moderate to high ranking, meaning this ecoregion is more likely to have negative ecological impacts from warming (Enquist and Gori 2008, pp. 20, 32).

We acknowledge that current climate projections indicate that warming in the U.S. Southwest will persist, and may worsen (IPCC 2007b, p. 15; IPCC 2007c, p. 887). However, we find the information presented in the petition and readily available in our files on the subject of climate change to be insufficiently specific to Aztec gilia to be considered substantial. Additionally, no data are available to evaluate whether long-term weather patterns have negatively affected the habitat or population sizes of Aztec gilia. In fact, we are not aware of any Aztec gilia populations that have been extirpated since 1986, nor are we aware of monitoring data to compare population sizes to determine whether there has been a downward trend in the number of plants across the range of the species. Based on these results, we find that the information provided in the petition, as well as other information readily available in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to threats from climate change.

Narrow Range

The petitioner states that because the Service routinely recognizes small population size and restricted range as increasing the likelihood of extinction, Aztec gilia should be considered particularly vulnerable (WildEarth Guardians 2010, p. 21). The petitioner asserts that the species' limited range indicates vulnerability to weather events, such as drought and storms, suggesting the Service should consider this plant's narrow range a threat to the taxon (WildEarth Guardians 2010, p. 21).

Evaluation of Information Provided in the Petition and Available in Service Files

No specific information was provided or is available in our files to indicate that Aztec gilia may be imperiled by its population size or narrow range. The petitioner provides information about generalized threats to other species with limited population size or small geographic ranges, but they are located on islands in the Pacific Ocean and not relevant to Aztec gilia. Therefore, we find that the information provided in the petition, as well as other information readily available in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to concerns about small population sizes and a narrow range.

Finding

The petition does not present substantial information on whether oil and gas activities, surface mining, road construction and use, off-road vehicle use, electric transmission line construction, domestic livestock grazing, human population growth, other BLM land uses, inadequate regulatory mechanisms, limited ability to reseed or transplant, climate change, small population size, or a restricted range may threaten Aztec gilia populations and their habitat. Even though Aztec gilia and its habitat may be exposed to the factors listed above, this does not necessarily mean that the species may be threatened by those factors. We found very few negative impacts to the plant resulting, or documented, from the potential threats cited in the petition or in our review of information readily available in our files. The petitioner cites generalized information about potential impacts that can occur due to these situations and stressors. Little information is presented in the petition regarding the magnitude of potential impacts on the species, or whether the potential impacts may have population-level effects. The loss of a few individuals does not necessarily mean that the species may be in danger of extinction. Our review of the readily available information indicates that the species appears to be maintaining its presence in all known locations throughout its range.

In summary, we find no information to suggest that threats are acting on Aztec gilia such that the species may be in danger of extinction now or in the foreseeable future. On the basis of our determination under section 4(b)(3)(A) of the Act, we conclude that the petition does not present substantial scientific or commercial information to indicate that listing Aztec gilia under the Act as endangered or threatened may be warranted at this time.

Although we will not review the status of the species at this time, we encourage interested parties to continue to gather data that will assist with the conservation of Aztec gilia. If you wish to provide information regarding Aztec gilia, you may submit your information or materials to the Field Supervisor/Listing Coordinator, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section, above), at any time.

References Cited

A complete list of all references cited in this finding is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** section, above).

Authors

The primary authors of this rule are the staff members of the New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

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

Dated: April 18, 2012.

Gregory E. Siekaniec,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 2012–10049 Filed 4–25–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0030; FXES11130900000C6–123–FF09E30000; 92220–1113–0000–C6]

RIN 1018–AW02

Endangered and Threatened Wildlife and Plants; Revising the Proposed Special Rule for the Utah Prairie Dog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental notice of proposed rulemaking; reopening of public comment period and notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) notify the public that we are making changes to our proposed rule of June 2, 2011, to revise the special rule for the Utah prairie dog (*Cynomys parvidens*). We are reopening the comment period because we are making substantive changes and one addition to our proposed rule based on public and peer review comments received. Comments previously submitted will be considered and do not need to be resubmitted now. However, we invite comments on the new information presented in this announcement relevant to our consideration of these changes, as described below. We encourage those who may have commented previously to submit additional comments, if appropriate, in light of this new information. We are also making available for public review the draft

Environmental Assessment (EA) on our proposed actions, in accordance with the National Environmental Policy Act.

DATES: To ensure that we are able to consider your comments and information, we request that we receive them no later than May 29, 2012. Please note that, if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is 11:59 p.m., Eastern Daylight Saving Time on this date. We may not be able to address or incorporate information that is submitted after the above requested date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by May 11, 2012.

