

disability rating retroactively in accordance with §§ 3.156(c) and 3.400(q)(2) of this part for the period specified in paragraph (c) of this section; or

(iii) At the time of death, the veteran had a service-connected disability that was continuously rated totally disabling by VA for the period specified in paragraph (c) of this section, but was not receiving compensation because:

(A) VA was paying the compensation to the veteran's dependents;

(B) VA was withholding the compensation under the authority of 38 U.S.C. 5314 to offset an indebtedness of the veteran;

(C) The veteran had not waived retired or retirement pay in order to receive compensation;

(D) VA was withholding payments under the provisions of 10 U.S.C. 1174(h)(2);

(E) VA was withholding payments because the veteran's whereabouts were unknown, but the veteran was otherwise entitled to continued payments based on a total service-connected disability rating; or

(F) VA was withholding payments under 38 U.S.C. 5308 but determines that benefits were payable under 38 U.S.C. 5309.

(Authority: 38 U.S.C. 501(a), 1311, 1314, and 1321).

4. Section 3.22 is amended by revising paragraph (b) to read as follows:

§ 3.22 DIC benefits for survivors of certain veterans rated totally disabled at time of death.

* * * * *

(b) For purposes of this section, "entitled to receive" means that the veteran filed a claim for disability compensation during his or her lifetime and one of the following circumstances is satisfied:

(1) The veteran would have received total disability compensation at the time of death for a service-connected disability rated totally disabling for the period specified in paragraph (a)(2) of this section but for clear and unmistakable error committed by VA in a decision on a claim filed during the veteran's lifetime; or

(2) Additional evidence submitted to VA before or after the veteran's death, consisting solely of service department records that existed at the time of a prior VA decision but were not previously considered by VA, provides a basis for reopening a claim finally decided during the veteran's lifetime and for awarding a total service-connected disability rating retroactively in accordance with §§ 3.156(c) and

3.400(q)(2) of this part for the relevant period specified in paragraph (a)(2) of this section; or

(3) At the time of death, the veteran had a service-connected disability that was continuously rated totally disabling by VA for the period specified in paragraph (a)(2), but was not receiving compensation because:

(i) VA was paying the compensation to the veteran's dependents;

(ii) VA was withholding the compensation under authority of 38 U.S.C. 5314 to offset an indebtedness of the veteran;

(iii) The veteran had not waived retired or retirement pay in order to receive compensation;

(iv) VA was withholding payments under the provisions of 10 U.S.C. 1174(h)(2);

(v) VA was withholding payments because the veteran's whereabouts were unknown, but the veteran was otherwise entitled to continued payments based on a total service-connected disability rating; or

(vi) VA was withholding payments under 38 U.S.C. 5308 but determines that benefits were payable under 38 U.S.C. 5309.

* * * * *

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

5. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart L—Finality

6. Section 20.1106 is revised to read as follows:

§ 20.1106 Rule 1106. Claim for death benefits by survivor—prior unfavorable decisions during veteran's lifetime.

Except with respect to benefits under the provisions of 38 U.S.C. 1311(a)(2), 1318, and certain cases involving individuals whose Department of Veterans Affairs benefits have been forfeited for treason or for subversive activities under the provisions of 38 U.S.C. 6104 and 6105, issues involved in a survivor's claim for death benefits will be decided without regard to any prior unfavorable disposition of those issues during the veteran's lifetime.

(Authority: 38 U.S.C. 7104(b))

[FR Doc. 04-23488 Filed 10-22-04; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[OA-2004-0004; FRL-7829-9]

RIN 2090-AA13

National Environmental Performance Track Program, Parallel Proposal To Direct Final Rule for RCRA Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This proposed rulemaking is a parallel proposal to the direct final rulemaking EPA is also publishing today. EPA is taking direct final action on the National Environmental Performance Track Program, Direct Final Rule for RCRA Corrections. The revisions concern the proposed rule published on August 13, 2002 (67 FR 52674), and the subsequent final rule published on April 22, 2004 (69 FR 21737). Both the 2002 proposal and the 2004 final rule contained an inconsistency between the preamble language and regulatory language. The final rule also inadvertently omitted three references to applicable regulatory provisions that were properly referenced in the proposed rule. We are proposing today's revisions to address the inconsistency between the preamble and regulatory language, and to correct the inadvertently omitted applicable regulatory provisions.

In the "Rules and Regulations" section of today's **Federal Register**, we are approving these revisions and corrections in a direct final rulemaking because we view this as a noncontroversial amendment and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect, and we will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by November 24, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. OA-2004-0004, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

• *Agency Web site:* <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

• *Mail:* Mr. Robert D. Sachs, Environmental Protection Agency, Mail code 1807T, 1200 Pennsylvania Avenue, Washington, DC 20460 telephone number 202-566-2884; fax number 202-566-0966; e-mail address: sachs.robert@epa.gov.

• *Hand Delivery:* Office of Environmental Information Docket, Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OA-2004-0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the federal [regulations.gov](http://www.regulations.gov) Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is

not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Office of Environmental Information Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Environmental Information Docket is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Sachs, Performance Incentives Division, Office of Business and Community Innovation, Office of Policy, Economics and Innovation, Office of Administrator, Mail Code 1807T, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460 telephone number 202-566-2884; fax number 202-566-0966; e-mail address: sachs.robert@epa.gov.

SUPPLEMENTARY INFORMATION: This document concerns revisions to the Resource Conservation and Recovery Act to address an inconsistency between the preamble and regulatory language at 67 FR 52674 and 69 FR 21737, and to correct three inadvertently omitted applicable regulatory provisions at 69 FR 21737. The revisions proposed here are identical to those contained in the Direct Final Rule located in the "Rules and Regulations" section of this **Federal Register** publication. Please refer to the preamble and regulatory text of the direct final action for further information and the actual text of the revisions. Additionally, all information regarding Statutory and Executive Orders for this proposed rule can be found in the Statutory and Executive Order Review section of the direct final action.

Dated: October 19, 2004.

Michael O. Leavitt,
Administrator.

[FR Doc. 04-23841 Filed 10-22-04; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AT57

Endangered and Threatened Wildlife and Plants; Reopening of the Public Comment Period for the Draft Economic Analysis and Proposed Designation of Critical Habitat for the Santa Ana Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of the public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the draft economic analysis on the proposed designation of critical habitat for the Santa Ana sucker (*Catostomus santaanae*) and on the proposed designation itself. The comment period will provide the public, Federal, State, and local agencies, and tribes with an additional opportunity to submit written comments on this proposal and its respective draft economic analysis. Comments previously submitted for this proposed rule and draft economic analysis 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 November 24, 2004. We will accept comments and information until 5 p.m. p.s.t. 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 fw1sasur@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 and the draft economic analysis on the