

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 62**

[KS 105-1105b; FRL-6733-8]

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators (HMIWI); State of Kansas****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed action.

**SUMMARY:** EPA proposes to approve the state of Kansas' section 111(d) plan for controlling emissions from existing HMIWIs. The plan was submitted to fulfill the requirements of sections 111 and 129 of the Clean Air Act. The state plan establishes emission limits and controls for sources constructed on or before June 20, 1996.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed action. Any parties interested in commenting on this document should do so at this time.

**DATES:** Comments must be received in writing by August 14, 2000.**ADDRESSES:** Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.**FOR FURTHER INFORMATION CONTACT:** Wayne Kaiser at (913) 551-7603.**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: June 20, 2000.

**Michael Sanderson,***Acting Regional Administrator, Region 7.*

[FR Doc. 00-17873 Filed 7-13-00; 8:45 am]

**BILLING CODE 6560-50-P****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 1837****Acquisition of Training Services****AGENCY:** National Aeronautics and Space Administration (NASA).**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the NASA FAR Supplement (NFS) by removing Subpart 1837.70—Acquisition of Training, to conform the acquisition of training with FAR Part 6.

**DATES:** Comments should be submitted on or before September 12, 2000.**ADDRESSES:** Interested parties should submit written comments to James H. Dolvin, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to: [jdolvin1@hq.nasa.gov](mailto:jdolvin1@hq.nasa.gov).**FOR FURTHER INFORMATION CONTACT:** James H. Dolvin, (202) 358-1279, or [jdolvin1@hq.nasa.gov](mailto:jdolvin1@hq.nasa.gov).**SUPPLEMENTARY INFORMATION:****A. Background**

In 1991, Subpart 1837.70—Acquisition of Training, was added to the NFS. Section 1837.7000, Acquisition of off-the-shelf training courses, provided that the Government Employees Training Act of 1958, 5 U.S.C. 4101 *et seq.*, could be used as the authority for acquisition of “non-Governmental off-the-shelf training courses which are available to the public.” Section 1837.7001, Acquisition of new training courses, provided that acquisition of new training courses “developed to fill a specific NASA need” must be conducted in accordance with the FAR. This subpart is being removed because it has caused confusion within NASA about the relevance of the FAR to training service procurement.

**B. Regulatory Flexibility Act**

NASA certifies that this rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the deletion of this subpart will not alter the manner in which NASA is required to acquire training.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or

collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**Tom Luedtke,***Associate Administrator for Procurement.***List of Subjects in 48 CFR Part 1837**

Government procurement.

Accordingly, 48 CFR Part 1837 is proposed to be amended as follows:

1. The authority citation for 48 CFR Part 1837 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1)**PART 1837—SERVICE CONTRACTING**

2. Amend Part 1837 by removing Subpart 1837.70.

[FR Doc. 00-17880 Filed 7-13-00; 8:45 am]

**BILLING CODE 7510-01-U****DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****RIN 1018-AF45****Endangered and Threatened Wildlife and Plants; Clarification of Take Prohibitions for Coastal Cutthroat Trout****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule; clarification.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), provide notice that the Endangered Species Act prohibitions against take of threatened species will apply to Southwestern Washington/Columbia River coastal cutthroat trout and will go into effect on the effective date of listing, if the proposed listing of this species is finalized. We also provide lists of actions that would, and would not, likely constitute a violation of section 9 of the Act and seek comment on those lists.

**DATES:** Comments from all interested parties must be received by August 14, 2000.**ADDRESSES:** Comments and materials should be sent to the U.S. Fish and Wildlife Service, Oregon State Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266 (telephone 503/231-6179; facsimile 503/231-6195), email: [coastal\\_cutthroat@fws.gov](mailto:coastal_cutthroat@fws.gov).

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:**  
Kemper McMaster, State Supervisor,  
503/231-6179.

**SUPPLEMENTARY INFORMATION:** Based on questions we have received regarding the application of the take prohibition of section 9 of the Endangered Species Act of 1973, as amended (Act), to the potential listing of coastal cutthroat trout (*Oncorhynchus clarki clarki*) as threatened, we are providing the following clarification of our position relative to take prohibitions for threatened species.

### Background

On April 5, 1999, the National Marine Fisheries Service (NMFS) and the Service jointly published a proposed rule (64 FR 16397) to list the Southwestern Washington/Columbia River coastal cutthroat trout evolutionarily significant unit (ESU) in Washington and Oregon as threatened. On November 22, 1999, we assumed sole regulatory jurisdiction over all life forms of coastal cutthroat trout under the Act (see 65 FR 21376). On April 14, 2000 (65 FR 20123), we extended by 6 months (until October 5, 2000) the timeframe to take final action on the proposed rule. We needed additional time to review new information available since the status review was published and to examine the role of hatchery and above-barrier populations of the coastal cutthroat trout within southwest Washington and the Columbia River and their importance to conservation of the species in this area. Consequently, we will take final action on the April 5, 1999, proposed rule by October 5, 2000.

Section 9 of the Act prohibits certain activities, including take, for endangered species. Section 4(d) of the Act allows the prohibition of any of these activities for threatened species, through promulgation of a special rule. The April 5, 1999, proposed rule included the stipulation that protective regulations pursuant to section 4(d) of the Act would be addressed in the future and that all relevant National Environmental Policy Act (NEPA) and Regulatory Flexibility Act (RFA) requirements would be met at that time. This stipulation reflects the approach that NMFS takes when proposing a species as threatened under the Act. However, the Service promulgated regulations establishing prohibitions for all threatened species under its jurisdiction on April 28, 1978 (43 FR 18181), and amended these regulations on May 31, 1979 (44 FR 31580). As a result, our regulations at 50 CFR 17.31 apply all of the take prohibitions for

endangered species at § 17.21, except § 17.21(c)(5), to threatened wildlife. Since we now have sole regulatory authority for coastal cutthroat trout, these regulations will apply at the time of listing of any coastal cutthroat trout. Therefore, further action relative to NEPA and RFA requirements is not necessary for application of these regulations to coastal cutthroat trout in Southwestern Washington/Columbia River region, should the proposed listing be finalized.

The regulations at 50 CFR 17.21 and 17.31 prohibit taking (to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. Harass is defined as creating the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

We recognize that some activities that provide for the conservation of the species may result in harm or harassment to individual coastal cutthroat trout. These activities may be permitted through a section 10(a)(1)(A) permit. In the future, we may also implement a section 4(d) rule to remove the prohibition against take resulting from activities that contribute to the conservation of the species. Such a 4(d) rule must go through a full regulatory process, including publication of a proposal in the **Federal Register** and a public comment period. For example, a section 4(d) rule could remove the prohibition against take resulting from State-regulated recreational fisheries or activities covered by local land-use planning regulations, so long as such activities provide for the conservation of the species. Activities that may result in harm or harassment to individual coastal cutthroat trout may also be permitted through section 10(a)(1)(B) with the development of a habitat conservation plan that minimizes and mitigates the impact to the maximum extent practical.

### Activities That Would Not Constitute a Violation of Section 9 of the Act

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act, as

stipulated in 50 CFR 17.21 and 17.31. By presenting this information, we hope to increase public awareness of the potential effects of the proposed listing on new and ongoing activities within the range of coastal cutthroat trout in the Southwest Washington/Columbia River region. We believe the following actions would not be likely to result in a violation of section 9, provided the activities are carried out in accordance with all existing regulations and permit requirements:

(1) Actions that may affect coastal cutthroat trout and are authorized, funded, or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by us pursuant to section 7 of the Act;

(2) State, local, and other activities for the conservation of the coastal cutthroat trout approved by us under section 4(d), section 6(c)(1), or section 10(a)(1) of the Act;

(3) The planting of native vegetation within riparian areas, using hand tools or mechanical auger. This does not include any site preparation that involves the removal of native vegetation (such as deciduous trees and shrubs) or that goes beyond that necessary to plant individual trees, shrubs, or other plants;

(4) The installation of fences to exclude livestock impacts to the riparian area and stream channel. The installation of new off-channel livestock watering facilities and the operation and maintenance of existing off-channel livestock watering facilities when such facilities consist of low-volume pumping, gravity feed, or well systems, and employ in-water intakes that are screened consistent with NMFS' current Juvenile Fish Screen Criteria For Pump Intakes. This does not include the potential impacts associated with the grazing activity itself or negative effects attributable to depleting stream flow due to water withdrawal;

(5) The placement of human access barriers, such as gates, fences, boulders, logs, vegetative buffers, and signs, to limit use- and disturbance-associated impacts. These impacts may include timber theft, disturbance to wildlife, poaching, illegal dumping of waste, erosion of soils, and sedimentation of aquatic habitats, particularly in sensitive areas such as riparian habitats or geologically unstable zones. This does not include road maintenance or the potential impacts associated with the road itself;

(6) The current operation and maintenance of fish screens on various water facilities that meet the current NMFS' Juvenile Fish Screen Criteria for

Pump Intakes. This does not include the use of traps or other collection devices at screen installations, operation of the diversion structure, or negative effects attributable to depleting stream flow due to water diversion;

(7) The installation, operation, and maintenance of screens where the existing canal or ditch is located off the main stream channel when: (a) The canal or ditch is dewatered prior to screen and bypass installation and prior to fish entering the canal or ditch; (b) Installed screens and bypass structures meet the current NMFS' Juvenile Fish Screen Criteria; and (c) Bypass is accomplished through free (volitional) access, with adequate velocities, construction materials, and stream re-entry conditions that will not result in harm or death to fish. This does not include the use of traps or other collection devices at screen installations, placement or operation of the diversion structure, or negative effects attributable to depleting stream flow due to water diversion;

(8) The general maintenance of existing structures, such as homes, apartments, and commercial buildings, which may be located in close proximity to a stream corridor, but outside of the stream channel. This does not include potential impacts associated with sediment or chemical releases that may adversely affect coastal cutthroat trout or their habitat, nor does this include those activities that may degrade existing riparian areas or alter streambanks (such as removal of streamside vegetation and streambank stabilization); and

(9) The lawful use of existing State, county, city, and private roads. This does not include road maintenance and the potential impacts associated with the road itself that may destroy or alter coastal cutthroat trout habitat (such as grading unimproved roads, stormwater and contaminant runoff from roads, failing road culverts, and road culverts that block fish migration), unless

authorized by us through section 6, 7, or 10 of the Act.

#### **Activities That Would Constitute a Violation of Section 9 of the Act**

We believe that the following could result in a violation of section 9:

(1) Take of coastal cutthroat trout without a permit or other authorization from us. Take includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State, National Park Service, and Tribal fish and wildlife conservation laws and regulations;

(2) To possess, sell, deliver, carry, transport, or ship illegally taken coastal cutthroat trout;

(3) Introduction of nonnative fish species that compete or hybridize with, or prey on, coastal cutthroat trout;

(4) Implementation of activities that destroy or alter coastal cutthroat trout habitat including, but not limited to: dredging, channelization or diversion; riparian vegetation removal that leads to reduced shade or the recruitment of large woody debris; in-stream vehicle operation or streambed material removal; grading unimproved roads; road maintenance activities such as side-casting into riparian zones or waterways; failure to control stormwater and contaminant runoff from roads or to maintain failing road culverts; and installation of road culverts that block fish migration; or other activities that result in the destruction or significant degradation of water quality or quantity, water temperature, cover, channel stability, substrate composition, turbidity, and migratory corridors used by the species for foraging, cover, migration, and spawning;

(5) Discharges, release, or dumping of toxic chemicals, silt, or other pollutants into waters supporting coastal cutthroat trout that result in death or injury of individuals of the species, including misuse of toxic chemicals that enter the water and result in death or injury of individuals; and

(6) Destruction or alteration of stream, riparian, estuarine, or lakeshore habitat and adjoining uplands of waters supporting coastal cutthroat trout by timber harvest, grazing, mining, hydropower development, road construction, habitat restoration, or other development activities that result in long- or short-term destruction or significant degradation of water quality or quantity, water temperature, cover, channel stability, substrate composition, turbidity, and migratory corridors used by the species for foraging, cover, migration, and spawning.

We will review other activities not identified above on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. We do not consider these lists to be exhaustive and provide them as information to the public.

#### **Comments Solicited**

This rulemaking action does not propose any changes to the regulation prohibiting take for threatened wildlife, as stipulated in 50 CFR 17.31, or the manner in which this prohibition is applied. We are soliciting comments on the above list of activities that would, and would not, likely constitute a violation of section 9 of the Act. We are not soliciting comments on the application of this regulation to any other populations of coastal cutthroat trout that may be listed in the future.

Author: The primary authors for this rulemaking action are John A. Young, Regional Office, Region 1, and Robin Bown, Oregon State Office (see **ADDRESSES** section).

#### **Authority**

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

Dated: July 6, 2000.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 00-17921 Filed 7-13-00; 8:45 am]

**BILLING CODE 4310-55-P**