ADDRESSES: Electronic copies of the 2011 proposed revision to the special rule for the Utah prairie dog, comments received on that proposal, and the draft EA for the proposed special rule can be obtained at *http://www.regulations.gov,* Docket No. [FWS–R6–ES–2011–0030]. You may submit comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter Docket No. [FWS–R6–ES–2011–0030], which is the docket number for this rulemaking. Follow the instructions for submitting a comment.

By hard copy: Submit by U.S. mail or hand-delivery: to Public Comments Processing, Attention: [FWS–R6–ES–2011–0030]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more details).

Copies of Documents: The June 2, 2011, proposed rule and draft EA are available on *http://www.regulations.gov.* In addition, the supporting files for the proposed rule and draft EA will be available for public inspection, by appointment, during normal business hours, at the Utah Ecological Services Field Office, 2369 West Orton Circle, West Valley City, Utah 84119, telephone 801–975–3330. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, (telephone 801–975–3330; facsimile 801–975–3331). Direct all questions or request for additional information to: UTAH PRAIRIE DOG SPECIAL RULE QUESTIONS, U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119. Individuals who are hearing-impaired or speech-impaired may call the Federal Information Relay Service (FIRS) at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Public Comments

We want any final rule resulting from this proposal to be as effective as possible. Therefore, we invite tribal and governmental agencies, the scientific community, industry, and other interested parties to submit comments regarding our recommendations regarding the six substantive changes to our proposed rule, and comments on our draft EA associated with our proposed revised special rule for the Utah prairie dog. Comments should be as specific as possible.

Before issuing a final rule to implement this proposed action, we will take into account all comments and any additional information we receive. Such communications may lead to a final rule that differs from our proposal. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

You may submit your comments and materials concerning our changes to the proposed rule, and/or our draft Environmental Assessment by one of the methods listed in the **ADDRESSES** section. Comments must be submitted to *http://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

The Endangered Species Act of 1973, as amended (Act or ESA) (16 U.S.C. 1531 *et seq.*), provides measures to prevent the loss of species and their habitats. Section 4 of the Act sets forth the procedures for adding species to the Lists of Endangered and Threatened Wildlife and Plants, and section 4(d) authorizes the Secretary of the Interior (Secretary) to extend to threatened species the prohibitions provided for endangered species under section 9. Our implementing regulations for threatened wildlife, found at title 50 of the Code of Federal Regulations (CFR) in § 17.31, incorporate the section 9 prohibitions for endangered wildlife, except when a special rule is promulgated. Under section 4(d) of the Act, the Secretary may specify the prohibitions and any exceptions to those prohibitions that are appropriate for a threatened species, provided that those prohibitions and exceptions are necessary and advisable to provide for the species' conservation. A special rule issued under section 4(d) of the Act for a threatened species includes provisions tailored specifically for the conservation needs of that species, and these provisions may be more or less restrictive than the general provisions at 50 CFR 17.31.

Since 1984, the Service has implemented a special rule for the Utah prairie dog. This special rule (also referred to as a ''4(d) rule'') is found in 50 CFR 17.40(g). We published a proposed rule to revise the current special rule for the Utah prairie dog on June 2, 2011 (76 FR 31906). It is our intent in this document to discuss only those topics directly relevant to (1) our substantive changes to our June 2, 2011, proposed rule (76 FR 31906) to revise the special rule for the Utah prairie dog, and (2) information related to our draft environmental assessment. For more information on previous Federal actions concerning the special rule for Utah prairie dogs and species information, refer to the June 2, 2011, proposed rule, which is available online at *http://www.regulations.gov* at Docket Number FWS–R6–ES–2011–0030, or by appointment during normal business hours, at the U.S. Fish and Wildlife Service, Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

Our 1984 special regulations for the Utah prairie dog, as amended in 1991, did not apply the take prohibitions described in section 9 of the ESA to activities occurring on private lands across the range of the species, under a permit system developed by the Utah Division of Wildlife Resources (UDWR), as authorized by Utah Code R657–19–6 and R657–19–7. Our June 2, 2011 (76 FR 31906), proposed rule would revise the

1991 rule to provide limits to the allowable take and to expand the range of otherwise legal activities where applying the take prohibitions in section 9 of the Act is not necessary and advisable. Our June 2, 2011, proposal had a 60-day comment period, ending August 2, 2011. We received no requests for a public hearing; therefore, no public hearing was held.

Draft Environmental Assessment

We have prepared a draft EA analyzing the proposed revisions to our 4(d) regulations. The draft EA incorporates the substantive changes to our proposed rule, as described in the following section. We evaluated three alternatives in the draft EA:

1. Alternative 1 (No Action)—continuation of the current special rule as implemented by the UDWR permitting process under Utah State Code R657–19–6 and R657–19–7.

