewed this rule in light of section 2 of Executive Order 12778 and certify for the National Science Foundation that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects

45 CFR Part 606

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

45 CFR Part 610

Administrative practice and procedure, Scholarships and fellowships, Science and technology.

45 CFR Part 611

Civil rights, Reporting and recordkeeping requirements.

45 CFR Part 612

Freedom of information.

45 CFR Part 613

Privacy.

45 CFR Part 614

Sunshine Act.

45 CFR Part 630

Administrative practice and procedure, Scholarships and fellowships, Science and technology.

45 CFR Part 640

Environmental impact statements.

45 CFR Part 641

Antarctica, Environmental protection.

45 CFR Part 650

Administrative practice and procedure, Government contracts, Grant programs-science and technology, Inventions and patents, Reporting and recordkeeping requirements, Science and technology.

45 CFR Part 671

Administrative practice and procedure, Antarctica.

45 CFR Part 672

Administrative practice and procedure, Antarctica, Penalties.

45 CFR Part 689

Administrative practice and procedure, Grant programs-science and technology, Investigations, Science and technology.

Dated: July 18, 1994.

National Science Foundation.

Lawrence Rudolph,

Acting General Counsel.

For the reasons set out in the preamble and under the authority of section 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)), Chapter VI of title 45 of the Code of Federal Regulations, is amended as follows:

PART 606—[AMENDED]

1. By amending Part 606 as follows:

§ 606.70 [Amended]

a. Change "Office of Equal Opportunity (OEO)" to "Office of Equal Opportunity Programs (OEOP)" in §§ 606.70(c) and (f) introductory text.

b. Change "Office of Equal Opportunity, National Science Foundation, 1800 G Street NW., Washington, DC 20550" to "Office of Equal Opportunity Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in § 606.70(d).

PART 610—[REMOVED]

2. By removing Part 610.

PART 611—[AMENDED]

3. By amending Part 611 as follows:

§ 611.9 [Amended]

a. Change the site of hearings from "Washington, DC" to "Arlington, VA" in § 611.9(b).

PART 611, APPENDIX A [AMENDED]

b. Remove "Title IX of the National Defense Education Act of 1958 (42 U.S.C. 1876 through 1879).", "The National Sea Grant College and Program Act of 1966 (80 Stat. 998).¹", and the footnote from Appendix A.

PART 612—[AMENDED]

4. By amending Part 612 as follows:

§ 612.2 [Amended]

a. Change the location given for the NSF library from "1800 G Street, NW.,

Washington, DC" to "4201 Wilson Boulevard, Arlington, VA" in § 612.2(b).

b. Change "Assistant Director for Administration (AD/A)" to "Director, Office of Information and Resource Management (D/IRM)" and "ADA" to "D/IRM" in § 612.2(c).

§ 612.3 [Amended]

c. Change "the NSF Mail and Distribution Unit" to "the NSF Forms and Publications Unit" in § 612.3(a).

d. Change "the Mail and Distribution Unit, National Science Foundation, Washington, DC 20550" to "Forms and Publications, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in § 612.3(a).

e. Change "National Science Foundation, Office of Legislative and Public Affairs, 1800 G Street, NW., Washington, DC 20550" to "Office of Legislative and Public Affairs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" both places the former appears in § 612.3(c).

f. Change "National Science Foundation, Office of Inspector General, 1800 G Street, NW., Washington, DC 20550" to "Office of the Inspector General, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in § 612.3(c).

g. Change "Office of Inspector General" to "Office of the Inspector General" both places the former appears in § 612.3(c).

h. Change "Deputy Director, National Science Foundation, 1800 G Street, NW., Washington, DC 20550" to "Deputy Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in § 612.3(f).

PART 613—[AMENDED]

5. By amending Part 613 as follows:

§§ 613.2 and 613.3 [Amended]

a. Change "Division of Administrative Services at 1800 G Street, NW., Washington, DC 20550" to "Division of Administrative Services at 4201 Wilson Boulevard, Arlington, VA" in §§ 613.2(a) and 613.3(a).

b. Change "NSF Privacy Act Officer, Assistant Director for Administration, National Science Foundation, Washington, DC 20550" to "NSF Privacy Act Officer, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in § 613.2(a).

c. Change "NSF Privacy Act Officer, Assistant Director for Administration, NSF, Washington, DC 20550" to "NSF Privacy Act Officer, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201

Wilson Boulevard, Arlington, VA 22230" in § 613.3(a).

