Proposed Rules

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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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2604

RIN 3209–AA22

Proposed Amendments to the Office of Government Ethics Freedom of Information Act Regulation

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule amendments.

SUMMARY: The Office of Government Ethics is proposing to amend its rules under the Freedom of Information Act (FOIA) primarily to effectuate various provisions under the 1996 Electronic FOIA Amendments. The proposed revisions include the new response time for FOIA requests, procedures for requesting expedited processing, additional categories of documents available in OGE's FOIA reading room facility, the availability of certain public information on OGE's Web site, and express inclusion of electronic records and automated searches along with paper records and manual searches. In addition, OGE's proposed amendments would increase the general FOIA search fees somewhat. Finally, OGE is proposing some other updating revisions and corrections. This rulemaking only deals with such matters at OGE; it is not an executive branchwide regulation.

DATES: Comments from the public and the agencies are invited and are due by February 1, 1999.

ADDRESSES: William E. Gressman, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

FOR FURTHER INFORMATION CONTACT: Mr. Gressman at the Office of Government Ethics; telephone: 202–208–8000, ext. 1110; TDD: 202–208–8025; FAX: 202–208–8037; Internet E-mail address: usoge@oge.gov (for E-mail messages, the subject line should include the following reference—Proposed Amendments to the OGE FOIA Regulation).

SUPPLEMENTARY INFORMATION: In this rulemaking, the Office of Government Ethics is proposing to amend its regulation at 5 CFR part 2604 under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These proposed amendments do not concern separate subpart G of part 2604, which sets forth certain duplication and mailing fees this Agency can charge under the Ethics in Government Act of 1978 (the Ethics Act), 5 U.S.C. appendix, for large requests for copies of Standard Form 278 Executive Branch Personnel Public Financial Disclosure Reports that are on file at OGE.

The primary focus of these proposed amendments is to effectuate for this Agency various provisions under the 1996 Electronic FOIA Amendments, Public Law No. 104–231. Thus, in a proposed newly redesignated paragraph (a)(1) of § 2604.305, OGE would codify in its FOIA regulations the new statutorily prescribed general 20 working day response time for responding to FOIA requests. The Office of Government Ethics has already been administratively adhering to the new time period (though many requests are still answered in less time), along with the various other requirements of the Electronic FOIA Amendments. The prior statutory response time was 10 working days.

In addition, OGE proposes to add a new paragraph (a)(2) to § 2604.305 to codify the provision for response to requests for expedited processing within 10 calendar days. Pursuant to the Electronic FOIA Amendments, a person can request expedited processing of his or her FOIA request based upon a showing of ''compelling need,'' which the requester must certify in writing to be true and complete to the best of his or her knowledge and belief. Compelling need is defined in the amended FOIA as circumstances in which a failure to obtain records requested on an expedited basis could reasonably be expected to present an imminent threat to the life or physical safety of an individual or, for a person primarily engaged in disseminating information, an urgency to inform the public about actual or alleged Federal Government activity. The Office of Government Ethics is then to respond to expedited processing requests within 10 calendar days, as it has been doing as a matter of administrative practice. These provisions would be codified in new proposed paragraph (e) of § 2604.301 of OGE's FOIA regulation.

The Office of Government Ethics has decided not to propose multitrack processing of its FOIA requests. The Electronic FOIA Amendments provide that an agency can provide by regulation for multiple ''tracks'' in responding to FOIA requests, depending on the amount of time and work entailed in responding to differing kinds of requests. Since OGE only receives a limited number of FOIA requests each year (currently running at the rate of about 35–45) and is able to respond to them on a timely basis, this Agency does not need to provide for separate processing tracks for more complicated versus simpler FOIA requests. Moreover, in that regard, OGE does not have a FOIA backlog.

The Electronic FOIA Amendments require that deleted portions of copies of documents released in part be identified and that a volume estimation of materials withheld in whole be given, unless exempt information would thereby be revealed. The Office of Government Ethics would codify this requirement in proposed new paragraph (b)(3) of § 2604.303 of its FOIA regulation. In a separate, unrelated proposed revision to § 2604.303, paragraph (a) would be revised to provide expressly that OGE could alternatively consult with another Government agency at which responsive records originated and then decide whether to grant or deny the request, in lieu of the usual course of referring the FOIA request to the originating agency for its direct response to the requester.

The general requirement to honor a form or format request, unless the record requested is not readily reproducible in the requested form or format, would be set forth in paragraph (c) of § 2604.302, as proposed to be revised. The definitions of the terms ''records'' and ''search'' in § 2604.103 are proposed to be amended to more explicitly include electronic records and automated searches (along with paper records and manual searches).

The Office of Government Ethics would also clarify in revised subpart B and § 2604.201 headings and text that, as a small agency with a limited FOIA practice, it has a FOIA public reading

room *facility*, rather that a ''room'' per se. Thus, upon request, OGE makes available information required to be made available under FOIA paragraph (a)(2) and certain other publicly available information in its reception or conference room areas. Such materials created by OGE since October 1, 1996 (and in certain cases before then, if feasible), are also available via computer telecommunications on OGE's Internet Web site at the following address: http://www.usoge.gov. The Web site is referenced in new proposed paragraph (a)(2) of § 2604.201 of the OGE FOIA regulation. The Electronic FOIA Amendments also added a new category of such publicly available materials, copies of records created by OGE which are requested and released to individual FOIA requesters which, because of the nature of their subject matter, OGE determines have become or are likely to become the subject of subsequent requests for substantially the same records, together with a general index thereof. In accordance with Department of Justice guidance, any such materials must be the subject of at least three FOIA requests. The Office of Government Ethics would add reference to such documents at proposed new paragraph (b)(4) of § 2604.201 of its FOIA regulation. Further, OGE would add a new paragraph (d) to § 2604.201 regarding permissible deletions from records covered in this section in order to prevent a clearly unwarranted invasion of personal privacy.

In § 2604.501(b)(1)(i), OGE is proposing to raise the hourly rate for manual searches for responsive records by a homogeneous class of OGE personnel by 10% to reflect increased salaries and overhead since the OGE FOIA regulations were issued in February 1995. The new proposed rates would be $11.00 an hour (versus $10.00 currently) for such searches by clerical staff and $22.00 an hour (versus $20.00) for such searches by professional staff. The charge for individual staff searches would remain unchanged at the particular salary rate (basic pay plus 16%) of the individual employee making the search.

Finally, OGE is proposing to make a couple of updating changes and corrections to its FOIA regulation, including adding its current telephone and FAX numbers.

Matters of Regulatory Procedure

Executive Order 12866

In issuing these proposed amendments to its Freedom of Information Act regulation, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These proposed amendments have also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Office of Government Ethics Director, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities because it would only affect Freedom of Information Act matters at OGE.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these proposed amendments do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2604

Administrative practice and procedure, Archives and records, Confidential business information, Conflict of interests, Freedom of Information, Government employees.

Approved: October 5, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is proposing to amend 5 CFR part 2604 as follows:

PART 2604—[AMENDED]

1. The authority citation for part 2604 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

§ 2604.103 [Amended]

2. In § 2604.103, the text of the definition of the term ''Records'' is amended by adding, in the second parenthetical, between the words ''as'' and ''punchcards'' the words ''electronic documents, electronic mail,'', and the text of the definition of the term ''Search'' is amended by adding between the words ''material'' and ''that'' the words ''manually or by automated means''.

3. The heading of subpart B is revised to read as follows:

Subpart B—FOIA Public Reading Room Facility and Web Site; Index Identifying Information for the Public

4. Section 2604.201 is amended by:

a. Revising the heading;

b. Redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2);

c. Adding the word ''facility'' after the word ''room'' at each place it appears in newly redesignated paragraph (a)(1), including the heading thereof, and in paragraphs (b) and (c);

d. Removing the telephone number ''(202) 523–5757'' and the FAX number ''(202) 523–6325'' in the second sentence of newly redesignated paragraph (a)(1) and adding in their place the new telephone number ''202–208–8000'' and FAX number ''202–208–8037'', respectively;

e. Removing the word ''and'' at the end of paragraph (b)(3);

f. Redesignating paragraph (b)(4) as paragraph (b)(5); and

g. Adding new paragraphs (b)(4) and (d).

The revision and additions read as follows:

§ 2604.201 Public reading room facility and Web site.