2. Alternative 2 (Preferred Action)—limiting where direct take can be permitted, limiting the amount of rangewide direct take allowed, providing site-specific limits on the amount of direct take, identifying timing of permitted direct take, identifying methods allowed to implement direct take, and adding incidental take authorization for standard agricultural practices.

3. Alternative 3—promulgating the blanket 4(d) rule that applies all Endangered Species Act section 9(a) take prohibitions to the Utah prairie dog. Under this alternative, lethal take would not be allowed unless permitted pursuant to section 10(a)(1)(A) of the Act.

We are seeking comment on the draft EA, which is available upon request or online at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2011–0030 or at *http://www.fws.gov/mountain-prairie/species/mammals/UTprairiedog/index.htm.*

Addition to the Proposed Rule—Allowing Take Where Utah Prairie Dogs Cause Serious Human Safety Hazards or Disturb the Sanctity of Significant Human Cultural or Burial Sites

Public comments received on our June 2, 2011, proposed rule included a recommendation that we should amend the proposed 4(d) rule to allow take in situations where human safety is at risk and in cemeteries. We are now proposing to include properties where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant cultural or human burial sites as locations where take would not be prohibited.

Take would be allowed in these areas when Utah prairie dogs are determined, with the written approval of the Service to be presenting a serious human safety hazard (e.g., airport safety areas, recreational sports fields, nursing homes, schools), or disturbing the sanctity of a significant human cultural or human burial site sites (e.g., public cemetery, sacred tribal sites) if these lands are determined not necessary for the conservation of the species. No UDWR permit would be required in these instances. This change would only apply to areas where a credible, serious public safety hazard or harm to significant human cultural or human burial sites could be clearly demonstrated. Areas of serious human safety hazards would not include public rangelands or properties being developed for residential or commercial uses. In addition, we would not intend for this rule to be used to eliminate prairie dogs because of concerns regarding plague transmission to humans, unless this disease becomes a proven human safety issue in the future, and is directly linked to the presence of Utah prairie dogs in specific circumstances.

Lethal take in these situations would be used as a last resort, and only allowable after all practicable measures to resolve the conflict are implemented. All practicable measures means, with respect to these situations, the (1) construction of a prairie-dog proof fence, above and below grade to specifications approved by the Service, around the area in which there is concern, and (2) translocation of Utah prairie dogs out of the area in which there is a concern. Lethal take would be allowed only to remove prairie dogs that remain in these areas after the measures to fence and translocate are successfully carried out. Despite our best engineering efforts, prairie-dog proof fences may still be breached by prairie dogs. The local communities or private entities would be required to maintain the fence, fix any breaches, or modify the fences as necessary to limit access of prairie dogs in order for the lethal take authorization to be sustained long-term. These qualifying circumstances would be certified in writing by the Service following any necessary site visits and coordination with the requesting entity. As stated above, a UDWR permit would not be required to allow take under these conditions.

We would not limit the amount, timing, or methods of lethal take allowed on lands where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, as long as the qualifying circumstances described above are met. These sites are relatively small areas, would be fenced, and prairie dogs would be removed by translocation prior to the permitting of lethal take. Thus, we expect that the numbers of Utah prairie dogs lethally removed would be small. In addition, these areas do not contribute to conservation of the species because they are generally within otherwise developed areas with substantial human activity and habitat fragmentation.

Substantive Changes to the Proposed Rule

Based on public and peer review comments received on our June 2, 2011, proposed rule, we are proposing to make substantive changes for our final rule. These changes are described below in response to the comments received, and tables comparing the provisions of the current special rule, the proposed revisions to that rule, and the Utah code follows this discussion.

Permitting Take

We received a comment from the State of Utah recommending that entities other than the UDWR be allowed to issue permits for control of Utah prairie dogs. The previous special rules (49 FR 22330, May 29, 1984; 56 FR 27438, June 14, 1991) allowed take of Utah prairie dogs when permitted by UDWR. Under these rules, UDWR biologists were required to count Utah prairie dogs, determine extent of damage, determine level of take, and issue permits to applicants who requested the ability to control prairie dogs on their lands. At the time the previous rules were published, UDWR biologists were likely the only persons with the expertise to perform these permitting tasks. However, we now have a larger partnership effort, in the form of the Utah Prairie Dog Recovery Implementation Program, in which members of other state, federal, tribal, local entities and the public are working together on various programs to facilitate the species' recovery. Because of this partnership, we can reasonably assume that other entities may be available to conduct many of the permitting responsibilities previously undertaken by the UDWR. Approved permitting entities would at a minimum be required to employ a sufficient number of professional wildlife biologists to conduct all permitting responsibilities; request and complete permitting training from the UDWR for staff assigned to permitting; complete the Service's annual Utah prairie dog survey training; maintain a complete

reporting and tracking system for take, including annual reports on the number and location of permits issued, spring population counts and boundaries of permitted colonies, number of animals allowed to be taken, number of animals actually taken, method of take, and method of disposal of all Utah prairie dogs taken. Thus, we are proposing that this special rule will allow, with the Service's written approval, other entities to perform the permitting and reporting tasks for control activities formerly only conducted by UDWR.

