

organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The area we are proposing as critical habitat is already occupied by *Yermo xanthocephalus*. As a result, Federal agencies funding, permitting, or implementing activities in this area are already required to consult with us under section 7 of the Act, to avoid jeopardizing the continued existence of this species. While the designation of critical habitat will require that agencies ensure, through section 7 consultation, that their activities do not destroy or adversely modify critical habitat, we do not believe this will result in any additional regulatory burden on the Federal agencies or their applicants. As a result, this proposed rule, if finalized, would not likely result in a significant economic burden on Federal agencies or their applicants. However, the economic analysis will provide the details needed prior to certifying that this proposed rule is not expected to have a significant adverse impact on a substantial number of small entities, with no need for a regulatory flexibility analysis.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued an Executive Order (13211) which applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we will use the economic analysis to further evaluate this situation.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The rule will not increase or decrease

current restrictions on private property concerning *Yermo xanthocephalus* because all of the critical habitat designated is on Federal land. Due to current public knowledge of the species' protection, and the fact that the plant receives protection through section 9 of the Act both within and outside of the designated areas, we do not anticipate that property values will be affected by the critical habitat designation.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Wyoming. The designation of critical habitat within the geographic range occupied by *Yermo xanthocephalus* imposes no additional restrictions to those currently in place and, therefore, has little additional impact on State and local governments and their activities. The designation may have some benefit to these governments in that the area essential to the conservation of the species is more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While defining the area essential to the conservation of *Y. xanthocephalus* and identifying primary constituent elements does not alter where and what federally sponsored activities may occur, this information may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated area to assist the public in understanding the habitat needs of *Yermo xanthocephalus*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

Our position is that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act (NEPA) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (Ninth Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the Tenth Circuit, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (Tenth Cir. 1996), we will complete a NEPA analysis. The range of *Yermo xanthocephalus* includes States within the Tenth Circuit; therefore, we are completing an Environmental Assessment and will announce its availability in the **Federal Register**.

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), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Yermo xanthocephalus* because these lands do not support populations, or provide essential habitat. Therefore, critical habitat for *Y. xanthocephalus* has not been proposed on Tribal lands.

References Cited

- Bureau of Land Management (BLM). 1986. Final Resource Management Plan/ Environmental Impact Statement for the Lander Resource Area.
- Bureau of Land Management (BLM). 1998. Draft *Yermo xanthocephalus* (Desert Yellowhead) Conservation Agreement, Assessment and Strategy. 17pp.
- Bynum, M. 1993. Soils 5120 Term Project. Unpublished soil survey prepared for Dr. Larry Munn, University of Wyoming. 7pp.