§ 613.4 [Amended]

d. Change "Privacy Act Officer, Assistant Director for Administration, National Science Foundation, Washington, DC 20550" to "NSF Privacy Act Officer, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in § 613.4(a).

PART 614—[AMENDED]

6. By amending Part 614 as follows:

§ 614.2 [Amended]

Change the address for requests in § 614.2(b) from "National Science Board, National Science Foundation, Washington, DC 20550" to "Executive Officer, National Science Board, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230".

PART 630—[REMOVED]

7. By removing Part 630.

PART 640—[AMENDED]

8. By amending Part 640 as follows:
Revise paragraph (a) of § 640.2 to read as follows:

§ 640.2 Committee on environmental matters.

(a) There is established an NSF Committee on Environmental Matters (hereafter referred to as the Committee) to consist of one representative from each directorate. The General Counsel, or his or her designee, shall serve as Chairman. At the discretion of the Chairman and with the concurrence of the Committee, additional members may be appointed.

* * * * *

PART 641—[AMENDED]

9. By amending Part 641 as follows:

§ 641.14 [Amended]

a. Change "Assistant Director for Geosciences" to "Director of the Office of Polar Programs" in § 641.14(m).

b. Change "designated by the Assistant Director" to "designated by the Director" in § 641.14(m).

§ 641.16 [Amended]

c. Remove "and the Office of the General Counsel" from § 641.16(d).

§ 641.20 [Amended]

d. Change "Division of Polar Programs" to "Office of Polar Programs" in § 641.20.

PART 650—[AMENDED]

10. By amending Part 650 as follows:

§ 650.4 [Amended]

a. Change "Patent Assistant, Office of the General Counsel, National Science Foundation, Washington, DC 20550" to "Patent Assistant, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230" in paragraph (l) of the clause in § 650.4(a).

§ 650.11 [Amended]

b. Change "650.14" to "650.13" in § 650.11.

PART 671—[AMENDED]

12. By amending Part 671 as follows:

§ 671.2 [Amended]

a. Change "potentially harmful" to "designated" in § 671.2.

§ 671.6 [Amended]

b. Change "Washington, D.C. 20550" to "4201 Wilson Boulevard, Arlington, VA 22230" in § 671.6(b).

PART 672—[AMENDED]

13. By amending Part 672 as follows:

§ 672.3 [Amended]

a-b. Change "Division of Polar Programs" in the heading of § 672.3 to "Office of Polar Programs."

c. Change "Division of Polar Programs" to "Office of Polar Programs" and "Division of Polar Programs (DPP)" to "Office of Polar Programs (OPP)" in the heading and text, respectively, of § 672.3(f).

d. Change "DPP" to "OPP" in § 672.3(f).

e. Change "NSF's Office of General Counsel" to "NSF's Office of the General Counsel" in § 672.3(f).

f. Change "Division of Polar Programs" to "Office of Polar Programs" in § 672.3(g).

g. Change "DPP" to "OPP" in § 672.3(g).

h. Change "Division of Polar Programs" to "Office of Polar Programs" in § 672.3(h).

i. Change "Office of General Counsel" to "Office of the General Counsel" in § 672.3(i).

j. Change "Division of Polar Programs" to "Office of Polar Programs" in § 672.3(i).

PART 689—[AMENDED]

14. By amending Part 689 as follows:

§ 689.6 [Amended]

a. Change "program and DGC officials" to "program, grant, and contracting officers" in § 689.6(a).

§ 689.7 [Amended]

b. Change "DGC, OGC," to "the Division of Contracts, Policy, and Oversight or Division of Grants and Agreements, the Office of the General Counsel," in § 689.7(a).

[FR Doc. 94-17779 Filed 7-21-94; 8:45 am]

BILLING CODE 7555-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 2 and 15**

[ET Docket No. 93-1; FCC 94-183]

Radio Scanners That Receive Cellular Telephone Transmissions

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This *Memorandum Opinion and Order* denies a petition for reconsideration of new regulations that deny equipment authorization to radio scanners capable of receiving transmissions in the Domestic Public Cellular Radio Telecommunications Service. This action is taken in response to a petition for reconsideration filed by Kenwood Communications Corporation. The intended effect of this action is to help ensure the privacy of cellular telephone conversations.