Limiting the Amount and Distribution of Direct Take That Can Be Permitted

In this section of the proposed rule, we propose to make changes to (1) limiting take by season and (2) limiting the amount of take—

(1) Limiting Take by Season—One commenter recommended that we revise our timing of permitted take from June 1 to July 1 on the Awapa and Paunsaugunt recovery units to protect pups in these areas, which emerge later than those within the West Desert Recovery Unit. We reviewed the available literature and discussed the permit dates with the Utah Prairie Dog Recovery Team relative to differences in pup emergence from dens in the lower elevations of the West Desert Recovery Unit as compared to the Awapa and Paunsaugunt Recovery Units. Generally, pups emerge from their dens earlier in the West Desert Recovery Unit as compared to the Awapa and Paunsaugunt Recovery Units. We propose to allow direct lethal take to start on June 15 each year throughout the range of the species, including the West Desert Recovery Area. Despite the earlier emergence of pups in the West Desert, we find it prudent for consistency and simplicity to select a range of dates best supported by the available scientific information to apply throughout the range of the species. This is a moderate change from the dates of June 1 through December 31 proposed in our June 2, 2011 proposed rule and authorized by the 1991 special rule.

Our proposed change is based on our most current knowledge of the species biology: pups emerge from their burrows by mid to late June at which time they are foraging independently (Hoogland 2003, p. 236). Therefore, the loss of female adult prairie dogs after the pups emerge from their dens would not negatively affect the survivability of the remaining young. In addition, prairie dog populations with seasonal shooting closures of March 14 to June 15 show positive population growths and low to negligible risk of extirpation (Colorado Division of Wildlife 2007, p. 135). These seasonal shooting closure dates directly correspond to our proposed timing of June 15 through December 31 for allowing direct lethal take. Thus, we can conclude that restricting use of the 4(d) rule between the dates of January 1 through June 14 would result in positive population growths with low to negligible risk of extinction. This conclusion is supported by our observations that we have never verified the loss of a Utah prairie dog colony because of take permitted by UDWR, and prairie dog counts have remained stable to increasing on sites where permits were repeatedly requested over the last 25 years (Day 2010). In this timeframe, UDWR provided permits to landowners beginning June 1. Thus, our proposed revision to June 15 is more conservative than past practice, and is based on the best current available science.

(2) Limiting the Amount of Take—We received comments from a couple of peer reviewers questioning whether our proposed rule was supported by the available modeling of population responses to shooting. Based on the comments, we reevaluated the available literature.

According to the literature, a harvest rate based on a percentage of the known population (*i.e.,* fluctuating harvest rate) can ensure the maintenance of a sustainable population, with no risk of extinction (Reeve and Vosburgh 2006, pp. 123–125). Our June 2, 2011, proposed rule limits the allowable permitted direct take on agricultural lands and properties neighboring conservation lands to no more than 10 percent of the estimated annual rangewide population (adults and juveniles)—agricultural lands would be limited to take not exceeding 7 percent of the estimated annual rangewide population and the remaining allowable take is reserved for properties neighboring conservation lands. We conclude that our proposed limit is a fluctuating harvest rate, is conservative, based on available modeling, and will continue to result in stable to increasing Utah prairie dog population trends. Therefore, we do not propose to change this portion of our proposed rule based on the available literature.

Our proposed rule of June 2, 2011, established that UDWR could only permit direct lethal take under the revised 4(d) rule on prairie dog colonies that had a minimum spring count of five animals (total population estimate = 36 animals; see our June 2, 2011, proposed rule for population calculations). After reviewing public and peer review comments, we are now proposing that a minimum spring count of seven animals (total population estimate = 50 animals) is established to ensure that permits are authorized only where resident prairie dogs have become established on agricultural lands and to ensure that shooting does not result in the loss of a colony. If the maximum amount of take (one-half of the colony's productivity = 18 prairie dogs) occurs on this size colony, it would reduce the total colony size to 32 animals prior to the following breeding season. Colonies of at least 25 prairie dogs are likely to show population growth with very little risk of extinction. Populations with 50 or greater animals show no risk of extinction and strong population growth (Colorado Division of Wildlife 2007, p. 128). Therefore, we would expect prairie dog colonies of 32 animals to continue to exist long-term with annual, regulated shooting pressure. This conclusion is supported by our observations that we have never verified the loss of a Utah prairie dog colony because of take permitted by UDWR and prairie dog counts have remained stable to increasing on sites where permits were repeatedly requested since 1985 (Day 2010).