(a) * * *

(2) *Web site.* The records listed in paragraph (b) of this section, which are created on or after November 1, 1996, or which OGE is otherwise able to make electronically available (if feasible), along with the OGE FOIA and Public Records Guide and OGE's annual FOIA reports, are also available via OGE's Web site (Internet address: http://www.usoge.gov).

(b) * * *

(4) Copies of records created by OGE that have been released to any person under subpart C of this part which, because of the nature of their subject matter, OGE determines have become or are likely to become the subject of subsequent requests for substantially the same records, together with a general index of such records; and

* * * * *

(d) OGE may delete from the copies of materials made available under this section any identifying details necessary to prevent a clearly unwarranted invasion of personal privacy. Any such deletions will be explained in writing and the extent of such deletions will be indicated on the portion of the records that are made available or published, unless the indication would harm an interest protected by the FOIA exemption pursuant to which the deletions are made. If technically feasible, the extent of any such deletions will be indicated at the place in the records where they are made.

5. Section 2604.301 is amended by removing the telephone number ''(202) 523–5757'' in the first sentence of

paragraph (a) and adding in its place the following text (with the new telephone and FAX numbers) ''202–208–8000, or FAX, 202–208–8037'', and by adding a new paragraph (e) to read as follows:

§ 2604.301 Requests for records.

* * * * *

(e) *Seeking expedited processing.* (1) A requester may seek expedited processing of a FOIA request if a compelling need for the requested records can be shown.

(2) ''Compelling need'' means:

(i) Circumstances in which failure to obtain copies of the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person primarily engaged in disseminating information.

(3) A requester seeking expedited processing should so indicate in the initial request, and should state all the facts supporting the need to obtain the requested records quickly. The requester must also certify in writing that these facts are true and correct to the best of the requester's knowledge and belief.

6. Section 2604.302 is amended by revising the heading and first sentence of paragraph (b) and revising paragraph (c) to read as follows:

§ 2604.302 Response to requests.

* * * * *

(b) *Referral to, or consultation with, another agency.* When a requester seeks access to records that originated in another Government agency, OGE will normally refer the request to the other agency for response; alternatively, OGE may consult with the other agency in the course of deciding itself whether to grant or deny a request for access to such records. * * *

* * * * *

(c) *Honoring form or format requests.* In making any record available to a requester, OGE will provide the record in the form or format requested, if the record already exists or is readily reproducible by OGE in that form or format. If a form or format request cannot be honored, OGE will so inform the requester and provide a copy of a nonexempt record in its existing form or format or another convenient form or format which is readily reproducible. OGE will not, however, generally develop a completely new record (as opposed to providing a copy of an existing record in a readily reproducible new form or format, as requested) of information in order to satisfy a request.

* * * * *

7. Section 2604.303 is amended by removing the word ''and'' following paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(4), and adding a new paragraph (b)(3) to read as follows:

§ 2604.303 Form and content of responses.

* * * * *

(b) * * *

(3) When only a portion of a document is being withheld, the amount of information deleted and the FOIA exemption(s) justifying the deletion will generally be indicated on the copy of the released portion of the document. If technically feasible, such indications will appear at the place in the copy of the document where any deletion is made. If a document is withheld in its entirety, an estimate of the volume of the withheld material will generally be given. However, neither an indication of the amount of information deleted nor an estimation of the volume of material withheld will be included in a response if doing so would harm an interest protected by any of the FOIA exemptions pursuant to which the deletion or withholding is made; and

* * * * *

8. Section 2604.305 is amended by redesignating paragraph (a) as paragraph (a)(1), by removing the number ''10'' in newly redesignated paragraph (a)(1) and adding in its place the number ''20'', and by adding a new paragraph (a)(2) to read as follows:

§ 2604.305 Time limits.

(a) * * *

(2) *Request for expedited processing.* When a request for expedited processing under § 2604.301(e) is received, the General Counsel will respond within ten calendar days from the date of receipt of the request, stating whether or not the request for expedited processing has been granted. If the request for expedited processing is denied, any appeal of that decision will be acted upon expeditiously.

* * * * *

§ 2604.402 [Amended]

9. Section 2604.402 is amended by removing the initial lower case ''e'' in the word ''exemption'' in the first sentence of paragraph (b) and adding in its place an upper case ''E''.

§ 2604.501 [Amended]

10. Section 2604.501 is amended by removing the dollar amounts ''$10.00'' and ''$20.00'' from the second sentence of paragraph (b)(1)(i) and adding in their place the dollar amounts ''$11.00'' and ''$22.00'', respectively, and by removing the citation to ''§ 2604.104(q)'' in the first sentence of paragraph (b)(3) and adding in its place the citation ''§ 2604.103''.

11. Subpart F is revised to read as follows:

Subpart F—Annual OGE FOIA Report

§ 2604.601 Electronic posting and submission of annual OGE FOIA report.

On or before February 1 of each year, OGE shall electronically post on its Web site and submit to the Office of Information and Privacy at the United States Department of Justice a report of its activities relating to the Freedom of Information Act (FOIA) during the preceding fiscal year.

§ 2604.602 Contents of annual OGE FOIA report.

(a) The Office of Government Ethics will include in its annual FOIA report the following information for the preceding fiscal year:

(1) The number of FOIA requests for records pending before OGE as of the end of the fiscal year;

(2) The median number of calendar days that such requests had been pending before OGE as of that date;

(3) The number of FOIA requests for records received by OGE;

(4) The number of FOIA requests that OGE processed;

(5) The median number of calendar days taken by OGE to process different types of requests;

(6) The number of determinations made by OGE not to comply with FOIA requests in full or in part;

(7) The reasons for each such determination;

(8) A complete list of all statutes upon which OGE relies to authorize withholding of information under FOIA Exemption 3, 5 U.S.C. 552(b)(3);

(9) A description of whether a court has upheld the decision of the agency to withhold information under each such statute;

(10) A concise description of the scope of any information withheld under each such statute;

(11) The number of appeals made by persons under 5 U.S.C. 552(a)(6);

(12) The result of such appeals;

(13) The reason for the action upon each appeal that results in a denial of information;

(14) The total amount of fees collected by OGE for processing requests; and

(15) The number of full-time staff of OGE devoted to processing requests for records under the FOIA; and

(16) The total amount expended by OGE for processing such requests.

(b) In addition, OGE will include in the report such additional information about its FOIA activities as is appropriate and useful in accordance with Justice Department guidance and as otherwise determined by OGE.

[FR Doc. 98–32193 Filed 12–2–98; 8:45 am]

BILLING CODE 6345–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Domestic Licensing of Production and Utilization Facilities; Public Workshop Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of public workshop meeting.

SUMMARY: The Commission has requested the staff to develop and assess options on incorporating risk insights in the Code of Federal Regulations 10 CFR 50.59. This regulation permits licensees to implement certain changes that do not require prior NRC approval. On or about December 19, 1998, the staff will place in the public document room (PDR) a draft report that identifies options for incorporating risk insights into the existing § 50.59 process. At the same time that the document is placed in the PDR, the staff will issue a notice to hold a public workshop on January 19, 1998, at the NRC auditorium, in Rockville, Maryland. That notice will also solicit comments on this program.

WORKSHOP MEETING INFORMATION: A 1-day workshop will be held to review the subject document, address comments and answer questions. Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Jack Guttmann, US Nuclear Regulatory Commission, MS T10E50, phone (301) 415–7732, e-mail jxg@nrc.gov.

DATES: January 19, 1999.

AGENDA: To be published in January, 1999.

REGISTRATION: No registration fee is required for this workshop. Interested parties who plan to attend the meeting should preregister in order to ensure adequate space. Persons interested in attending the workshop should notify Jack Guttmann, at US Nuclear Regulatory Commission, MS T10E50, Washington, D.C., 20555, or by phone (301) 415–7732, or by e-mail jxg@nrc.gov.

Dated at Rockville, Maryland, this 20th day of November, 1998.

For the Nuclear Regulatory Commission.

Mary Drouin

Acting Branch Chief, Probabilistic Risk Analysis Branch Division of Systems Technology, Office of Nuclear Regulatory Research.

[FR Doc. 98–31933 Filed 12–1–98; 8:45 am]

BILLING CODE 7590–01–p

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, 284, 375, 380, 381, and 385

[Docket No. RM98–9–000]

Revision of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act; Notice of Extension of Time

November 24, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Extension of Time.