EFFECTIVE DATE: July 22, 1994.

FOR FURTHER INFORMATION CONTACT: David Wilson, Office of Engineering and Technology, (202) 653-8138.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in ET Docket No. 93-1, FCC 94-183, adopted July 8, 1994, and released July 19, 1994. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Services at (202) 857-3800 or 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Memorandum Opinion and Order

1. By this action, the Commission denies a request by Kenwood Communications Corporation (Kenwood) for reconsideration of portions of the rules adopted in the *Report and Order* in this proceeding. These rules were adopted in response to the Telephone Disclosure and Dispute

Resolution Act (TDDRA), Pub. L. 102-556, and generally prohibit the manufacture and importation of radio scanners capable of receiving cellular telephone communications. See *Report and Order* in ET Docket No. 93-1, 58 FR 25574, April 27, 1993.

2. In its Petition for Reconsideration, Kenwood raises three issues. First, it argues that the deadlines for complying with the rules adopted in this proceeding should be extended. Second, it requests that scanners sold to Military Affiliate Radio Service (MARS) and Civil Air Patrol (CAP) licensees be exempt from the regulations adopted in this proceeding. Finally, it argues that the definition of "readily altered by the user" that was adopted in this proceeding should include only scanners that can be modified "quickly" by "non-technical" consumers. There were no comments filed in response to the Kenwood petition.

3. Implementation dates. Kenwood contends that the April 26, 1993, cutoff date for equipment authorization and the April 26, 1994, cutoff date for manufacture and importation of scanners that do not comply with the new rules do not provide sufficient time to design and build new products to replace those being prohibited. This short period of time is, however, mandated by the TDDRA and reflects the position of Congress that reception of cellular communications by means of scanning receivers is a serious problem that must be resolved expeditiously. Accordingly, we are denying Kenwood's request for an extension of the cutoff dates.

4. Exemption for equipment sold to MARS and CAP licensees. Kenwood states that it manufactures two-way transceivers that are generally set up to operate only on frequencies available within a particular radio service. Kenwood indicates that some of its transceivers are routinely modified at its factory to operate on additional frequencies, such as those used by MARS and CAP licensees, in order to accommodate the needs of its customers. Kenwood states that these factory modifications can result, incidentally, in the ability to scan cellular telephone frequencies.

5. We see no reason why it is not possible to manufacture equipment to operate on MARS and CAP frequencies without resulting in that equipment also having the capability to receive the cellular frequencies, since MARS and CAP frequencies are far removed from the cellular frequencies. Consequently, we find that there is no technical justification for exempting scanning equipment from the rules adopted in

this proceeding based on its intended use by MARS or CAP licensees, and we are denying Kenwood's request.

6. The definition of "readily altered by the user." Kenwood requests that we modify the definition of "readily altered by the user" to include only devices that can be quickly modified by "non-technical consumers."

7. We believe that Kenwood's proposed definition would make it too easy to modify scanners. Most of the examples given in our definition of scanners that can be "readily altered by the user" are modifications that perhaps could not be done by "non-technical consumers." Yet, they are examples of precisely the kind of easy modifications that we believe the TDDRA was intended to prohibit.

Accordingly, we are rejecting Kenwood's request.

8. In accordance with the above discussion and pursuant to the authority contained in Sections 4(i), 302 and 303 of the *Communications Act of 1934*, as amended, and the *Telephone Disclosure and Dispute Resolution Act*, it is ordered that the Petition for Reconsideration filed by Kenwood Communications Corporation is denied.

9. For further information on this proceeding, contact David Wilson, Technical Standards Branch, Office of Engineering and Technology, at (202) 653-8138.

List of Subjects in 47 CFR Parts 2 and 15

Communications equipment, wiretapping and electronic surveillance.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-17846 Filed 7-21-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 90-Day Finding and Commencement of Status Review for a Petition To List the Southern Rocky Mountain Population of the Boreal Toad as Endangered**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the

southern Rocky Mountain population of the boreal toad (*Bufo boreas boreas*) to the List of Threatened and Endangered Wildlife. The Service finds the petition presents substantial information indicating that the requested action may be warranted.

DATES: The finding announced in this notice was made on July 14, 1994. Comments and materials need to be submitted by September 20, 1994, to be considered in the 12-month finding.

