

docket for inspection or copying where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 017.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.393(b) to read as follows:

#### § 117.393 Illinois Waterway.

\* \* \* \* \*

(b) The draw of the Chessie Railroad Bridge, mile 254.1, at Seneca, Illinois, operates as follows:

(1) The draw is normally maintained in the fully open position, displaying green mid-channel lights to indicate the span is fully open.

(2) When a train approaches the bridge and the draw is in the open position, the train will stop, train operator shall walk out on the bridge and scan the river for approaching vessels.

(3) If a vessel is approaching the bridge, the draw will remain open. The vessel shall contact the train operator on VHF–FM channel 16 and the train operator shall keep the draw in the fully open position until the vessel has cleared the bridge.

(4) If no vessels are observed, the train operator initiates a five minute warning period on VHF–FM radio channel 16 before closing the bridge. The train operator will broadcast the following message: “The Chessie Railroad Bridge at Mile 254.1, Illinois River, will close to navigation in five minutes.” The announcement is repeated every minute counting down the time remaining until closure.

(5) At the end of the five minute warning period, and if no vessels are approaching the bridge, the train operator shall sound the siren for 10 seconds, activate the alternate flashing red lights on top of the draw, then lower and lock the draw in place. Red lights shall continue to flash to indicate the draw is closed to navigation.

(6) After the train has cleared the bridge, the draw shall be raised to its full height and locked in place, the red

flashing lights stopped, and the draw lights changed from red to green.

\* \* \* \* \*

Dated: October 19, 2006.

**Ronald W. Branch,**

*Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist. Acting.*

[FR Doc. E6–19310 Filed 11–15–06; 8:45 am]

**BILLING CODE 4910–15–P**

### DEPARTMENT OF AGRICULTURE

#### Forest Service

#### 36 CFR Parts 241, 251, 261

**RIN 0596–AC33**

#### Piscicide Applications on National Forest System Lands

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule; request for public comments.

**SUMMARY:** The Forest Service proposes to amend Title 36 Code of Federal Regulations (CFR) parts 241, 251 and 261. Relevant sections of the Forest Service Manual (FSM) 2151, 2152, 2153, 2610, 2651 and 2719; and Forest Service Handbook (FSH) 2109.14, would also be revised to reflect the changes in the regulations. Title 36 CFR part 241 addresses the cooperation between the agency and State fish and game management agencies and governs the agency’s responsibility in these partnerships. Part 251 sets out requirements governing special uses on National Forest System lands and identifies the categories of uses for which a special use authorization is required. Part 261, subpart A sets out the general prohibitions of activities on National Forest System lands, while subpart B provides for prohibition of activities on National Forest System lands by closure orders.

The proposed amendment to the rule would result in three changes. The principle change, in part 241, would establish criteria for State piscicide use on National Forest System lands, outside designated Wild and Scenic Rivers or Congressionally designated Wilderness and Wilderness Study Areas. A provision that State piscicide applications outside designated Wilderness and Wilderness Study Areas are not “special uses” requiring special use authorization would be added to 36 CFR 251.50. A paragraph would be inserted into 36 CFR 261.50 to specifically provide for closure of an area, under specific circumstances, to prohibit piscicide application. In addition, the ambiguous phrase “other

minor uses,” which refers to pesticide uses, would be eliminated in 36 CFR 261.9(f). The proposed rule changes would provide an efficient and standardized national approach for the application of piscicides by State agencies on National Forest System lands while retaining the Forest Service’s authority over such use. Public comment is invited and will be considered in development of the final rule.

