| State | City/town/county | Source of flooding | Location | ıDepth in feet above ground. *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 2.06 miles upstream of 428th Avenue Southeast. | None | *482 |
| | | South Fork Skykomish River. | Approximately 200 feet upstream of confluence with Maloney Creek. | *922 | *922 |
| | | | Approximately .46 mile upstream of Fifth Street North. | *940 | *940 |
| | | North Creek | At confluence with Sammomish River | *22 | *22 |
| | | | At 208th Street Southeast | None | *122 |
| Maps are available for inspection at the King County Department of Development and Environmental Services, 3600 136th Place Southeast, Bellevue, Washington. | | | | | |
| Send comments to The Honorable Ron Simms, King County Executive, King County Courthouse, Room 400, 516 Third Avenue, Seattle, Washington 98104. | | | | | |
| Maps are available for inspection at the Town of Skykomish, 119 Fourth Street North, Skykomish, Washington. | | | | | |
| Send comments to The Honorable Ted Cleveland, Mayor, Town of Skykomish, 119 Fourth Street North, Skykomish, Washington 98288. | | | | | |
| Maps are available for inspection at the City of Issaquah Planning Department, 130 East Sunset Way, Issaquah, Washington. | | | | | |
| Send comments to The Honorable Rowan Hinds, Mayor, City of Issaquah, P.O. Box 1307, Issaquah, Washington 98027. | | | | | |
| Maps are available for inspection at the City of Redmond, 15670 Northeast 85th Street, Redmond, Washington. | | | | | |
| Send comments to The Honorable Rosemarie Ives, Mayor, City of Redmond, 15670 Northeast 85th Street, Redmond, Washington 98052. | | | | | |
| Wyoming | Sheridan County (Unincorporated Areas). | Big Goose Creek | Approximately 1,800 feet downstream of State Highway 388. | None | *3,697 |
| | | | Approximately 4 miles upstream of Works Street. | None | *3,800 |
| | | Little Goose Creek | Approximately 1,250 feet downstream of Brundage Lane. | *3,782 | *3,782 |
| | | | Just upstream of County Road 66 | None | *3,836 |
| | | Tongue River | Approximately 2 miles downstream of Wolf Creek Road at the north section line of Section 20. | None | *3,728 |
| | | | Just upstream of Wolf Creek Road | *3,762 | *3,761 |
| | | | Approximately 3 miles upstream of Wolf Creek Road. | None | *3,776 |
| | | Fivemile Creek | At the township line between Townships 85 and 86 West. | None | *3,776 |
| | | | Approximately 800 feet upstream of township line between Townships 85 and 86 West. | None | *3,780 |
| Maps are available for inspection at the Sheridan County Engineering Department, 224 South Main Street, Sheridan, Wyoming. | | | | | |
| Send comments to The Honorable Ken Kerns, Chairperson, Sheridan County Board of Supervisors, 224 South Main Street, Suite B1, Sheridan, Wyoming 82801. | | | | | |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: July 15, 1997.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 97–19218 Filed 7–21–97; 8:45 am]

BILLING CODE 6718–04–P

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 525

## Denial of Petition for Rulemaking; Corporate Average Fuel Economy (CAFE) Standards

This document sets forth the reasons for the denial of a petition for rulemaking submitted by the Coalition of Small Volume Automobile Manufacturers, Inc. (COSVAM) regarding eligibility for exemptions from corporate average fuel economy (CAFE) standards under 49 CFR Part 525. COSVAM requested that the agency initiate rulemaking to amend Part 525.5 to add a definition that would define the number of ''Passenger automobiles manufactured by a manufacturer'' to:

(1) Include every passenger vehicle manufactured by

(A) The manufacturer; and

(B) Any person that controls, is controlled by, or is under common control with the manufacturer, unless such person neither manufactures in nor imports into the Customs territory of the United States;

(2) Not include an automobile manufactured by any person described in (1)(A) or (B) above, that is exported from the US not later than 30 days after end of the model year in which the automobile is manufactured.

The petition is denied on the basis that it is unlikely that the agency would adopt this definition. NHTSA concludes that the proposed definition is contrary

to the language and intent of the governing statute.

Section 32902(d) of Title 49, United States Code (49 U.S.C. 32902(d)), provides that low volume manufacturers of passenger automobiles may be eligible for an exemption from the general average fuel economy standards for passenger automobiles. Subsection (d)(1) of Section 32902(d) limits eligibility for low volume exemptions to those manufacturers who ''manufacture'' (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year for which an exemption is sought. This section also declares that applications for these exemptions may only be submitted by manufacturers who produced fewer than 10,000 passenger automobiles in the second model year preceding the model year for which the exemption is sought.

