

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
	(c) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	(d) Members of the National Pest Management Association treating processed food, cheese, herbs and spices, and spaces and equipment in associated processing and storage facilities.	Moderate to severe beetle or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Dry Cured Pork Products	(a) California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California. (a) Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc.	Rapid fumigation required to meet a critical market window, such as during the holiday season. Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermeest beetle infestation. Ham mite infestation.

[FR Doc. E9-27822 Filed 11-20-09; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 440 and 441

[CMS-2261-WN]

RIN 0938-A081

Medicaid Program; Coverage for Rehabilitative Services; Withdrawal

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule that was published in the *Federal Register* on August 13, 2007. The proposed rule discussed our proposal to amend the definition of Medicaid "rehabilitative services." It also clarified the broad general language of the current regulation to ensure that rehabilitative services are provided in a coordinated manner, are limited to rehabilitative purposes, and are furnished by qualified providers.

DATES: Effective November 23, 2009, the proposed rule published on August 13, 2007 (72 FR 45201) is withdrawn.

FOR FURTHER INFORMATION CONTACT: Melissa Harris, (410) 786-3397.

SUPPLEMENTARY INFORMATION: On August 13, 2007, we published a proposed rule in the *Federal Register* entitled "Medicaid Program; Coverage for Rehabilitative Services" (72 FR 45201). The rule proposed to amend the definition of Medicaid "rehabilitative services" to include a requirement for a

person-centered written rehabilitation plan and maintenance of case records.

We received a total of 1,845 public comments in response to the August 13, 2007 proposed rule. In addition, following the publication of the proposed rule, in section 206 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, Public Law 110-173, the Congress enacted a moratorium on December 29, 2007 that included a prohibition on the Secretary taking any action, including publication of a final rule that was more restrictive with respect to coverage or payment for rehabilitative services than the requirements in place as of July 1, 2007. That moratorium was extended until April 1, 2009 by section 7001(a)(2) of the Supplemental Appropriations Act of 2008, Public Law 110-52.

Before the expiration of that congressional moratorium, the American Recovery and Reinvestment Act of 2009, Public Law 111-5, was enacted on February 17, 2009 and, at section 5003(d), stated that it was the "sense of Congress" that the Secretary should not promulgate as a final regulation the August 13, 2007 proposed regulation concerning rehabilitative services.

In light of the clear congressional concern indicated by the statutory moratorium and the resolution opposing issuance of a final rule based on the proposed rule, as well as the complexity of the underlying issues and of the public comments received, we have decided to withdraw the August 2007 proposed rule in order to assure agency flexibility in re-examining the issues and exploring options and alternatives with stakeholders.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: October 28, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: November 17, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9-27954 Filed 11-17-09; 4:15 pm]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 89

RIN 0991-AB60

Organizational Integrity of Entities Implementing Leadership Act Programs and Activities

AGENCY: U.S. Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS) is issuing this Notice of Proposed Rulemaking (NPRM) to obtain input from stakeholders and other interested parties. This is a proposal to amend the rule governing the separation that must exist between a recipient of HHS funds to implement HIV/AIDS programs and activities under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 and an affiliate organization that engages in activities that are not consistent with a policy opposing prostitution and sex trafficking. The proposed rule relaxes the criteria for recipient—affiliate separation, and simplifies the process for compliance with the statutory requirement that recipients of HHS Leadership Act HIV/AIDS funds have a policy explicitly opposing prostitution and sex

trafficking. This proposal eliminates the requirement that recipients prepare and file additional documentation specifically to demonstrate adherence to this policy. The documentation will instead consist of a statement in the awarding document to which the prime recipient must agree in order to receive Leadership Act HIV/AIDS funds.

DATES: To be assured consideration, submit electronic comments on or before December 23, 2009 via the Internet at <http://www.regulations.gov>.

ADDRESSES: You may submit comments, identified by RIN 0991-AB60, through the Federal eRulemaking Portal: <http://www.regulations.gov>.

Instructions: For detailed information on submitting comments and additional information on the rulemaking process, visit <http://www.regulations.gov>. All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Diana Perez-Rivera or Natarsha Wright, Office of Global Health Affairs, Hubert H. Humphrey Building, Room 639H, 200 Independence Avenue, SW., Washington, DC 20201, Tel: 202-690-6174, E-mail: ogha.os@hhs.gov.

