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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2014–0008]

[4500030113]

RIN 1018–BA32

Endangered and Threatened Wildlife and Plants; 4(d) Rule for the Georgetown Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are amending our proposed rule under authority of section 4(d) of the Endangered Species Act of 1973, as amended (Act), that provides measures that are necessary and advisable to provide for the conservation of the Georgetown salamander (*Eurycea naufragia*), a species that occurs in Texas. We are seeking public comments on this revised proposed rule. We also announce the availability of a draft environmental assessment of this revised proposed rule.

DATES: We will consider comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments submitted electronically using the Federal eRulemaking Portal (see **Public Comments**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the original proposed rule, this revised proposed rule, and the draft environmental assessment at <http://www.regulations.gov> at Docket No. FWS–R2–ES–2014–0008, or by mail from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Written comments: You may submit comments on this revised proposed rule by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter FWS–R2–ES–2014–0008, which is the docket number for this rulemaking. Then click on the Search button. When you have

located the correct document, you may submit a comment by clicking on “Comment Now!”

(2) *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2014–0008; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

We request that you send comments **only** by one of the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section, below, for more information).

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd, Suite 200, Austin, TX 78758; telephone 512–490–0057; facsimile 512–490–0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be as accurate

and as effective as possible. Therefore, we request comments or suggestions on this revised proposed rule. We particularly seek comments concerning:

(1) Whether the measures outlined in this revised proposed rule are necessary and advisable for the conservation and management of the Georgetown salamander;

(2) The effectiveness of the adaptive management component incorporated within the measures outlined in this revised proposed rule; and

(3) Additional provisions the Service may wish to consider for a rule issued under section 4(d) of the Act (16 U.S.C. 1531 *et seq.*) in order to conserve, recover, and manage the Georgetown salamander.

We will consider all comments and information received during our preparation of a final rule. Accordingly, the final rule may differ from this proposal.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments **only** by the methods described in **ADDRESSES**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this

information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On August 22, 2012, we published a proposed rule to list the Georgetown salamander (*Eurycea naufragia*), Salado salamander (*Eurycea chisholmensis*), Jollyville Plateau salamander (*Eurycea tonkawae*), and Austin blind salamander (*Eurycea waterlooensis*) as endangered species and to designate critical habitat for these species under the Act (77 FR 50768). On February 24, 2014, we published a final determination to list the Georgetown salamander and the Salado salamander as threatened species under the Act (79 FR 10236), and a proposed rule under section 4(d) of the Act (a proposed 4(d) rule) for the Georgetown salamander (79 FR 10077). Please see the final listing determination (79 FR 10236) for additional information concerning previous Federal actions for the Georgetown salamander.

Background

The Georgetown salamander is entirely aquatic and depends on water from the Edwards Aquifer in sufficient quantity and quality to meet its life-history requirements for survival, growth, and reproduction. Degradation of habitat, in the form of reduced water quality and quantity and disturbance of spring sites, is the main threat to this species. For more information on the Georgetown salamander and its habitat, please refer to the February 24, 2014, final listing determination (79 FR 10236).

The Act does not specify particular prohibitions, or exceptions to those prohibitions, for threatened species. Instead, under section 4(d) of the Act, the Secretary of the Interior has the discretion to issue such regulations as she deems necessary and advisable to provide for the conservation of such species. The Secretary also has the discretion to prohibit by regulation, with respect to any threatened wildlife species, any act prohibited under section 9(a)(1) of the Act. Exercising this discretion, the Service developed general prohibitions (50 CFR 17.31) and exceptions to those prohibitions (50 CFR 17.32) under the Act that apply to most threatened wildlife species. Alternately, for other threatened species, under the authority of section 4(d) of the Act, the Service may develop specific prohibitions and exceptions that are tailored to the specific conservation needs of the species. In such cases, some of the prohibitions and authorizations under 50 CFR 17.31 and 17.32 may be appropriate for the species and incorporated into a rule under section 4(d) of the Act. However, these rules, known as 4(d) rules, will also

include provisions that are tailored to the specific conservation needs of the threatened species and may be more or less restrictive than the general provisions at 50 CFR 17.31.

