§ 76.227 Blocking of indecent sexually-oriented programming channels.

(a) In providing sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming, a multichannel video programming distributor shall fully scramble or otherwise fully block the video and audio portion of such channel so that one not a subscriber to such channel or programming does not receive it.

(b) Until a multichannel video programming distributor complies with the requirement set forth in paragraph (a) of this section, the multichannel video programming distributor shall not provide the programming referred to in paragraph (a) of this section between the hours of 6 a.m. and 10 p.m.

(c) Scramble means to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.

(d) Sexually explicit adult programming or other programming that is indecent means any programming that describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards for the cable or other multichannel video programming distribution medium.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–5869 Filed 3–8–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 671

[Docket 93–A]

RIN 2132–AA49

Temporary Local Match Waiver; Removal

AGENCY: Federal Transit Administration, DOT.

ACTION: Final Rule.

SUMMARY: Because the supporting statutory authority has expired, the Federal Transit Administration (FTA) is removing the Temporary Local Match Waiver for sections 9 and 18 from the Code of Federal Regulations. FTA made this determination as part of the President's ''reinventing government'' initiative.

EFFECTIVE DATE: March 11, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Zaczek, Attorney-Advisor, Office of the Chief Counsel, (202) 366–4011.

SUPPLEMENTARY INFORMATION:

Introduction

On August 11, 1993, FTA published an Interim Final Rule announcing a temporary change in how it finances capital projects for certain FTA-funded programs, specifically allowing for a ''waiver'' of the local match requirements under two FTA-funded programs. 58 FR 42690. The underlying statutory authority for that policy change has expired, thus prompting FTA to remove 49 CFR 671 from the Code of Federal Regulations. The Federal Highway Administration (FHWA) published a final rule on February 2, 1993 at 58 FR 6713, subsequently codified at 23 CFR 140, waiving the State matching requirements to fund certain kinds of construction projects under the Federal-aid highway program. Because FTA and FHWA were authorized by the same statute to waive the local or State matching requirements, FTA and FHWA adopted similar approaches to implementing the temporary waiver program.

The Temporary Waiver Program

As explained in the interim final rule, under section 9 of the Federal Transit Act, as amended (FT Act) now codified at 49 U.S.C. § 5336 and called ''urbanized area formula program,'' and under section 18 of the FT Act, now codified at 49 U.S.C. § 5311 and called ''non-urbanized area formula program,'' FTA and a recipient of its funds share the costs of financing local mass transit capital projects. Specifically, FTA pays eighty percent of a capital project's eligible costs (the Federal share), and a recipient pays the remaining twenty percent (the local match or local share). To ensure the sufficiency of local financing for a project, 49 U.S.C. § 5307 requires a recipient to certify that it can pay its share of the project's cost. A similar requirement applies to grants made under FTA's ''non-urbanized area formula program.''

During fiscal years 1992 and 1993, however, an alternative approach to these Federal and local share requirements was available. Specifically, the Dire Emergency Supplemental Appropriations Act, 1992, P.L. 102–302, and the Department of Transportation Appropriations Act, 1993, P.L. 102–388, (the Acts) permitted FTA, under limited circumstances, to waive in fiscal years 1992 and 1993 part or all of the local share required for capital projects under 49 U.S.C. §§ 5311 and 5336, thereby increasing the proportion of Federal money used to pay for a project, which Part 671 called the ''increased Federal share.'' In short, in fiscal years 1992 and 1993 a recipient could have funded a project's costs using only Federal money.

The rule specified the circumstances under which FTA would grant a waiver, described the application process, and detailed procedures for the repayment of the ''increased Federal share.'' The waiver applied only to funds obligated by FTA and drawn down by the recipient before October 1, 1993.

Analysis of the Comment

FTA received only one comment to the interim final rule. That comment, from a State Department of Transportation (DOT), raised concerns about how the ''increased Federal share'' would be repaid by a recipient. The ''increased Federal share'' equals the amount of the local share waived by FTA.

The rule specified that recipients must repay the ''increased Federal share'' before March 31, 1994. Should a recipient fail to meet this deadline, the rule provided that FTA would deduct fifty percent of the amount waived in fiscal year 1995 and fifty percent in fiscal year 1996 from the recipient's apportionment. If, however, the funds were transferred from the Surface Transportation Program or the Congestion Mitigation and Air Quality program to formula programs for urbanized or non-urbanized areas and the recipient did not repay those funds before March 31, 1994, the Federal Highway Administration (FHWA) would deduct fifty percent of the amount waived from the originating apportionment under the appropriate highway program in FY 1995 and the remaining portion in FY 1996.

The State DOT objected to the latter alternative and recommended that State DOTs be given a formal role in approving any waiver requested by a recipient, and that any waiver of the local share for a transit project be repaid from a recipient's transit apportionment regardless of the original source of the funding.

This State DOT was the only commenter who raised this particular concern and therefore FTA concluded that virtually all FTA recipients and State DOTs did not see this particular repayment provision as burdensome or objectionable. Moreover, the Acts did not give State DOTs a role in approving waiver requests. Consequently, FTA did not change this particular provision.

Regulatory Analysis

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. It does not impose costs on regulated parties; it merely removes a Part that has become obsolete and whose underlying statutory authority has lapsed. There are not sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 671

Grant programs-transportation, Mass Transportation.

Accordingly, for the reasons set forth above, and under the Authority 49 U.S.C. 5334 (b)(2), part 671 is hereby removed.

Issued: March 5, 1996.

Gordon J. Linton,

Administrator.

[FR Doc. 96–5670 Filed 3–8–96; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Interim Listing Priority Guidance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of interim listing priority guidance.

SUMMARY: The U.S. Fish and Wildlife Service (Service) adopts interim guidance for assigning relative priorities to listing actions conducted under section 4 of the Endangered Species Act (Act). Congress enacted a moratorium on final listings and critical habitat designations in April 1995 which, combined with severe funding constraints, essentially shut down the Service's listing program beginning in October 1995. During this shutdown, a large backlog of listing actions, particularly unresolved proposed listings, is accruing. When the moratorium is lifted and adequate funding is restored to operate a listing program, the Service will need to act expeditiously to resolve the status of outstanding proposed listings. This guidance supplements, but does not replace, the current listing priority guidelines, which are silent on the matter of prioritizing among different types of listing activities. While the backlog exists, and in order to focus conservation benefits on those species in greatest need, the Service believes that processing the outstanding proposed listings should receive higher priority than other actions authorized by section 4 (such as petition findings, new proposed listings, and critical habitat determinations).

DATES: This guidance takes effect March 11, 1996. Comments on this guidance will be accepted until April 10, 1996. This interim guidance will remain in effect until September 30, 1996, unless extended by further notice.

ADDRESSES: Comments on this interim guidance should be addressed to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street NW., Mailstop ARLSQ–452, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703–358–2171 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The Service adopted guidelines on September 21, 1983 (48 FR 43098–43105) that govern the assignment of priorities to species under consideration for listing as endangered or threatened under section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Service adopted those guidelines to establish a rational system for allocating available appropriations to the highest priority species when adding species to the lists of endangered or threatened wildlife and plants or reclassifying threatened species to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or equivalently, distinct population segments of vertebrates).

The enactment of Public Law 104–6 in April, 1995 rescinded $1.5 million from the Service's budget for carrying out listing activities through the remainder of Fiscal Year 1995. Public Law 104–6 also contained a prohibition on the expenditure of the remaining appropriated funds for final determinations to list species or designate critical habitat which, in effect, placed a moratorium on those activities.

Since the end of Fiscal Year 1995, funding for the Service's endangered species programs, including listing of endangered and threatened species, has been provided through a series of continuing resolutions, each of which has maintained in force the moratorium against issuing final listings or critical habitat designations. The continuing resolutions also severely reduced or eliminated the funding available for the Service's listing program. Consequently, the Service reassigned listing program personnel to other duties. The net effect of these legislative and administrative actions is that the Service's listing program has been essentially shut down since October 1995, and will remain so until adequate funding is restored. The moratorium and severe funding restrictions have created problems that require additional guidance.

When adequate appropriations are provided by the Congress for the administration of a listing program and when the listing program is no longer restricted by moratoria or similar conditions, the Service will face the considerable task of restaffing its listing program and allocating the available resources to the following listing activities that have accrued significant backlogs. First, the Service has issued proposed listings for 243 species, which require final decisions. Second, although the moratorium imposed by Pub. L. 104–6 does not specifically extend to petition processing or the development of new proposed listings, the extremely limited funding available to the Service for listing activities has generally precluded these actions since October 1, 1995. However, during this period the Service has continued to receive new petitions and now has a backlog of petitions that request the listing or delisting of 41 species under section 4(b)(3) of the Act. Third, the Service is required by numerous court orders or settlement agreements to process a variety of actions under section 4 of the Act. Fourth, the Service also needs to make expeditious progress on determining the conservation status of the 182 species designated by the Service as candidates for listing in the recently published Candidate Notice of Review (61 FR 7596; February 28, 1996). These backlogs and court orders illustrate the need for program-wide priorities to guide the allocation of resources once the listing program is revived. For the above reasons, good cause exists to make this guidance effective immediately.

Section 4(b)(1) of the Act requires the Service to use the ''best available scientific and commercial information'' to determine those species in need of the Act's protections. It has been long-standing Service policy that the order in