SUPPLEMENTARY INFORMATION: The Preamble to this NPRM is organized as follows:

- I. Public Participation
- II. Summary
- III. Background
- IV. Discussion of the Proposed Rule
- V. Impact Analysis

I. Public Participation

Comments will be available for public inspection at <http://www.regulations.gov>.

Electronic Access: You can download an electronic version of the NPRM at <http://www.regulations.gov>. HHS/OGHA has also posted the NPRM and related materials to its Web site at the following Internet address: <http://www.globalhealth.gov/>.

II. Summary

Statutory Authority

This proposal would amend the "Regulation on the Organizational Integrity of Entities That Are Implementing Programs and Activities Under the Leadership Act," 73 FR 78997 (Dec. 24, 2008), which implements subsection 7631(f) of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act

("Leadership Act"), Public Law 108-25 (May 27, 2003), as amended, 22 U.S.C. 7631(f).

III. Background

Congress enacted the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003, 22 U.S.C. §§ 7601-7682, ("Leadership Act") in May 2003. The Leadership Act contains limitations on the use of funds provided to carry out HIV/AIDS activities under the Act ("Leadership Act HIV/AIDS funds"). Subsection 7631(f) prohibits the use of Leadership Act HIV/AIDS funds "to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking." (Subsection 7631(f) of the Leadership Act was amended in 2004 to exempt certain public international organizations. Consolidated Appropriations Act of 2004 and 2005, Division D—Foreign Operations, Export Financing, and Related Programs Appropriations ("FY 04 and FY 05 Appropriations Act"), Title II—Bilateral Economic Assistance, United States Agency for International Development, Child Survival Health Programs Fund. Reauthorization of the Leadership Act in 2008 did not amend Subsection 7631(f)). Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, Public Law 110-293 (July 30, 2008).

During legislative debate on the Leadership Act, in response to a question from Senator Leahy on the Senate floor regarding subsection 7631(f), Senator Frist stated that "a statement in the contract or grant agreement between the U.S. Government and such organization that the organization is opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women * * * would satisfy the intent of the provision." 149 Cong. Rec. S6457 (daily ed. May 15, 2003) (statement of Sen. Frist).

By December, 2003, HHS had begun including a requirement in all of its grant and cooperative agreement funding announcements that required all recipients under the Leadership Act of HIV/AIDS funds to have a policy explicitly opposing prostitution and sex trafficking. In March, 2004, HHS exempted domestic U.S. recipients from this restriction, but withdrew the exemption in May, 2005. On July 23, 2007, HHS published sub-regulatory "Organizational Integrity Guidance" in the **Federal Register** to clarify the scope of the policy requirement by stating that

Leadership Act HIV/AIDS funding recipients may have affiliates that do not have a policy against prostitution and sex trafficking. HHS followed the issuance of this guidance with a notice of proposed rulemaking (NPRM) on April 17, 2008, 73 FR 29096, which initiated the notice-and-comment rulemaking process. The final rule was published on December 24, 2008, 73 FR 78997, corrected on January 16, 2009, 74 FR 2888 (codified at 45 CFR part 89), and took effect on January 20, 2009. The final rule established the legal, financial, and organizational standards for determining whether a funding recipient had objective integrity and independence from an affiliated organization that engaged in activities inconsistent with a policy opposing prostitution and sex trafficking. The final rule also required all Leadership Act HIV/AIDS funding recipients, including sub-recipients, to certify compliance with the rule.

The proposed amendment to the present rule modifies the criteria for evaluating the separation between recipients and affiliated organizations, while complying with the statutory requirement regarding opposition to prostitution and sex trafficking. It is important to implementation of the Leadership Act that recipients of Leadership Act funds to implement HIV/AIDS programs and activities not confuse the U.S. Government's message opposing prostitution and sex trafficking by undertaking activities or advocating positions that conflict with this policy. However, HHS has determined after further study that the objectives of the Leadership Act can be effectuated through the application of standards that are less burdensome for funding recipients than the standards set out in the present rule.

HHS is working in coordination with USAID to ensure consistent administration of these programs for recipients and subrecipients.

Nothing in the proposed amendment is intended to lessen or relieve relevant prohibitions on Federal Government funding under other applicable Federal laws.

IV. Discussion of the Proposed Rule

These sections discuss the proposed amendment to the rule, including changes to the regulatory separation requirements and deletion of the requirement for certification.