**DATES:** Comments must be received, in writing, January 16, 2007.

**ADDRESSES:** Written comments concerning this notice should be addressed to Dr. Jesus A. Cota at Forest Health Protection Staff, 1601 N. Kent St., RPC, 7th Floor (FHP), Arlington, VA 22209. Comments for Dr. Jesus A. Cota may be sent via e-mail to [pesticiderule@fs.fed.us](mailto:pesticiderule@fs.fed.us) or via facsimile to (703) 605–5353.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Service office of the Forest Health Protection staff, 1601 N. Kent St., RPC, 7th Floor (FHP), Arlington, VA 22209. Due to security requirements, visitors are encouraged to call ahead to (703) 605–5352 to facilitate entry to the building.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jesus A. Cota at Forest Health Protection Staff, at (703) 605–5344 (e-mail: [jcota@fs.fed.us](mailto:jcota@fs.fed.us)) or Ronald Dunlap at Watershed, Fish, Wildlife, Air and Rare Plants Staff, at (202) 205–1790 (e-mail: [rlldunlap@fs.fed.us](mailto:rlldunlap@fs.fed.us)).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern standard time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** State agencies and the Forest Service share responsibility for the protection and management of fish and wildlife populations on National Forest System (NFS) lands. A number of Federal land management statutes acknowledge the States’ traditional role in managing fish and wildlife populations by affirming that the statutes do not affect the jurisdiction or responsibilities of the States with respect to wildlife and fish on the National Forests; see the Organic Administration Act at 16 U.S.C. 480; the Multiple-Use Sustained-Yield Act at 16 U.S.C. 528; the Sikes Act at 16 U.S.C. 670h; the Federal Land Policy and Management Act at 43 U.S.C. 1732; and the Wilderness Act at 16 U.S.C. 1131–1136. In acknowledging State

jurisdiction and responsibilities, however, these statutes do not diminish the Federal Government's coexistent jurisdiction and responsibilities.

Overall, the Forest Service and State agencies have enjoyed long-standing and mutually beneficial partnerships. On some management issues, such as hunting and fishing, the States generally exercise virtually all management responsibility. On other issues, Forest Service and the States exercise their responsibilities cooperatively, with the State and Forest Service working out issues in order to satisfy any concerns. This cooperative, informal approach has generally worked except on occasions when Forest Service special authorizations have been required. Under the current rules, the States must obtain special use authorization for the application of pesticides, including piscicides, on units of the NFS.

Piscicides are chemicals intended to kill fish. Piscicides are the most effective means of eradicating invasive species or making habitat—streams, lakes or other bodies of water—available for desired aquatic species. A State piscicide project is generally understood to include the following activities: The ground transportation of supplies, equipment and personnel to and from the project site; the construction or setup of a temporary downstream barrier to ensure that target species do not escape the application of the piscicide (typically a block net, in place for a month or less); the application of an Environmental Protection Agency (EPA) approved piscicide to the target waters; the detoxification of the waters by chemically neutralizing the effects of the piscicide; and pretreatment and post treatment monitoring.

The proposed amendment to the rule would strengthen the cooperative relationship between the Forest Service and the State(s) by setting criteria for State piscicide use on NFS lands; where a State piscicide use meets the criteria, it may proceed. The rule does not change the Forest Service's ability to use a closure order to preclude the action where necessary to protect NFS resources.

Not requiring the special use authorization process for State piscicide applications would reduce the time between a State's proposing an action and the execution of that action. A State would know beforehand the precise information it must supply the Forest Service before it can proceed with a piscicide project and would need not wait for a special use authorization to be granted.

Timing is important in accomplishing piscicide projects, particularly with

respect to control and eradication of invasive species. Where rapid control or eradication of invasive species is not possible, risk to native fish can increase dramatically, as can control costs. The special use authorization process has often resulted in increased costs or failure to achieve management goals, such as control of invasive species; recovery, downlisting or delisting of threatened and endangered species; and has caused friction in long-standing State-Federal partnerships.

The standard set of criteria established in the rule also would provide consistency from NFS unit to unit, and State to State. Currently, a State with a number of national forests within its borders may have to meet a different set of criteria or conditions for each of those NFS units. Over time, a State may have to meet a different criteria within the same NFS unit. Under the proposed rule, a State would know the criteria it must meet on any NFS unit. Moreover, the same criteria would apply to every State. The criteria have been designed to eliminate duplicative State and Federal procedures while ensuring adequate protection of resources.

