

hearing is held, and during the public comment period. Issues raised by those comments may be the basis for a decision to deny approval to the State. EPA will give notice of its final decision in the **Federal Register**; the notice will include a summary of the reasons for the final determination and a response to all significant comments.

#### Statutory and Executive Order Reviews

This proposed rule will only approve State underground storage tank requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law (see **SUPPLEMENTARY INFORMATION**, section A. Background). Therefore, this proposed rule complies with applicable executive orders and statutory provisions as follows:

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget has exempted this proposed rule from its review under Executive Order 12866. 2. *Paperwork Reduction Act*—This proposed rule will not impose an information collection burden under the Paperwork Reduction Act. 3. *Regulatory Flexibility Act*—After considering the economic impacts of today's proposed rule on small entities under the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. 4. *Unfunded Mandates Reform Act*—Because this proposed rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act. 5. *Executive Order 13132: Federalism*—Executive Order 13132 does not apply to this proposed rule because it will not have federalism implications (i.e., substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). 6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—Executive Order 13175 does not apply to this proposed rule because it will not have tribal implications (i.e., substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes). 7. *Executive Order 13045: Protection of Children from Environmental Health &*

*Safety Risks*—This proposed rule is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks. 8. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This proposed rule is not subject to Executive Order 13211 because it is not a significant regulatory action as defined in Executive Order 12866. 9. *National Technology Transfer Advancement Act*—EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advance Act does not apply to this proposed rule.

#### List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedures, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

**Authority:** This document is issued under the authority of section 9004 of the Resource Conservation and Recovery Act as amended 42 U.S.C. 6991c.

Dated: December 20, 2002.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-AI51**

#### Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Flat-tailed Horned Lizard as Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** We, the Fish and Wildlife Service (Service), have determined that the action of listing the flat-tailed horned lizard (*Phrynosoma mcallii*) as threatened, pursuant to the Endangered Species Act (Act) of 1973, as amended, is not warranted, and we consequently withdraw our proposed rule. We have made this determination because threats to the species as identified in the proposed rule are not as significant as

earlier believed, and current available data do not indicate that the threats to the species and its habitat, as analyzed under the five listing factors described in section 4(a)(1) of the Act, are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range.

**ADDRESSES:** Supporting documentation for this rulemaking is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92009.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, at the above address (telephone, 760-431-9440, or fax, 760-431-9618).

#### SUPPLEMENTARY INFORMATION:

##### Background

The flat-tailed horned lizard (*Phrynosoma mcallii*) is a small phrynosomatid lizard that reaches a maximum adult body length of 8.4 centimeters (cm) (3.3 inches [in]) (Muth and Fisher 1992). The flat-tailed horned lizard has a dorso-ventrally flattened body; long, broad flattened tail; and dagger-like head spines common to horned lizards. The species is cryptic in color, ranging from pale gray to light rust brown dorsally, and white or cream ventrally. It can be distinguished from the only other horned lizard known to occur within its range, the desert horned lizard (*Phrynosoma platyrhinos*), by its dark vertebral stripe, two rows of fringed scales on each side of the body, lack of external ear openings, and unmarked white ventral surface in most individuals (Foreman 1997). Apparent hybrids between the two species, exhibiting a mix of morphological characteristics, have been observed in the vicinity of Ocotillo, California (Stebbins 1985), and southeast of Yuma, Arizona (K. Young, Utah State University, pers. comm. 2002).

The flat-tailed horned lizard is endemic (restricted) to the Sonoran Desert in southern California, southwestern Arizona, and adjoining portions of Sonora and Baja California, Mexico (Turner and Medica 1982). Within California, the flat-tailed horned lizard ranges from the Coachella Valley, the northernmost extent of its range, south along both sides of the Salton Sea and Imperial Valley. On the west side of the Salton Sea and Imperial Valley, the species ranges into the Borrego Valley, Ocotillo Wells area, West Mesa, and the Yuha Desert (Yuha Basin). On the east side of Imperial Valley, the species occurs in the vicinity of the Dos Palmas Bureau of Land Management (BLM)