part of its review of the Virginia submittal, EPA performed a line-by-line review of Virginia's proposed revision and has preliminarily determined that they are consistent with the Tailoring Rule. These changes to Virginia's regulations are also consistent with section 110 of the CAA because they are incorporating GHGs for regulation in the Virginia SIP.

V. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve Virginia's October 27, 2010, SIP revision, relating to PSD requirements for GHG-emitting sources. Specifically, Virginia's October 27, 2010, proposed SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the State's law as meeting federal requirements and does not impose additional requirements beyond those imposed by the State's law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed SIP revision pertaining to greenhouse gas permitting does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 3, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–495 Filed 1–11–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2010–0042; MO 92210–0–0009–B4]

RIN 1018–AW90

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Tumbling Creek Cavesnail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on June 23, 2010, proposed designation of critical habitat for the Tumbling Creek cavesnail (*Antrobia culveri*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for the Tumbling Creek cavesnail and an amended required determinations section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment on the items listed above. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES: We will consider public comments we receive on or before February 11, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R3–ES–2010–0042.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R3–ES–2010–0042; Division of Policy and Directives Management; U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

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: Paul McKenzie, Endangered Species Coordinator, Columbia Missouri Ecological Services Field Office, 101 Park DeVille Dr.; Suite A, Columbia, MO 65203; telephone (573) 234–2132; facsimile (573) 234–2181. 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 the proposed rule will be based on the best scientific data available and will be as accurate and effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party during this

reopened comment period on the proposed designation of critical habitat for the Tumbling Creek cavesnail published in the **Federal Register** on June 23, 2010 (75 FR 35751), including the draft economic analysis of the proposed designation of critical habitat for the Tumbling Creek cavesnail and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

- The amount and distribution of Tumbling Creek cavesnail habitat,
- What areas within the geographical area occupied by the species at the time of listing that contain features essential to the conservation of the species we should include in the designation and why, and
- What areas outside the geographical area occupied at the time of listing are essential to the conservation of the species and why.

(3) Land-use designations and current or planned activities in the subject areas and their possible effects on the proposed critical habitat for the Tumbling Creek cavesnail.

(4) Any foreseeable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions), and the benefits of including or excluding areas from the proposed designation that exhibit these impacts.

(5) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(6) Comments or information that may assist us in identifying or clarifying the primary constituent elements and the resulting physical and biological features essential to the conservation of the Tumbling Creek cavesnail.

(7) How the proposed critical habitat boundaries could be refined to more closely circumscribe the landscapes identified as essential.

(8) Information on the potential effects of climate change on the Tumbling Creek cavesnail and its habitat.

(9) Any foreseeable impacts on energy supplies, distribution, and use resulting from the proposed designation and, in particular, any impacts on electricity production, and the benefits of including or excluding any particular areas that exhibit these impacts.

(10) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(11) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes that likely may occur if we designate proposed critical habitat for the Tumbling Creek cavesnail.

(12) Information on the accuracy of our methodology in the DEA for distinguishing baseline and incremental costs, and the assumptions underlying the methodology.

(13) Information on whether the DEA correctly assesses the effect on regional costs associated with any land use controls that may result from the proposed designation of critical habitat for the Tumbling Creek cavesnail.

(14) Information on whether the proposed designation of critical habitat will result in disproportionate economic impacts to specific areas or small businesses, including small businesses in the land development sector in Taney County.

(15) Information on whether the DEA identifies all costs that could result from the proposed designation of critical habitat for the Tumbling Creek cavesnail.

(16) Economic data on the incremental costs of designating a particular area as critical habitat.