SUMMARY: The Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking that proposes to update its regulations governing the filing of applications for the construction and operation of facilities to provide service or to abandon facilities or service under section 7 of the Natural Gas Act (63 FR 55682 October 16, 1998). The date for filing comments is being extended at the request of various interested parties.

DATES: Comments are extended to and including December 22, 1998.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: David P. Boergers, Secretary, 888 First Street, NE, Washington, DC 20426, (202) 208–0400.

[Docket No. RM98–9–000]

On November 24, 1998, the Interstate Natural Gas Association of America, the American Gas Association, the Process Gas Consumers Group and American Iron and Steel Institute (hereafter ''Petitioners'') filed a joint motion for an extension of time for the filing of comments in response to the Commission's Notice of Proposed Rulemaking issued September 30, 1998, in the above-docketed proceeding.

In its motion, Petitioners state that due to the shear number of ongoing rulemaking proceedings at the Commission and the onset of the Thanksgiving holiday season, additional time is needed within which to prepare and file comments. The motion also states that an extension of time will not unduly delay Commission action on the matters related to this proceeding. Petitioners motion further states that they are authorized to represent that the American Petroleum Association of America and the Natural Gas Supply Association have been contacted and they do not oppose the request for additional time.

Upon consideration, notice is hereby given that an extension of time for the filing of comments is granted to and including December 22, 1998.

David P. Boergers,

Secretary.

[FR Doc. 98–32159 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS No. NM–039–FOR]

New Mexico Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to or additions of rules pertaining to the definitions of ''material damage'' and ''occupied residential dwelling and associated structures,'' adjustment of bond amounts for subsidence damage, subsidence control buffer zones, and impoundments meeting the class B or C criteria for dams in Technical Release-60 published by the U.S. Natural Resources Conservation Service (NRCS). The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.s.t., January 4, 1999. If requested, a public hearing on the proposed amendment will be held

on December 28, 1998. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t., on December 18, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Willis L. Gainer at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Willis L. Gainer, Chief, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102.

Mining and Minerals Division, New Mexico Energy & Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address: WGAINER@OSMERE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated November 13, 1998, New Mexico submitted a proposed amendment (administrative record No. NM–804) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment in response to the required program amendments at 30 CFR 931.16(w), (x), and (aa). The provisions of Title 19, Chapter 8, Part 2, of the New Mexico Administrative Code (19 NMAC 8.2) that New Mexico proposes to revise or add are: 19 NMAC 8.2 107.M. (1), 107.O.(2), 909.E. (5), 2017.D through 2017.G, 2071.A through 2071.D, and 2072.

Specifically, New Mexico proposes to revise:

19 NMAC 8.2 107.M.(1) and 107.O.(2), the definitions of ''material damage'' and ''occupied residential dwelling and associated structures,'' by adding a reference in each definition to its rules at 2069 through 2072, concerning subsidence control;

19 NMAC 909.E.(5), concerning ponds, impoundments, banks, dams, and embankments, by adding the requirement that if the structure meets the Class B or C criteria for dams in TR–60 or meets the size or other criteria of 30 CFR 77.216(a), each plan required under 909.B, C, and E shall include a stability analysis of the structure;

19 NMAC 2017.D by adding the requirement that impoundments that meet the Class B or C criteria for dams in TR–60 be certified by a qualified registered professional engineer;

19 NMAC 2017.F.(2)(i), (ii), and (iii), by adding the requirement that the minimum design precipitation event for a spillway be, respectively, the: (1) 100-year 6-hour event for an impoundment meeting the Class B or C criteria for dams in TR–60, (2) 25-year 6-hour event for temporary impoundments not meeting the Class B or C criteria for dams in TR–60, and (3) 50-year 6-hour event for permanent impoundments not meeting the Class B or C criteria for dams in TR–60;

19 NMAC 2017.G(4) and (5), respectively, by correcting a typographical error and by adding the requirement that impoundments meeting the Class B or C criteria for dams in TR–60 be examined in accordance with 30 CFR 77.216–3;

19 NMAC 2071, concerning subsidence buffer zones, by adding at 2071.A through 2071.D, the requirements, that: (1) Unless otherwise approved, underground mining shall not be conducted beneath or adjacent to any perennial stream or impoundment having a storage volume of 20 acre-feet or more, (2) underground mining activities beneath any aquifer that serves as a significant source of water supply to a public water system shall be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata, (3) unless, otherwise approved, underground mining activities shall not be conducted beneath or in close proximity to any public buildings, and (4) underground mining shall be suspended under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments or permanent streams, if imminent danger is found to inhabitants of urbanized areas, cities, towns, or communities; and

19 NMAC 2072 by adding the requirement that when subsidence related contamination, diminution, or interruption to a water supply protected under 2069(a) through (d) occurs, the Director of the New Mexico program must require the permittee to obtain additional performance bond in the amount of the estimated costs of the repairs or of the estimated cost to replace the protected water supply.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., on December 18, 1998. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the

audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. 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 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (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 1255) and the Federal regulations at 30 CFR 730.11, 732.11, 732.15, and 732.17(h)(1), 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.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 24, 1998.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 98–32188 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[NM–037–FOR]

New Mexico Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions and additional explanatory information pertaining to previously proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and additional explanatory information for New Mexico's proposed rules pertain to permit application contents for operations exclusively under reclamation and the timing of backfilling and grading. The amendment is intended to revise the New Mexico program to incorporate the additional flexibility afforded by the revised Federal regulations, as amended, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t. December 18, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Willis L. Gainer at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Willis L. Gainer, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

Mining and Minerals Division, New Mexico Energy & Minerals Department 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address WGAINER@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated March 11, 1996, New Mexico submitted a proposed amendment (administrative record No. NM–773) to its program pursuant to

SMCRA (30 U.S.C. 1201 *et seq.*). OSM announced receipt of the proposed amendment in the March 26, 1996, **Federal Register** (61 FR 13117; administrative record No. NM–802), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy. Because no none requested a public hearing or meeting, none was held. The public comment period ended on April 25, 1996.

During its review of the amendment, OSM identified concerns relating to the provisions of Coal Surface Mining Commission (CSMC) Rules 80–1–5–23(a) and 80–1–15–11 through 80–1–15–27, minimum requirements for permit applications concerning coal mining operations exclusively under reclamation, and CSMC Rule 80–1–20–101(a)(1) and (3), timing of backfilling and grading. OSM notified New Mexico of the concerns by letter dated May 15, 1996 (administrative record No. NM–885).

Please note that by letter dated January 6, 1998, New Mexico submitted a proposed amendment (administrative record No. NM–795) to recodify the New Mexico Surface Coal Mining Regulations. New Mexico recodified its rules from Coal Surface Mining Code Rule 80–1 (CSMC Rule 80–1), sections 1 through 15 and sections 19 through 34, to Title 19 (Natural Resources and Wildlife), Chapter 8, (Coal Mining), Part 2 (Cold Surface Mining) of the New Mexico Administrative Code (19 NMAC 8.2), Subparts 1 through 34. No substantive changes to the text of the rules were proposed. OSM approved the recodification of New Mexico's rules on June 8, 1998 (63 FR 31112, administrative record No. NM–805). For purposes of clarity, OSM will hereinafter give both the recodified and the old citations of New Mexico's proposed revisions that are the subject of this document.

New Mexico responded in a letter dated November 9, 1998, by submitting a revised amendment and additional explanatory information (administrative record No. NM–803). New Mexico proposes to further revise its program by (1) withdrawing it's proposed revision of 19 NMAC 8.2 505.A (old CSMC Rule 80–1–5–23(a)) and withdrawing in its entirety the proposed addition of Subpart 15 (old CSMC Rules 80–1–15–11 through 80–1–15–27), concerning minimum requirements for permit applications pertaining to coal mining operations exclusively under reclamation, and (2) revising and submitting additional explanatory information for 19 NNMAC 8.2 2054.A (old CSMC Rules 80–1–20–101(a)), concerning the timing of backfilling and grading.

