§ 1.274–14 Disallowance of deductions for certain transportation and commuting benefit expenditures.

(a) *General rule.* Except as provided in this section, no deduction is allowed for any expense incurred for providing any transportation, or any payment or reimbursement, to an employee of the taxpayer in connection with travel between the employee's residence and place of employment. The disallowance is not subject to the exceptions provided in section 274(e). The disallowance applies regardless of whether the travel between the employee's residence and place of employment includes more than one mode of transportation, and regardless of whether the taxpayer provides, or pays or reimburses the employee for, all modes of transportation used during the trip. For example, the disallowance applies if an employee drives a personal vehicle to a location where a different mode of transportation is used to complete the trip to the place of employment, even though the taxpayer may not incur any expense for the portion of travel in the employee's personal vehicle. The rules in section 274(l) and this section do not apply to business expenses under section 162(a)(2) paid or incurred while traveling away from home. The rules in section 274(l) and this section also do not apply to any expenditure for any qualified transportation fringe (as defined in section 132(f)) provided to an employee of the taxpayer. All qualified transportation fringe expenses are required to be analyzed under section 274(a)(4) and § 1.274–13.

(b) *Exception.* The disallowance for the deduction for expenses incurred for providing any transportation or commuting in paragraph (a) of this section does not apply if the transportation or commuting expense is necessary for ensuring the safety of the employee. The transportation or commuting expense is necessary for ensuring the safety of the employee if unsafe conditions, as described in § 1.61–21(k)(5), exist for the employee.

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Employee.* The term *employee* means an employee of the taxpayer as defined in section 3121(d)(1) and (2) (that is, officers of a corporate taxpayer and employees of the taxpayer under the common law rules).

(2) *Residence.* The term *residence* means a residence as defined in § 1.121–1(b)(1). An employee's residence is not limited to the employee's principal residence.

(3) *Place of employment.* The term *place of employment* means the employee's regular or principal (if more than one regular) place of business. An employee's place of employment does not include temporary or occasional places of employment. An employee must have at least one regular or principal place of business.

(d) *Applicability date.* This section applies to taxable years beginning on or after December 16, 2020.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: December 4, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–27505 Filed 12–15–20; 8:45 am]

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DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 50

[Docket No. OAG 163; AG Order No. 4927–2020]

RIN 1105–AB62

Prohibition on Settlement Payments to Non-Governmental Third Parties

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Department's regulations to set forth the principles of the Attorney General's Memorandum of June 5, 2017, prohibiting the inclusion of provisions in settlement agreements directing or providing for a payment or loan to a non-governmental person or entity that is not a party to the dispute, except in defined circumstances.

DATES: *Effective Date:* December 16, 2020.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW, Washington, DC 20530, telephone (202) 514–8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 5, 2017, then-Attorney General Sessions issued a Memorandum to the Heads of all Department of Justice Components and to all United States Attorneys titled, ''Prohibition on Settlement Payments to Third Parties.'' In this Memorandum, he stated: ''Our Department is privileged to represent the United States and its citizens in courts across our country. We take this responsibility seriously. In the course of this representation, there may come a time when it is in the best interests of the United States to settle a lawsuit or end a criminal prosecution. Settlements, including civil settlement agreements, deferred prosecution agreements, non-prosecution agreements, and plea agreements, are a useful tool for Department attorneys to achieve the ends of justice at a reasonable cost to the taxpayer. The goals of any settlement are, first and foremost, to compensate victims, redress harm, or punish and deter unlawful conduct.''

However, certain previous settlement agreements involving the Department included provisions requiring payments to various non-governmental, third-party organizations as a condition of settlement with the United States. Those third-party organizations were neither victims nor parties to the lawsuits.

The June 5, 2017, Memorandum announced that the Department would no longer engage in this practice. Pursuant to the June 5, 2017, Memorandum, except in specific limited circumstances, ''Department attorneys may not enter into any agreement on behalf of the United States in settlement of federal claims or charges, including agreements settling civil litigation, accepting plea agreements, or deferring or declining prosecution in a criminal matter, that directs or provides for a payment or loan to any non-governmental person or entity that is not a party to the dispute.'' This policy is already incorporated into the Justice Manual at *https://www.justice.gov/jm/jm/1-17000-settlement-payments-third-parties.*

This final rule amends the Department's regulations to reflect this policy, with certain changes from the June 5, 2017, Memorandum to clarify the scope of exceptions. This rule specifically clarifies that the policy extends to a payment or loan, whether in cash or in kind, to any non-governmental person or entity that is not a party to the dispute. The Miscellaneous Receipts Act provides that Government officials ''receiving money for the Government from any source shall deposit that money with the Treasury.'' *See* 31 U.S.C. 3302(b). ''Receiving money for the Government'' includes the ''constructive receipt'' of money ''if a federal agency could have accepted possession and retains discretion to direct the use of the money.'' *See* Effect of 31 U.S.C. 484 on the Settlement Authority of the Attorney General, 4B Op. O.L.C. 684, 688 (1980). This rule thus similarly forbids circumvention of the policy reflected in this statute via the use of in-kind payments.

