

the Secretary's position with respect to any disputed plan provision; and a copy of the accident response plan indicating all disputed and agreed-upon provisions.

(c) *Filing and service of pleadings.* Filing with the Commission of any document in an accident response plan dispute proceeding is effective upon receipt. A copy of each document filed with the Commission in such a proceeding shall be expeditiously served on all parties, such as by personal delivery, including courier service, by express mail, or by facsimile transmission.

(d) *Submission of materials.*

(1) Within 15 calendar days of the referral, the parties shall submit to the Judge assigned to the matter all relevant materials regarding the dispute. Such submissions shall include a motion for any relief sought, including any request to stay the effect of a disputed provision pending any appeal taken pursuant to paragraph (f) of this section, and may include proposed findings of fact and conclusions of law. Such materials may be supported by affidavits or other verified documents, and shall specify the grounds upon which the party seeks relief. Supporting affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated.

(2) *Hearing.*

(i) Within 5 calendar days following the Secretary's referral, any party may request a hearing and shall so advise the Commission's Chief Administrative Law Judge or his designee, and simultaneously notify the other parties.

(ii) Within 5 calendar days following the Secretary's referral, the Commission's Chief Administrative Law Judge or his designee may issue an order scheduling a hearing on the Judge's own motion, and must immediately so notify the parties.

(iii) If a hearing on the referral is requested or ordered, the hearing shall be held within 15 calendar days of the referral. The scope of a hearing on an accident response plan dispute referral is limited to the disputed plan provision or provisions. If no hearing is held, the Judge assigned to the matter shall review the materials submitted by the parties pursuant to paragraph (d)(1) of this section, and shall issue a decision pursuant to paragraph (e) of this section.

(e) *Decision of the Judge.*

(1) Within 15 calendar days following receipt by the Judge of all submissions and testimony made pursuant to paragraph (d) of this section, the Judge shall issue a decision that constitutes the Judge's final disposition of the

proceedings. The decision shall be in writing and shall include all findings of fact and conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented by the record, and an order. The decision shall include a ruling, if a party has so moved, on whether inclusion of the disputed provision in the plan shall be limited, and its effect stayed, by any appeal taken pursuant to paragraph (f) of this section. As far as is practicable, the decision of the Judge shall otherwise be subject to the provisions of § 2700.69.

(2) The parties shall be notified of the Judge's decision by the most expeditious means reasonably available. Service of the decision shall be by certified or registered mail, return receipt requested.

(f) *Review of decision.* Any party may seek review of a Judge's decision by filing with the Commission a petition for discretionary review pursuant to § 2700.70 and § 2700.75. The Commission shall act upon a petition on an expedited basis. If review is granted, the Commission shall issue a briefing order. Except under extraordinary circumstances, the Commission will not grant motions for extension of time for filing briefs.

Dated: July 12, 2006.

**Michael F. Duffy,**

*Chairman, Federal Mine Safety and Health Review Commission.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

[DoD-2006-OS-0074]

#### 32 CFR Part 54

#### Allotments for Child Support and Spousal Support

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense is administratively amending 32 CFR part 54, "Allotments for Child Support and Spousal Support" to identify the location of the policy and procedures for Allotments for Child Support and Spousal Support in the DoD Directives System. All other information remains unchanged.

**DATES:** This rule is effective July 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** L. Bynum, 703-696-4970.

**SUPPLEMENTARY INFORMATION:** DoD Directive 1340.17, which was originally codified in the CFR as 32 CFR part 54, has been removed from the DoD Directives System. The sentence added to inform readers that were previously used to making cross-reference to the Directive will now know where to locate additional information.

#### List of Subjects in 32 CFR Part 54

Alimony, Child support, Military personnel, Reporting and recordkeeping requirements, Wages.

■ Accordingly, 32 CFR part 54 is amended as follows:

#### PART 54—ALLOTMENTS FOR CHILD AND SPOUSAL SUPPORT

■ 1. The authority citation for 32 CFR part 54 continues to read as follows:

**Authority:** 15 U.S.C. 1673, 37 U.S.C. 101, 42 U.S.C. 665.

■ 2. Section 54.1 is amended by adding a sentence at the end of the section to read as follows:

#### § 54.1 Purpose.

\* \* \* The policy and procedures for this part are also located in the DoD Financial Management Regulation ("DoDFMR"), Volume 7B, Chapter 43, section 4304, "Allotments for Child Support and Spousal Support" (DoD 7000.14-R).

Dated: July 12, 2006.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

[DoD-2006-OS-0093]

#### 32 CFR Part 78

#### Voluntary State Tax Withholding From Retired Pay

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense is administratively amending 32 CFR Part 78, "Voluntary State Tax Withholding From Retired Pay" to identify the location of the policy and procedures for Voluntary State Tax Withholding from Retired Pay in the DoD Directives System. All other information remains unchanged.