Provisions of the Revised Proposed 4(d) Rule for the Georgetown Salamander

Under section 4(d) of the Act, the Secretary may publish a rule that modifies the standard protections for threatened species and that contains prohibitions tailored to the conservation of the species and that are determined to be necessary and advisable. Under this revised proposed 4(d) rule, the Service would provide that all of the prohibitions under 50 CFR 17.31 and 17.32 are necessary and advisable and, therefore, apply to the Georgetown salamander, except as noted below. This revised proposed 4(d) rule would not remove or alter in any way the consultation requirements under section 7 of the Act.

On December 20, 2013, the City Council of Georgetown, Texas, approved the Edwards Aquifer Recharge Zone Water Quality Ordinance (Ordinance No. 2013-59). In the February 24, 2014, proposed 4(d) rule (79 FR 10077), the Service proposed that take incidental to activities that are conducted consistent with the conservation measures contained in the ordinance would not be prohibited under the Act. Since we published the proposed 4(d) rule, the City of Georgetown has incorporated, and expanded upon, the ordinance in their Unified Development Code (UDC), which is the primary tool to regulate land development in Georgetown. This revised proposed rule provides greater clarity around the activities that are proposed to be covered.

For activities outside of habitat occupied by the Georgetown salamander, we propose that take of Georgetown salamanders that is incidental to regulated activities that are conducted consistent with the water quality regulations contained in chapter 11.07 of the City of Georgetown Unified Development Code (UDC 11.07) (<https://udc.georgetown.org/>) would not be prohibited under the Act. The water quality regulations in UDC 11.07 were finalized on February 24, 2015. Chapter 11.07 of the UDC describes stream and spring buffers, water quality best management practices, and geologic assessments that are required for property development within the Northern Edwards Aquifer Recharge Zone and the City of Georgetown.

When a property owner submits a development application for a regulated activity on a tract of land located over the Edwards Aquifer Recharge Zone, that individual is required to submit a geologic assessment. The geologic assessment identifies and describes all springs and streams on any subject property, and the UDC establishes buffer zones around identified springs and streams. For springs, the buffer encompasses 50 meters (164 feet) extending from the approximate center of the spring outlet that is identified in a geologic assessment. For streams, the boundaries of the buffer must coincide with either the boundaries of the Federal Emergency Management Agency 1 percent floodplain or a calculated 1 percent floodplain, whichever is smaller. Thus, these stream buffers may vary depending on the size of the stream, but they may be no smaller than 200 feet (61 meters) wide with at least 75 feet (23 meters) from the centerline of the

stream. Section 11.07.003 of the UDC states that no “regulated activities” may be conducted within the spring and stream buffers. “Regulated activities” are defined in Title 30, Texas Administrative Code section 213.3(28) as any construction-related or post-construction activities on the Recharge Zone of the Edwards Aquifer having the potential for polluting the Edwards Aquifer and hydrologically connected surface streams. More specific details on spring and stream buffers can be found in sections 11.07.003A. and B. of the UDC.

In addition to the establishment of these spring and stream buffers, the UDC outlines water quality best management practices designed to minimize sediment runoff, increase the removal of total suspended solids, prevent an increase in flow rates, and ensure spill containment for new or expanded roadways. These regulations in chapter 11.07 of the UDC are designed to reduce water quality degradation that may occur as a result of development. By reducing further water quality degradation that may result from development, these protective measures are also expected to minimize habitat degradation to the Georgetown salamander.