Section 89.2 Organizational Integrity of Recipients

This section of the proposed rule describes the separation that must exist between a recipient of HHS funds to

implement HIV/AIDS programs and activities under the Leadership Act and an affiliated organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking. Proposed amendments to the criteria for evaluating separation are discussed in greater detail below. As amended, this section would also provide that recipients will no longer be required to submit separate documentation certifying that they have a policy explicitly opposing prostitution. Rather, the policy requirement will be included in the notices of availability of funds and similar announcements, and acknowledged by recipients in the documents awarding the funds.

Paragraph (a) states the policy to which recipients must adhere under subsection 7631(f), and identifies the criteria that will be used to evaluate the organizational integrity and independence of the recipient from affiliated organizations. Under the amendment, the recipient would agree that it is opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men and children. With respect to criteria, the paragraph retains the prohibition against affiliated organizations that do not satisfy subsection (f)'s requirement of opposing prostitution and sex trafficking from receiving Leadership Act HIV/AIDS funds. The paragraph continues to prohibit the use of Leadership Act HIV/AIDS funds to subsidize activities inconsistent with a policy opposing prostitution and sex trafficking. However, paragraph (a) would no longer mandate that the affiliate must be "a legally separate entity," but would instead provide that the legal status of the affiliate is one of the factors to be considered in deciding whether there is adequate separation between the recipient and the affiliate. This change recognizes the reported burden on recipients operating overseas in satisfying this criterion in certain cases, and the difficulty inherent in HHS's analyzing foreign legal requirements. A similar change would be made to the factor suggesting evaluation of "[t]he existence of separate personnel, management, and governance." The proposal now refers to "[t]he existence of separate personnel or other allocation of personnel that maintains adequate separation between the recipient and affiliate." Again, this proposed change reflects reported difficulties in meeting a requirement for fully separate personnel in some situations. The proposed rule also deletes the

requirement for consideration of separate "management" and "governance" and for separate "accounts" because those elements of the relationship are not necessary to maintain sufficient separation between recipients and affiliated organizations to prevent confusion of the Government's message opposing prostitution and sex trafficking. Other factors have been simplified and relaxed. Moreover, a further and very significant change to paragraph (a) provides that recipients must meet the criteria for separation "to the extent practicable in the circumstances," which will permit practical factors to be taken into account in a specific case. In sum, these changes to paragraph (a) are intended to allow a recipient to maintain a relationship with an affiliated organization that may engage in restricted activities, without jeopardizing the recipient's eligibility for HIV/AIDS funding under the Leadership Act.

Paragraph (b) requires HHS agencies to include in funding notices and award instruments a statement that recipients of Leadership Act HIV/AIDS funds from HHS agree that they are opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men, and children. By entering into the award agreement and accepting Leadership Act HIV/AIDS funds, recipients acknowledge this opposition, but are relieved from the necessity of preparing and submitting additional documentation.

Paragraph (c) recognizes the statutory exemption for the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative and any United Nations Agency from subsection 7631(f), and is not affected by this amendment.

Section 89.3 Certifications

This proposed amendment to the rule deletes this section requiring separate documents certifying compliance with the Leadership Act because the materials described in subsection 89.2(b) will provide the necessary assurances.

V. Impact Analysis

Paperwork Reduction Act

To obtain or retain Leadership Act HIV/AIDS funding, under the December 24, 2008 final rule, HHS required recipients to submit certifications attesting to their non-involvement in activities supporting prostitution and human trafficking and policies to that effect. The title of the information

collection was "Certification Regarding the Organizational Integrity of Entities Implementing Leadership Act Programs and Activities."

HHS estimated that 555 respondents had to prepare documents to validate that recipients had objective integrity and independence from organizations that engage in activities inconsistent with policies opposing prostitution and sex trafficking. HHS also estimates that the average cost per hour will be \$26.44, with a 0.5 hour estimated time burden per response. In total, the estimated burden cost is approximately \$7337.10.

This proposed rule removes the certification requirements of the December 24, 2008 rule. As a result, the burden estimate of 0.5 hours per applicant for Leadership Act HIV/AIDS funds is removed along with the associated costs.

Executive Order 12866—Regulatory Planning and Review

HHS has drafted and reviewed this regulation in accordance with Executive Order 12866, section (b), Principles of regulation. HHS has determined this rule is a "significant regulatory action" under Executive Order 12866, section 3(f)(4), because it raises novel legal or policy issues that arise out of legal mandates and the President's priorities, and accordingly, the Office of Management and Budget has reviewed it.

As explained above, this rule modifies a previously issued final rule on the same subject, published on December 24, 2008 in the **Federal Register** (P. 78997 to 79002). As explained earlier in this notice, the modification does not change policy, but reduces burden in complying with the established policy. Policy under the Leadership Act has been consistent and clear: The U.S. government is opposed to prostitution and sex trafficking. Contractors and subcontractors cannot use Leadership Act HIV/AIDS funds to carry out activities that call into question the anti-trafficking/anti-prostitution policy. Enforcement of this policy was originally through language inserted in awards at the time they were executed. The December 24, 2008 final rule required further statements and formal documentation from recipients before they could receive Leadership Act HIV/AIDS funds. The Impact Analysis and the Paperwork Reduction Act in the December 24, 2008 final rule estimated the burden and cost of writing the additional documentation. This rule no longer requires this additional documentation. It reestablishes the earlier requirement contained in the funding agreement prohibiting activities

and policies that support prostitution and sex trafficking in human beings. As a result, applicants for Leadership Act HIV/AIDS funds will no longer have to incur the costs outlined in the December 24, 2008 impact analysis and paperwork burden analysis.

The benefits of this rule are the reduction in burden and the possible

encouragement of additional applicants because of the burden reduction.

The costs of the rule are minimal as there are no changes in policy and we have determined that the methods of achieving compliance prior to December 24, 2008 are fully compatible with the purposes of the Act.

We are republishing the impact table from the December 24, 2008 final rule. The burden estimate was \$7337 calculated by assuming an additional half hour of clerical work to prepare documentation on behalf of 555 grantees at an hourly rate of \$26.44.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Average cost per hour	Total burden hours	Total burden cost
Certifications	555	1	0.5	\$26.44	277.5	\$7,337

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. Since enactment of the policy requirement in the Leadership Act, HHS has required its contract solicitations and grant announcements for Leadership Act HIV/AIDS funding to include a section regarding “Prostitution and Related Activities” Furthermore, the proposed rule proposes to remove the requirements for certification that were imposed on recipients in the December 24, 2008 final rule.

Executive Order 13132—Federalism

Executive Order 13132 on Federalism requires Federal Departments and agencies to consult with State and local Government officials in the development of regulatory policies with implications for Federalism. This rule does not have Federalism implications for State or local Governments, as defined in the Executive Order.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered Federal Department or agency prepare a cost-benefit analysis before promulgating a rule that includes any Federal mandate that could result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more in any one year adjusted for inflation. The current threshold for preparing a cost-benefit analysis is \$133 million. HHS has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal Governments, in the aggregate, or by the private sector, of more than \$133 million in any one year.

Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal Departments and agencies to determine whether a final policy or regulation could affect family well-being. If the determination is affirmative, then the Department or agency must prepare an impact assessment to address criteria specified in the law. This rule will not have an impact on family well-being, as defined in this legislation.

List of Subjects in 45 CFR Part 89

Administrative practice and procedure, Federal aid programs, Grant programs, Grants administration.

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR Part 89 as follows:

PART 89—ORGANIZATIONAL INTEGRITY OF ENTITIES IMPLEMENTING PROGRAMS AND ACTIVITIES UNDER THE LEADERSHIP ACT.

1. The authority citation for part 89 continues to read as follows:

Authority: 22 U.S.C. 7631(f) and 5 U.S.C. 301.

2. Revise § 89.2 to read as follows:

§ 89.2 Organizational integrity of recipients.

(a) A recipient must have objective integrity and independence from any affiliated organization that engages in activities inconsistent with the recipient's opposition to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men, and children (“restricted activities”). A recipient will be found to have objective integrity and independence from such an organization if:

(1) The organization receives no transfer of Leadership Act HIV/AIDS

funds, and Leadership Act HIV/AIDS funds do not subsidize restricted activities; and

(2) The recipient is, to the extent practicable in the circumstances, legally, physically, and financially separate from the affiliated organization. Mere bookkeeping separation of Leadership Act HIV/AIDS funds from other funds is not sufficient. HHS will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient legal, physical, and financial separation exists. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include, but will not be limited to, the following:

(i) Whether the organization is a legally separate entity;

(ii) The existence of separate personnel or other allocation of personnel that maintains adequate separation of the activities of the affiliated organization from the recipient;

(iii) The existence of separate accounting and timekeeping records;

(iv) The degree of separation of the recipient's facilities from facilities in which restricted activities occur, and the extent of such restricted activities by the affiliated organization; and

(v) The extent to which signs and other forms of identification that distinguish the recipient from the affiliated organization are present.

(b) HHS agencies shall include in the public announcement of the availability of the grant, cooperative agreement, contract, or other funding instrument involving Leadership Act HIV/AIDS funds the requirement that recipients agree that they are opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men, and children. This statement shall also be included in the award documents for any grant, cooperative agreement or other funding instrument

involving Leadership Act HIV/AIDS funds entered into with the recipient.

(c) This regulation applies to all recipients, including prime recipients and sub-recipients, unless they are exempted from the policy by statute.

§ 89.3 [Removed]

3. Remove § 89.3.

Dated: October 29, 2009.

John Monahan,

Interim Director, Office of Global Health Affairs.

Dated: October 29, 2009.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. E9-28127 Filed 11-19-09; 4:15 pm]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R6-ES-2009-0080; 92210-1111-0000-B2]

Endangered and Threatened Wildlife and Plants; Notice of Intent to Conduct a Status Review of Gunnison sage-grouse (*Centrocercus minimus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to conduct status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), under the authority of the Endangered Species Act of 1973, as amended (Act), give notice of our intent to conduct a status review of Gunnison sage-grouse (*Centrocercus minimus*). We conduct status reviews to determine whether the species should be listed as endangered or threatened under the Act. Through this notice, we encourage all interested parties to provide us information regarding Gunnison sage-grouse.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before December 23, 2009. After this date, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept faxed comments.

FOR FURTHER INFORMATION CONTACT: Al Pfister, Western Colorado Field Office; telephone (970) 243-2778, ext. 29. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

To ensure that the status review is based on the best available scientific and commercial information and to provide an opportunity to any interested parties to provide information for consideration, we are requesting information concerning Gunnison sage-grouse. We request information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, and any other interested party. We are seeking:

- (1) General information concerning the taxonomy, biology, ecology, genetics, and status of the Gunnison sage-grouse;
- (2) Specific information on the conservation status of Gunnison sage-grouse, including information on distribution, abundance, and population trends;
- (3) Specific information on threats to Gunnison sage-grouse, including: (i) The present or threatened destruction, modification, or curtailment of its habitat or range; (ii) overutilization for commercial, recreational, scientific, or educational purposes; (iii) disease or predation; (iv) the inadequacy of existing regulatory mechanisms; and (v) other natural or manmade factors affecting its continued existence; and
- (4) Specific information on conservation actions designed to improve Gunnison sage-grouse habitat or reduce threats to Gunnison sage-grouse and their habitat.

If you submit information, we request you support it with documentation such as data, maps, bibliographic references, methods used to gather and analyze the data, or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so.

Information and supporting documentation that we received and used in preparing this finding will be available for you to review by appointment during normal business hours at the U.S. Fish and Wildlife Service, Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

The sage-grouse (*Centrocercus* spp.) is the largest grouse in North America and was first described by Lewis and Clark in 1805 (Schroeder *et al.* 1999, p. 1). Sage-grouse are most easily identified by their large size; dark brown color; distinctive black bellies; long, pointed tails; and association with sagebrush habitats. They are dimorphic in size, with females being smaller. Both sexes have yellow-green eye combs, which are less prominent in females. Sage-grouse are known for their elaborate mating ritual where males congregate on strutting grounds called leks and "dance" to attract a mate. During the breeding season males have conspicuous filoplumes (specialized erectile feathers on the neck) and exhibit yellow-green apteria (fleshy bare patches of skin) on their breasts (Schroeder *et al.* 1999, pp. 2, 18).

For many years sage-grouse were considered a single species. Young *et al.* (2000, pp. 447-451) identified Gunnison sage-grouse (*Centrocercus minimus*) as a distinct species based on morphological (Hupp and Braun 1991, pp. 257-259; Young *et al.* 2000, pp. 447-448), genetic (Kahn *et al.* 1999, pp. 820-821; Oyler-McCance *et al.* 1999, pp. 1460-1462), and behavioral (Barber 1991, pp. 6-9; Young 1994; Young *et al.* 2000, p. 449-451) differences and geographical isolation.

Gunnison sage-grouse are smaller than greater sage-grouse (*C. urophasianus*), weighing approximately one-third less (Hupp and Braun 1991, p. 257; Young *et al.* 2000, p. 447). Their filoplumes are longer and give the appearance of a "ponytail" during the courtship display, unlike the filoplumes on greater sage-grouse. Gunnison sage-grouse retrices (tail feathers) have distinctive barring, unlike the mottled pattern on greater sage-grouse retrices (Young *et al.* 2000, p. 448). Gunnison sage-grouse mating displays are slower