

*et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This rule will have no costs because it merely changes the designation of ten select agents and toxins from being regulated by both HHS and USDA to being regulated solely by HHS. We hereby certify this proposed rule will not have a significant economic impact on a substantial number of small businesses.

#### Unfunded Mandates

The Unfunded Mandates Reform Act at 2 U.S.C. 1532 requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted for inflation) in any given year. This proposed rule is not expected to result in any one-year expenditure that would exceed this amount.

#### Executive Order 12988

This Notice of Proposed Rulemaking has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Would preempt all State and local laws and regulations that are inconsistent with this rule; (2) would have no retroactive effect; and (3) would not require administrative proceedings before parties may file suit in court challenging this rule.

#### Executive Order 13132

This Notice of Proposed Rulemaking has been reviewed under Executive Order 13132, Federalism. The notice does not propose any regulation that would preempt State, local, and Indian tribe requirements, or that would have any substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### List of Subjects in 42 CFR Part 73

Biologics, Incorporation by reference, Packaging and containers, Penalties, Reporting and Recordkeeping requirements, Transportation.

Dated: August 17, 2007.

**Michael O. Leavitt,**  
Secretary.

For the reasons stated in the preamble, we are proposing to amend 42 CFR part 73 as follows:

### PART 73—SELECT AGENTS AND TOXINS

1. The authority citation for part 73 continues to read as follows:

**Authority:** 42 U.S.C. 262a; sections 201–204, 221 and 231 of Title II of Public Law No. 107–188, 116 Stat. 637 (42 U.S.C. 262a).

2. Amend paragraph (b) of § 73.3 by adding the following entries in alphabetical order and revising the entry for *Coccidioides posadasii* to read as follows:

#### § 73.3 HHS select agents and toxins.

\* \* \* \* \*

(b) \* \* \*

Botulinum neurotoxins

Botulinum neurotoxin producing species of *Clostridium*

\* \* \* \* \*

*Clostridium perfringens* epsilon toxin

*Coccidioides posadasii*/*Coccidioides immitis*

\* \* \* \* \*

*Coxiella burnetii*

\* \* \* \* \*

Eastern Equine Encephalitis virus

\* \* \* \* \*

*Francisella tularensis*

\* \* \* \* \*

Shigatoxin

\* \* \* \* \*

Staphylococcal enterotoxins

T–2 toxin

\* \* \* \* \*

3. Amend paragraph (d)(3) of § 73.3 by adding the following entries in alphabetical order: 05. mg of Botulinum neurotoxins; 100 mg of *Clostridium perfringens* epsilon toxin; 100 mg of Shigatoxin; 5 mg of Staphylococcal enterotoxins; or 1,000 mg of T–2 toxin.

4. Amend paragraph (f)(3)(i) of § 73.3 by adding the following entries in alphabetical order: Botulinum neurotoxins and *Francisella tularensis*.

#### § 73.5 [Amended]

5. Amend paragraph (a)(3)(i) of § 73.5 by adding the following entries in alphabetical order: Botulinum neurotoxins and *Francisella tularensis*.

#### § 73.4 [Amended]

6. Amend paragraph (b) of § 73.4 by removing the entries for Botulinum neurotoxins, Botulinum neurotoxin producing species of *Clostridium*, *Clostridium perfringens* epsilon toxin, *Coccidioides immitis*, *Coxiella burnetii*, Eastern Equine Encephalitis virus, *Francisella tularensis*, Shigatoxin, Staphylococcal enterotoxins, and T–2 toxin.

7. Remove paragraph (d)(3) of § 73.4.

8. Amend paragraph (f)(3)(i) of § 73.4 by removing the following entries:

Botulinum neurotoxins and *Francisella tularensis*.

#### § 73.6 [Amended]

9. Amend paragraph (a)(3)(i) of § 73.6 by removing the following entries: Botulinum neurotoxins and *Francisella tularensis*.