This rule also revises the exceptions to the prohibition. Under the rule, there are four limited exceptions to the policy's prohibition. First, the prohibition does not apply to an otherwise lawful payment or loan that provides restitution or compensation to a victim, though in no case shall any settlement agreement require defendants in environmental cases, in lieu of payment to the Federal Government, to expend funds to provide goods or services to third parties for Supplemental Environmental Projects. Second, the prohibition does not apply when, in cases of foreign official corruption, a trusted third party is required to facilitate the repatriation and use of funds to directly benefit those harmed by the foreign corruption. Third, the prohibition does not apply to payments for legal or other professional services rendered in connection with the case. Fourth, the prohibition does not apply to payments expressly authorized by statute or regulation, including restitution and forfeiture. Finally, this rule also deletes some examples of exception (c)(1).

The policy set forth in this final rule applies to all civil and criminal cases litigated under the direction of the Attorney General and includes civil settlement agreements, *cy pres* agreements or provisions, plea agreements, non-prosecution agreements, and deferred prosecution agreements.

Regulatory Certifications

Administrative Procedure Act

This rule relates to a matter of agency management or personnel and is a rule of agency organization, procedure, or practice. Accordingly, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. *See* 5 U.S.C. 553(a)(2), (b), and (d).

Regulatory Flexibility Act

This regulation will not have an impact on small entities because it pertains to personnel and administrative matters affecting the Department. An analysis under the Regulatory Flexibility Act was not required for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter. *See* 5 U.S.C. 601(2), 604(a).

Executive Orders 12866, 13563, and 13771—Regulatory Review

This regulation has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866, ''Regulatory Planning and Review,'' and section 1(b) of Executive Order 13563, ''Improving Regulation and Regulatory Review.''

This final rule is ''limited to agency organization, management, or personnel matters'' and thus is not a ''rule'' for purposes of review by the Office of Management and Budget under section 3(d)(3) of Executive Order 12866. Accordingly this rule has not been reviewed by the Office of Management and Budget.

This rule is not subject to the requirements of Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' because it is not a significant regulatory action under Executive Order 12866, and because it is ''related to agency organization, management, or personnel'' and thus not a ''rule'' under Executive Order 13771, section 4(b).

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform.''

Executive Order 13132—Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It is a rule of internal agency practice and procedure. Therefore, in accordance with Executive Order 13132, ''Federalism,'' the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Congressional Review Act

This action is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act, 5 U.S.C. 804(3)(B),(C). Therefore, the reporting requirements of 5 U.S.C. 801 do not apply.

List of Subjects in 28 CFR Part 50

Administrative practice and procedure.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509, 510, part 50 of title 28 of the Code of Federal Regulations is amended as follows:

PART 50—STATEMENTS OF POLICY

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1162; 28 U.S.C. 509, 510, 516, and 519; 42 U.S.C. 1921 *et seq.,* 1973c; and Pub. L. 107–273, 116 Stat. 1758, 1824.

■ 2. Add § 50.28 to read as follows:

§ 50.28 Prohibition on settlement payments to non-governmental third parties.

(a) The goals of a settlement agreement between the Department of Justice and a private party are to compensate victims, redress harm, or punish and deter unlawful conduct. It is generally not appropriate to use a settlement agreement to require, as a condition of settlement, payment to non-governmental, third-party organizations who are not victims or parties to the lawsuit.

(b) Except as provided in paragraph (c) of this section, Department attorneys shall not enter into any agreement on behalf of the United States in settlement of federal claims or charges, including agreements settling civil litigation, accepting plea agreements, or deferring or declining prosecution in a criminal matter, that directs or provides for a payment or loan, in cash or in kind, to any non-governmental person or entity that is not a party to the dispute.

(c) Department attorneys may only enter into such agreements in four specific situations:

(1) When the otherwise lawful payment or loan, in cash or in kind, provides restitution or compensation to a victim, though in no case shall any such agreements require defendants in environmental cases, in lieu of payment to the Federal Government, to expend funds to provide goods or services to third parties for Supplemental Environmental Projects;

(2) When, in cases of foreign official corruption, a trusted third party is required to facilitate the repatriation and use of funds to directly benefit those harmed by the foreign corruption;

(3) When payment is for legal or other professional services rendered in connection with the case; or

(4) When payment is expressly authorized by statute or regulation, including restitution and forfeiture.