Although the Forest Service proposes to change the manner in which it exercises its responsibilities, it does not anticipate that this rule change would change the frequency and manner of piscicide use by States on NFS land. State and Forest Service cooperation has always extended to such use, and, as described in the "Section-by-section explanation of the proposed rule," the criteria that would be established in this Rule are practices that generally have been required by Forest Service authorizations, and by the States themselves on their operations. The reporting requirements also would formalize a long-standing practice. The Forest Service is required to maintain records of restricted-use pesticides and to annually report all pesticide use on its lands. In addition, field units are required to report to the Washington Office all accidents and incidents involving pesticides; this provision is included to ensure that the Forest Service will have a thorough accounting of use on National Forest System lands.

The rule does not change the requirement that States obtain a special use authorization to use piscicides within congressionally designated wilderness and wilderness study areas, as well as designated wild and scenic rivers. The Wilderness Act provides that "each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area," and

also that "except as necessary to meet minimum requirements for the administration of the area for the purposes of this Act \* \* \* there shall be no \* \* \* use of motor vehicles, motorized equipment or motorboats, \* \* \* no other form of mechanical transport, and no structure or installation within any such area." The Forest Service must retain its authority to determine whether a proposed piscicide application would be appropriate in wilderness, particularly where motorized equipment or installation of temporary structures would be involved, as is often the case. Likewise, it is appropriate for the Forest Service to require that States obtain special use authorization within the Wild and Scenic Rivers System, to ensure protection of the values for which each river has been added to the National Wild and Scenic Rivers System (see 16 U.S.C. 1272). Because Congress typically requires the Forest Service to manage wilderness study areas so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System (see, for example the Montana Wilderness Study Act, Pub. L. 95-150, 91 Stat 1243 (1977)), the U. S. Department of Agriculture (USDA) believes that the Forest Service also should require special use authorization for State piscicide actions in such areas.

### **Section-by-Section Explanation of the Proposed Rule**

#### *Proposed Changes to 36 CFR Part 241*

A portion of the text of the current section 241.2 would be designated as paragraph (a), and new paragraphs (b)(1) through (b)(4)(ii) would be added to specifically refer to State application of piscicides within the National Forest System.

Paragraph (b)(1) would require the State to provide notice of a piscicide project to the supervisor for the NFS unit within which the project would take place. This provision requires communication between State and Federal agencies regarding any fish or wildlife management project the State undertakes on Federal land, and specifies the particular information to provide regarding the piscicide project. The proposed rule provides that 60 days prior to the date the project is to take place, the State is to give the Forest Service notice of the reason for the project; its location and scope; the specific piscicide and amount to be applied; the method of application; and the time period in which the project would occur. The qualifications of the persons to apply the piscicide must be

stated. The Forest Service believes that 60 days is an appropriate time period in which the Forest Service can consider whether it has concerns about the project, and the State and Forest Service can address and satisfy those concerns. The information required to be provided would help ensure that the Forest Service has sufficient information to know that the project would fit the criteria set out in paragraphs (b)(3)(i) through (b)(3)(vi), so that the project may proceed.

Paragraph (b)(3) on criteria allows the Forest Service to waive the 60-day notice period in an emergency, when rapid action is necessary, such as to eradicate an invasive species that has the potential to increase quickly.

Paragraph (b)(2) identifies reporting requirements. By December 1 of each year, the State is required to report to the applicable supervisor all piscicide projects the State has conducted during the Federal fiscal year (October 1–September 30) on the administrative unit under the supervisor's responsibility. The information is necessary for the Forest Service field units to fulfill their recording of restricted-use pesticides as required under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and to report to the Washington Office all pesticide use on National Forest System lands. This section also requires immediate reporting of accidents or incidents involving piscicide use on the administrative unit. Examples of accidents or incidents to report are: piscicide spills, crashes of aircraft or vehicle with piscicides on board, and injury or fatality of application personnel for any reason in the preparation or execution of the project piscicide.

Paragraph (b)(3)(i) through (vi) provides that States need not obtain special use authorization for piscicide projects that are outside Congressionally designated Wilderness, Wilderness Study Areas, and designated Wild and Scenic Rivers and that meet certain criteria set out in that paragraph. The project must be in compliance with all Federal laws and regulations, and must be consistent with the Land and Resource Management Plan for the administrative unit within which the project will occur, in addition to any applicable or relevant aquatic resource recovery plan or species management plan. The piscicide to be applied must be registered for that purpose with EPA, and restricted use piscicide must be applied by certified personnel or under the supervision of a certified pesticide applicator.