The UDC also outlines exemptions from the requirement to prepare a geologic assessment, the process by which a landowner may request a variance to the spring and stream buffer requirements, and exemptions to the spring and stream buffer requirements of section 11.07.003. Small (less than 5 acres (2 hectares)) single-family and two-family residential developments are exempt from submitting a geologic assessment; however,

these developments are required to implement UDC water quality measures. Property owners may request a variance from the spring or stream buffer requirements. For unoccupied habitat, variances will be considered by the City of Georgetown's Planning and Zoning Commission. Properties with a site occupied by the Georgetown salamander are exempt from the spring and stream buffer requirements in chapter 11.07. Rather, UDC Appendix A outlines voluntary conservation measures to be implemented when undertaking regulated activities that occur on a tract of land with an occupied site, or within 984 feet (300 meters) of an occupied site.

For activities involving habitat occupied by the Georgetown salamander, we propose that take of the Georgetown salamander that is incidental to regulated activities that are conducted consistent with the voluntary guidelines described in Appendix A of the UDC will not be prohibited under the Act. Similar to chapter 11.07 of the UDC, the guidelines in Appendix A establish stream and spring buffers and allowable activities within those buffers; however, the measures described in Appendix A create larger, more protective buffers than those that appear in chapter 11 for unoccupied sites. First, Appendix A establishes a "No-Disturbance Zone" in the stream or waterway that a spring drains directly into; this zone extends 264 feet (80 meters) upstream and downstream from the approximate center the spring outlet of an occupied site and is bounded by the top of the bank. No regulated activities may occur within the "No-Disturbance Zone." In addition, Appendix A establishes a "Minimal-Disturbance Zone" for the subsurface area that drains to the spring(s) at an occupied site; this zone consists of the area within 984

feet (300 meters) of the approximate center of the spring outlet of an occupied site, except those areas within the “No-Disturbance Zone.” Most regulated activities are also prohibited in the “Minimal-Disturbance Zone,” but single-family developments; limited parks and open space development; and wastewater infrastructure will be allowed. For additional details on the buffers around occupied sites and prohibited actions, please refer to the UDC Appendix A to Chapter 11.

Section 11.07.008 of the UDC also establishes an Adaptive Management Working Group (Working Group) that is responsible for reviewing data on a regular basis and making recommendations for specific changes in the management directions related to the voluntary conservation measures for occupied sites in Appendix A. Adaptive management of preservation of the Georgetown salamander is one of the duties tasked to the Working Group. Therefore, the guidelines described in Appendix A may change over time. Appendix A also indicates that the Working Group is authorized to hear and make recommendations to the Service regarding variances from the voluntary guidelines on a case-by-case basis and as long as the proposed variance will achieve the same level or greater level of water quality benefits and conservation objectives to the Georgetown salamander. The Working Group will also develop an annual report regarding the preservation of the Georgetown salamander, continuous monitoring of the Georgetown salamander, assessment of research priorities, and the effectiveness of the water quality regulations and guidelines. Copies of the UDC 11.07 and Appendix A are available at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2014-0008.

Proposed Determination

Section 4(d) of the Act states that “the Secretary shall issue such regulations as [s]he deems necessary and advisable to provide for the conservation” of species listed as threatened species. Conservation is defined in the Act to mean “to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.”

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, the Secretary may find that it is necessary and advisable not to include a taking prohibition, or to include a limited taking prohibition. See *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, and 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002). In addition, as affirmed in *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988), the rule need not address all the threats to the species. As noted by Congress when the Act was initially enacted, “once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. [S]he may, for example, permit taking, but not importation of such species,” or she may choose to forbid both taking and importation but

allow the transportation of such species, as long as the prohibitions, and exceptions to those prohibitions, will “serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act” (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Section 9 prohibitions make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as an endangered species, without written authorization. It also is illegal under section 9(a)(1) of the Act to possess, sell, deliver, carry, transport, or ship any such wildlife that is taken illegally. Prohibited actions consistent with section 9 of the Act are outlined for threatened wildlife in 50 CFR 17.31(a) and (b). For the Georgetown salamander, the Service has determined that a 4(d) rule tailored to its specific conservation needs is appropriate. This revised proposed 4(d) rule proposes that all prohibitions in 50 CFR 17.31(a) and (b) will apply to the Georgetown salamander, except as described below.