A final rule, implementing the exemption provisions, became effective July 28, 1977 (42 FR 38374). It added a new part 525 to NHTSA regulations that established the timing, content, and format requirements of petitions for exemption as well as the procedures that the agency follows in acting on such petitions. Section 525.5 of Part 525 restates the statutory criteria for the availability and application of exemptions by providing that an application may only be made by a manufacturer who manufactures fewer than 10,000 cars in the second model year preceding the model year for which an application is made and that no exemption shall apply in any model year in which the manufacturer produces more that 10,000 vehicles.

Section 32901(a)(4) defines ''automobiles manufactured by a manufacturer'' to include ''every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer * * *.'' Under this definition, two or more companies producing automobiles are considered to be a single manufacturer if one company is controlled by, or controls, another manufacturer of motor vehicles.

In 1978, NHTSA issued an interpretation of Part 525 known as the ''Chase interpretation.'' This interpretation, addressed to Howard E. Chase, an attorney representing Officino Alfieri Maserati, S.p.A (Maserati), concluded that cars produced by a ''parent'' manufacturer that are neither produced or imported into the United States are not counted for the purposes of determining eligibility for an exemption. It thereby allowed Maserati, whose world-wide production of automobiles was much less than 10,000 vehicles, to be eligible for exemption from CAFE requirements even though Maserati was controlled by Nuova Innocenti S.p.A. (Innocenti), whose annual production of passenger automobiles exceeded 10,000 vehicles. Because Innocenti did not import any vehicles into the United States, Maserati was granted an exemption from the general CAFE requirements. This interpretation allowed an importer or a number of importing manufacturers to apply for an exemption if the worldwide production of those firms within a control relationship that import into the United States did not exceed 10,000 passenger vehicles.

In a September 1990 notice concerning an application for exemption submitted by Ferrari, which was then under the control of Fiat (55 FR 38822, Sept. 21, 1990), NHTSA re-examined the position it had taken in the Chase interpretation. In that notice, the agency found that the Chase interpretation was based on the definition of ''manufacture'' contained in the general definitions now found in Section 32901. This definition states that ''manufacture'' means ''to produce or assemble in the customs territory of the United States or to import.'' NHTSA then concluded that the Chase interpretation wrongly applied this limited definition of manufacture when the exemption provisions themselves, now found in Section 32901(d), restrict the availability of exemptions to manufacturers that ''manufactured (whether in the United States or not) fewer than 10,000 passenger automobiles * * *'' The notice also explained that importers who are controlled by larger ''parent'' manufacturers have, by virtue of the relationship with the parent, access to technological and material resources that can provide them with the ability to manufacture more fuel efficient vehicles. The fact that the parent may choose not to import and market in the United States does not have any bearing on the availability of these resources. In a notice dated July 10, 1991 (56 FR 31459), the agency indicated that it was adopting the revised interpretation set forth in the September 1990 notice and abandoning the Chase interpretation.

COSVAM's January 8, 1997 petition sought to broaden the exemption for small volume automobile manufacturers. The amendments proposed by COSVAM would allow importing manufacturers within a control relationship with another major manufacturer to be eligible to apply for an exemption from the CAFE requirements even though the combined worldwide annual production of all related manufacturers within the control relationship exceeds 10,000 passenger automobiles, provided no other manufacturer in the control relationship produces or imports more than 10,000 passenger automobiles in the United States. The petitioner's proposed amendment would modify 49 CFR Part 525.5 by adding a new section, 525.5(b), reading as follows:

(b) For purpose of determining whether a manufacturer manufactured * * * 10,000 or more passenger automobiles, ''automobiles manufactured by a manufacturer'':

(1) Includes every automobile manufactured * * * by

(A) The manufacturer; and

(B) Any person that controls, is controlled by, or is under common control with the manufacturer, unless such person neither manufactures in nor imports into the Customs territory of the United States.

The petitioner also stated that the petition process for an exemption, as outlined in Part 525.6 and 525.7, is cumbersome and an unnecessary burden on small volume manufacturers.

Notwithstanding COSVAM's view, Chapter 329 sets clear limits on eligibility for exemption from CAFE standards. These limits preclude the agency from granting the relief COSVAM requests. Section 32901(a)(4) defines ''automobiles manufactured by a manufacturer'' to include ''every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer * * *''. Section 32902(d)(1) limits eligibility for low volume exemptions to those manufacturers who ''manufacture'' (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year for which an exemption is sought regardless of where those automobiles are produced.

Congress had a clear purpose when it indicated in Section 32902(d) that ''manufacture'' meant worldwide production. Examination of both the text and the legislative history of the exemption provisions indicates that Congress sought to provide relief to low volume manufacturers because of their limited flexibility and resources to improve fuel economy. In so doing, Congress intended that such relief be made available to manufacturers who, based on their worldwide annual production, may not be able to adapt to the CAFE standards applicable to large manufacturers. Congress did not intend that any inquiry into the size and resources of a company seeking exemption be governed by an examination of how many cars it brings

into the U.S., either directly or by a subsidiary it controls.