Specifically, New Mexico proposes to:

(1) Withdraw it's proposed revision at 19 NMAC 8.2 505.A (old CSMC Rule 80–1–5–23(a)) and withdraw in its entirety the proposed addition of Subpart 15 (old CSMC Rules 80–1–15–11 through 80–1–15–27), concerning minimum requirements for permit applications pertaining to coal mining operations exclusively under reclamation;

(2) Submit additional explanatory information for 19 NMAC 8.2 2054.A (old CSMC Rules 80–1–20–101(a)), pertaining to timing of backfilling and grading; and

(3) Further amended proposed 19 NMAC 8.2 2054.A by (a) revising 2054.A(2), pertaining to open pit mining, to allow for an annual backfilling and grading schedule based on either time or distance; (b) revising 2054.A(4), pertaining to surface areas disturbed incidental to underground mining activities, to require backfilling and grading in accordance with an annual time schedule; and (c) adding 2054.A(5), pertaining to any final pit at the completion of mining activities, to require that rough backfilling and grading occur in accordance with a time schedule approved by the Director of the New Mexico program.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed New Mexico program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Alburquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. 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 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (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 sepcific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) 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.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovermental relations, Surface mining, Underground mining.

Dated: November 24, 1998.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center

[FR Doc. 98–32187 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX No. PA4082b; FRL–6194–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NOX RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing volatile organic compound (VOC) and nitrogen oxides (NO_X) reasonably available control technology (RACT) for five major sources located in Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If adverse comments are received that do not pertain to all paragraphs subject to this rulemaking action, those paragraphs not affected by the adverse comments will be finalized in the manner described here. Only those paragraphs that receive adverse comments will be withdrawn in the manner described here.

DATES: Written comments must be received by January 4, 1999.

ADDRESSES: Written comments on this action should be addressed to Kathleen Henry, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, at the EPA Region III office or via e-mail at miller.linda@epamail. epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: For additional information pertaining VOC and NOx RACT determinations for individual sources located in Pennsylvania, see the Direct Final rule located in the Rules and Regulations section of this **Federal Register**.

Dated: November 13, 1998.

William Wisnewski,

Acting Regional Administrator, Region III.

[FR Doc. 98–32006 Filed 12–2–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3106, 3130, and 3160

[AA–610–08–4111–2410]

RIN 1004–AC54

Oil and Gas Leasing; Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Bureau of Land Management (BLM) is reopening the public comment period under a proposed rule published in the **Federal Register** on January 13, 1998, (63 FR 1936), concerning lessee responsibility for oil and gas drainage. BLM is reopening the comment period for 60 days in order to consult with Indian Tribes, pursuant to Executive Order 13084, on the issue of whether the proposed rule should apply to Tribal and individual Indian oil and gas leases. BLM seeks further public comments solely on the issue of the appropriateness of applying the proposed rule to Indian oil and gas leases.

DATES: Comments must be received on or before February 1, 1999. BLM will not necessarily consider comments received after this time in developing the final rule or include them in the administrative record.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the Bureau of Land Management, Administrative Record, 1849 ''C'' Street, NW, Room 401LS, Washington, DC 20240. You may also comment via the Internet to WOComment@wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: AC54'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

Comments, including names and street addresses of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Eastern Time, Monday through Friday, except holidays. BLM will also post all comments on its home page (www.blm.gov) at the end of the comment period. Individual respondents may request confidentiality, which BLM will consider on a case-by-case basis. If you wish to request that BLM consider withholding your name, home street address, Internet address, or personal telephone number from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Finally, you may hand-deliver comments to BLM at 1620 L Street, NW, Room 401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donnie Shaw, Fluid Minerals Group, Bureau of Land Management, Mail Stop 401LS, 1849 ''C'' Street, NW, Washington, DC 20240; telephone (202) 452–0340 (Commercial or FTS). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On January 13, 1998, (63 FR 1936), BLM published the drainage proposed rule in the **Federal Register**. The comment period was extended for 60 days in a notice published on February 24, 1998, (63 FR 9171). BLM is reopening the comment period for 60 days in order to consult with Indian Tribes, pursuant to Executive Order 13084, on the issue of whether the proposed rule should apply to Tribal and individual Indian oil and gas leases. Comments were solicited on this question in the original Notice of Proposed Rulemaking, but only one comment was received.

BLM seeks further public comments solely on the issue of the appropriateness of applying the proposed rule to Indian oil and gas leases. Specifically, BLM seeks comment on the issue of whether the proposed amendments to 43 CFR 3100.5 through 3100.80 should apply to both Federal and Indian leases. Should BLM determine to make those amendments applicable to Indian leases as well as Federal leases, the proposed amendments would be made in Part 3160 and replace 3162.2(a) and (b).

BLM is not considering applying to Indian oil and gas leases the proposed revisions to 43 CFR Subpart 3106 governing the obligations of Federal oil and gas assignors and assignees. Instead, Indian oil and gas leases are governed by the obligations in 25 CFR 211.53 and 212.53.

The proposed rule would clarify the responsibilities of oil and gas lessees for protecting Federal and Indian oil and gas resources from drainage by operations on nearby lands that would result in lower royalties to the Federal Government and Indian mineral owners. It would specify when the obligations of the lessee or operating rights owner to protect against drainage begin and end and what steps should be taken to determine if drainage is occurring.

Dated: November 23, 1998.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 98–31846 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–84–p

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AF30

Endangered and Threatened Wildlife and Plants; Proposed Special Regulations for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) (Preble's) was listed as a threatened species under the Endangered Species Act (Act) of 1973 (16 U.S.C. sections 1531 to 1544) on May 13, 1998. At the time the Preble's was listed, a special rule for the conservation of Preble's was not promulgated and therefore virtually all of the restrictions of the Act became applicable to the species. This proposed rule would establish special standards for the conservation of the Preble's over the next 18 months, long enough to devise a more comprehensive and lasting approach for preserving the species.

DATES: Your comments on the proposed rule must be received by February 1, 1999 to receive consideration by the Service.

ADDRESSES: You should send your comments concerning this proposal to LeRoy Carlson, Field Supervisor, Colorado Field Office, Ecological Services, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0207. Comments and materials received are available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service's Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: LeRoy W. Carlson, Field Supervisor, Colorado Field Office (see **ADDRESSES** section), telephone 303/275–2370.

SUPPLEMENTARY INFORMATION:

Background

The Preble's meadow jumping mouse (*Zapus hudsonius preblei*), a subspecies of the meadow jumping mouse (*Zapus hudsonius*) is known to occur only in portions of Colorado and Wyoming. The final rule listing Preble's as a threatened species under the Endangered Species Act was published in the **Federal Register** on May 13, 1998 (63 FR 26517). Section 4(d) of the Act (16 U.S.C. section 1533) provides that whenever a species is listed as a threatened species, the Secretary of the Interior will issue regulations deemed necessary and advisable to provide for the conservation of the species. This is done in either of two ways.

First, the Fish and Wildlife Service (Service) has issued regulations that generally apply to threatened wildlife virtually all the prohibitions that section 9 of the Act (16 U.S.C. section 1538) establishes with respect to endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' any listed wildlife species; i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect any threatened or endangered species or to attempt to engage in any such conduct [16 U.S.C. section 1532 (19)].

The Service's regulations for threatened wildlife, however, also provide that a ''special rule'' under section 4(d) of the Act can be tailored for a particular threatened species. In that case, the general regulations applying most section 9 prohibitions to threatened species do not apply to that species, and the special rule is to contain the prohibitions (and exemptions) necessary and appropriate to conserve that species.

At the time Preble's was listed, we did not promulgate a special section 4(d) rule and, therefore, the section 9 prohibitions, including the take prohibitions, became applicable to the species. We are now proposing to issue this special rule for the Preble's to replace those general prohibitions with special measures tailored to the conservation of this species.

We anticipate that this proposed rule will prohibit actions that threaten the Preble's, to the extent necessary to provide for the conservation of the Preble's. It also provides flexibility to private landowners for ongoing activities that will not jeopardize the species. We also believe that this rule would garner the support of State and local governments, private landowners, and other interested parties for a lasting, cooperative approach for the long-term conservation of the species.

This proposed rule is best understood in the context of other regulations and actions, already in place or in development, to provide for conservation of the Preble's.

First, it is important to understand that an activity now prohibited under the general regulations or that would be prohibited under this special rule may still be allowed under section 10 of the Act. That section provides for a person to obtain from us in appropriate

circumstances a permit allowing the ''incidental'' taking of Preble's. One of the purposes of this proposed rule is to enable us to make, in advance, general decisions that certain types of activities are consistent with the conservation of Preble's, without requiring people to seek individual Section 10 permits authorizing those activities. Additional activities that would result in the take of Preble's still could be permitted by us under section 10 of the Act.