In addition, we are proposing to include a provision that UDWR or other entities (as described above) would spatially distribute the 7 percent allowed take on agricultural lands across the three Recovery Units, based on the distribution of the total annual population estimate within each Recovery Unit. This spatial distribution will help ensure that the take is not clustered in one area, and is instead more uniform based on comparative annual population numbers.

Several commenters, including peer reviewers, were confused because we used two numeric limits to take—an upper annual limit of 6,000 Utah prairie dogs, and a limit based on calculating 10 percent of the total estimated annual rangewide Utah prairie dog population.

We propose to limit take using only the 10 percent limit. This is a fluctuating harvest rate that is supported by the available literature and based on total annual Utah prairie dog population numbers. Therefore, we do not believe there is a need to place an additional limit at 6,000 animals annually.

We conclude that these proposed changes are consistent with the available population models and ensure that our proposed rule is based on the best available science. These proposed changes are more restrictive than past practice under the 1984 special rule, as amended in 1991. In the last 25 years, Utah prairie dog population trends have remained stable to increasing. Thus, we

conclude that these proposed changes will continue to support Utah prairie dog conservation efforts and are based on the best available science.

Limiting Methods Allowed To Implement Direct Take

One peer reviewer recommended that we prohibit the use of gas cartridges, anticoagulants, and explosive devices as methods of permissible lethal control. The revised 4(d) rule would specifically prohibit the use of gas cartridges, anticoagulants, and explosive devices as methods of permissible lethal control on agricultural lands and properties adjacent to conservation lands. These types of methods could be applied across large areas and kill large numbers of prairie dogs. These techniques do not allow control agents to target a specific number of prairie dogs or track actual take. However, the use of any methodology will be allowed in areas where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant cultural or human burial sites (see *Addition to the Proposed Rule—Allowing Take at Significant Human Cultural or Burial Sites,* above).

Summary

Table 1 describes the Current Special Rule and Practice of 1991, the revisions we proposed in our June 2, 2011 rule (76 FR 311906), and the additions and changes included in this revised proposed rule. Table 2 provides a summary of our proposed amendments to the existing special rule based on both our June 2, 2011, proposed rule and the additions and changes described in this revised proposed rule.

TABLE 1—COMPARISON OF THE CURRENT RULE AND PRACTICE (1991); THE PROPOSED RULE OF JUNE 2, 2011 AND THIS REVISED PROPOSED RULE

	Current rule and practice (1991)	Proposed rule (2011)	Revised proposed rule (2012)
Who Can Allow Take.	Utah Division of Wildlife Resources (UDWR).	UDWR	UDWR, or other entities with the Service's written approval. Add that no permit is needed where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or burial sites. Written approval from the Service is sufficient in these circumstances.
Where Direct Take Is Allowed.	Existing Special Rule—private lands Utah Code— agricultural lands	Agricultural lands and properties adjacent to conservation lands.	Retain agricultural lands and properties adjacent to conservation lands. Add properties where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or burial sites.
Amount of Rangewide Direct Take Allowed.	6,000 animals annually	Maintains the current rule's upper annual permitted take limit of 6,000 animals. Adds a condition that the upper permitted take limit may not exceed 10 percent of the estimated rangewide population annually.	The upper annual permitted take limit of 6,000 animals annually is removed. The upper permitted take limit may not exceed 10 percent of the estimated rangewide population annually; and, on agricultural lands, may not exceed 7 percent of the estimated annual rangewide population annually. Take in areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or burial sites does not contribute to the take allowance.
Site Specific Limits on Amount of Direct Take.	No restrictions specified	On agricultural lands, within-colony take is limited to one-half of a colony's estimated annual production (approximately 36 percent of estimated total population). On properties neighboring conservation lands, take is restricted to animals in excess of the baseline population.	Retain limits of Proposed Rule for agricultural lands and properties neighboring conservation lands. Add that there are no limits on the amount of direct take where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or burial sites.
Timing of Allowed Direct Take.	June 1 to December 31	June 15 to December 31	Retain the June 15 to December 31 seasonal limits on agricultural lands and properties neighboring conservation lands. Add that there is no timing restriction where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or burial sites, except that translocations will be conducted before lethal measures of control are allowed.