The purpose of the project must be for the management of aquatic resources. The Forest Service expects that projects would continue to be carried out for the reintroduction, maintenance, or enhancement of native and desired species, particularly in habitat occupied by invasive species; and to maintain sport fisheries. Also, the project must be designed to ensure that there is no long-term impairment to ecosystem functions, or unreasonable interference with other uses on National Forest System lands. Some short-term impairment, such as a temporary reduction in macro-invertebrate populations, is a common consequence of piscicide application, and would not preclude a piscicide project that meets all the criteria in the rule from going forward on National Forest System lands. A project of such extent and intensity that would result in long-term impairment of ecosystem functions, however, would not meet this criterion. In addition, the project must be designed so that it would not interfere with other uses, such as shortly before a holiday weekend when many visitors may be in the area.

The project design must include a plan for monitoring to determine that the project was effective in meeting its objectives, that detoxification successfully neutralized the piscicide, the extent, if any, to which the piscicide had drifted, and the impacts to non-target species within and outside the treatment area. Like the other criteria, this criterion is not expected to impose a new responsibility on the States, as monitoring is always an integral part of State piscicide projects. Finally, the State must have reported on past piscicide projects, as required by this section at (b)(2).

Paragraph (b)(4)(i) would confirm that State piscicide projects within Congressionally designated Wilderness, Wilderness Study Areas and designated Wild and Scenic Rivers remain subject to Forest Service special use authorization requirements. Paragraph (b)(4)(ii) affirms the normal requirement that States, engaged in wildlife and fish management activities including piscicide projects, must obtain a special use authorization for access over closed roads, trails or areas, or for construction or placement of structures and installations on NFS lands, unless a structure or installation would be temporary and necessary to a piscicide project.

#### *Proposed Changes to 36 CFR Part 251*

Part 251, Subpart B governs special use authorization requirements on National Forest System lands and

identifies the categories of activities that require a special use authorization and those that do not. The change to section 251.50 would include the application of piscicides by State fish and game management agencies on National Forest System lands, consistent with proposed 36 CFR 241.2(b), in the category of activities that do not require a special use authorization.

#### *Proposed Changes to 36 CFR Part 261*

Part 261 governs the prohibitions of activities on National Forest System lands. Section 261.9(f) specifically prohibits the use of pesticides on National Forest System lands and also identifies the exceptions to this prohibition. The application of piscicides by State fish and game management agencies in accordance with the criteria in section 241.2(b) would be included in this list of exceptions. The phrase "other minor uses" would be removed from the exceptions in this list. The phrase is being removed to acknowledge that special use authority may be issued for any pesticide use, not just minor uses.

Section 261.10(a) currently lists activities, including constructing, placing or maintaining any kind of road, trail, structure, fence, enclosure, communications equipment, or other improvement on National Forest System lands or facilities that are prohibited except as permitted under the use of such written instruments as a special use authorization, contract or operating plan. This section currently states that these activities are prohibited unless the requirement of such a written instrument is waived pursuant to section 251.50(e). Since State piscicide application activities can include the set up or construction of a temporary downstream barrier, those activities listed under paragraph (a) of section 251.50 are being added to section 261.10(a).

Section 261.50 governs the use of closure orders, including the authority, method of posting, and the different reasons for which an order can be issued. The proposed changes to this section would specify the triggers that can result in the issue of a closure order by the Forest Service in order to prohibit a State piscicide project on National Forest System lands. One trigger would be if the criteria listed in 36 CFR 241.2(b) are not met. An additional trigger would include the occurrence of an existing fire incident or other emergency that threatens public safety so that a piscicide application at such time would not be appropriate. The Forest Service believes that it will rarely have to use the proposed closure

authority. The usual cooperative relationships with States should ensure that any problems will be worked out well before the point of issuing an order. Nevertheless, the Forest Service believes it must retain the option to close an area to piscicide use, if necessary.