If you submitted comments or information on the proposed rule (75 FR 35751) during the initial comment period from June 23, 2010, to August 23, 2010, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning our proposed rule, the associated DEA, and our amended required determinations by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hard copy comment 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 hard copy comments on *http://www.regulations.gov.*

Comments and materials we receive (and have received), as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* (Docket Number FWS–R3–ES–2010–0042), or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Columbia, Missouri Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule and DEA by mail from the Columbia, Missouri Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**), by visiting the Federal eRulemaking Portal at *http://www.regulations.gov* (Docket Number FWS–R3–ES–2010–0042), or on our Web site at *http://www.fws.gov/midwest/Endangered.*

Background

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat for the Tumbling Creek cavesnail in this document. For more information on previous Federal actions concerning the Tumbling Creek cavesnail, refer to the proposed designation of critical habitat published in the **Federal Register** on June 23, 2010 (75 FR 35751). Additional information on the Tumbling Creek cavesnail may also be found in the final listing rule published in the **Federal Register** on August 14, 2002 (67 FR 52879). These documents are available on our Web site at *http://www.fws.gov/midwest/Endangered.*

On December 27, 2001 (66 FR 66803), we published an emergency rule to list the Tumbling Creek cavesnail, due to water degradation and a precipitous decline in the cavesnail populations. The species was subsequently listed as endangered on August 14, 2002 (67 FR 52879). At the time, critical habitat was not designated in order to allow the Service to concentrate its resources on immediate protections needed for the conservation of the species. On August 11, 2008, the Institute for Wildlife Protection and Crystal Grace Rutherford filed a lawsuit against the Secretary of the Interior for our failure to timely designate critical habitat for the Tumbling Creek cavesnail (*Institute for Wildlife Protection et al.* v. *Kempthorne,* (Case No. CV–07–01202–CMP)). In a court-approved settlement agreement, we agreed to submit to the **Federal Register** a prudency determination, and if the designation was found to be prudent, a proposed designation of critical habitat, by June 30, 2010, and a final designation by June 30, 2011. On June 23, 2010, we proposed to designate 25 acres of Tumbling Creek and associated springs as critical habitat.

The Tumbling Creek cavesnail is a small, white, blind, aquatic snail, restricted to a single cave stream in Tumbling Creek Cave in Taney County, southwestern Missouri. Significant declines in the snail's population have been documented since 1996. The Tumbling Creek cavesnail is likely threatened by habitat degradation through diminished water quality from upstream locations within the unprotected or improperly managed areas within the cave's delineated recharge zone. The species may also be threatened with competition from limpets or from changes in the cave's normal hydrological cycles due to recent droughts.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Possible Exclusions From Critical Habitat and Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (*see* **ADDRESSES** section).

The intent of the DEA is to identify and analyze the potential economic impacts associated with the proposed designation of critical habitat for the Tumbling Creek cavesnail. The DEA quantifies the economic impacts of all potential conservation efforts for the Tumbling Creek cavesnail; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the proposed designation of critical habitat for the Tumbling Creek cavesnail is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (for example, under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated and may include costs incurred in the future. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since we listed the species, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed designation of critical habitat for the Tumbling Creek cavesnail. For a further description of the methodology of the analysis, *see* Chapter 2, "Framework for the Analysis," of the DEA.

The current DEA estimates the foreseeable economic impacts of the proposed designation of critical habitat for the Tumbling Creek cavesnail by identifying the potential resulting incremental costs. The DEA analyzed economic impacts of Tumbling Creek cavesnail conservation efforts on the following activities: Water management and other activities that may affect water quality such as road construction and maintenance; oil, gas, and utility easements; forest and pasture management; alteration of septic systems; and effluent discharges. It also assessed possible indirect impacts to economic activities as the result of possible applications of other State and local laws and regulatory uncertainty or delay. The DEA considers future baseline and incremental impacts over the next 20 years (2011 to 2030).

The DEA estimates that minimal economic impacts are likely to result from the designation of critical habitat. The main reason for this conclusion is that the private landowners of all surface critical habitat areas and the Tumbling Creek Cave Foundation, which owns lands within much of the cave's recharge area, have been undertaking extensive restoration and conservation efforts for the benefit of the cavesnail. Those lands have recently been enrolled in a voluntary conservation program that encourages the landowners to undertake and continue additional conservation activities. These efforts are expected to continue after critical habitat designation.

