

the data do not indicate that carbaryl constitutes a potential oncogenic, teratogenic, or reproductive hazard under proper use. More recently, the Agency reexamined these data as part of the reregistration process for carbaryl. In the Guidance Document, dated March 30, 1984, the Agency reaffirmed the conclusions reached in the previous evaluation.

Based on the 2-year chronic rat feeding study with a NOEL of 10.0 mg/kg and using a safety factor of 100, the acceptable daily intake (ADI) for humans is calculated to be 0.1 mg/kg of body weight (bw)/day. The theoretical maximum residue contribution (TMRC) resulting in the human diet from this and previously established tolerances utilizes 91.57 percent of the ADI. The requested tolerance on pineapples will increase the TMRC by approximately 0.0016 per cent.

The metabolism of carbaryl is adequately understood, and an adequate analytical method (HPLC) is available for enforcement purposes. No regulatory actions are currently pending against continued registration of carbaryl; however, a nonrodent (dog) feeding study of at least 1-year duration has been determined to be a data gap.

FDA has submitted a pineapple processing study that demonstrates that carbaryl does not concentrate in the edible pulp or juice, but these data do demonstrate that carbaryl does concentrate in the inedible portion (bran). A feed additive tolerance of 20.0 ppm carbaryl will be established at a later date for wet and dry pineapple bran. Although pineapple bran can be a major feed item for cattle, goats, horses, sheep, and swine, the established tolerances in milk and the fat, kidney, liver, meat and meat by-products of cattle, goats, horses, sheep, and swine are adequate to cover any secondary residues in these commodities from this use. In addition, since there is only sufficient fresh pineapple residue data from Mexico, this tolerance will not support carbaryl's use on domestically grown pineapples (Hawaii and Puerto Rico). To support such a use, additional residue data (edible pulp and juice, bran and forage) are needed from Hawaiian grown pineapples and a proposed tolerance on pineapple forage is required. Until these requirements have been met, the Agency is not in a position to entertain applications for registration under sections 3 or 24(c) of FIFRA for carbaryl's use on pineapples grown in the U.S. or its territories.

The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the information cited above, the Agency has determined that

the establishment of the tolerance for residues of the pesticide in or on the commodity will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objection. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 25, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for 40 CFR Part 180 is revised to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.169(d) is added to read as follows:

§ 180.169 Carbaryl; tolerances for residues.

* * *

(d) A tolerance is established for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate) in or on the raw agricultural commodity pineapples at 2.0 parts per million.

[FR Doc. 85-10913 Filed 5-7-85; 8:45 am]

BILLING CODE 8560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 85-211]

Permitting Attorneys' Submissions to the Commission Unaccompanied by Their Signatures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 1.52 of the Commission's Rules to permit attorneys and parties not represented by counsel to file facsimile copies of documents with the Commission.

This action is taken by the Commission in efforts to eliminate an unnecessary requirement imposed by our regulations.

EFFECTIVE DATE: June 10, 1985.

ADDRESS: Federal Communications Commission, Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Kaminer, Office of General Counsel, (202) 632-6990.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Report and Order

In the Matter of the Revision of § 1.52 of the Commission's Rules to Permit Attorneys' Submissions to the FCC Unaccompanied by their Signatures.

Adopted: April 25, 1985.

Released May 2, 1985.

By the Commission.

1. Petitioner¹ have requested that the Commission amend § 1.52 of the Commission's Rules, 47 CFR 1.52, to permit attorneys to file documents with the Commission without their actual signature.

2. Section 1.52 now requires documents filed by attorneys to bear the actual handwritten signature of an attorney.² The rule reads, in pertinent part, as follows:

The original of all petitions, motions, pleadings, briefs, and other documents filed by an party represented by counsel, shall be signed by at least one attorney of record in his individual

¹ Petitioners, Joseph A. Belisle, Carey L. Ewing, Ashton R. Hardy, Wade Hargove, Dennis F. Kahane, Matthew L. Leibowitz, Larry D. Perry, Frederick A. Polner and John M. Spencer, filed a "Petition for Declaratory Ruling or, in the alternative, for Rulemaking" on May 30, 1984.

² Section 1.52 also requires pleadings submitted by parties not represented by counsel to be verified.

name, whose address shall be stated. . . . The signature of an attorney constitutes a certificate by him that he has read the document; that to best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

The Commission's rule parallels that of the federal courts.³

3. Petitioners suggest that the rule be amended to permit "(a) employees or agents of a attorney to sign that attorney's signature to pleadings, petitions, motions, briefs or other documents when: (i) The attorney has read the document; and (ii) the attorney authorizes the employee or agent to sign the attorney's name to the document; and (b) pleadings to be filed with facsimile signature pages when: (i) the pleading is actually signed by an attorney; (ii) a facsimile of the signed signature page is transmitted for filing with the Commission; and (iii) the signed pleading is retained in the attorney's files.

4. We have examined the Commission's cases involving violations of the signature requirement contained in § 1.52. In those cases, the Commission seems to have been primarily concerned with whether the affixed signature, when not that of the attorney, was actually authorized,⁴ or whether the absence of an attorney's signature signified a lapse in professional responsibility⁵ or merely carelessness⁶ in the preparation of the papers. The case law indicates that the primary purpose of the attorney signature requirement is to assure accountability on the part of attorneys practicing before this Agency.⁷

³Rule 11 of the Federal Rules of Civil Procedure requires that pleadings be signed by the representing attorney:

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. . . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose. . . . Fed. R. Civ. P. 11, as codified in 28 U.S.C. § 11.

⁴University of Houston for Renewal of Licenses of Noncommercial Educational Stations KUHT(TV) and KUHF(FM), 68 FCC2d 566, 567 (1978).

⁵Clayton W. Mopoles, 34 FCC 2d 1030, 1041 (1972).

⁶American Television Relay Inc., 11 FCC 2d 553, 556 (1968).

⁷The Commission has made it clear that a casual attitude toward the signature requirement will not be tolerated, saying, "[W]e demand full compliance therewith." See Mopoles, *supra*, at 1041.

5. The rules of other federal agencies differ as to the importance of the presence of an original signature. Some agencies require the signature as the indicia to responsibility.⁸ Other agencies require no signature.⁹ At least one agency requires an original signature;¹⁰ another has given no such indication.¹¹

6. The Securities Exchange Commission (SEC) has recently examined the filing of documents in an electronic format. The SEC's Temporary Rules And Forms For The Pilot Electronic Disclosure System,¹² designated "EDGAR" (Electronic Data Gathering, Analysis and Retrieval), embraces all filings with the SEC. For the use of EDGAR, the SEC assigns personal identification numbers ("PINs") and passwords, to be used singly by individuals, or in combination with one another, by companies. To obtain a PIN, an applicant submits a signed agreement, which remains on permanent file with the Agency until withdrawn. Together, the form and the use of the PIN with each entry constitute a user's signature.

7. We have carefully reviewed Petitioners' arguments and have concluded that the rule requiring the affixation of an attorney's original signature is unnecessary to protect the integrity of the Commission's processes. We are of the view that attorney accountability can be maintained by permitting attorneys to file pleadings which contain facsimile reproductions of their original signatures so long as an original document containing an original signature is retained in the files of the attorney. We are similarly convinced that we can maintain the integrity of our processes while permitting parties unrepresented by counsel to file facsimile copies of documents providing they retain the originals thereof for inspection by the Commission in the event a question as to authenticity is raised.

⁸National Labor Relations Board, 29 CFR 102.21; Patent and Trademark Office, Department of Commerce, 37 CFR 1.346 and 2.15.

⁹Nuclear Regulatory Commission, 10 CFR 2.101. The party or applicant must provide the name and address of any representative, however, 10 CFR 2.101(a)(3)(ii) [That person apparently need not be an attorney] The Maritime Administration, Department of Transportation, also does not require the signature of an attorney in certain procedures, 46 CFR 202.3. The Department of Energy does not require a signature since a party must inform the Department of any representation by another, 10 CFR 205.4.

¹⁰The original of each document filed shall have a hand signed signature by an attorney of record for the party. . . . Federal Trade Commission, 16 CFR 4.2(e)(1).

¹¹E.g., Benefits Review Board, Department of Labor, 30 CFR 802.215.

¹²49 FR 25044 (July 10, 1984).

8. We propose to maintain attorney accountability for facsimile signatures to the same extent as for actual signatures. Therefore, a facsimile signature will constitute a certificate that the signatory has read the document, that, to the best of his knowledge, there is good ground to support it and that it is not interposed for delay.

9. We propose to require attorneys or unrepresented parties to retain the original document until the Commission's decision is final and no longer subject to judicial review.

