

statistics, 100 percent of small developers and 100 percent of builders and general contractors in Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld Counties have annual sales less than this amount. Thus, according to our economic analysis, the expected number of small businesses likely to experience a significant effect is 100 percent of 17.3, or 17.3 businesses annually. This number represents approximately 5 percent of construction and development companies in Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld Counties.

To the extent that section 7 implementation may lead to an increase in the number of consultations and project modifications regarding agricultural operations in Wyoming, the Service estimates that approximately 54 informal and 10 formal consultations are likely to occur within critical habitat areas during the next 10 years, or 5.4 informal and 1 formal consultations per year. There are approximately 162 small farms and ranches in the Wyoming counties in which critical habitat units are located. Therefore, our economic analysis indicates that approximately 4 percent of small agricultural operations in the counties in which critical habitat units are located may be affected by section 7 implementation in critical habitat annually.

One hundred and sixty-two agriculture operations in Albany, Converse, Laramie and Platte Counties, or approximately 95 percent of all agriculture operations in the counties designated as critical habitat, are considered small. Small businesses in the agriculture industry could potentially bear a per-business cost of \$4,100 per formal and \$2,900 per informal consultation, respectively. The annual sales that a rancher or farmer would require for the \$4,100 per-business cost and the \$2,900 per-business cost to constitute a "significant effect" would be less than \$137,000 and \$97,000, respectively. Based on national statistics, approximately 86 percent of agriculture operations in the counties designated as critical habitat have annual sales less than the "significant effect" threshold for formal consultation, and 82 percent have annual sales less than the "significant effect" threshold for informal consultation. Thus, our economic analysis shows that the expected number of small agriculture businesses likely to experience a significant effect from formal consultation is 86 percent of 0.95 (95 percent of 1 formal consultation per year), or about 0.8 annually, and the number of small agriculture businesses likely to

experience a significant effect from informal consultation is 82 percent of 5.1 (95 percent of 5.4 informal consultations per year), or about 4.2 annually. These 5 agriculture operations (0.8 plus 4.2) represent approximately 3 percent of the 162 small agricultural operations in the counties designated as critical habitat in Wyoming.

Small businesses in the utility industry could potentially be affected by section 7 protection for the Preble's if the designation leads to significant project modifications or delays. This analysis assumes that 79 unique companies may consult with the Service on utilities projects during the next 10 years, or 7.9 businesses per year. There are approximately 166 small utility, electric services, natural gas distribution, and water supply companies in Boulder, Douglas, El Paso, Jefferson, Larimer, Teller, and Weld in which critical habitat units are located. Thus, according to our economic analysis, approximately 5 percent of small utility companies may be affected by section 7 implementation in proposed critical habitat annually.

Small businesses in the utility industry could potentially bear a per-business cost of \$9,000 to \$18,600 per consultation. For utility companies with annual sales up to \$1 million, 16 percent of all utility companies, this cost would be greater than or equal to 3.2 percent of annual sales. For utility companies with \$1 million to \$3 million in annual sales, 20 percent of all utility companies, this cost would comprise 1.1 to 1.8 percent of annual sales. For utility companies with \$3 million to \$5 million in annual sales, 9 percent of all utility companies, this cost would represent 0.6 percent of annual sales. For utility companies with greater than \$5 million in annual sales, 55 percent of all utility companies, this cost would comprise less than 0.1 to 0.2 percent of annual sales.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211, which applies to "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." In order to ensure that Federal agencies "appropriately weigh and consider the effects of the Federal government's regulations on the supply, distribution, and use of energy," the President has directed agencies to prepare and submit to the OMB's Office of Information and Regulatory Affairs a "Statement of Energy Effects" for their "significant energy actions." The OMB has provided guidance for implementing this Executive Order that

outlines nine outcomes that may constitute "a significant adverse effect" when compared with the regulatory action under consideration: (1) Reductions in crude oil supply in excess of 10,000 barrels per day; (2) Reductions in fuel production in excess of 4,000 barrels per day; (3) Reductions in coal production in excess of 5 million tons per year; (4) Reductions in natural gas production in excess of 25 million mcf; (5) Reductions in electricity production in excess of 1 billion kilowatts per year or in excess of 500 megawatts of installed capacity; (6) Increases in energy use required by the regulatory action that exceed the thresholds above; (7) Increases in the cost of energy production in excess of one percent; (8) Increases in the cost of energy distribution in excess of one percent; or (9) Other similarly adverse outcomes.

Energy distribution via natural gas pipelines is the only activity related to this executive order where section 7 consultation regarding the Preble's appears likely. The Service has conducted consultations with the Federal Energy Regulatory Commission regarding construction of interstate gas pipelines through Preble's habitat. Efforts were made to minimize disturbance, in some cases through placing temporal limits on construction or by directional drilling under sensitive habitat, and to assure timely revegetation of areas disturbed. Costs related to required section 7 consultations represent far less than 1 percent of the cost of energy distribution. Consequently, this rule will not have a "significant adverse effect" on the supply, distribution, or use of energy, 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.*):

1. On the basis of information contained in the Draft Economic Analysis and Addendum to the Economic Analysis, this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat or take the species under section 9.

2. This rule will not produce a Federal mandate of \$100 million or greater in any year (*i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act).