An additional reason that minimal economic impacts are likely to result from critical habitat designation is that, while cavesnails may not always be detected through surveys within critical habitat every year, the Service assumes the species is present within the entire area proposed for designation. Thus, we anticipate that Action agencies will initiate consultation regarding the cavesnail regardless of whether critical habitat is designated. Activities taking place outside of the proposed designation but within the recharge area for the cave may affect the cavesnail.

These projects may include road construction projects, U.S. Forest Service activities, or management changes at Bull Shoals reservoir. These types of projects are already subject to section 7 consultation under the jeopardy standard; therefore, the only incremental costs are those resulting from the additional administrative costs by the Service and action agency to include an adverse modification finding within the Biological Opinion and Biological Assessment as part of a formal consultation. As a result, the total incremental costs associated with this rule are estimated to be $4,420 annually over the next 20 years, assuming a 7 percent discount rate.

The DEA also discusses the potential benefits associated with the designation of critical habitat. The primary intended benefit of critical habitat is to support the conservation of endangered and threatened species, such as the Tumbling Creek cavesnail. However, economic benefits are not quantified or monetized in the DEA. As described in the DEA, designation of critical habitat is not anticipated to result in additional conservation efforts for the cavesnail. As a result, no changes in economic activity or land management are expected to result from critical habitat designation.

The DEA considered both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (*e.g.,* lost economic opportunities associated with restrictions on land use). The DEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, small entities, and the energy industry. We can use this information to assess whether the effects of the proposed designation might unduly burden a particular group or economic sector.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as on all aspects of the proposed designation of critical habitat, and our amended required determinations. We may revise the proposed rule or the economic analysis to incorporate or address information we receive during this public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided the exclusion will not result in the extinction of the species.

Required Determinations—Amended

In our proposed rule dated June 23, 2010 (75 FR 35751), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). Based on the DEA data, we are also affirming our required determinations made in the proposed rule concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), and E.O. 13211 (Energy, Supply, Distribution, and Use).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to 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 effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Tumbling Creek cavesnail would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the Tumbling Creek cavesnail. If the proposed critical habitat designation is finalized, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA of the proposed designation of critical habitat, we evaluated the potential economic effects resulting from implementation of conservation actions related to the proposed designation of critical habitat.

Although the DEA forecasts approximately $50,100 in incremental impacts over the next 20 years, these impacts are expected to be borne by Federal and State agencies, including the U.S. Forest Service, U.S. Army Corps of Engineers, the Natural Resource Conservation Service, and the Missouri Department of Transportation. Such agencies are not considered small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the reasons discussed above, and based on currently available information, we certify that if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13211—Energy Supply, Distribution, and Use

Executive Order 13211 requires an agency to prepare a Statement of Energy Effects when undertaking certain actions. We implement this executive order using the Office of Management and Budget's guidance which outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. As discussed in chapter 3, the DEA finds that this proposed critical habitat designation is not expected to have any impacts on the energy industry. As a result, a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, the Service makes the following findings:

(a) This rule will 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 Tribal 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 Tribal 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. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) as a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action that may affect designated critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the DEA of the proposed designation of critical habitat for the Tumbling Creek cavesnail, we do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The DEA concludes that incremental impacts expected to result from the designation of critical habitat are limited to additional administrative effort to consider adverse modification in section 7 consultation. In total, these impacts are estimated at $50,100 in present value terms over the next 20 years, or $4,420 on an annualized basis (discounted at seven percent). Consequently, we do not believe critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R3–ES–2010–0042 or from the Columbia, Missouri Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this notice are staff members of the Columbia, Missouri Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 30, 2010.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–468 Filed 1–11–11; 8:45 am]

BILLING CODE 4310–55–P