In summary, the principle change under the proposed rule would be that a special use authorization for State piscicide projects on National Forest Systems lands except in Wilderness and Wilderness Study Areas would no longer be required. Instead, States would be required to meet specific criteria (36 CFR 241.2(b)) to apply piscicides, and the Forest Service will continue to retain final authority over piscicide use on National Forest Service lands by means of closure orders instead of special use authorizations. This change would not apply to piscicide projects proposed in designated Wild and Scenic Rivers and Congressionally designated Wilderness and Wilderness Study Areas. Although piscicide projects in these areas are not prohibited, because of the additional considerations due to the special character of such areas, as defined in the Wild and Scenic Rivers Act and the Wilderness Act, State piscicide projects proposed in these areas would remain subject to Forest Service special use authorization requirements. The practice and frequency of piscicide applications by States on National Forest System lands is not expected to change as a result of the amendment of the rule. The proposed rule change would provide a consistent, standardized national approach for the application of piscicides on National Forest System lands by State agencies, would eliminate the delays associated with the Forest Service special use authorization process, and would strengthen long-term Federal and State partnerships. The benefit to the States, the Forest Service, and the public that would be realized as a result of this proposed rule change is the ability for State agencies to proceed in a timely manner with piscicide projects to achieve aquatic management objectives which include the restoration of aquatic ecosystems, the recovery of listed species, and the rapid response to discoveries of new or rapidly spreading invasive species.

### Regulatory Certifications

#### *Regulatory Impact*

This proposed rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has

determined that this is a non-significant rule as defined by E.O. 12866. This proposed rule will not have an annual effect of \$100 million or more on the economy, nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This proposed rule would not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this proposed rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients of such programs. Therefore, it has been determined that this proposed rule is not an economically significant regulatory action.

This proposed rule also has been considered in light of the Regulatory Flexibility Act, as amended, (5 U.S.C. 601 *et seq.*). In promulgating this proposed rule, publication of an advance notice of proposed rulemaking was not required by law. Further, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities as defined by that act. Therefore, it has been determined that preparation of a regulatory flexibility analysis is not required for this proposed rule.

#### *Environmental Impact*

Section 31.11a of Forest Service Handbook 1909.15 (69 FR 40591; July 6, 2004) excludes from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's preliminary assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule. Moreover, this proposed rule itself has no impact on the human environment. Therefore, it has been determined that preparation of an environmental assessment or an environmental impact statement is not required in promulgating this proposed rule.

#### *Federalism*

The agency has considered this proposed rule under the requirements of Executive Order 12612 and has made a preliminary assessment that the proposed rule will not have substantial direct effects on the States, on the relationship between the Federal

Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment on federalism implications is necessary at this time.

#### *Consultation With Tribal Governments*

This proposed rule has been reviewed under E.O. 13175 of November 6, 2000, "Consultation, and Coordination With Indian Tribal Governments." This proposed rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nor does this proposed rule impose substantial direct compliance costs on Indian tribal governments or preempt tribal law. Therefore, it has been determined that this proposed rule does not have tribal implications requiring advance consultation with Indian tribes.

#### *No Takings Implications*

This proposed rule has been reviewed for its impact on private property rights under Executive Order 12630. It has been determined that this proposed rule does not pose a risk of taking private property.

#### *Controlling Paperwork Burdens on the Public*

This proposed rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

#### *Energy Effects*

This proposed rule has been reviewed under E.O. 13211 of May 18, 2001, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." This proposed rule will not have a significant adverse effect on the supply, distribution, or use of energy. Nor has the Office of Management and Budget designated this rule as a significant energy action. Therefore, it has been determined that this proposed rule does not constitute a significant energy action requiring the preparation of a Statement of Energy Effects.

### Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this proposed rule, (1) All State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted (2) no retroactive effect would be given to this proposed rule; and (3) this proposed rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

### Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the agency has assessed the effects of this proposed rule on State, local, and tribal governments, and on the private sector. This proposed rule does not compel the expenditure of \$100 million or more by any State, local, or tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

### List of Subjects

#### 36 CFR Part 241

Fish, Intergovernmental relations, National forests, Wildlife, Wildlife refuges.