Under this revised proposed 4(d) rule, incidental take of the Georgetown salamander will not be considered a violation of section 9 of the Act if the take occurs on privately owned, State, or County land and from regulated activities that are conducted consistent with the water quality protection measures contained in chapter 11.07 and

Appendix A of the City of Georgetown Unified Development Code. This revised proposed 4(d) rule refers to the definition of “regulated activities” in Title 30, Texas Administrative Code section 213.3(28), which are any construction related or post-construction activities on the recharge zone of the Edwards Aquifer having the potential for polluting the Edwards Aquifer and hydrologically connected surface streams. Our rationale for including this provision is explained in the paragraphs that follow.

The local community in the City of Georgetown and Williamson County has expressed a desire to design and implement a local solution to conserving the natural resources in their county, including water quality and the Georgetown salamander (City of Georgetown Resolution No. 082812-N). Because impervious cover levels within most of the springsheds known to be occupied by the Georgetown salamander are still relatively low, a window of opportunity exists to design and implement measures to protect water quality and, therefore, conserve the salamander. The City and County’s approach for accomplishing this conservation goal includes both regulatory and non-regulatory actions, as described below. Regulatory actions include passage of the Edwards Aquifer Recharge Zone Water Quality Ordinance (Ordinance No. 2013-59) by the Georgetown City Council on December 20, 2013, and the revisions to their UDC (chapter 11.07) finalized on February 24, 2015. Their approach also includes nonregulatory actions, such as the technical guidance provided in Appendix A of the UDC, which outlines additional conservation measures to protect water quality and to avoid direct destruction of occupied sites.

Habitat modification, in the form of degraded water quality and quantity and disturbance of spring sites, is the primary threat to the Georgetown salamander. The conservation measures in both chapter 11.07 and Appendix A of the UDC provide a variety of water quality protection measures, such as the creation of buffers around springs and streams where regulated activities are prohibited, designed to lessen impacts to the water quality of springs and streams in the Edwards Aquifer Recharge Zone. Although the UDC addresses water quality, regulating water quantity and groundwater withdrawal is outside the scope of the UDC. The UDC is applied throughout the watersheds that contain the Georgetown salamander. This watershed-level approach works to avoid incremental environmental degradation that may go unnoticed on a small, individual project scale. Through this revised proposed 4(d) rule, we could achieve a greater level of conservation for the Georgetown salamander than we could without it because it encourages implementation of the water quality protective measures that are likely to limit habitat degradation for Georgetown salamanders. The majority of salamanders occur within 164 feet (50 meters) of a spring outlet; this coincides with the spring and stream buffers for unoccupied sites. We also believe the salamander populations exist through underground conduits that may extend 984 feet (300 meters) around cave or spring points; this area coincides with the size of the “Minimal-Disturbance” Zones for occupied sites. By limiting development activities within these respective areas, the measures in the UDC 11.07 and Appendix A are expected to limit water quality degradation in these areas that may provide suitable surface or subsurface

habitat for the Georgetown salamander regardless of occupancy. In addition, although the areas that provide recharge and the source water for specific areas occupied by the salamander have not been precisely delineated, this watershed-level approach makes it likely that these unknown recharge areas are covered under the UDC. This is because the UDC requires buffers around all springs and streams where regulated activities are prohibited; thus, water quality impacts are expected to be limited.

