

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
		Potomac River .....	Approximately 0.3 mile upstream of County Route 522/1.	None	*681
			At the confluence of Cherry Run (downstream county boundary).	None	*407
			At upstream county boundary.	None	*539

Maps available for inspection at the Morgan County Courthouse, Berkeley Springs, West Virginia.

Send comments to Mr. Glen R. Stotler, Chairman of the Morgan County Commission, P.O. Box 28, Berkeley Springs, West Virginia 25411.

West Virginia .....	Paw Paw (town) Morgan County.	Potomac River .....	At the Town of Paw Paw corporate limits.	None	*532
			Approximately 1.16 miles upstream of State Route 51.	None	*537

Maps available for inspection at the Paw Paw Town Hall, Paw Paw, West Virginia.

Send comments to The Honorable Helena G. Moser, Mayor of the Town of Paw Paw, P.O. Box 35, Paw Paw, West Virginia 25434.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 28, 1995.

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 95-19220 Filed 8-3-95; 8:45 am]

BILLING CODE 6718-03-P

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**49 CFR Part 5**

[Docket No. OST-95-360; Notice 95-9]

RIN 2105-AC11

**Use of Direct Final Rule Making**

**AGENCY:** Department of Transportation; Office of the Secretary.

**ACTION:** Notice of proposed rulemaking

**SUMMARY:** The Office of the Secretary (OST) is proposing to implement a new rulemaking procedure that would expedite the processing of noncontroversial changes to its regulations. Rules that the Secretary judges to be noncontroversial and unlikely to result in adverse public comment would be published as "direct final" rules. Such direct final rules would advise the public that no adverse comment is anticipated, and that, unless written adverse comment or written notice of intent to submit adverse comment is received within the specified time, the rule will become effective a specified number of days after the date it is published in the **Federal Register**. This new procedure should expedite the promulgation of

routine or otherwise noncontroversial rules by reducing the time necessary to develop, review, clear, and publish separate proposed and final rules where OST receives no public comment.

**DATES:** Comments are requested by October 3, 1995. Late-filed comments will be considered only to the extent practicable.

**ADDRESSES:** Comments on this proposal should be sent, preferably in triplicate, to Docket Clerk, Docket No. OST-95-360, Department of Transportation, 400 7th Street SW., Washington, DC 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday.

Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

**FOR FURTHER INFORMATION CONTACT:** Neil Eisner, Assistant General Counsel for Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street SW., Room 10424, Washington, DC 20590. (202) 366-9307.

**SUPPLEMENTARY INFORMATION:**

**Background**

The National Performance Review, a recent presidential initiative to reorganize and streamline the federal government, and the Administrative Conference of the United States identified several methods to improve the efficiency of agency rulemaking procedures. One was the use of "direct final" rulemaking in order to reduce

needless double review of noncontroversial rules. The use of direct final rulemaking can eliminate an unnecessary second round of internal review and clearance, as well as public review, that presently exists for all proposed rules when the agency receives no adverse comment. The Environmental Protection Agency has been using this process for a number of years with great success, and other Departments, such as Agriculture, have recently adopted this procedure. In order to streamline the regulatory process and to fulfill Departmental missions, the Office of the Secretary proposes to use the direct final rulemaking procedure to promulgate specified categories of rules that are not expected to be controversial and that are unlikely to result in adverse comments.

**The Direct Final Rule Process**

The judgment that a particular rulemaking is noncontroversial and unlikely to result in adverse comment will be based upon the Office of the Secretary's experience with similar rules that were proposed and did not receive adverse public comment in the past. By "adverse" comment, we are referring to comments that are critical of the rule, that suggest that the rule should not be adopted, or that suggest a change should be made in the rule. A comment submitted in support of the rule would not be considered adverse. In addition, a comment suggesting that the policy or requirements of the rule should or should not also be extended to other Departmental programs outside the scope of the rule would not be considered adverse. The Environmental

Protection Agency has used this process in over two hundred cases, with great success. The U.S. Department of Agriculture has also recently adopted this process and used it in approximately a dozen rulemakings.

When using the direct final rulemaking procedure, the Office of the Secretary will publish the rule in the final rule section of the **Federal Register**. The document will advise the public that no adverse comment is anticipated, and that unless written adverse comment or written notice of intent to submit adverse comment is received within the specified time, the rule will become effective a specified number of days after the date it is published. The Administrative Procedure Act (5 U.S.C. 553) specifically provides that notice and public comment are not required if the agency finds good cause that notice and public procedures are unnecessary or contrary to the public interest. If the agency is mistaken and someone wishes to file adverse comments, this procedure will ensure that the public is given notice of the Secretary's intent to adopt the rule if no adverse comment is received, and an opportunity to participate in the rulemaking by submitting comments.

