

offender's calculus of the costs and benefits of committing a crime. Consequently, the perceived lenient treatment that may have occurred under the Bureau's system before December 2002—allowing terms of imprisonment to initially be served in CCCs—risked eroding Congress's goal of deterring criminal activity. These rules will ensure the Bureau's designation policy does not undermine the deterrent role that Congress intends Federal criminal law to serve.

#### *Where To Send Comments*

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534; or via e-mail to [BOPRULES@BOP.GOV](mailto:BOPRULES@BOP.GOV).

We will consider comments received during the comment period before taking final action. We will try to consider comments received after the end of the comment period.

We do not plan to have oral hearings on this rule. All the comments received remain on file for public inspection at the above address.

#### **Executive Order 12866**

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

BOP has assessed the costs and benefits of this rule as required by Executive Order 12866 section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will have the benefit of eliminating confusion in the courts that has been caused by the change in the Bureau's statutory interpretation, while allowing us to continue to operate under revised statutory interpretation. There will be no new costs associated with this rulemaking.

#### **Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

#### **Regulatory Flexibility Act**

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5

U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **List of Subjects in 28 CFR Part 570**

Prisoners.

**Harley G. Lappin,**

*Director, Bureau of Prisons.*

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR part 570 as set forth below.

#### **Subchapter D—Community Programs and Release**

#### **PART 570—COMMUNITY PROGRAMS**

1. Revise the authority citation for 28 CFR part 570 to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 751, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Amend part 570 by adding subpart B, consisting of §§ 570.20 and 570.21 to read as follows:

#### **Subpart B—Community Confinement**

Sec.

570.20 What is the purpose of this subpart?

570.21 How will the Bureau decide when to designate inmates to community confinement?

#### **§ 570.20 What is the purpose of this subpart?**

(a) This subpart provides the Bureau of Prisons' (Bureau) categorical exercise of discretion for designating inmates to community confinement. The Bureau designates inmates to community confinement only as part of pre-release custody and programming which will afford the prisoner a reasonable opportunity to adjust to and prepare for re-entry into the community.

(b) As discussed in this subpart, the term "community confinement" includes Community Corrections Centers (CCC) (also known as "halfway houses") and home confinement.

#### **§ 570.21 When will the Bureau designate inmates to community confinement?**

(a) The Bureau will designate inmates to community confinement only as part of pre-release custody and programming, during the last ten percent of the prison sentence being served, not to exceed 6 months.

(b) We may exceed these time-frames only when specific Bureau pre-release programs allow greater periods of community confinement, as provided by separate statutory authority (for example, residential substance abuse treatment program (18 U.S.C. 3621(e)(2)(A)), or shock incarceration program (18 U.S.C. 4046(c)).

[FR Doc. 04–18747 Filed 8–17–04; 8:45 am]

BILLING CODE 4410–05–P

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[R05–OAR–2004–MN–0001, FRL–7794–6]

#### **Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Sulfur Dioxide; United Defense**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve a revision to Minnesota's State Implementation Plan (SIP) for Sulfur Dioxide (SO<sub>2</sub>) for the United Defense, LP facility located in Anoka County at 4800 East River Road, Fridley, Minnesota. This revision replaces the Administrative Order, originally issued

to the facility on May 27, 1992, with a Title V permit containing non-expiring Title I SIP conditions, issued on November 25, 2002. The Minnesota Pollution Control Agency (MPCA) submitted this SIP revision on December 19, 2002. In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments in response to that direct final rule, EPA plans to take no further action on this proposed rule. If EPA receives significant adverse comments, in writing, which EPA has not addressed, EPA will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received on or before September 17, 2004.

**ADDRESSES:** Submit comments, identified by Docket ID No. R05-OAR-2004-MN-0001 by one of the following methods: *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

*E-mail:* [bortzer.jay@epa.gov](mailto:bortzer.jay@epa.gov).

*Fax:* (312) 886-5824.

*Mail:* You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR-18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

*Hand delivery:* Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. R05-OAR-2004-MN-0001. EPA's policy is that all comments received will be included in the public docket without change, 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 [regulations.gov](http://regulations.gov), or e-mail. The federal [regulations.gov](http://regulations.gov) website is an "anonymous access" system, 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 [regulations.gov](http://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. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

*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.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please contact Kathleen D'Agostino at (312) 886-1767 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767.  
[dagostino.kathleen@epa.gov](mailto:dagostino.kathleen@epa.gov)

#### SUPPLEMENTARY INFORMATION:

##### A. Does This Action Apply to Me?

This action is rulemaking on a Sulfur Dioxide plan for the United Defense, LP facility located in Anoka County.

##### B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, [regulations.gov](http://regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

##### Additional Information

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at EDOCKET or in hard copy at the above address. (Please telephone Kathleen D'Agostino at (312) 886-1767 before visiting the Region 5 Office.)

Dated: July 19, 2004.