The effect of the rulemaking suggested by COSVAM would be to allow a small volume manufacturer to be eligible for an exemption if the worldwide production of all manufacturers within the control relationship that import into the U.S. does not exceed 10,000 vehicles per year, even though non-importing manufacturers may produce many more than 10,000 vehicles per year. As noted above, NHTSA considers that adoption of this language to be contrary to the commands of Chapter 329 and beyond the agency's authority. COSVAM argues however, that the agency would be within its authority as a proposed change to the existing scheme under an inherent power to fashion relief from the operation of a statutory scheme where the impact of such relief is *de minimis*, as recognized in the case of *Alabama Power* versus *Costle*, 636 F.2d 323 (D.C. Cir. 1979). The agency does not agree that it has such an implied power. Congress has expressly addressed the issue of exemptions under the CAFE statutes and issued precise criteria under which such exemptions may be granted. This express directive negates any implied right the agency might otherwise have had to fashion its own scheme.

COSVAM further argues that this petition should be granted because of this agency's commitment to regulatory reform. However, regulatory reform does not grant the agency authority to do what the statute does not permit. While COSVAM also suggested that the procedures for applying for an exemption be simplified, it offered no suggestions on how to make the petition process less cumbersome for a low volume automobile manufacturer. The agency has already reviewed Parts 525.6 and 525.7 as part of its regulatory reform effort and concluded that all of the information requested is necessary for the agency to fulfill its responsibility in establishing the maximum feasible fuel economy standard for manufacturers seeking an exemption. NHTSA also notes that provisions have been incorporated into Part 525 to allow for an exemption to be sought for as many as three model years. This was intended to provide some relief for the small volume manufacturer by reducing the frequency of petitions.

The agency has consistently concluded, since reconsideration of the Chase interpretation, that for CAFE purposes ''vehicles manufactured by a manufacturer'' includes all vehicles manufactured, worldwide, by any entity that controls, is controlled by, or is under common control with the manufacturer. In the agency's view this interpretation is consistent with the express language and the purpose of Chapter 329. For the reasons stated above, the petition is denied.

Issued on: July 16, 1997.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 97–19151 Filed 7–21–97; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Availability of Draft Recovery Plan for Four Species of Hawaiian Ferns for Review and Comment

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

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the Technical/Agency Draft Recovery Plan for Four Species of Hawaiian Ferns. These four taxa are currently found on one or more of the following Hawaiian Islands: Oahu, Molokai, Lanai, Maui, and Hawaii.

**DATES:** Comments on the draft recovery plan must be received on or before September 22, 1997.

**ADDRESSES:** Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Ecoregion Office, 300 Ala Moana Boulevard, room 3108, P.O. Box 50088, Honolulu, Hawaii 96850 (phone 808/541–3441); U.S. Fish and Wildlife Service, Regional Office, Ecological Services, 911 N.E. 11th Ave., Eastside Federal Complex, Portland, Oregon 97232–4181 (phone 503/231–6131); the Molokai Public Library, 15 Ala Malama Street, Kaunakakai, Hawaii 96748; Kailua-Kona Public Library, 75–138 Hualalai Road, Kailua-Kona, Hawaii 96740; Hilo Public Library, 300 Waianuenue Avenue, Hilo, Hawaii 96720; and, the Wailuku Public Library, 251 High Street, Wailuku, Maui, Hawaii 96793. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Brooks Harper, Field Supervisor, Ecological Services, at the above Honolulu address.

**FOR FURTHER INFORMATION CONTACT:** Kevin Foster at the above Honolulu address.

**SUPPLEMENTARY INFORMATION:**

### Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The four taxa being considered in this recovery plan are: *Asplenium fragile* var. *insulare* (no common name (NCN)), *Ctenitis squamigera* (pauoa), *Diplazium molokaiense* (NCN), and *Pteris lidgatei* (NCN).

These four taxa are all Federally listed as endangered and are currently found on one or more of the following Hawaiian Islands: Oahu, Molokai, Lanai, Maui, and Hawaii. Three of the four endangered fern taxa have been reported from lowland forest habitat. *Ctenitis squamigera* is typically found in lowland mesic forests, while *Pteris lidgatei* appears to be restricted to lowland wet forest. *Diplazium molokaiense* has been reported from lowland to montane forests in mesic to wet settings. The fourth species, *Asplenium fragile* var. *insulare*, has been reported from montane wet, mesic and dry forest habitats as well as subalpine dry forest and shrubland