**DATES:** This rule is effective July 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** L. Bynum, 703-696-4970.

**SUPPLEMENTARY INFORMATION:** DoD Directive 1332.34, which was originally codified in the CFR as 32 CFR part 78, has been removed from the DoD Directives System. The sentence added to inform readers that were previously used to making cross-reference to the Directive will now know where to locate additional information.

#### List of Subjects in 32 CFR Part 78

Income taxes, Intergovernmental relations, Military personnel, Pensions.

■ Accordingly, 32 CFR part 78 is amended as follows:

#### PART 78—VOLUNTARY STATE TAX WITHHOLDING FROM RETIRED PAY

■ 1. The authority citation for 32 CFR part 78 continues to read as follows:

**Authority:** 10 U.S.C. 1045.

■ 2. Section 78.1 is amended by adding a sentence at the end of the section to read as follows:

##### § 78.1 Purpose.

\* \* \* The policy and procedures for this part are also located in the DoD Financial Management Regulation ("DoDFMR"), Volume 7B, Chapter 26, "State and Local Taxes" (DoD 7000.14-R).

Dated: July 12, 2006.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

[FR Doc. E6-11324 Filed 7-17-06; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AH57

#### Endangered and Threatened Wildlife and Plants; Reclassification of the Gila Trout (*Oncorhynchus gilae*) From Endangered to Threatened; Special Rule for Gila Trout in New Mexico and Arizona

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are reclassifying the federally endangered Gila trout (*Oncorhynchus gilae*) to threatened status under the authority of the Endangered Species Act of 1973, as amended (Act). We are also finalizing a

special rule under section 4(d) of the Act that would apply to Gila trout found in New Mexico and Arizona. This special rule will enable the New Mexico Department of Game and Fish (NMDGF) and the Arizona Game and Fish Department (AGFD) to promulgate special regulations in collaboration with the Service, allowing recreational fishing of Gila trout.

**DATES:** This final rule is effective on August 17, 2006.

**ADDRESSES:** Comments and materials received, as well as supporting documentation used in preparation of this final rule, are available for public inspection, by appointment, during normal business hours, at the New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113.

You may obtain copies of this final rule from the New Mexico Ecological Services Field Office at the address provided above, by calling (505) 346-2525, or from our Web site at <http://www.fws.gov/ifw2es/NewMexico/>.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES**) (telephone 505/346-2525, facsimile 505/346-2542).

#### SUPPLEMENTARY INFORMATION:

##### Background

The purposes of the Act (16 U.S.C. 1531 *et seq.*) are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved and to provide a program for the conservation of those species. A species can be listed as threatened or endangered for any of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence. When we determine that protection of a species under the Act is no longer warranted, we take steps to remove (delist) the species from the Federal list. If a species is listed as endangered, we may reclassify it to threatened status as an intermediate step before eventual delisting; however, reclassification to threatened status is not required in order to delist.

Section 3 of the Act defines terms that are relevant to this final rule. An endangered species is any species that is in danger of extinction throughout all or a significant portion of its range. A threatened species is any species that is

likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. A species includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature.

#### Previous Federal Action

The Gila trout was originally recognized as endangered under the Federal Endangered Species Preservation Act of 1966 (March 11, 1967; 32 FR 4001), and Federal designation of the species as endangered continued under the Act (1973). In 1987, the Service proposed to reclassify the Gila trout as threatened (October 6, 1987; 52 FR 37424). However, we withdrew our proposal for reclassification on September 12, 1991 (56 FR 46400) (see "Recovery Plans and Accomplishments" section below for further information). On November 11, 1996, Mr. Gerald Burton submitted a petition to us to downlist the species from endangered to threatened. We acknowledged receipt of the petition by letter on January 13, 1997. On May 11, 2005, we published a proposed rule to downlist the species, which constituted our 90-day and 12-month findings on the November 11, 1996, petition (70 FR 24750).

In the May 11, 2005, proposed rule (70 FR 24750), we requested all interested parties to submit comments or information concerning the proposed reclassification of the Gila trout from endangered to threatened. We published notices, announcing the proposal and inviting public comment, in the Albuquerque Journal and the Arizona Republic. In addition, we contacted interested parties (including elected officials, Federal and State agencies, local governments, scientific organizations, and interest groups) through a press release and related fact sheets, faxes, mailed announcements, telephone calls, and e-mails. The public comment period on the proposal closed on July 15, 2005.

#### Systematics

The Gila trout is a member of the salmon and trout family (*Salmonidae*). Gila trout was not formally described until 1950, using fish collected in Main Diamond Creek in 1939 (Miller 1950). It is most closely related to Apache trout (*Oncorhynchus apache*), which is endemic to the upper Salt and Little Colorado River drainages in east-central Arizona. Gila trout and Apache trout are more closely related to rainbow trout (*O. mykiss*) than to cutthroat trout (*O. clarki*), suggesting that Gila and Apache