TABLE 1—COMPARISON OF THE CURRENT RULE AND PRACTICE (1991); THE PROPOSED RULE OF JUNE 2, 2011 AND THIS REVISED PROPOSED RULE—Continued

	Current rule and practice (1991)	Proposed rule (2011)	Revised proposed rule (2012)
Methods Allowed to Implement Direct Take.	Existing Special Rule—no restrictions specified. Utah Code—limited to firearms and trapping, and chemical toxicants specifically prohibited	Limited to translocations, trapping intended to lethally remove prairie dogs, and shooting. Actions intended to drown or poison prairie dogs, and the use of gas cartridges, anticoagulants, and explosive devices are prohibited.	Retain restrictions on agricultural lands and properties neighboring conservation lands. Add that no restrictions on methods to implement direct take are applied to areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or burial sites, except that translocations will be conducted before lethal measures of control are allowed.
Service Ability to Further Restrict Direct Take.	The Service may immediately prohibit or restrict such taking as appropriate for the conservation of the species.	Unchanged	Unchanged.
Incidental Take	Not authorized	Authorized when take is incidental to otherwise legal activities associated with standard agricultural practices.	Unchanged.

TABLE 2—SUMMARY OF OUR PROPOSED AMENDMENTS

	Proposed amendments
Who Can Allow Take	UDWR or, with the Service's written approval, other entities can perform the permitting and reporting tasks for control activities on agricultural lands or properties adjacent to conservation lands. No permits are required for take in areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or burial sites.
Where Direct Take Is Allowed	Direct take is limited to: Agricultural land being physically or economically impacted by Utah prairie dogs when the spring count on the agricultural lands is seven or more individuals; private properties within 0.8 km (0.5 mi) of Utah prairie dog conservation land; and areas where human safety hazards or the sanctity of significant cultural or human burial sites are a serious concern, but only after all practicable measures to resolve the conflict are implemented.
Amount of Rangewide Direct Take Allowed.	The upper permitted take limit may not exceed 10 percent of the estimated rangewide population annually for agricultural lands and properties adjacent to conservation lands; and, on agricultural lands, may not exceed 7 percent of the estimated annual rangewide population annually. There is no limit for the amount of take in areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or burial sites, and take in these circumstances does not contribute to the upper permitted take limits described above.
Site-Specific Limits on Amount of Direct Take.	On agricultural lands, within-colony take is limited to one-half of a colony's estimated annual production (approximately 36 percent of estimated total population). On properties neighboring conservation lands, take is restricted to animals in excess of the baseline population. The baseline population is the highest estimated total (summer) population size on that property during the 5 years prior to establishment of the conservation property. There are no site-specific direct take limits in areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or burial sites.
Timing of Allowed Direct Take	The timing of permitted direct take on agricultural lands and properties adjacent to conservation lands is limited to June 15 through December 31. There is no timing restriction where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or burial sites, except that translocations must be completed prior to conducting any lethal take.
Methods Allowed to Implement Direct Take.	On agricultural lands and properties adjacent to conservation lands, direct take is limited to activities associated with translocation efforts by trained and permitted individuals complying with current Service-approved guidance, trapping intended to lethally remove prairie dogs, and shooting. Actions intended to drown or poison prairie dogs, and the use of gas cartridges, anticoagulants, or explosive devices is prohibited in these areas. There are no restrictions on methods to implement take in areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or burial sites, except that translocations will be conducted before lethal measures of control are allowed.
Service Ability to Further Restrict Direct Take.	Unchanged.
Incidental Take	Utah prairie dogs may be taken when take is incidental to otherwise legal activities associated with standard agricultural practices (see rule for specifics).

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

a. Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government;

b. Whether the rule will create inconsistencies with other Federal agencies' actions;

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; or

d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). Based on the information that is available to us at this time, we certify that this regulation will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

Utah prairie dogs have been listed under the ESA since the early 1970s (38 FR 14678, June 4, 1973; 39 FR 1158, January 4, 1974). A 4(d) special rule has been in place since 1984 that provides protections deemed necessary and advisable to provide for the conservation of the species (49 FR 22330, May 29, 1984; 56 FR 27438, June 14, 1991). These special regulations allow limited take of Utah prairie dogs on private land from June 1 through December 31, as permitted by UDWR (50 CFR 17.40(g)). While this proposed rule places limits on the current special rule, the proposed changes are largely consistent with current UDWR permitting practices. Because this proposal largely institutionalizes current practices, there should be little or no increased costs associated with this proposed regulation compared to the past similar special rules that were in effect for the last several decades.