**Norman Niedergang,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 04-18765 Filed 8-17-04; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Finding for the Resubmitted Petition To List the Black-Tailed Prairie Dog as Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Finding on a resubmitted petition.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce our resubmitted 12-month petition finding for the black-tailed prairie dog (*Cynomys ludovicianus*). We conclude that the black-tailed prairie dog is not likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, pursuant to the Endangered Species Act (Act) of 1973, as amended. Therefore, we find that proposing a rule to list the species is not warranted, and we no longer consider it to be a candidate species for listing. We make this determination because recent distribution, abundance, and trend data indicate that the threats to the species identified in the 12-month finding are not as serious as earlier believed.

**DATES:** This finding was made on August 12, 2004. Although no further action will result from this finding, we request that you submit new information concerning the status of, or threats to, this species, whenever it becomes available.

**ADDRESSES:** The complete file for this finding is available for inspection, by appointment, during normal business hours, at the South Dakota Field Office, U.S. Fish and Wildlife Service, 420 S. Garfield Avenue, Suite 400, Pierre, South Dakota 57501. Submit new information, materials, comments, or questions concerning this species to us at the above address. You may obtain a copy of our species assessment for the black-tailed prairie dog on the Internet at <http://mountain-prairie.fws.gov/species/mammals/btprairiedog/> or by contacting the South Dakota Field Office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Pete Gober, at the South Dakota Field Office,

(see **ADDRESSES** section above), by telephone at (605) 224-8693, extension 24, by facsimile at (605) 224-9974, or by e-mail [Pete\\_Gober@fws.gov](mailto:Pete_Gober@fws.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(B) of the Act requires that within 12 months after receiving a petition to revise the List of Endangered and Threatened Wildlife that contains substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings—(a) The petitioned action is not warranted, (b) the petitioned action is warranted, or (c) the petitioned action is warranted but precluded by pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**. The Act also requires that when a warranted but precluded finding is made, a petition is treated as resubmitted and the Service is required to publish a new petition finding on an annual basis.

On July 31, 1998, the Service received a petition dated July 30, 1998, from the National Wildlife Federation (NWF) (1998). The petitioner requested that the Service list the black-tailed prairie dog (*Cynomys ludovicianus*) as threatened throughout its range. On August 26, 1998, the Service received another petition regarding the black-tailed prairie dog from the Biodiversity Legal Foundation, the Predator Project, and Jon C. Sharps (Biodiversity Legal Foundation *et al.* 1998). The Service accepted this second petition as supplemental information to the NWF petition. A notice of a 90-day finding for the petition was published in the **Federal Register** on March 25, 1999 (64 FR 14425), indicating that it and other readily available scientific and commercial information presented substantial information that the petitioned action may be warranted. On February 4, 2000, the Service announced a 12-month finding that listing the black-tailed prairie dog as a threatened species was warranted but precluded by other higher priority actions (65 FR 5476). When we find that a petition to list a species is warranted but precluded, we refer to the species as being a candidate for listing.

Section 4(b)(3)(B) of the Act directs that, when we make a “warranted but precluded” finding on a petition, we are to treat the petition as being one that is resubmitted annually on the date of the finding; thus the Act requires us to reassess the petitioned actions and to publish a finding on the resubmitted petition on an annual basis. Two previous candidate assessments and resubmitted petition findings for this

species were completed February 7, 2001, (66 FR 54808, October 30, 2001) and March 18, 2002 (67 FR 40657, June 13, 2002) (2001 Candidate Assessment, and 2002 Candidate Assessment respectively). These assessments are available at <http://mountain-prairie.fws.gov/btprairiedog/>. In our most recent Notice of Findings on Resubmitted Petitions, we noted that we had not yet updated our finding with regard to the black-tailed prairie dog (69 FR 24876, May 4, 2004). We noted that, since our 2002 assessment, we had received significant new information about this species from the NWF, Forest Guardians, and the States of Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. We stated that we were considering this new information and intended to publish a finding for this species upon completing our new assessment. This resubmitted 12-month finding is based on consideration of all new information that we have received since 2002. It presents evaluations of this new information and re-evaluations of previously acquired information. In accordance with section 4(b)(3)(B) of the Act, we have now completed a status review of the best available scientific and commercial information on the species, and have reached a determination regarding the petitioned action.

##### Species Information

Prairie dogs occur only in North America. They are rodents within the squirrel family (Sciuridae) and include five species—the black-tailed prairie dog; the white-tailed prairie dog (*C. leucurus*); the Gunnison’s prairie dog (*C. gunnisoni*); the Utah prairie dog (*C. parvidens*); and the Mexican prairie dog (*C. mexicanus*) (Pizzimenti 1975). The Utah and Mexican prairie dogs are currently listed as threatened (49 FR 22339, May 29, 1984) and endangered (35 FR 8495, June 2, 1970), respectively. Generally, the black-tailed prairie dog occurs east of the other four species in more mesic habitat. Based upon the information currently available, the Service concurs with Pizzimenti’s (1975) assessment of the black-tailed prairie dog as monotypic.

Prairie dogs are small, stout ground squirrels. The total length of an adult black-tailed prairie dog is approximately 37 to 43 centimeters (14 to 17 inches) and the weight of an individual ranges from 0.5 to 1.4 kilograms (1 to 3 pounds). Individual appearances within the species vary in mixed colors of brown, black, gray, and white. The black-tipped tail is characteristic