

Service Response: Under 8(b) "Disease" of the **SUPPLEMENTARY INFORMATION** section of this final rule, we address the implications of disease to the success of the actions under this rule. Management plans for ferret reintroductions in South Dakota also have contingencies developed relating to disease management. These contingencies include: Vaccinating all black-footed ferrets prior to release into pre-release conditioning pens, vaccinating black-footed ferret kits at least once prior to release, re-administering medications to ferrets captured during monitoring, discouraging presence of domestic dogs near the pre-conditioning pens, and encouraging routine vaccination of dogs. Management plans also call for continued monitoring of prairie dog populations and certain predators to determine if various disease outbreaks are occurring. It is the Service and Tribe's intent to avoid any disease outbreaks.

Issue 11: Commenters also expressed concern that prairie dog colonies on Tribal Trust lands could result in less revenue generated from grazing receipts for the Tribe and Allottees.

Service Response: The Rosebud Prairie Management Plan proposes to offset the loss of revenue to the Tribe and Allottees by making a payment to those entities with prairie dog colonies on Tribal Trust Lands. The efforts to develop a payment to offset revenue loss from prairie dogs was developed in response to comments received at informational meetings and incorporated into the Rosebud Prairie Management Plan.

Issue 12: Other commenters voiced concern that an incentive payment for prairie dogs might make individuals uninterested in prairie dog control.

Service Response: Any payments for prairie dog acreage will be at the discretion of the Rosebud Sioux Tribe.

Issue 13: Some commenters mentioned that prairie dog control and management is needed before reintroducing ferrets on Rosebud Reservation.

Service Response: The Rosebud Prairie Management Plan will actively manage the existing prairie dog population on Trust lands including prairie dog control and range improvements. Ferret reintroduction will not affect the ability to control prairie dogs in the counties designated as part of the Experimental Population Area.

Issue 14: Some commenters asked what the penalties are for killing black-footed ferrets while driving cars or

conducting other activities in the Experimental Population Area.

Service Response: Section 8.(e) "Mortality" of this final rule addresses the issue of incidental take of black-footed ferrets within the Experimental Population Area. Basically, any take of a ferret within the experimental population boundary that is incidental to an otherwise lawful activity will not constitute "knowing take" for the purposes of this regulation. Consequently, we will investigate any ferret killed by an automobile or by other actions to determine if the death was entirely accidental, or whether there was any intention to deliberately kill the ferret. If the ferret was killed unintentionally and reasonable care was given to avoid the ferret, there will be no penalty for killing of the ferret. All ferret deaths must be reported (see **ADDRESSES** section) so that cause of death can be determined and to assist the Tribe in maintenance of its records on the status of the reintroduced population.

Issue 15: Some commenters asked, "What are the effects of the proposal on private lands?"

Service Response: This NEP designation will impose no additional restrictions on activities on private lands other than those that currently exist, except for restricting intentional take of the reintroduced ferrets. This NEP designation relaxes the consultation process under section 7 of the Act for any activity requiring Federal approval. For example, prairie dog control on private lands will continue to be subject to the rodenticide label restrictions. Killing a black-footed ferret on private lands requires reporting the incident to the proper authorities for determination of whether the take was incidental or intentional. The black-footed ferret management plans prepared for the Rosebud reintroduction effort predict that all current land uses on private lands in these areas will continue to operate following reintroduction of black-footed ferrets.

Effective Date Justification

We find good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to make this rule effective upon publication. Making this rule effective immediately allows for the timely transfer of suitable black-footed ferret preconditioned animals or those that are wild-born to the Experimental Population Area. The following biological considerations necessitate this approach. Weather conditions may preclude the ability to trap and move wild-born ferrets. The opportunity to release ferrets on Rosebud Tribal Trust

lands is dependent upon the availability of animals for translocation, which may be limited in the captive population. The success of the reintroduction effort may be related, at least in part, to the ability to release animals immediately upon publication of this rule. Therefore, we are making this rule effective immediately upon publication.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, the designation of NEP status for the black-footed ferret reintroduction into south-central South Dakota is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of \$100 million and will not have an adverse effect upon any economic sector, productivity, jobs, the environment, or other units of government. Therefore, a cost-benefit and economic analysis is not required.

Lands within the Experimental Population Area affected by this rule include Gregory, Mellette, Todd, and Tripp Counties in South Dakota. The primary reintroduction area where ferrets will be released is Rosebud Tribal Trust lands in Todd County, and most of the prairie dog colonies within the primary release area are on these lands. Prairie dog colonies off the Rosebud Tribal Trust lands but within the primary reintroduction area and those colonies within Experimental Population Area but outside the primary reintroduction area are not needed for the Reservation reintroduction effort to have a successful site. Land uses on private, Tribal, and State school lands will not be hindered by the proposal, and only voluntary participation by private landowners will occur.

This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are primarily other Department of the Interior bureaus (*i.e.*, Bureau of Indian Affairs) and the Department of Agriculture (Forest Service). This rulemaking is consistent with the policies and guidelines of the other Interior bureaus. Because of the substantial regulatory relief provided by the NEP designation, we believe the reintroduction of the black-footed ferret in the areas described will not conflict with existing human activities or hinder public utilization of the area.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations