

Dated: January 5, 2001.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 01-1026 Filed 1-11-01; 8:45 am]

BILLING CODE 6718-05-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. OST-1999 6189;
Amendment-#303].

Organization and Delegation of Powers and Duties; Delegation to the Administrator, Federal Highway Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) delegates to the Federal Highway Administrator his authority to implement the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), codified at 23 U.S.C. 181-189. The TIFIA authorizes the Department of Transportation ("Department of Transportation") to provide secured direct loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. The Federal Highway Administrator is delegated authority with respect to coordination and management of the day-to-day activities associated with implementing the TIFIA program. The Federal Highway Administrator may further delegate this authority. The Secretary reserves the authority to evaluate and select individual projects to receive TIFIA assistance and reserves authority to provide overall policy direction and key program decisions for the TIFIA program.

EFFECTIVE DATE: This rule is effective on January 12, 2001.

FOR FURTHER INFORMATION CONTACT:

Gloria Hardiman-Tobin, Office of the Chief Counsel, HCC-40, (202) 366-1397, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Blane Workie, Office of the General Counsel, (202) 366-9314, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

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SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 241 (1998), created the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA). The TIFIA establishes a new Federal credit program to provide credit assistance to surface transportation projects. The TIFIA authorizes the Secretary to provide secured (direct) loans, lines of credit, and loan guarantees to private and public sponsors of eligible transportation projects.

Funding for TIFIA is limited; therefore, the projects to receive financial assistance will be selected on a competitive basis. In fiscal years 1999 through 2003, TIFIA authorizes \$530 million to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the Secretary to provide up to \$10.6 billion of credit assistance to major surface transportation projects. The TIFIA authorizes the Secretary to select the recipients of credit assistance and to use up to \$2 million of the budget authority provided each fiscal year for program administration.

The TEA-21 Conference Report stated, "To ensure the financial and programmatic success of TIFIA, the conference strongly encourages the Secretary to establish an organizational structure within the Department in which financial activities and programs can be closely coordinated and monitored." In June 1999, consistent with the Conference Report language, the Secretary and the Administrators of the Federal Highway Administration ("FHWA"), the Federal Railroad Administration ("FRA"), and the Federal Transit Administration ("FTA") entered into a Memorandum of Understanding ("MOU") to manage the TIFIA program on an interim basis through the creation of a TIFIA Working Group.

In December 2000, the Secretary and the Administrators of FHWA, FRA, and FTA entered into an MOU, which

amended and superseded the June 1999 MOU, to establish a TIFIA Joint Program Office ("TIFIA JPO") to coordinate and manage the day-to-day activities associated with implementing the TIFIA statutory provisions. According to the 2000 MOU, the TIFIA JPO will organizationally be located within FHWA and will have a dual reporting structure. The TIFIA JPO will report to the Secretary for overall policy direction and key program decisions. The TIFIA JPO will report to the Federal Highway Administrator for coordination and management of day-to-day operations and funding matters.

In accordance with the December 2000 MOU, the Secretary is delegating his authority to operate and manage the financial assistance program under TIFIA to the Federal Highway Administrator. Operation and management of the program consists of the initial evaluation of each project, the negotiation and preparation of the legal documents necessary to consummate the transaction, and the continuing oversight of the project.

For instance, the Federal Highway Administrator will act as the Executive Agent for the TIFIA Program and will be responsible for managing the TIFIA funds, which are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account), with assistance from the other modal agencies and the TIFIA JPO. The Federal Highway Administrator will also manage specific accounting and budgeting activities to include: recording credit agreement obligations into the accounting system; preparing requests for and entering into loan agreements with the U.S. Treasury to borrow funds; receiving borrower requests (original documents) for fund disbursements; disbursing funds to borrowers; collecting and depositing payments from borrowers; making interest payments to the U.S. Treasury for borrowed funds; and satisfying other necessary budgetary and reporting requirements in accordance with the Federal Credit Reform Act (FCRA) and other relevant laws, regulations, and OMB guidelines.

Further, the Federal Highway Administrator will procure any necessary financial, legal, or other technical support services to assist in implementing and administering the TIFIA program and will execute all TIFIA credit instruments, including, but not limited to, term sheets, loan agreements, line of credit agreements, and loan guarantee agreements under delegated authority from the Secretary to the Federal Highway Administrator.

This delegation to the Federal Highway Administrator does not affect the authority or responsibility of the Secretary to develop credit policy and make the final selection of the projects receiving assistance. The Secretary and the Administrators of FHWA, FRA, and FTA intend to create a TIFIA Credit Council that will assist the Secretary in establishing overall policy direction and key program decisions for the TIFIA Program. The TIFIA Credit Council, with the approval of the Secretary, will select individual projects to receive TIFIA assistance, based on the analyses and recommendations of the TIFIA JPO. Formal membership of the TIFIA Credit Council will include the following: Assistant Secretary for Budget and Programs; Assistant Secretary for Transportation Policy; Director of the Office of Intermodalism; General Counsel; and, Administrators of FHWA, FRA and FTA. The TIFIA Credit Council will be chaired by the Assistant Secretary for Budget and Programs.

Since this amendment relates to Departmental organization, procedure, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). Efficient execution of the TIFIA JPO is instrumental to ensuring the financial and programmatic success of TIFIA. This delegation of authority assists the Federal Highway Administrator in establishing an organizational structure within the FHWA in which financial activities and programs can be closely coordinated and monitored. Further, since the amendment expedites the Department of Transportation's ability to meet the statutory intent of the Transportation Infrastructure Finance and Innovation Act of 1998, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended, effective upon publication, to read as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows: Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711 (a) (2); Pub. L. 101-552, 104 Stat. 2736; Pub. L. No. 106-159, 113 Stat. 1748

2. In § 1.48, add paragraph (nn) to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

* * * * *

(nn) Carry out the functions and exercise the authority vested in the Secretary by sections 1501-1504 of Public Law 105-178, 112 Stat. 241, titled Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), to manage the day-to-day activities associated with implementation of the TIFIA program. The Federal Highway Administrator may further delegate this authority.

Issued on: January 5, 2001.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 01-992 Filed 1-11-01; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH73

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on the Threatened Status of the Sacramento splittail (*Pogonichthys macrolepidotus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), in response to the order of the District Court, Eastern District of California, in the cases *San Luis & Delta-Mendota Water Authority v. Anne Badgley, et al.* (Case No. CIV-F-99-5658 OWW) and *State Water Contractors, et al. v. Michael Spear, et al.* (Case No. CIV-R-99-5667 OWW) and pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of the opening of a comment period regarding the threatened status for the Sacramento splittail (*Pogonichthys macrolepidotus*). This comment period has been opened to acquire information regarding issues identified by the court in the above cases and additional information on the status, abundance and distribution of the Sacramento splittail in the Central Valley of California. Upon the close of the comment period, the Service will make its determination whether the splittail warrants the continued protection of the Act.

DATES: The comment period for this rule closes on February 12, 2001. Any comments received by the closing date

will be considered in the final decision on this rule.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W-2605, Sacramento, California 95825. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Michael Thabault or Stephanie Brady, at the above address, phone 916-414-6600, facsimile 916-414-6710.

SUPPLEMENTARY INFORMATION:

Background

The Sacramento splittail (*Pogonichthys macrolepidotus*), is the only large cyprinid that is endemic to California's Central Valley, where they were once widely distributed (Moyle 1976). Historically, splittail were found as far north as Redding on the Sacramento River, as far south as the present-day site of Friant Dam on the San Joaquin River, and as far upstream as the current Oroville Dam site on the Feather River and Folsom Dam site on the American River (Rutter 1908).

In recent times, dams and diversions have increasingly prevented upstream access to large rivers, and the species is now apparently restricted to a small portion of its former range (Moyle and Yoshiyama 1992). Splittail enter the lower reaches of the Feather (Jones and Stokes 1993) and American rivers (Charles Hanson, State Water Contractors, *in litt.*, 1993) on occasion; however, the species now is largely confined to the delta, Suisun Bay, Suisun Marsh, and Napa Marsh. The "Delta" refers to all tidal waters contained within the legal definition of the San Francisco Bay-Sacramento-San Joaquin River Delta, as delineated by section 12220 of the State of California's Water Code of 1969. Generally, the Delta is contained within a triangular area that extends south from the City of Sacramento to the confluence of the Stanislaus and San Joaquin rivers at the southeast corner and Chipps Island in Suisun Bay.

In recent years, splittail have been found most often in slow moving sections of rivers and sloughs and dead-end sloughs (Moyle *et al.* 1982, Daniels and Moyle 1983). Reports from the 1950s, however, mention Sacramento River spawning migrations and catches of splittail during fast tides in Suisun Bay (Caywood 1974). California Department of Fish and Game survey