If no written adverse comment or written notice of intent to submit adverse comment is received in response to the rule, the Office of the Secretary would then publish a notice in the **Federal Register** indicating that no adverse comment was received and confirming that the rule will become effective a specified number of days after the date that the direct final rule was published. However, if the Office of the Secretary does receive any written adverse comment or written notice of intent to submit adverse comment, then a notice withdrawing the direct final rule would be published in the final rule section of the **Federal Register** and a notice of proposed rulemaking would be issued in the proposed rule section. The proposed rule would provide for a new comment period.

Rules for which the Office of the Secretary believes that the direct final rulemaking procedure may be appropriate are noncontroversial rules that (1) affect internal procedures of the Office of the Secretary, such as filing requirements and rules governing inspection and copying of documents, (2) are nonsubstantive clarifications or corrections to existing rules, (3) update existing forms (4) make minor changes in the substantive rules regarding statistics and reporting requirements, such as a change in the reporting sequence (for example, from monthly to

quarterly) or eliminating a type of data that no longer needs to be collected by the Office of the Secretary, (5) make changes to the rules implementing the Privacy Act, and (6) adopt technical standards set by outside organizations, such as those developed by the Architectural Barriers and Compliance Board for determining compliance with the Americans with Disabilities Act. We request comments on whether there are any other areas for which direct final rulemaking may be beneficial. As stated earlier, the direct final rulemaking procedure will only be used in circumstances where previous rulemakings indicate that adverse comment is unlikely. Even if a rulemaking fits into one of the above categories, if adverse comment is anticipated, we would not use the direct final rule process. The additional time and effort necessary to withdraw the rule and issue a Notice of Proposed Rulemaking if there is adverse comment will serve as an incentive for the Office of the Secretary to act conservatively in evaluating whether to use the procedure for a particular rule.

#### Regulatory Analyses and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no costs associated with this rule. There will be some cost savings in **Federal Register** publication costs and efficiencies for the public and OST personnel in eliminating duplicative reviews. The Department certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Department does not believe that there would be sufficient federalism implications to warrant the preparation of a federalism assessment.

#### List of Subjects in 49 CFR Part 5

Administrative practice and procedure. For the reasons set forth in the preamble, the Office of the Secretary proposes to amend 49 CFR Part 5 as follows:

#### PART 5—[AMENDED]

1. The authority citation for Part 5 continues to read as follows:

**Authority:** Sec. 9, 80 Stat. 944 (49 U.S.C. 1657).

2. Section 5.21 would be amended by adding paragraph (d), as follows:

#### §5.21 General.

\* \* \* \* \*

(d) For rules for which the Secretary determines that notice is unnecessary because no adverse public comment is anticipated, the direct final rulemaking procedure described in § 5.35 of this subpart will be followed.

3. A new § 5.35, *Procedure for direct final rulemaking*, would be added to read, as follows:

#### § 5.35 Procedures for direct final rulemaking.

(a) Rules that the Secretary judges to be noncontroversial and unlikely to result in adverse public comment will be published in the final rule section of the **Federal Register** as direct final rules. These include noncontroversial rules that:

(1) Affect internal procedures of the Office of the Secretary, such as filing requirements and rules governing inspection and copying of documents,  
 (2) Are nonsubstantive clarifications or corrections to existing rules,  
 (3) Update existing forms,  
 (4) Make minor changes in the substantive rules regarding statistics and reporting requirements, such as a change in the reporting sequence (for example, from monthly to quarterly) or eliminating a type of data that no longer needs to be collected by the Office of the Secretary,

(5) Make changes to the rules implementing the Privacy Act, and  
 (6) Adopt technical standards set by outside organizations, such as those developed by the Architectural Barriers and Compliance Board for determining compliance with the Americans with Disabilities Act.

(b) The **Federal Register** document will state that any adverse comment or notice of intent to submit adverse comment must be received in writing by the Office of the Secretary within the specified time after the date of publication, and that if no written adverse comment or written notice of intent to submit adverse comment is received, the rule will become effective a specified number of days after the date of publication.

(c) If no written adverse comment or written notice of intent to submit adverse comment is received by the Office of the Secretary within the specified time of publication in the **Federal Register**, the Office of the Secretary will publish a notice in the **Federal Register** indicating that no adverse comment was received and confirming that the rule will become effective on the date that was indicated in the direct final rule.