Currently, the State of Colorado, the Service, and various local governmental entities are working together to develop one or more plans to conserve the Preble's and its habitat. This collaborative approach is expected to result in the development of one or more habitat conservation plans and applications to the Service for incidental take permits under section 10 of the Act. These habitat conservation plans will provide the foundation upon which to build a lasting, effective, and efficient recovery program for the Preble's.

Under this planning process, we have held three rounds of public meetings in each of the five geographic subareas that comprise the known range of the Preble's in Colorado. Key riparian areas important to Preble's that require protection have been identified, threats to the Preble's have been ranked in importance, and preliminary strategies to minimize or mitigate adverse impacts to the Preble's have been discussed by stakeholders. Nine Colorado counties and five Colorado cities have passed resolutions supporting this planning process and have indicated that they will consider using their regulations, incentives, and ordinances to protect the Preble's. We are also working with local governments in Wyoming on similar conservation planning efforts.

Both this long-term cooperative approach and this short-term special rule are consistent with the spirit and intent of the November 29, 1995, Memorandum of Agreement between the Secretary of the Interior and the Governor of Colorado. This agreement commits the Service and the State to use the flexibility in State and Federal laws and regulations and promotes participation of a broad spectrum of partners to achieve long-term conservation and development solutions. By involving and taking advantage of the land use planning and other authorities and resources of State and local governments, we believe that we can more effectively provide for the long-term conservation of the Preble's than relying just on our own authorities and resources. One of the purposes of this special rule is to begin allowing for that cooperation among us, the States, and local governments.

The second important component of the context for this special rule is that Federal agencies are required under section 7 of the Act to consult with us to ensure that their actions are not likely to jeopardize the Preble's. For consultations that involve the use of Federal land, we expect that those lands will be managed to contribute to the conservation of the species to the maximum extent possible, lessening the burden on others. Other types of consultations involve actions similar to those that are considered under the section 10 process. For example, many of the activities likely to affect the Preble's will be undertaken wholly or partly in riparian areas, and will be subject to permitting requirements of the Clean Water Act, such as § 404 dredge-and-fill permits to be issued by the Army Corps of Engineers. We expect to apply the same type of approach reflected in this proposed rule, when appropriate, to those consultations.

Third, a variety of Federal, State, and local programs are available to help conserve the Preble's through the acquisition and preservation of its habitat. These include the Service's Partners for Fish and Wildlife Program, the Natural Resource Conservation Service's wetland/riparian habitat protection programs, grant programs administered by Great Outdoors Colorado, city and county open space programs, and activities of local land trusts. In particular, our Partners for Fish and Wildlife Program has proven to be an especially effective approach for wildlife conservation on agricultural lands by providing funding for restoration of wetland and riparian habitats. We intend to dedicate additional funds to our Partners for Fish and Wildlife Program for the conservation of the Preble's on private lands.

Provisions of the Rule

Term of the Rule

We are proposing the conditions contained in this rule to be enforced for a period of 18 months. It is expected that during this time period, comprehensive habitat conservation plans for the Preble's will be developed.

Take Prohibitions

We are proposing that virtually all of the prohibitions under section 9 of the Act that apply to endangered species continue to apply to the Preble's, to the same extent as they apply to other threatened species under our general regulations, except that certain activities would be exempted. This would make it illegal for any person subject to the jurisdiction of the United States to take any Preble's; i.e., to harass, harm, pursue, hunt, shoot, wound, trap, kill, or collect them or to attempt any of these actions. It would also make it illegal to import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any Preble's, or to possess, sell, deliver, carry, transport, or ship any Preble's that have been taken illegally.

Exempted Activities

We are proposing to include in this rule the following exemptions, provided that the activities resulting in such take are conducted in accordance with the requirements identified in this special rule.

1. Activities Outside of Mouse Protection Areas and Potential Mouse Protection Areas

In this rule, we are proposing to exempt all incidental take outside of specified Mouse Protection Areas and Potential Mouse Protection Areas (which are further explained below). As with many other listed species, the Service maintains records of known occurrence of the Preble's, as well as information on high potential habitat areas throughout its range. Mouse Protection Areas are areas where mice have been documented since 1992 and reported to the Service. Potential Mouse Protection Areas are areas that have a high potential to support the Preble's based on habitat conditions. Together these areas include more than 1,000 linear miles of streams and constitute the known locations and potential Preble's habitat in Colorado and Wyoming.

We believe that these areas include sufficient habitat to achieve recovery of the Preble's and that incidental take outside of these areas will be unlikely and would not compromise Preble's conservation efforts. These areas may be amended or adjusted based on new information.

2. Rangewide Exemptions

We are proposing to exempt four types of existing activities from the take prohibitions anywhere within the Preble's range (including within Mouse Protection Areas and Potential Mouse Protection Areas).

a. *Rodent control within 10 feet of or inside any structure.* The Preble's is generally not found in association with structures such as barns, houses, and other buildings. We believe that any Preble's mortality associated with

trapping near these structures would be insignificant and that this exemption will promote public support for Preble's conservation efforts.

b. *Ongoing agricultural activities.* This exemption provides for a continuation of existing agricultural practices but does not allow an increase of impacts to, or further encroachment upon, Preble's habitat. For example, it does not allow for an increase in grazing intensity in Preble's habitat or mowing closer to a stream supporting the Preble's. Situations where Preble's populations coexist with ongoing agriculture may provide valuable insight into habitat conditions required by the Preble's and the specific types of grazing and farming practices that are compatible with the Preble's.

We believe that the exemption for agricultural practices will provide a positive incentive for agricultural interests to engage in voluntary conservation activities and will remove much of the existing reluctance by private landowners to allow Preble's surveys to be conducted on their lands. These surveys may lead to a more complete understanding of the status and distribution of the species. With this knowledge, our ability to develop an effective long-term recovery program will be enhanced.

c. *Maintenance and replacement of existing landscaping and related structures and improvements, with no increase in impervious surfaces.* Some existing landscaping activities, such as lawn mowing and gardening associated with residential or commercial development, golf courses, and parks have disrupted Preble's habitat in certain areas. However, allowing these activities to continue in ways that do not lead to any increases in impervious surfaces within Mouse Protection Areas and Potential Mouse Protection Areas is not expected to adversely affect Preble's conservation and recovery efforts.

d. *Existing uses of water associated with the exercise of perfected water rights under State law, and interstate compacts and decrees.* The cumulative effect of the development and exercise of water rights has impacted riparian communities and the Preble's in some areas. However, the exercise of certain water rights and water development may have beneficial effects in riparian communities and to the Preble's. Persons with perfected water rights are encouraged to engage in conservation planning efforts to provide voluntarily the flows that may be determined to be important to protect Preble's habitat. Take associated with new water development would be prohibited.

The Service considered a possible rangewide exemption pertaining to periodic maintenance of existing water supply ditches. Periodic maintenance of ditches includes activities such as burning or clearing vegetation that may impact Preble's habitat. We have concluded, however, that because some water supply ditches may, in fact, provide suitable habitat and dispersal routes for the Preble's, take relating to periodic maintenance of these ditches should be prohibited. We intend to assess the value of water supply ditches to the conservation and recovery of the Preble's, both in specific areas where use of these ditches by Preble's has been documented, and in areas that may contain suitable habitat to determine if these areas should be classified as Mouse Protection Areas or Potential Mouse Protection Areas. The conclusions from this assessment will be used in conservation and recovery planning for the Preble's. Coordination with the Service is required when activities are planned in areas potentially significant for the Preble's.

3. New Development in Mouse Protection Areas and Potential Mouse Protection Areas

Under this proposed rule, States, counties, and/or municipalities which manage land use at the local level may, at their option and upon concurrence by the Service, adopt and enforce necessary protective standards for the Preble's, as follows:

1. State or local authorities will identify to us their legal authorities to protect Preble's habitat. They will also commit to use those authorities to enforce the Preble's protection standards described below;

2. We will review these authorities and provide concurrence that the authorities are adequate to protect Preble's habitat; and

3. Upon receiving our concurrence, State/local authorities may approve development or actions that are consistent with the mouse protection standards and mitigation guidelines described below.

The Service will closely monitor implementation of this rule by State and local governments and provide assistance as required. We will meet quarterly with each governmental entity which has received written concurrence from us recognizing its present authority and ability to protect the Preble's.