#### 36 CFR Part 251

Administrative practice and procedure, Alaska, Fish, National Forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

#### 36 CFR Part 261

Law enforcement, National Forests.

For the reasons stated in the Preamble, the Forest Service proposes to amend 36 CFR Chapter II as follows:

### PART 241—FISH AND WILDLIFE

1. The authority citation for part 241 continues to read as follows:

**Authority:** 16 U.S.C. 472, 539, 551, 683.

#### Subpart A—General Provisions

2. Revise § 241.2 to read as follows:

##### § 241.2 Cooperation in wildlife management.

The Chief of the Forest Service, through the Regional Foresters and Forest Supervisors, shall determine the extent to which national forests or portions thereof may be devoted to fish and wildlife protection in combination with other uses and services of the national forests, and, in cooperation with the Fish and Game Department or other constituted authority of the State

concerned, will formulate plans for securing and maintaining desirable populations of wildlife species, and may enter into such general or specific cooperative agreements with appropriate State officials as are necessary and desirable for such purposes. Officials of the Forest Service will cooperate with State game officials in:

(a) The planned and orderly removal in accordance with the requirements of State laws of the crop of game, fish, furbearers, and other wildlife on national forest lands;

(b) The application of piscicides within the National Forest System by State fish and game management agencies.

(1) *Notice.* Written notice of a project involving the application of piscicides by State agencies on National Forest System lands must be provided to the Supervisor for the affected administrative unit and must:

(i) Precede the project by at least 60 days, unless the Forest Service agrees that an emergency requiring response within a shorter period of time exists.

(ii) Include a description of the purpose of the project, the location and scope of the project, the piscicide to be applied, the amount applied, the method of application, the qualifications of the persons that will apply the piscicides, the time period within which the piscicides will be applied, and the monitoring plan for the project.

(2) *Reporting.* By December 1 of each year the State must provide to the Supervisor, in writing, information on piscicide use within the administrative unit under the Supervisor's jurisdiction, and monitoring results for such uses, including: The name of the piscicide active ingredients (AI), the formulation used, the amount applied, and the total area within the administrative unit treated during the Federal fiscal year. The State shall immediately report any accident or incident involving piscicides occurring on National Forest System lands to the Supervisor for the administrative unit where the accident or incident occurred.

(3) *Criteria for State piscicide projects outside Wild and Scenic Rivers, Wilderness, and Wilderness Study Areas.* Forest Service special use authorization is not required for State piscicide projects that would occur outside designated Wild and Scenic Rivers or Congressionally designated Wilderness and Wilderness Study Areas and that meet the following criteria:

(i) The project is in compliance with all Federal laws and regulations;

(ii) The project is consistent with the Land and Resource Management Plan plus any relevant Aquatic Resource Recovery Plan and Species Management Plan;

(iii) The piscicides to be applied are currently registered with EPA and restricted-use piscicides will only be applied by a certified pesticide applicator or those under the supervision of a certified pesticide applicator;

(iv) The purpose of the project is for the management of aquatic resources;

(v) The project is designed in concert with the local Forest to address any issues related to ecosystem functions and existing uses of the National Forest System lands;

(vi) The project design includes a plan for monitoring within 60 days of treatment, including:

(A) Effectiveness monitoring to determine whether project objectives were met;

(B) Detoxification monitoring to determine whether piscicide neutralization was successful; and

(C) Non-target monitoring to determine piscicide drift and impacts to non-target species.

(vii) The State has provided reports on past piscicide use as required by paragraph (2).

#### (4) Special Use Authorization Requirements.

(i) Piscicide projects within designated Wild and Scenic Rivers or Congressionally designated Wilderness and Wilderness Study Areas are subject to special use authorization requirements of 36 CFR part 251 subpart B.

(ii) Nothing in this Rule exempts a State from the requirement to obtain a special use authorization in accordance with 36 CFR part 251 subpart B, for any purpose to gain access over a closed road or trail, or through a closed area; or to construct structures or installations beyond those temporary structures or installations that are a necessary part of a piscicide project.