[FR Doc. 07–4233 Filed 8–27–07; 8:45 am]

BILLING CODE 4163–18–M

### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Gunnison's Prairie Dog as Threatened or Endangered

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

**ACTION:** Notice; initiation of status review and request for new information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the opening of a public comment period regarding the status of the Gunnison's prairie dog (*Cynomys gunnisoni*) in the contiguous United States. We are initiating this status review under a July 2, 2007, court-approved settlement agreement, in which we agreed to prepare a 12-month finding on a petition to list the species as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). Through this action, we encourage all interested parties to provide us information regarding the status of, and any potential threats to, the Gunnison's prairie dog.

**DATES:** To be considered in the 12-month finding, comments must be received on or before October 29, 2007. However, we will accept new scientific and commercial information on the Gunnison's prairie dog after the official comment period closes.

**ADDRESSES:** If you wish to provide new information, you may submit your comments and materials by any one of the following methods:

(1) You may mail or hand-deliver written comments and information to Gunnison's Prairie Dog Comments, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506–3946.

(2) You may electronic mail (e-mail) your comments to [FW6\\_Gunnison's\\_prairie\\_dog@fws.gov](mailto:FW6_Gunnison's_prairie_dog@fws.gov). For directions on how to submit comments by e-mail, see the "Public

Comments Solicited" section of this notice.

**FOR FURTHER INFORMATION CONTACT:**

Larry Thompson, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506-3946 (telephone 970-243-2778, extension 39).

**SUPPLEMENTARY INFORMATION:**

**Public Comments Solicited**

You may submit your comments and materials concerning this status review by one of two methods (see **ADDRESSES**). If you use email to submit your comments, please include "Attn: Gunnison's prairie dog" in your subject header, preferably with your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly by calling our Grand Junction Fish and Wildlife Office at 970-243-2778.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation used in the preparation of this status review will be available for public inspection by appointment, during normal business hours at the Grand Junction Fish and Wildlife Office, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506-3946 (telephone 970-243-2778).

**Background**

On February 23, 2004, the Service received a petition from Forest

Guardians and 73 other organizations and individuals requesting that the Gunnison's prairie dog, found in Arizona, Colorado, New Mexico, and Utah, be listed as threatened or endangered, and that critical habitat be designated for the species. Action on this petition was precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for Fiscal Year 2004.

On July 29, 2004, we received a 60-day notice of intent to sue for failure to complete a finding. On December 7, 2004, an amended complaint for failure to complete a finding for this and other species was filed. We reached a settlement agreement with the plaintiffs, and on February 7, 2006, we published a 90-day finding in the **Federal Register** (71 FR 6241) determining that the petition did not present substantial scientific information indicating that listing the Gunnison's prairie dog species may be warranted.

On August 17, 2006, Forest Guardians and eight other organizations and individuals provided written notice of their intent to sue regarding the determination in the 90-day finding. On December 13, 2006, the plaintiffs filed a complaint challenging the finding and seeking a Court order requiring issuance of a new positive 90-day finding, and completion of a 12-month finding on the petition to list the Gunnison's prairie dog. On June 29, 2007, we reached a settlement agreement with the plaintiffs for submittal to the **Federal Register** of a 12-month finding by February 1, 2008, and the terms and conditions of the agreement were adopted by the court on July 2, 2007.

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants (Lists) that contains substantial scientific or commercial information that the petitioned action

may be warranted, we make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) Not warranted, (b) warranted, or (c) warranted, but that the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and we are making expeditious progress to add or remove qualified species from the Lists.

We are opening a 60-day comment period to allow all interested parties an opportunity to provide information on the status of the Gunnison's prairie dog and potential threats to the species. We will base our 12-month finding on a review of the best scientific and commercial information available, including information received as a result of this notice.

We are especially seeking any new scientific information regarding the taxonomic status of the Gunnison's prairie dog; the distribution, population, and status of the Gunnison's prairie dog in Arizona, Colorado, New Mexico, and Utah, on both local and State-wide scales; and the effects and dynamics of sylvatic plague on the Gunnison's prairie dog, including its population responses to plague.

**Author**

The primary author of this document is staff from the Grand Junction, Colorado U.S. Fish and Wildlife Service office.

**Authority**

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

Dated: August 21, 2007.

**Kenneth Stansell,**

*Acting Director, Fish and Wildlife Service.*

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