Projects or actions within the jurisdiction of local governmental entities that elect not to enforce these standards would be subject to all the prohibitions on take in this proposed rule, unless the activity is otherwise exempt in this proposed rule. However, if you are undertaking an action that may take the Preble's, including significantly modifying its habitat within an area where the local government has chosen not to use the provisions in this rule, we will work directly with you to develop a habitat conservation plan and an incidental take permit under section 10. If there is Federal approval or funding involved, we will review the action under section 7 of the Act (16 U.S.C. section 1536).

In cases where an individual habitat conservation plan is required for a specific property, the applicant will be responsible for the costs of developing and implementing the habitat conservation plan. Habitat conservation plans will be consistent with provisions of this rule, including the mouse protection standards and associated mitigation guidelines. However, it may be necessary and desirable to modify these standards and guidelines to address site specific conditions of a project.

Mouse Protection Standards

We have developed standards for the Preble's to ensure adequate protection of important habitats known as Mouse Protection Areas and Potential Mouse Protection Areas. For the purposes of this rule, a Mouse Protection Area is the reach of any stream that is located within 1 linear mile upstream and 1 linear mile downstream of any known location of the Preble's that has been reported to the Service since 1992. Major Preble's surveying efforts began in this year and surveys since 1992 represent the known occupied habitat of the Preble's. In instances where two designated Mouse Protection Areas on the same stream are separated by one linear mile or less, one continuous Mouse Protection Area will be established. Biological research shows that there is a high likelihood that these areas will be used by the Preble's on a year-round basis or as a movement corridor.

A Mouse Protection Area (MPA) also extends 300 feet on each side of the stream measured from the centerline, or 300 feet from the exterior boundary of any contiguous wetlands, whichever is further. The basis for the 300-foot standard is that mice have been documented to regularly move up to 150 feet from streams and wetlands. The remaining 150-foot zone serves as a buffer zone to avoid disturbance of Preble's habitat associated with human activities. We believe that this zone will encompass the normal home range of the Preble's and will provide an

adequate buffer from adjoining development.

The Service recognizes that it may be desirable to modify the boundaries of a Mouse Protection Area to reflect the actual extent of Preble's habitat along a stream or a wetland. The Service may make these changes when biologically justified. In addition, local entities that have agreed to enforce the mouse protection standards may also propose changes to a Mouse Protection Area based on new biological information. We would need to approve any changes.

There are many areas within the historic range of the Preble's that contain suitable Preble's habitat that have not been surveyed, or if previously surveyed, in which no mice have been captured. These areas, known as Potential Mouse Protection Areas, have high potential of supporting a Preble's population based on the presence of suitable riparian habitat such as willow or shrub vegetation, and/or the proximity to known locations of the Preble's or other suitable habitat. These areas require careful scrutiny because the Preble's may actually live in these locations and they may be important for the recovery and eventual delisting of the Preble's.

The Service evaluated the potential for new impacts to Mouse Protection Areas from trails, road and utility line crossings, and other development, and determined that Preble's persists along some streams despite the presence of trails, road crossings, limited residential and commercial development, and other habitat disruption. Based on this, we have concluded that new projects or actions will be allowed to modify a cumulative total of up to four percent of the habitat within a Mouse Protection Area under the following conditions:

1. A State or local government has received Service approval and is willing to adopt and enforce protection standards for the Preble's;

2. All habitat losses will be fully compensated through mitigation; and

3. The action will not impede movement of mice up or down riparian corridors.

A Mouse Protection Area 2 miles long and 600 feet wide encompasses about 145 acres of habitat. This rule would allow less than 6 acres of that habitat in a Mouse Protection Area to be modified without further advance review by us. We believe that exempting this amount of habitat loss, in conjunction with the mitigation, is biologically sound and consistent with the conservation of the Preble's. We are soliciting comment on this point and will conduct a Section 7 consultation.

Existing roads, structures, and other impervious surfaces would not be considered Preble's habitat for the purposes of computing the four percent.

Each jurisdiction that elects to implement the mouse protection standards must ensure that the four percent habitat modification limit is not exceeded. Where a Mouse Protection Area crosses jurisdictional boundaries, each jurisdiction would be allowed to modify up to four percent of the habitat in the portion of the Mouse Protection Area that occurs in their jurisdiction.

Some projects outside (i.e., upstream) of a Mouse Protection Area may adversely impact a Mouse Protection Area or Potential Mouse Protection Area. This may occur when stream flows are altered (for example by an increase in stormwater runoff) or when there is an increase in sedimentation. Projects outside of a Mouse Protection Area or Potential Mouse Protection Area which do not appreciably alter stream flows or sedimentation or otherwise impact a Mouse Protection Area or Potential Mouse Protection Area would be exempted from section 9 incidental take prohibitions. New projects which do result in a significant modification of stream flow or sedimentation or otherwise impact a Mouse Protection Area or Potential Mouse Protection Area would be subject to the section 9 incidental take prohibitions of the Act, unless the activity is otherwise exempt in this proposed rule.

State and local authorities have the option to implement Preble's protection standards for Mouse Protection Areas, or for both Mouse Protection Areas and Potential Mouse Protection Areas. Where the respective governmental entity elects to accept responsibility for enforcing Preble's protection standards for Potential Mouse Protection Areas, these areas will be treated the same as Mouse Protection Areas until and unless a Service-approved Preble's survey of the area occurs. Where the governmental entity does not elect to accept responsibility for enforcing Preble's protection standards for Potential Mouse Protection Areas, the Service nonetheless strongly encourages the performance of surveys in accordance with Service protocol before habitat modification occurs to avoid potential liability for an action that does result in a prohibited take of a Preble's.

If a Preble's is trapped during a survey in any Potential Mouse Protection Area, it will be reclassified as a Mouse Protection Area and treated accordingly. If a new survey is conducted and no Preble's are trapped, the area surveyed will no longer be considered a potential mouse protection area. Projects may commence if they do not appreciably alter stream flows or sedimentation or otherwise impact a Mouse Protection Area or Potential Mouse Protection Area. The project proponent must receive Service concurrence with the results of the survey.

The Service recognizes that the Preble's protection standards may be adjusted based on new information. We will work cooperatively with local governmental entities to apply these standards in a reasonable manner.

Mitigation Guidelines

Mouse Protection Areas encompass both the specific habitats that the Preble's is known to frequent, and adjacent habitats that have both direct value to the Preble's and provide an essential buffer from adjacent development and human activity. Armstrong et al. (1997, p. 77) described typical Preble's meadow jumping mouse habitat as ''well-developed plains riparian vegetation with relatively undisturbed grassland and a water source in close proximity.'' Also noted is a preference for ''dense herbaceous vegetation consisting of a variety of grasses, forbs and thick shrubs.'' Moving outward from streams and riparian corridors there generally exists a transition from habitat regularly used by the Preble's to habitat of value largely as a buffer. The goal of all mitigation is to offset impacts to the diverse habitat types required by the Preble's, including essential buffer areas. Mitigation must be accomplished in a manner that does not adversely impact important biological resources, other federally-threatened or endangered species, proposed species, or candidate species. This includes *Spiranthes diluvialis* (the Ute ladies'-tresses orchid) and *Gaura neomexicana* ssp. *coloradensis* (the Colorado butterflyplant).

Identification of practicable alternatives to a proposed project or action which avoids or minimizes impacts to Preble's habitat is a first step in assessing proposed project impacts. Avoidance and minimization of impacts is preferable to compensatory mitigation. Compensatory mitigation is required to offset unavoidable impacts that remain after all appropriate and practicable avoidance and minimization measures are applied. The goal of compensatory mitigation is to assure that no net loss of habitat value to the Preble's occurs. Thus, while up to four percent of land within any one Mouse Protection Area may be impacted within the tenure of this rule, overall loss of habitat value to the Preble's is not anticipated.

Compensatory mitigation may include restoration, enhancement, or creation of habitat. Restoration entails returning the functions of a disturbed, degraded, or totally altered site to its original status before it was damaged by a permitted project or action. For example, installation of an underground pipeline through Preble's habitat may entail removal of vegetation and soil disruption. Regrading and planting of appropriate vegetation could restore habitat value of the area for the Preble's. In general, restoration yields the greatest amount of benefit with the least amount of risk and is the preferable form of mitigation. Restoration will generally require a mitigation ratio of 1.5 to 1 (i.e., 1.5 acre restored for every 1 acre lost).