### PART 251—LAND USES

#### Subpart B—Special Uses

3. The authority citation for subpart B continues to read as follows:

**Authority:** 16 U.S.C. 4601–6a, 4601–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

4. Amend § 251.50 by revising paragraph (a) to read as follows:

##### § 251.50 Scope.

(a) All uses of National Forest System lands, improvements, and resources,

except those authorized by the regulations governing sharing use of roads (§ 212.9); grazing and livestock use (part 222); the sale and disposal of timber and special forest products, such as greens, mushrooms, and medicinal plants (part 223); minerals (part 228); and the application of piscicides by State fish and game management agencies outside of designated Wild and Scenic Rivers and Congressionally designated Wilderness and Wilderness Study Areas (part 241) are designated "special uses." Before conducting a special use, individuals or entities must submit a proposal to the authorized officer and must obtain a special use authorization from the authorized officer, unless that requirement is waived by paragraphs (c) through (e)(3) of this section.

\* \* \* \* \*

**PART 261—PROHIBITIONS**

5. The authority citation for part 261 continues to read as follows:

**Authority:** 7 U.S.C. 1011(f); 16 U.S.C. 472, 551, 620(f), 1133(c), (d)(1), 1246(i).

**Subpart A—General Prohibitions**

6. Revise § 261.9(f) to read as follows:

**§ 261.9 Property.**

\* \* \* \* \*

(f) Using any pesticide except for:  
(1) Personal use as an insect repellent;  
(2) Application of piscicides on National Forest System lands by State fish and game management agencies in accordance with section 241.2(b) of this chapter;  
(3) Other pesticide use authorized pursuant to part 251, subpart B of this chapter.

\* \* \* \* \*

7. Revise § 261.10 (a) to read as follows:

**§ 261.10 Occupancy and use.**

\* \* \* \* \*

(a) Constructing, placing, or maintaining any kind of road, trail, structure, fence, enclosure, communications equipment, or other improvement on National Forest System lands or facilities without a special use authorization, contract, or approved operating plan, unless such authorization, contract, or operating plan is waived pursuant to section 251.50(a) or (e) of this chapter.

\* \* \* \* \*

**Subpart B—Prohibitions in Areas Designated by Order**

8. Amend § 261.50 by adding paragraphs (g) to read as follows:

**§ 261.50 Orders.**

\* \* \* \* \*

(g) The Chief, each Regional Forester, each Experiment Station Director, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may issue orders to close an area to prohibit piscicide applications by State agencies under the following circumstances:

(1) A proposed State piscicide application that does not meet the requirements specified under 36 CFR 241.2(b), or

(2) Existing fire incident or other emergencies that threaten public safety.

Dated: October 18, 2006.

**Dale N. Bosworth,**

*Chief, Forest Service.*

[FR Doc. E6-19197 Filed 11-15-06; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[EPA-HQ-OAR-2006-0497; FRL-8243-1]**

**RIN A2060-AN96**

**Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing a facility-specific nitrogen oxides (NO<sub>x</sub>) standard for a steam generating unit which simultaneously combusts fossil fuel and chemical by-product/waste at the Innovene USA facility located in Lima, Ohio. New source performance standards limiting emissions of, among other pollutants, NO<sub>x</sub> from industrial-commercial-institutional steam generating units capable of combusting more than 100 million British thermal units per hour were promulgated on November 25, 1986. The standards limit NO<sub>x</sub> emissions from the combustion of fossil fuels by themselves or in combination with other fuels or wastes. The standards include provisions for the establishment of facility-specific NO<sub>x</sub> standards for steam generating units which simultaneously combust fossil fuel and chemical by-product/waste under certain conditions.

**DATES:** *Comments.* Comments must be received on or before December 18, 2006, unless a hearing is requested by November 27, 2006. If a timely hearing request is submitted, the hearing will be held on December 1, 2006 and we must

receive written comments on or before January 2, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0497, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail:* A-and-r-docket@epa.gov.
- *Fax:* (202) 566-1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, 1301 Constitution Avenue, NW., Room B-108, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (*see FOR FURTHER INFORMATION CONTACT*).

**Note:** The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations, and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedures for submitting comments to *http://www.regulations.gov* are not affected by the flooding and will remain the same.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0497. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly