

*Regulatory Flexibility Act*

We have examined the impacts of the interim final rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). Unless we certify that the rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. The Regulatory Flexibility Analysis concludes that the rule is not expected to have a significant impact on a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This regulatory action is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This interim final rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

*Paperwork Reduction Act*

The interim final rule does not require any information collections. Therefore, we have not conducted a Paperwork Reduction Act analysis.

*National Environmental Policy Act (NEPA)*

The interim final rule is excluded from NEPA's environmental review requirements, pursuant to 48 FR 9374–02 (National Environmental Policy Act (NEPA), Review of Program Actions), based on the determination that it will not normally significantly affect the human environment.

*Civil Justice (Executive Order 12988)*

This interim final rule is in compliance with Executive Order 12988.

**List of Subjects in 42 CFR Part 70**

Communicable diseases, Public health, Quarantine, Reporting and recordkeeping requirements, Travel restrictions, User fees, Vaccination.

■ For the reasons set forth in the preamble, amend part 70 of title 42 of the Code of Federal Regulations as follows:

**PART 70—INTERSTATE QUARANTINE**

■ 1. The authority citation for part 70 is revised to read as follows:

**Authority:** Secs. 215 and 311 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 216, 243); section 361–369, PHS Act, as amended (42 U.S.C. 264–272); 31 U.S.C. 9701.

■ 2. Add § 70.9 to read as follows:

**§ 70.9 Vaccination clinics.**

(a) The Director may establish vaccination clinics, through contract or otherwise, authorized to administer vaccines and/or other prophylaxis.

(b) A vaccination fee may be charged for individuals not enrolled in Medicare Part B to cover costs associated with administration of the vaccine and/or other prophylaxis. Such fee is to be collected at the time that the vaccine is administered. The vaccination fee, if imposed, is shown in the following table:

Vaccine	Effective dates	Amount
Fluarix .....	11/25/05	² \$25.00

<sup>1</sup> Continuing for one year.

<sup>2</sup> \$7.00 for the vaccine and \$18.00 for administration.

Dated: January 12, 2005.

**Tommy G. Thompson,**  
Secretary.

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**BILLING CODE 4160–17–P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Reinstating Special Regulations for the Preble's Meadow Jumping Mouse**

**AGENCIES:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; correction.

**SUMMARY:** On May 22, 2001, the Fish and Wildlife Service (Service) adopted special regulations governing take of the threatened Preble's meadow jumping mouse (*Zapus hudsonius preblei*). On October 1, 2002, the Service amended those regulations to provide exemptions for certain activities related to noxious weed control and ongoing ditch maintenance activities. These regulations were set to expire on May 22, 2004. On May 20, 2004, the Service published a final rule to extend these special regulations permanently.

However, in spite of this final rule, the special regulations were removed from the CFR. This removal was done in error. With this final rule, we reinstate the regulatory text at § 17.40(l) as it was set forth in the May 20, 2004, final rule.

**DATES:** Effective May 20, 2004.

**ADDRESSES:** Division of Policy and Directives Management, U.S. Fish and Wildlife Service, Mail Stop 222, Arlington Square, 4401 N. Fairfax Drive, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Sara Prigan, Federal Register Liaison, Fish and Wildlife Service, at (703) 358–2508.

**SUPPLEMENTARY INFORMATION:****Background**

On May 22, 2001 (66 FR 28125), the Fish and Wildlife Service (Service, or we) adopted special regulations at 50 CFR 17.40(l) governing take of the threatened Preble's meadow jumping mouse (*Zapus hudsonius preblei*). The special regulations provided exemption from take provisions under section 9 of the Endangered Species Act for certain activities related to rodent control, ongoing agricultural activities, landscape maintenance, and existing uses of water. On October 1, 2002 (67 FR 61531), we amended these regulations to exempt certain activities related to noxious weed control and ongoing ditch maintenance activities. These regulations as amended were set to expire on May 22, 2004. On May 20, 2004 (69 FR 29101), we published a final rule to extend these special regulations permanently. We made this final rule effective on May 20, 2004, in order to avoid a gap in effectiveness. However, in spite of our efforts, by some error, the special regulations were removed from the CFR on May 22, 2004. With this correction, we reinstate the regulatory text of 17.40(l) as set forth in the May 20, 2004, final rule (69 FR 29101).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

**Regulation Correction****PART 17—[CORRECTED]**

■ For reasons set forth in the preamble, we correct 50 CFR 17.40 by reinstating paragraph (l), to read as follows:

**§ 17.40 Special rules—mammals.**

\* \* \* \* \*

(l) Preble's meadow jumping mouse (*Zapus hudsonius preblei*).

(1) *What is the definition of take?* To harass, harm, pursue, hunt, shoot,

wound, trap, kill, or collect; or attempt to engage in any such conduct. Incidental take is that which occurs when it is incidental to and not the purpose of an otherwise lawful activity. Any take that is not authorized by permit provided through section 7 or section 10 of the Act or that is not covered by the exemptions described below is considered illegal take.

(2) *When is take of Preble's meadow jumping mice allowed?* Take of Preble's meadow jumping mice resulting from the following legally conducted activities, in certain circumstances as described below, is allowed:

(i) *Take under permits.* Any person with a valid permit issued by the Service under § 17.32 may take Preble's meadow jumping mice pursuant to the terms of the permit.

(ii) *Rodent control.* Preble's meadow jumping mice may be taken incidental to rodent control undertaken within 10 feet of or inside any structure. "Rodent control" includes control of mice and rats by trapping, capturing, or otherwise physically capturing or killing, or poisoning by any substance registered with the Environmental Protection Agency as required by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136) and applied consistent with its labeling. "Structure" includes but is not limited to any building, stable, grain silo, corral, barn, shed, water or sewage treatment equipment or facility, enclosed parking structure, shelter, gazebo, bandshell, or restroom complex.

(iii) *Established, ongoing agricultural activities.* Preble's meadow jumping mice may be taken incidental to agricultural activities, including grazing, plowing, seeding, cultivating, minor drainage, burning, mowing, and harvesting, as long as these activities are established, ongoing activities and do not increase impacts to or further encroach upon the Preble's meadow jumping mouse or its habitat. New agricultural activities or those that expand the footprint or intensity of the activity are not considered to be established, ongoing activities.

(iv) *Maintenance and replacement of existing landscaping.* Preble's meadow jumping mice may be taken incidental to the maintenance and replacement of any landscaping and related structures and improvements, as long as they are currently in place and no increase in impervious surfaces would result from their maintenance and improvement. Construction of new structures or improvements or expansion of the

landscaping in a manner that increases impervious surfaces would not be considered maintenance and replacement of existing landscaping.

(v) *Existing uses of water.* Preble's meadow jumping mice may be taken incidentally as a result of existing uses of water associated with the exercise of perfected water rights pursuant to State law and interstate compacts and decrees. (A "perfected water right" is a right that has been put to beneficial use and has been permitted, decreed, or adjudicated pursuant to State law.) Increasing the use or altering the location of use of an existing water right would not be considered an existing use of water.

(vi) *Noxious weed control.* Preble's meadow jumping mice may be taken incidental to noxious weed control that is conducted in accordance with:

(A) Federal law, including Environmental Protection Agency label restrictions;

(B) Applicable State laws for noxious weed control;

(C) Applicable county bulletins;

(D) Herbicide application guidelines as prescribed by herbicide manufacturers; and

(E) Any future revisions to the authorities listed in paragraphs (1)(2)(vi)(A) through (D) of this section that apply to the herbicides proposed for use within the species' range.

(vii) *Ditch maintenance activities.* Preble's meadow jumping mice may be taken incidental to normal and customary ditch maintenance activities only if the activities:

(A) Result in the annual loss of no more than ¼ mile of riparian shrub habitat per linear mile of ditch, including burning of ditches that results in the annual loss of no more than ¼ mile of riparian shrub habitat per linear mile of ditch.

(B) Are performed within the historic footprint of the surface disturbance associated with ditches and related infrastructure, and

(C) Follow the Best Management Practices described in paragraphs (1)(2)(vii)(C)(1) through (3) of this section.

(1) Persons engaged in ditch maintenance activities shall avoid, to the maximum extent practicable, impacts to shrub vegetation. For example, if accessing the ditch for maintenance or repair activities from an area containing no shrubs is possible, then damage to adjacent shrub vegetation shall be avoided.

(2) Persons engaged in placement or sidecasting of silt and debris removed

during ditch cleaning, vegetation or mulch from mowing or cutting, and other material from ditch maintenance shall, to the maximum extent practicable, avoid shrub habitat and at no time disturb more than ¼ mile of riparian shrub habitat per linear mile of ditch within any calendar year.

(3) To the maximum extent practicable, all ditch maintenance activities should be carried out during the Preble's hibernation season, November through April.

(D) All ditch maintenance activities carried out during the Preble's active season, May through October, should be conducted during daylight hours only.

(E) Ditch maintenance activities that would result in permanent or long-term loss of potential habitat that would not be considered normal or customary include replacement of existing infrastructure with components of substantially different materials and design, such as replacement of open ditches with pipeline or concrete-lined ditches, replacement of an existing gravel access road with a permanently paved road, or replacement of an earthen diversion structure with a rip-rap and concrete structure, and construction of new infrastructure or the movement of existing infrastructure to new locations, such as realignment of a ditch, building a new access road, or installation of new diversion works where none previously existed.

(3) *When is take of Preble's not allowed?*

(i) Any manner of take not described under paragraph (1)(2) of this section.

(ii) No person may import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any Preble's meadow jumping mice.

(iii) No person, except for an authorized person, may possess, sell, deliver, carry, transport, or ship any Preble's meadow jumping mice that have been taken illegally.

(4) *Where does this rule apply?* The take exemptions provided by this rule are applicable within the entire range of the Preble's meadow jumping mouse.

\* \* \* \* \*

Dated: January 18, 2005.

**Sara Prigan,**

*Fish and Wildlife Service Federal Register Liaison.*

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