We have evaluated restoration and other mitigation techniques. This includes review of the habitat types likely to be mitigated, the potential for failure to meet compensatory mitigation goals, and the temporary loss of habitat that occurs until the full value of mitigation conducted concurrently with impacts is achieved. Ratios that are cited are based on this evaluation and are intended to assure that, at minimum, Preble's habitat values are maintained over the long term.

Enhancement is the process of improving one or more functions of existing habitat to meet certain goals. For example, altering grazing practices to allow recovery of riparian vegetation could yield substantial benefit to the Preble's. In some cases, supplemental planting of preferred plant species may be appropriate. While this type of mitigation is usually successful, its actual value to the Preble's may be difficult to assess. Depending on the techniques used, enhancement may require a mitigation ratio of 1.5 to 1, or up to 3 to 1.

Creation entails converting unsuitable habitat types to Preble's habitat. For example, a dry upland could be graded down or subirrigated to provide hydrology that would support establishment of preferred Preble's habitat. This form of mitigation may have a higher chance of failure and should be used only when restoration opportunities are absent. Creation of habitat will generally require a mitigation ratio of 3 to 1.

A component of mitigation through restoration, enhancement, or creation is the preservation in perpetuity of these habitat areas. However, for the purposes of this rule, preservation of habitat alone will generally not be credited as compensatory mitigation. Preservation may be effectively used in cases where Preble's habitat would certainly be lost without such measures. We will evaluate the acceptability of preservation as compensatory mitigation on a case by case basis.

In general, acceptable compensatory mitigation will entail in-kind mitigation (the restoration, creation, or enhancement of similar habitat to that being impacted) within the same protection area where impacts occur. Loss of habitat within a Mouse Protection Area will be mitigated by restoring, enhancing, or creating similar habitat nearby. Proposed exceptions, such as mitigating losses to buffer areas by restoring Preble's habitat (out-of-kind mitigation), will be reviewed and approved by the Service as we deem appropriate.

Local governmental entities will assure development of mitigation that is consistent with these mitigation guidelines and that sufficient funds are available to accomplish the proposed mitigation. Review of the proposed mitigation activities will be a significant aspect of quarterly meetings held with local governmental entities. We anticipate that within the State of Colorado the development of mitigation plans consistent with these guidelines will be accomplished by project proponents in coordination with the local governmental entity and the Colorado Division of Wildlife, with technical assistance provided by the Service.

Preble's Surveys

Potential Preble's habitat on private lands has not been thoroughly surveyed. Surveys for the Preble's on private lands will occur only with landowner permission. The conditions contained in this rule should remove some of the existing barriers to conducting Preble's surveys on these lands. Surveys of the Potential Mouse Protection Areas conducted on private lands will provide a conservation benefit to the species. This is particularly true if the survey results are used for developing management plans or habitat conservation plans for the Preble's and prioritizing conservation areas for the mouse.

Summary of Conservation Benefits

The proposed prohibitions and exemptions in this rule provide both for short-term conservation of the Preble's and an avenue for the development of meaningful long-term conservation efforts for the Preble's by State and local governments, agricultural interests, developers, and the general public.

Certain provisions of the rule define protection areas and provide for a significant role by State and local governments as partners in implementing the Act. This is designed to guide development activities during the interim period while comprehensive conservation plans are being developed. These comprehensive plans will provide a basis for habitat conservation plans for the Preble's. By employing existing local development review and land use controls, these provisions greatly increase participation by stakeholders and the level of review that proposed development activities receive. Standards set forth in the proposed rule limit impacts to Mouse Protection Areas and require mitigation that will prevent loss of Preble's habitat value. This level of local development review far surpasses that which we can directly provide. Projects or actions within the jurisdiction of local governmental entities that elect not to enforce these standards are subject to all the prohibitions of section 9 of the Act, unless the activity is otherwise exempt in this proposed rule.

Future Section 7 Consultations

This special rule does not change the obligation of Federal agencies to consult with the Service concerning actions they authorize, fund, or carry out which may affect listed species, including the Preble's. This rule is intended to supplement and not replace the Section 7 form of incidental take authorization. Therefore, Federal actions requiring incidental take authorization will receive that authorization through Section 7 and not this special rule. Only habitat loss authorized through this special rule will be counted against the four percent maximum. Habitat impacts authorized through Section 7 (or Section 10) will not be counted as part of the four percent authorized by this rule and will instead be tracked separately. All Section 7 consultations initiated after promulgation of this special rule will assume, as part of the environmental baseline against which projects are measured, that the maximum potential impact under this rule will occur (i.e., that there will be disruption of four percent of the habitat within each Mouse Protection Area, with appropriate mitigation).

Before the publication of a final rule for the Preble's, we must carry out an internal or intra-service consultation on the action of adopting this rule. A biological opinion will be prepared by the Service analyzing the proposed rule and any adverse, as well as beneficial effects, for the Preble's. This biological opinion will also discuss and analyze the effects of the implementation of this rule on listed species other than the Preble's.

The Service anticipates that the ongoing planning process in both Colorado and Wyoming will lead to habitat conservation plans and section 10 permits that will be the subject of future section 7 intra-service consultations.

Comments Solicited

The Service invites comments on the proposed rule. In particular, we are seeking comments on:

1. The desirability and practicality of establishing partnerships with local governmental entities to use their land use planning and regulatory powers to enforce the Mouse Protection Standards for Mouse Protection Areas, or for both Mouse Protection Areas and Potential Mouse Protection Areas;
2. The adequacy of the proposed mitigation guidelines including any options that may be available for mitigating impacts of development activities on Preble's habitat;
3. The adequacy of the Mouse Protection Standards and/or information that would lead to the development of more appropriate standards;
4. The types of agricultural practices, including grazing practices, that are compatible with maintenance of Preble's habitat within riparian zones; and
5. Any additional information on the locations and boundaries of designated Mouse Protection Areas and Potential Mouse Protection Areas.

To facilitate public comment, the Service will conduct public meetings in various locations in Colorado and Wyoming to explain the rule in more detail and address questions.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping or order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of Interior, Room 7229, 1849 C Street NW, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov

Literature Cited

Armstrong, D.M., M.E. Bakeman, A. Deans, C.A. Meaney, and T.R. Ryan. 1997. Report on habitat findings of the Preble's meadow jumping mouse. Boulder (CO); Report to the U.S. Fish and Wildlife Service and Colorado Division of Wildlife. 91 pp.

Required Determinations

The Service invites comments on the anticipated direct and indirect costs and benefits or cost savings associated with the special rule for the Preble's. In particular, the Service is interested in obtaining information on any significant economic impacts of the proposed rule on small public and private entities. Once we have reviewed the available information, we will determine whether we need to prepare an initial regulatory flexibility analysis for the special rule. We will make any such analysis or determination available for public review. Then, we will revise, as appropriate, and incorporate the information in the final rule preamble and in the record of compliance (ROC) certifying that the special rule complies with the various applicable statutory, Executive Order, and Departmental Manual requirements. Under the criteria in Executive Order 12866, the special rule does not need to be reviewed by the Office of Management and Budget.

Paperwork Reduction Act

The Service has examined this proposed rule under the Paperwork Reduction Act of 1995 and found it to contain no requests for additional information or increase in the collection requirements associated with the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) other than those already approved for Federal Fish and Wildlife license permits with OMB approval 1018-0094, which has an expiration date of February 28, 2001. For more information concerning these permits, see 50 CFR 17.32.

National Environmental Policy Act

The Service will review this proposed rule under the requirements of the National Environmental Policy Act before finalization.

Section 7 Consultation

The Service will review this proposed rule under the requirements of section 7 of the Act before finalization.

Government-to-Government Relationship With Tribes

This proposed rule does not directly affect Tribal resources.

List of Subjects in 50 CFR Part 17

Endangered and threatened species. Export, Import, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, the Service proposes to amend 50 CFR part 17, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.40 by adding a new paragraph (k) to read as follows:

17.40 Special rules-mammals.

* * * * *

(k) Preble's meadow jumping mouse (*Zapus hudsonius preblei*). (1) All of the prohibitions of 50 CFR 17.31 (a) and (b) and exemptions of 50 CFR 17.32 are applicable to the Preble's except where identified below. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take any federally-listed wildlife species. Prohibitions for threatened wildlife under section 17.31 include take (harass, harm, pursue, hunt, shoot, wound, trap, kill, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally.

(2) This rule is effective until (18 months from the effective date of the final rule).