In summary, we have considered whether the proposed rule would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that these amendments if promulgated would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

a. If adopted, this proposal will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments,'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

This proposed rule would not impose a legally binding duty on non-Federal Government entities or private parties. Instead, this proposed amendment to the existing special rule proposes to establish take authorizations and limitations deemed necessary and advisable to provide for the conservation of the Utah prairie dog. Application of the provisions within this proposed rule, as limited by existing regulations and this proposed amendment, is optional.

b. We do not believe that this rule would significantly or uniquely affect small governments. The State of Utah originally requested measures such as this proposed regulation to assist with reducing conflicts between Utah prairie dogs and local landowners on agricultural lands (49 FR 22331, May 29, 1984). In addition, the UDWR actively assists with implementation of the current special rule, and would do the same under this proposed regulation, through a permitting system. Thus, no intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. The special rule operates to maintain the existing relationship between the States and the Federal Government. Furthermore, the proposed limitations on where permitted take can occur, the amount of take that can be permitted, and methods of take that can be permitted, are largely consistent with current UDWR practices. Therefore, the rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Takings

This action is exempt from the requirements of E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights). Specifically, according to section VI (D) (3) of the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, regulations allowing the take of wildlife issued under the ESA are categorically exempt. This proposed amendment pertains to regulation of take (defined by the ESA as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'') deemed necessary and advisable to provide for the conservation of the Utah prairie dog. Thus, this exemption applies to this action.

Regardless, we do not believe this action would pose significant takings implications. This rule will substantially advance a legitimate government interest (conservation and recovery of listed species). However, it will not deny property owners economically viable use of their land, and will not present a bar to all reasonable and expected beneficial use of private property. We believe the existing special regulation and the proposed amendments provide

substantial flexibility to our partners while still providing for the conservation of the Utah prairie dog. Should additional take provisions be required, an applicant has the option to develop a Habitat Conservation Plan and request an incidental take permit (see Section 10(a)(1)(B) of the ESA). This approach would allow permit holders to proceed with an activity that is legal in all other respects, but that results in the ''incidental'' take of a listed species.

We have concluded that this action would not result in any takings of private property. Should any takings implications associated with the proposed amendment be realized, they will likely be insignificant.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule would not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed amendment with, appropriate State resource agencies in Utah. The State of Utah originally requested measures such as this proposed regulation to assist with reducing conflicts between Utah prairie dogs and local landowners on agricultural lands (49 FR 22331, May 29, 1984). In addition, the UDWR actively assists with implementation of the current special rule, and would do the same under this proposed regulation, through a permitting system. Thus, no intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially directly affected. The special rule operates and, if amended, would continue to operate to maintain the existing relationship between the State and the Federal government. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed this amendment to the existing special rule for the Utah prairie dog in accordance with the provisions of the ESA. Under section 4(d) of the ESA, the Secretary may extend to a threatened species those protections provided to an endangered species as deemed necessary and advisable to provide for the conservation of the species. The amendments proposed here satisfy this standard.

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

In 1983, upon recommendation of the Council on Environmental Quality, the Service determined that National Environmental Policy Act (NEPA) documents need not be prepared in connection with regulations adopted pursuant to section 4(a) of the ESA. The Service subsequently expanded this determination to section 4(d) rules. A section 4(d) rule provides the appropriate and necessary prohibitions and authorizations for a species that has been determined to be threatened under section 4(a) of the ESA. It is our view that NEPA procedures unnecessarily overlay NEPA's own matrix upon the ESA section 4 decisionmaking process. For example, the opportunity for public comment—one of the goals of NEPA—is already provided through section 4 rulemaking procedures. This determination was upheld in *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* No. 04–04324 (N.D. Cal. 2005).

However, out of an abundance of caution, we developed a draft Environmental Assessment that is available for public inspection and comment. All appropriate NEPA documents will be finalized before this rule is finalized.

Clarity of This Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, and the sections where you feel lists or tables would be useful.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. Therefore, we intend to coordinate with affected Tribes within the range of the Utah prairie dog. We will fully consider all of the comments on the proposed special regulations that are submitted by Tribes and Tribal members during the public comment period, and we will attempt to address those concerns, new data, and new information where appropriate.

Energy Supply, Distribution, or Use

E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect this action to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rulemaking is available upon request from our Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 76 FR 31906, June 2, 2011, as follows:

PART 17—[AMENDED]

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 revising paragraphs (g)(1), (g)(2), (g)(3) introductory text, (g)(3)(i)(A), (g)(3)(ii)(A), (g)(3)(iii), (g)(4), and (g)(5) and adding paragraphs (g)(3)(iv) and (g)(6), to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(g) * * *

(1) Except as noted in paragraphs (g)(2) through (6) of this section, all prohibitions of § 17.31(a) and (b) and exemptions of § 17.32 apply to the Utah prairie dog.

(2) A Utah prairie dog may be directly or intentionally taken as described in paragraphs (g)(3) and ((4) of this section on agricultural lands, properties adjacent to conservation lands, and areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites.