This watershed-level approach also includes an adaptive management component that will allow the Adaptive Management Working Group (Working Group) to evaluate the response of salamander populations to management actions and quickly respond and recommend adjustments, if necessary, to management strategies to protect water quality consistent with conserving the Georgetown salamander. The UDC formalizes the Working Group with representatives from the City of Georgetown, Williamson County, Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, university scientists, private real estate developers, and the U.S. Fish and Wildlife Service. The role of the Working Group is to:

- Review scientific information to understand the latest science on watershed management practices and the conservation of the Georgetown salamander;
- Recommend support for additional Georgetown salamander scientific studies and oversee a long-term monitoring program to ensure that salamander abundance at monitored locations are stable or improving;

- Conduct and evaluate water quality trend analysis as part of its long-term monitoring program to ensure water quality conditions do not decline and, in turn, result in impacts to salamander abundance; and
- Make recommendations for changes to the UDC Appendix A for occupied sites if scientific and monitoring information indicates that water quality and salamander protection measures need changes to minimize impacts to salamander populations and to attain the goal of species conservation.

While a window of opportunity exists to design and implement conservation measures to conserve the Georgetown salamander, human population levels and development are expected to increase rapidly in Williamson County (Texas State Data Center 2012, pp. 166–167). Therefore, the success of the local community’s efforts will depend on this robust adaptive management program designed to monitor and quickly assess the effectiveness of the identified conservation measures and strategies in attaining the goal of species’ conservation, and to respond quickly and adapt the measures and strategies as needed to attain the goal. The adaptive management approach will ensure that the water quality protective measures are serving their intended purpose of conserving the Georgetown salamander, thereby providing for the conservation of the species. Adaptive management measures related to UDC 11.07 and Appendix A that are agreed upon by the Working Group and consistent with the goal of preserving the Georgetown salamander would be covered under this revised proposed 4(d) rule.

By not prohibiting incidental take resulting from regulated activities conducted in accordance with the UDC 11.07 and Appendix A, the Service is supporting and encouraging a local solution to conservation of the Georgetown salamander. This revised proposed 4(d) rule would provide the Service the opportunity to work cooperatively, in partnership with the local community and State agencies, on conservation of the Georgetown salamander and the ecosystems on which it depends. Leveraging our conservation capacity with that of the State, local governments, and the conservation community at large may make it possible to attain biological outcomes larger than those we could attain ourselves due to the watershed-scale protection the UDC requires. Further, these local partners are better able to design solutions that minimize socioeconomic impacts, thereby encouraging participation in measures that will protect water quality and conserve the Georgetown salamander. In addition, by not prohibiting incidental take resulting from regulated activities conducted in accordance with UDC 11.07 and Appendix A, the Service is providing a streamlining mechanism for compliance with the Act for those project proponents who comply with the protective measures in the UDC 11.07 and Appendix A and, thus, would be covered by this revised 4(d) rule. Developers who comply with these protective measures outlined in this proposed rule can implement their projects without any potential delay from seeking incidental take coverage from the Service, while also minimizing water quality degradation; this simple approach makes streamlined compliance more enticing for project proponents and is likely to result in increased implementation of water quality protective measures that benefit salamanders than would occur otherwise.

Based on the rationale explained above, the provisions included in this revised proposed 4(d) rule are necessary and advisable to provide for the conservation of the Georgetown salamander. If an activity that may affect the species is not regulated by UDC 11.07 or is not in accordance with the UDC 11.07 and Appendix A, or a person or entity is not in compliance with all terms and conditions of the UDC 11.07 and Appendix A, and the activity would result in an act that would be otherwise prohibited under 50 CFR 17.31, then provisions of 50 CFR 17.31 and 17.32 for threatened species will apply. In such circumstances, the prohibitions of 50 CFR 17.31 would be in effect, and authorization under 50 CFR 17.32 would be required.

In addition, nothing in this revised proposed 4(d) rule affects in any way other provisions of the Act such as the designation of critical habitat under section 4, recovery planning provisions of section 4(f), and consultation requirements under section 7.

Draft Environmental Assessment

The Service is conducting a National Environment Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) analysis and has prepared a draft environmental assessment (EA) to address potential impacts of this revised proposed 4(d) rule. The NEPA analysis accomplishes three goals: (1) Determine if any action, or the absence of action, will have significant environmental impacts; (2) identify any unavoidable adverse effects; and (3) provide a

basis for a decision on a proposal. The draft EA and this revised proposed 4(d) rule are being made available concurrently; both are available for a 30-day period for public review and comment (see the **DATES** and **ADDRESSES** sections, above). The Service will analyze and consider all substantive comments we receive on both the draft EA and revised proposed 4(d) rule before issuing a final 4(d) rule.