(d) This policy applies to all civil and criminal cases litigated under the direction of the Attorney General and includes civil settlement agreements, *cy pres* agreements or provisions, plea agreements, non-prosecution agreements, and deferred prosecution agreements.

Dated: December 4, 2020.

William P. Barr,

Attorney General.

[FR Doc. 2020–27189 Filed 12–15–20; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 424

[Docket No. FWS–HQ–ES–2020–0047, FF09E23000 FXES1111090FEDR 212; Docket No. 201210–0335]

RIN 1018–BE69; 0648–BJ44

Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat

AGENCY: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively referred to as the ''Services'' or ''we''), add a definition of ''habitat'' to our regulations that implement section 4 of the Endangered Species Act of 1973, as amended (Act). This rulemaking responds to Supreme Court case law regarding the designation of critical habitat and provides transparency, clarity, and consistency for stakeholders.

DATES:

Effective date: This final regulation is effective on January 15, 2021.

Applicability date: This revised regulation applies to critical habitat rulemakings for which a proposed rule is published after January 15, 2021.

ADDRESSES: Public comments and materials received, as well as supporting documentation used in the preparation of this final regulation, are available on the internet at *http://www.regulations.gov* in Docket No. FWS–HQ–ES–2020–0047.

FOR FURTHER INFORMATION CONTACT: Gary Frazer, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, telephone (202) 208–4646; or Samuel D. Rauch, III, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone (301) 427–8403. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2020, the Services published a proposed regulatory definition of ''habitat'' in the **Federal Register** (85 FR 47333); the definition would be added to title 50 of the Code of Federal Regulations in part 424 (50 CFR part 424). In that proposed rule, we provided the background for our proposed definition in terms of the statute, legislative history, and case law.

In this final rule, we focus our discussion on changes from the proposed rule based on comments we received during the comment period and our further consideration of the issues raised. For background on the statutory and legislative history and case law relevant to this regulation, we refer the reader to the proposed rule (85 FR 47333, August 5, 2020).

In finalizing the specific changes to the regulation in this document and setting out the accompanying clarifying discussion in this preamble, the Services are establishing a prospective standard only. Although this regulation is effective 30 days from the date of publication as indicated in **DATES** above, it will apply only to relevant rulemakings for which the proposed rule is published after that date. Thus, the prior version of the regulations at 50 CFR part 424 will continue to apply to any rulemakings for which a proposed rule was published before the effective date of this rule. Nothing in this final revised regulation is intended to require that any previously completed critical habitat designation be reevaluated on the basis of this final regulation.

Discussion of Changes From the Proposed Rule

In this section, we discuss changes between the proposed regulatory definition and the definition we are finalizing for the term ''habitat,'' as that term is used in the context of critical habitat designations and which will be set forth in the implementing regulations at 50 CFR 424.02.

We proposed a regulatory definition of ''habitat'' as that term is used in the context of critical habitat designations under the Act. In addition to the proposed definition, we also sought comment on an alternative definition. The Act defines ''critical habitat'' in section 3(5)(A), establishing separate criteria depending on whether the relevant area is within or outside of the geographical area occupied by the species at the time of listing, but it does not define the broader term ''habitat.'' *See* 16 U.S.C. 1532(5)(A). The Services have not previously adopted a definition of the term ''habitat'' through regulations or policy; rather, we have traditionally applied the criteria from the definition of ''critical habitat'' based on the implicit premise that any specific area satisfying that definition was habitat.

However, the Supreme Court recently held that an area must logically be ''habitat'' in order for that area to meet the narrower category of ''critical habitat'' as defined in the Act *Weyerhaeuser Co.* v. *U.S. FWS,* 139 S. Ct. 361 (2018). The Court stated: ''. . . Section 4(a)(3)(A)(i) does not authorize the Secretary to designate [an] area as *critical* habitat unless it is also *habitat* for the species.'' *Id.* at 368; *see id.* at 369 n.2 (''we hold that an area is eligible for designation as critical habitat under section 4(a)(3)(A)(i) only if it is habitat for the species''). Given this holding in the Supreme Court's opinion in *Weyerhaeuser,* we are adding a regulatory definition of ''habitat.''

Under the text and logic of the statute, the definition of ''habitat'' must inherently be at least as broad as the statutory definition of ''critical habitat.'' To give effect to all of section 3(5)(A), the definition of ''habitat'' we are finalizing is broad enough to include both occupied areas and unoccupied areas, because the statute defines ''critical habitat'' to include both occupied and unoccupied areas. 139 S. Ct. at 369 (''[h]abitat can, of course, include areas where the species does not currently *live,* given that the statute defines critical habitat to include unoccupied areas'').

We received numerous comments that the proposed and alternative definitions lacked clarity, were ambiguous, and used terms that needed to be defined further. Additionally, commenters identified specific issues with some of the terms used in the proposed and alternative definitions and were