(3) *Agricultural lands and properties adjacent to conservation lands.* When permitted by the Utah Division of Wildlife Resources, or other parties as authorized in writing by the Service, direct or intentional take is allowed on agricultural land and private property near conservation land. Records on permitted take will be maintained by the State and made available to the Service upon request.

(i) * * *

(A) Take may be permitted only on agricultural land being physically or economically affected by Utah prairie dogs, only when the spring count on the agricultural lands is seven or more individuals, and only during the period of June 15 to December 31.

* * * * *

(ii) * * *

(A) Take may be permitted on private properties near (within 0.8 km (0.5 mi)) of Utah prairie dog conservation land during the period of June 15 to December 31.

* * * * *

(iii) *Amount of permitted take on agricultural lands and private property near conservation land.* (A) The Utah Division of Wildlife Resources, or other parties as authorized in writing by the Service, will ensure that permitted take on agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands does not exceed 10 percent of the estimated rangewide population annually.

(B) On agricultural lands, the Utah Division of Wildlife Resources, or other parties as authorized in writing by the Service, will limit permitted take to 7 percent of the estimated annual rangewide population and will limit within-colony take to one-half of a colony's estimated annual production. The Utah Division of Wildlife Resources, or other parties as authorized in writing by the Service, will spatially distribute the 7 percent allowed take on agricultural lands across the three Recovery Units, based on the distribution of the total annual population estimate within each Recovery Unit.

(C) In setting take limits on properties near conservation lands, the Utah Division of Wildlife Resources, or other parties as authorized in writing by the Service, will consider the amount of take that occurs on agricultural lands. The State will restrict the remaining permitted take (the amount that would bring the total take up to 10 percent of the estimated annual rangewide population) on properties neighboring conservation lands to animals in excess of the baseline population. The baseline population is determined in accordance with paragraph (g)(3)(iii)(D) of this section.

(D) Take on properties within 0.8 km (0.5 mi) of conservation lands is restricted to prairie dogs in excess of the baseline population. The baseline population is the highest estimated total (summer) population size on that property during the 5 years prior to the establishment of the conservation property. The baseline population will be established by the Utah Division of Wildlife Resources, or other parties as authorized in writing by the Service.

(E) Translocated Utah prairie dogs will count toward the take limits in paragraphs (g)(3)(iii)(A) through (D) of this section.

(iv) *Methods of allowed direct take on agricultural lands and private properties near conservation land.* Methods for controlling Utah prairie dogs on agricultural lands and properties bordering conservation lands are limited to activities associated with translocation efforts by trained and permitted individuals complying with current Service-approved guidance, trapping intended for lethal removal, and shooting. Actions intended to drown or poison Utah prairie dogs and the use of gas cartridges, anticoagulants, and explosive devices are prohibited.

(4) *Human safety hazards and significant human cultural or burial sites.* Direct or intentional take is allowed where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, but only after all practicable measures to resolve the conflict are implemented, and only as approved in writing by the Service. A Utah Division of Wildlife Resources permit is not required to allow take under these conditions.

(i) All practicable measures means, with respect to these situations:

(A) Construction of prairie-dog-proof fence, above and below grade to specifications approved by the Service, around the area in which there is concern.

(B) Translocation of Utah prairie dogs out of the area in which there is a concern. Lethal take is allowed only to remove prairie dogs that remain in these areas after the measures to fence and translocate are successfully carried out.

(C) Continued maintenance or modification of the fence as needed to preclude Utah prairie dogs from entering the fenced sites.

(ii) There are no restrictions on the amount, timing, or methods of lethal take allowed on lands where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, as long as all qualifications in paragraphs (g)(4)(i)(A) through (C) of this section are met.

(iii) The amount of take in areas where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites does not contribute to the upper permitted take limits described above for agricultural lands and private properties near conservation lands.

(5) *Incidental take.* Utah prairie dogs may be taken when take is incidental to otherwise-legal activities associated with standard agricultural practices on

legitimately operating agricultural lands. Acceptable practices include plowing to depths that do not exceed 46 cm (18 in.), discing, harrowing, irrigating crops, mowing, harvesting, and bailing, as long as these activities are not intended to eradicate Utah prairie dogs. There is no numeric limit established for incidental take associated with standard agricultural practices. Incidental take is in addition to, and does not contribute to the take limits described in paragraphs (g)(2) through (4) of this section. A Utah Division of Wildlife Resources permit is not required for incidental take associated with agricultural practices.

(6) If the Service receives evidence that take pursuant to paragraphs (g)(2) through (5) of this section is having an effect that is inconsistent with the conservation of the Utah prairie dog, the Service may immediately prohibit or restrict such take as appropriate for the conservation of the species.

* * * * *

Dated: April 16, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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