Peer Review

In accordance with our joint policy published in the Federal Register on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this revised proposed rule. We will send peer reviewers copies of this revised proposed rule immediately following publication in the Federal Register. We will invite these peer reviewers to comment, during the reopening of the public comment period, on our use and interpretation of the science used in developing our revised proposed 4(d) rule.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this revised proposed 4(d) rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996)), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations,

and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). Based on the information that is available to us at this time, we certify that this regulation will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

On February 24, 2014 (79 FR 10236), we published the final determination to list the Georgetown salamander as a threatened species. That rule became effective on March 26, 2014. As a result, the Georgetown salamander is currently covered by the full protections of the Act, including the full section 9 prohibitions that make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, shoot, wound, kill, trap, capture, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as an endangered species, without written authorization. It also is illegal under section 9(a)(1) of the Act to possess, sell, deliver, carry, transport, or ship any such wildlife that is taken illegally. Prohibited actions consistent with section 9 of the Act are outlined for threatened species

in 50 CFR 17.31(a) and (b). This revised proposed 4(d) rule proposes that all prohibitions in 50 CFR 17.31(a) and (b) will apply to the Georgetown salamander, except regulated activities that are conducted consistent with the water quality protective measures contained in Chapter 11.07 and Appendix A of the Unified Development Code, which would result in a less restrictive regulation under the Act, as it pertains to the Georgetown salamander, than would otherwise exist. For the above reasons, we certify that if promulgated, the revised proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(a) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or [T]ribal governments” with two exceptions. It excludes “a condition of Federal

assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

(b) This revised proposed 4(d) rule proposes that all prohibitions in 50 CFR 17.31(a) and (b) will apply to the Georgetown salamander, except activities that are conducted consistent with the water quality protection measures contained in Chapter 11.07 and Appendix A of the Unified Development Code, which would result in a less restrictive regulation under the Act, as it pertains to the Georgetown salamander, than would otherwise exist. As a result, we do not believe that this rule would significantly or

uniquely affect small governments. Therefore, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630, this proposed rule would not have significant takings implications. We have determined that the rule has no potential takings of private property implications as defined by this Executive Order because this revised proposed 4(d) rule would result in a less-restrictive regulation under the Endangered Species Act than would otherwise exist. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, this revised proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. This proposed rule would not have substantial direct effects on the State, on the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this revised proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Energy Supply, Distribution or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking actions that significantly affect energy supply, distribution, and use. For reasons discussed within this proposed rule, we believe that the rule would not have any effect on energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

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

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have prepared a draft environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969. For information on how to obtain a copy of the draft environmental assessment, see **ADDRESSES**, above.

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 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no known tribal lands within the range of the Georgetown salamander.

Authors

The primary authors of this proposed rule are the staff members of the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**) and the Southwest Regional Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 79 FR 10077 (February 24, 2014) as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

2. Amend § 17.43 by revising paragraph (e)(2), as proposed to be added on February 24, 2014 (79 FR 10077), to read as follows:

§ 17.43 Special rules—amphibians.

* * * * *

(e) * * *

(2) *Exemptions from prohibitions.* Incidental take of the Georgetown salamander will not be considered a violation of section 9 of the Act if the take occurs on privately owned, State, or county land from regulated activities that are conducted consistent with the water quality protection measures contained in chapter 11.07 and Appendix A of the City of Georgetown (Texas) Unified Development Code (UDC) dated February 24, 2015.

* * * * *

Dated: March 31, 2015

Signed:

Robert Dreher

Acting Director,

U.S. Fish and Wildlife Service

Billing Code 4310-55

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