ADDRESSES: Information, comments, or questions concerning this petition may be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 730 Simms Street, Suite 290, Golden, Colorado 80401. The petition, finding, and supporting documents are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Terry Ireland, U.S. Fish and Wildlife Service, Ecological Services, 764 Horizon Drive, South Annex A, Grand Junction, Colorado 81506-3946, telephone, (303) 243-2778.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species, or to revise a critical habitat designation presents substantial scientific and commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be promptly published in the *Federal Register*. If the finding is positive, the Service also is required to commence a review of the status of the petitioned species.

The Service announces a 90-day finding on a petition requesting the Service to list as endangered the southern Rocky Mountain population of the "western boreal toad" (*Bufo boreas boreas*) and initiates a status review.

A petition dated September 27, 1993, was received by the Service from the Biodiversity Legal Foundation and Dr. Peter Hovingh on September 30, 1993. The petition requested that the southern Rocky Mountain population of the "western boreal toad" be listed as endangered and that critical habitat be designated.

The Act allows the Service to list distinct population segments of vertebrate fish and wildlife. Physical

and climatic characteristics of the Great Divide Basin separate boreal toads in the southern Rocky Mountains (New Mexico, Colorado, and southeastern Wyoming) from populations in the Wasatch and Uinta Mountains of Utah to the west and the Wind River and Salt River Ranges of Wyoming to the north. The Basin's hot, dry summers, lack of available water, and high desert vegetation provide unsuitable habitat for the toad. Movement of toads between the southern Rocky Mountains and populations in western Wyoming and eastern Utah is unlikely because of the great distance (>165 km (100 miles)) and harsh environment. Because of this geographic isolation, possible genetic differentiation exists between toads in the southern Rocky Mountains and the remainder of their range (Blair 1964, Hubbard 1972). Considering these factors, the Service believes the southern Rocky Mountain population of the boreal toad is a distinct population segment.

A status review was first initiated for the southern Rocky Mountain population of *B. b. boreas* by a notice of review published January 6, 1989 (54 FR 554). At that time the population was designated as a category 2 candidate, meaning that more information was needed before a decision could be made as to whether this population should be listed.

Boreal toads were once common throughout much of the higher elevations in Colorado (Burger and Bragg 1946, Smith et al. 1965, Hammerson 1989) and in the Snowy and Sierra Madre Ranges of southeastern Wyoming (Baxter and Stone 1985). Boreal toads were found at only three localities at the southern periphery of their range in the San Juan Mountains of New Mexico; Lagunitas, Canjilon, and Trout Lakes (Campbell and Degenhardt 1971, Jones 1978, New Mexico Department of Game and Fish 1988).

Declines in isolated demes were first documented in New Mexico in the mid-1980's (Woodward and Mitchell 1985, Carey 1987) and in Colorado and southern Wyoming from 1986 through 1988 (Corn et al. 1989). Boreal toads are listed as endangered by the State of New Mexico and are thought to be extirpated (New Mexico Department of Game and Fish 1988). Surveys conducted in 1989 and 1993 revealed no populations at the three previously known San Juan Mountain locations in Rio Arriba County, New Mexico (Charlie Painter, New Mexico Department of Game and Fish, pers. comm., 1993). Carey (1993) also documented the extirpation of 11 demes in the Elk and West Elk

Mountains of west-central Colorado. Corn et al. (1989) found that boreal toads were absent from 83 percent of locations in Colorado previously known to contain toads. Subsequent surveys conducted by the Service and others in Colorado indicate that boreal toads continue to disappear from traditional localities or are absent from locations that contain suitable habitat (Steve Corn, National Biological Survey, unpubl. data, 1993; Hammerson 1989). No toad demes have been confirmed in Wyoming since 1987 (S. Corn, pers. comm., 1993).

No single factor known to cause direct loss of boreal toads in the southern Rocky Mountain population appears to be producing range-wide declines. Those factors that appear capable of affecting a population throughout all or most of its range cannot currently be linked to the decline of the southern Rocky Mountain population of the boreal toad. Low impact recreational activities such as hiking, camping, wildlife viewing, nonmotorized boating, and fishing may occasionally disrupt breeding pairs or trample recently metamorphosed juveniles along shorelines (Campbell 1970). High impact resource management strategies such as timber and grazing may alter or cause the destruction of boreal toad habitat. Other factors that may directly impact boreal toads are water retention projects, changes in water availability, competition and predation by native and nonnative species, and fishery management activities. State agencies have regulations to protect the southern Rocky Mountain population of the boreal toad from "take," but these measures in general do nothing to protect the toad's habitat from degradation or to protect the toads from other threats.