(3) We will likely adjust Mouse Protection Areas and Potential Mouse Protection Areas based on new information as provided in paragraph (k)(12) of this section. We will maintain updated geographic locations of these areas. Direct inquiries concerning whether specific lands fall within a Mouse Protection Area or Potential Mouse Protection Area to the Service offices listed in paragraph (k)(12)(ii) of this section and/or to a participating local governmental entity. Priority areas for conservation of the Preble's are:

(i) Mouse Protection Areas, the reach of any stream that is located within 1 linear mile upstream and 1 linear mile

downstream of any known location of Preble's that has been reported to the Service since 1992. In instances where two Mouse Protection Areas on the same stream are separated by 1 linear mile or less, one continuous Mouse Protection Area will be established. A Mouse Protection Area extends 300 feet on each side of the stream measured from the centerline, or 300 feet from the exterior boundary of any wetland contiguous with the stream, whichever is further.

(ii) Potential Mouse Protection Areas, the reach of a stream that the Service has determined contains suitable habitat conditions for the Preble's. Potential Mouse Protection Areas extend 300 feet on each side of the stream measured from the centerline, or 300 feet from the exterior boundary of any wetland contiguous with the stream, whichever is further.

(4) Except as provided in paragraph (k)(8) of this section, the take prohibitions of § 17.31 will not apply to incidental take outside of a Mouse Protection Area or Potential Mouse Protection Area. Any actions that significantly modify Preble's habitat within a Mouse Protection Area or Potential Mouse Protection Area must comply with § 17.31, except as otherwise exempted in this proposed rule. In addition, we require permits for trapping surveys to determine the presence or absence of the Preble's in Mouse Protection Areas or Potential Mouse Protection Areas, for education purposes, scientific purposes, the enhancement or propagation for survival of the Preble's, zoological exhibition, and other conservation purposes in accordance with 50 CFR 17.32 and under a section 6 (16 U.S.C. section 1535) cooperation agreement with a State, if applicable.

(5) The following activities, which may result in incidental take of the Preble's, are exempted by this rule from the § 17.31 take prohibitions, within the entire range of the Preble's:

(i) Rodent control within 10 feet of or inside any structure (''rodent control'' includes control of mice and rats by trapping, capturing, or otherwise physically capturing or killing rodents, or poisoning by any substance registered with the Environmental Protection Agency as required by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136) and applied consistent with its labeling. ''Structure'' means any manmade or other artificially constructed object which includes but is not limited to any building, stable, grain silo, corral, barn, shed, water or sewage treatment equipment or facility, enclosed parking structure, shelter, gazebo, bandshell, or restroom complex;

(ii) Ongoing agricultural activities including grazing, plowing, seeding, cultivating, minor drainage, burning, mowing and harvesting, as long as these activities are currently conducted and do not increase impacts to or further encroach upon Preble's habitat;

(iii) Maintenance and replacement of existing landscaping and related structures and improvements, with no increase in impervious surfaces; and

(iv) Existing uses of water associated with the exercise of perfected water rights under State law and interstate compacts and decrees. (A ''perfected water right'' is a right that has been put to beneficial use and has been permitted, decreed, or adjudicated under State law.)

(6) Actions within a Mouse Protection Area which may result in up to four percent cumulative modification of Preble's habitat within the Mouse Protection Area will be exempted from the § 17.31 take prohibitions provided that:

(i) The governmental entity (State, county, or municipality) where the action is to take place has elected to enforce the Preble's protection standards listed in paragraph (k)(7) of this section;

(ii) The governmental entity has provided the Service with written assurances that they have the legal authority and ability to enforce the standards (This means a written affirmation of the present authority and ability of the local governmental entity to implement and enforce its existing local regulations, incentives, and programs to enforce the Preble's protection standards in paragraph (k)(7) of this section. Existing regulations may include, but need not be limited to: floodplain regulations, subdivision regulations, zoning regulations, site planning requirements, standards for identifying and protecting ecologically sensitive lands, wildlife habitat protection regulations, drainage design standards, road and bridge construction standards, and grading standards. This may also mean an agreement of any State agency or instrumentality to implement its existing regulations and programs, and to exercise its legal authorities in furtherance of the purpose of this rule and the protection and recovery of the Preble's);

(iii) The Service has concurred in writing with the written assurances from the State or local entity; and

(iv) The governmental entity has reviewed and approved the action consistent with the Mouse Protection Standards in paragraph (k)(7) of this section.

(7) State, local, or municipal entities which elect to adopt the procedures in paragraph (k)(6) of this section and have received concurrence from the Service can approve new actions that significantly modify a cumulative total of four percent or less of each Mouse Protection Area. The applicant must ensure that the Preble's can move freely up or down the stream corridor. The applicant must also fully restore or replace the Preble's habitat values with restoration activities to be completed in a timely manner. Any replacement or restoration of habitat outside a Mouse Protection Area requires the concurrence of the Service.

(8) New actions proposed to take place outside of a Mouse Protection Area or Potential Mouse Protection Area which will significantly modify stream flows or sedimentation, or otherwise significantly modify the Preble's habitat inside a Mouse Protection Area or Potential Mouse Protection Area, will be subject to the § 17.31 take prohibitions unless otherwise exempted in this proposed rule.

(9) Local governmental entities may elect to accept responsibility for protecting a Potential Mouse Protection Area within its jurisdiction or may accept responsibility for protecting all or part of a Potential Mouse Protection Area in response to a request by a project proponent/landowner. The local governmental entity can only accept this responsibility under paragraph (k)(6) of this section. In these cases, the local governmental entity will treat the Potential Mouse Protection Area as a Mouse Protection Area under paragraph (k)(7) of this section.

(10) If a local governmental entity has not assumed responsibility for protection of any Potential Mouse Protection Area, the take prohibitions of § 17.31 apply to any actions, unless the activity is otherwise exempt in this proposed rule, that would result in a direct or indirect taking of the Preble's. However, a project proponent will be exempt from the take provisions of § 17.31 if:

(i) A presence/absence survey for the Preble's has been conducted in accordance with current Service survey guidelines;

(ii) The survey report concludes that the Preble's is not present on the site to be impacted and the Service concurs with the survey report's conclusion. (If a presence/absence survey documents the existence of the Preble's, the area surveyed will be designated as a Mouse Protection Area and will be treated

accordingly by the provisions of this rule).

(11) Each government entity which has received written concurrence from the Service concerning its present authority and ability to protect the Preble's under paragraph (k)(6) of this section will meet quarterly with the Service to evaluate implementation of this special rule. At least 2 weeks before the meetings, public notice of the meetings will be provided. As more site-specific information about Mouse Protection Areas and Potential Mouse Protection Areas becomes available, governmental entities authorized under the provisions of paragraph (k)(6) of this section must provide all new information to the Service so that necessary changes can be made with respect to the delineation of Mouse Protection Areas and Potential Mouse Protection Areas. If we determine that the governmental entity is not adequately enforcing the Preble's habitat protection standards contained in this special rule, we will provide written notice describing the deficiencies to that governmental entity with suggested corrective action. If corrective actions are not implemented, we may then withdraw our concurrence with the governmental entity's program. If we withdraw our concurrence, all of the § 17.31 take prohibitions will apply to lands within the jurisdiction of that governmental entity unless the activity is otherwise exempted in this rule.

(12)(i) Geographic locations of Mouse Protection Areas and Potential Mouse Protection Areas based on the best scientific information that is currently available are maintained by the Service at addresses provided below. Lists of these areas have also been provided to State and county offices and to selected municipalities within the Preble's range. We recognize that more site-specific information about each of the stream reaches may result in changes to delineated Mouse Protection Areas and Potential Mouse Protection Areas. The most current refinements to Mouse Protection Areas and Potential Mouse Protection Areas are available from the Service offices listed below and from counties, and selected municipalities. Lists of these areas are also available on our home page on the internet (www.r6.fws.gov/preble). Inquiries concerning whether or not specific lands fall within protection areas should be directed to the Service offices listed below or to a participating local governmental entity.

(ii) These geographic locations can be viewed at the U.S. Fish and Wildlife Service, Colorado Field Office, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0207, telephone (303) 275–2370 or at the U.S. Fish and Wildlife Service, Wyoming Field Office, 4000 Morrie Avenue, Cheyenne, Wyoming 82001, telephone (307) 722–2374.

Dated: November 25, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–32145 Filed 12–2–98; 8:45 am]

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