(d) If the Office of the Secretary receives any written adverse comment or written notice of intent to submit

adverse comment within the specified time period, a notice withdrawing the direct final rule will be published in the final rule section of the **Federal Register** and a notice of proposed rulemaking will be issued in the proposed rule section of the **Federal Register**.

(e) An "adverse" comment for the purpose of this subpart means any comment that is critical of the rule, that suggests that the rule should not be adopted, or suggests a change that should be made in the rule. A comment suggesting that the policy or requirements of the rule should or should not also be extended to other Departmental programs outside the scope of the rule is not adverse.

Issued in Washington, DC on this 19th day of July, 1995.

**Federico Peña,**

*Secretary.*

[FR Doc. 95-19108 Filed 8-3-95; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### National Marine Fisheries Service

### 50 CFR Part 402

### RIN 1018-AD32

### Joint Counterpart Endangered Species Act Section 7 Consultation Regulations

**AGENCIES:** Fish and Wildlife Service, Interior; and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** With the concurrence of the U.S. Department of Agriculture, Forest Service (FS) and the Department of the Interior, Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) propose to promulgate counterpart section 7 consultation regulations (50 CFR 402) under the Endangered Species Act of 1973 to establish an alternate consultation process. These regulations supplement the more general consultation regulations in Part 402 to provide for a more effective and efficient process to

meet the specific needs of BLM and FS programs.

**DATES:** Comments on this proposal must be received by October 3, 1995, in order to be considered in the final decision on this proposal.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, during normal business hours in Room 452, 4401 North Fairfax Drive, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** E. LaVerne Smith, Chief, Division of Endangered Species, at the above address (703/358-2171; facsimile 703/358-1735) or Robert C. Ziobro, Endangered Species Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713-1401 facsimile 301/713-0376).

#### SUPPLEMENTARY INFORMATION:

##### Background

These proposed joint counterpart Endangered Species Act (ESA) consultations procedures govern ESA section 7(a) consultation for FS and BLM. The procedures differ from the existing procedures in part 402 subparts A and B in that they encourage ESA consultation well before project-level decisions are made and provide a framework for consultation on program-level or ecosystem-level decisions, as opposed to project-level decisions. This early consultation at the program-level facilitates future consultation at the project-level and these procedures describe how that streamlining is accomplished. In addition, while the regulations at part 402 subparts A and B are silent as to whether ongoing actions can continue during consultations, these regulations expressly address that issue and specify the measures the agencies will take regarding ongoing actions once ESA consultation at the project-level becomes mandatory.

Under these procedures, FS and BLM and the appropriate consulting Service (either FWS or NMFS) are required to enter into a consultation agreement, unless they have already done so for that species or decision, when (1) a new species is proposed for listing or is listed; (2) critical habitat is proposed for designation or is designated; (3) a revision or amendment of a land planning document is formally announced; or (4) FS, BLM or one of the Services requests a consultation

agreement. In this agreement, the agencies choose how they will conduct program-level and project-level consultation. That is, they decide whether project-level (which the procedures call non-site-specific) consultation and when project-level (which these procedures call site-specific consultation) consultation will occur. The agreement sets a schedule for the chosen manner of consultation and all subsequent actions related to ongoing activities.

The objective of non-site specific consultation is to identify standards and guidelines or parameters that then can be applied to site-specific consultations. Where the parameters are identified as adequate to avoid adverse effects to the listed species in the non-site-specific consultation by the appropriate Service, the parameters are then used to facilitate site-specific consultation. For those actions that are in conformance with adequate parameters, consultations is concluded when FS and BLM notify the appropriate Service of the conforming action and provide the Service with the basis for that decision. Where no adequate parameters have been identified in a non-site-specific consultation, the action agencies are required to conduct consultation/conference pursuant to sections 402.10 and/or 402.14 for any project-level decisions.

The procedures address the measures the agencies are to take with respect to ongoing actions when consultation becomes mandatory under section 402.14. The procedures require the identification of all ongoing actions that may affect the listed species and an initial determination of which actions represent an imminent threat to the listed species. The action agencies are required to take all possible steps to halt or modify these imminent threat actions. The action agencies are required then to identify all actions that are likely to adversely affect the species in question and to review whether to take steps to halt or modify those actions as well. All other ongoing actions that are not halted under these procedures may go forward during consultation. Provisions for counterpart section 7 consultation procedures are set forth in section 402.04. Such regulations supersede consultation regulations at 50 CFR 402, subpart B.

As part of their land management planning processes, the FS prepares Land and Resource Management Plans and the BLM prepares Resource Management Plans. Plans identify general land-use purposes or allocations; future conditions that are desired on specific lands; goals and