Factors that may cause indirect loss of toads include acid rain, pollution, and ultraviolet radiation. The potential effects of acid rain, pollution, ultraviolet radiation, and natural population fluctuations remain unknown and may be working synergistically with other environmental or anthropogenic factors to cause declines in toad populations. Carey (1987, 1993) indicated that the proximate cause of the widespread decline of boreal toads in northern New Mexico and west-central Colorado was a result of infection by *Aeromonas hydrophila* bacteria (red-leg disease). However, *A. hydrophila* is common in the microfauna carried by amphibians, and it does not cause infection or death in healthy individuals. As a result, toads likely were stressed by other adverse environmental factors, such as those

mentioned above, and later succumbed to *A. hydrophila* infection (Carey 1987).

A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The five factors are:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Diseases or predation;

D. The inadequacy of existing regulatory mechanisms; and

E. Other natural or manmade factors affecting its continued existence.

Because of the threats discussed above, the Service believes that factors A, C, D, and E may apply to the southern Rocky Mountain population of the boreal toad.

The Service has carefully assessed the best scientific and commercial information available regarding the threats faced by this population. After

reviewing the petition, references cited in the petition, and other available information the Service finds that the petition presents substantial information indicating that listing the southern Rocky Mountain population of the boreal toad as endangered may be warranted. Within 1 year from the date the petition was received, a finding as to whether the petitioned action is warranted is required by Section 4(b)(3)(B) of the Act.

The petitioners also requested that critical habitat be designated. If the 12-month finding determines that the petitioned action to list the boreal toad is warranted, then the designation of critical habitat would be addressed in the subsequent proposed rule. At that time the Service also would determine if it is appropriate to propose to list the population as endangered or threatened.

More detailed information regarding the above decisions may be obtained from the Service's Golden office (see ADDRESSES above).

References cited

A complete list of all references cited is available upon request from the Golden, Colorado, field office (See ADDRESSES Section).

Author

The primary author of this 90-day finding is Terry Ireland (See FOR FURTHER INFORMATION CONTACT above).

Authority:

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 14, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94-17866 Filed 7-21-94; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register

Vol. 59, No. 140

Friday, July 22, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 372

[Docket No. 93-165-2]

RIN 0579-AA33

National Environmental Policy Act Implementing Procedures

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would establish procedures that set forth the principles and practices the Animal and Plant Health Inspection Service will follow to comply with the National Environmental Policy Act of 1969, the Council on Environmental Quality regulations, and the U.S. Department of Agriculture regulations implementing the National Environmental Policy Act. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

DATES: Consideration will be given only to comments on Docket No. 93-165-1 that are received on or before August 2, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-165-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Pizel, Branch Chief, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8565.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1994, we published in the *Federal Register* (59 FR 28814-28821, Docket No. 93-165-1) a proposed rule to establish procedures that set forth the principles and practices the Animal and Plant Health Inspection Service will follow to comply with the National Environmental Policy Act of 1969, the Council on Environmental Quality regulations, and the U.S. Department of Agriculture regulations implementing the National Environmental Policy Act.

Comments on the proposed rule were required to be received on or before July 18, 1994. In response to a request to extend the period during which comments will be accepted, we are extending the comment period on Docket No. 93-165-1 for an additional 15 days. This action will allow the requestor and all other interested persons additional time to prepare and submit comments.

Authority: 42 U.S.C. 4321 *et seq.*; 40 CFR 1500-1508; 7 CFR 1b, 2.17, 2.51, 371.2, 371.2(m), 371.13(d), and 371.14(b).

Done in Washington, DC, this 18th day of July 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-17823 Filed 7-21-94; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-94-16]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received September 20, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591. The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on July 15, 1994.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27749.
Petitioner: Aviall, Inc.
Regulations Affected: 14 CFR 145.51(d).

Description of Rulechange Sought: To allow a remote repair facility to exist as a permanent part of a repair station certificate.