10. We find that prior notice and comment procedures are unnecessary to implement the rule amendments in the attached Appendix because the amendments involve general rules of agency practice or procedure. See 5 U.S.C. 553(b)(3)(A).

11. In view of the foregoing and pursuant to Sections 4 (i) and (j) of the Communications Act of 1934, as amended, it is hereby ordered that Part 1 of the Commission's Rules is amended as set forth in the attached Appendix, effective June 10, 1985.

12. For further information contact Steve Kaminer, Office of General Counsel, (202) 632-6900.

Federal Communications Commission,
William J. Tricarico,
Secretary.

Appendix

PART 1—[AMENDED]

The authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Section 1.52 is revised to read as follows:

§ 1.52 Subscription and verification.

The original of all petitions, motions, pleadings, briefs, and other documents filed by any party represented by counsel shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and verify the document and state his address. Either the original document, or an electronic reproduction of such original document containing the facsimile signature of the attorney or unrepresented party is acceptable for filing. If a facsimile copy of a document is filed, the signatory shall retain the original until the Commission's decision is final and no longer subject to judicial review. Except

when otherwise specifically provided by rule or statute, documents signed by the attorney for a party need not be verified or accompanied by affidavit. The signature or electronic reproduction thereof by an attorney constitutes a certificate by him that he has read the document; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If the original of a document is not signed or is signed with intent to defeat the purpose of this section, or an electronic reproduction does not contain a facsimile signature, it may be stricken as sham and false, and the matter may proceed as though the document had not been filed. An attorney may be subjected to appropriate disciplinary action, pursuant to § 1.24, for a willful violation of this rule or if scandalous or indecent matter is inserted.

[FR Doc. 85-11103 Filed 5-7-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

Amateur Radio Service Rules; Specifying Only That Another Station's Call Sign May Not Be Transmitted for Identification Purposes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document clarifies the Amateur Radio Service Rules by specifying only that an amateur station may not transmit, for purposes of identifying the station, any call sign which has not been assigned to it. This action is necessary to resolve uncertainty as to when another station's call sign may be mentioned. The effect of the rule is to permit the mention of another station's call sign in normal conversation, and other circumstances.

EFFECTIVE DATE: May 20, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, D.C. 20554 (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Radio.
Order

In the matter of amendment of § 97.121 of the amateur radio service rules.
Adopted: April 25, 1985.
Released: May 1, 1985.

1. The Managing Director has under consideration a petition filed by David Popkin, 303 Tenafly Road, Englewood, New Jersey 07631-0528, requesting reconsideration of the Order of January 16, 1985, (50 FR 3525, January 25, 1985). That Order editorially amended § 97.121 of the Amateur Rules to clarify that the call sign of another amateur station could be transmitted when responding to a general call or as part of the required station identification procedure. Petitioner points out that by specifying the circumstances when an amateur radio station may transmit a call sign not assigned to it, the rule now implies all other use of another call sign is unauthorized. No oppositions to the petition for reconsideration have been filed.

2. As examples of his concern, petitioner refers us to one station's use of another's call sign when calling on a pre-arranged schedule, or the mention of a call sign during normal conversation. Petitioner believes that the rule should be amended to prohibit transmission of another call sign only when the other call sign is used for the purpose of identifying the station; or amended to include all the times when an amateur radio station can transmit the call sign of another station.

3. We agree with the petitioner that § 97.121 could be construed as restricting the use of another amateur station's call sign in the circumstances that petitioner cites, although that was not our intent. As stated in the Order of January 16th, the intent of the rule is to preclude the unlawful use of a false call sign as an unlicensed station or to avoid detection. Nevertheless, since some confusion still exists with respect to this rule, we will amend it further to specify only that an amateur station may not transmit, for the purpose of identifying the station, any call sign which has not been assigned to it.

4. Accordingly, in view of the foregoing, the petition for reconsideration is granted.

5. Because this clarifying rule amendment rule is non-substantive, the notice and comment provisions as well as the effective date requirements of the Administrative Procedure Act are inapplicable.

6. It is ordered, that § 97.121 of the Commission's Rules is amended as set forth in the Appendix.

7. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and §§ 0.231(d) and 1.106(a)(1) of the Commission's Rules.

8. The effective date of this rule amendment is May 20, 1985.

Federal Communications Commission.
Edward J. Minkel,
Managing Director

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

The authority citation for Part 97 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Section 97.121 is revised to read as follows:

§ 97.121 False signals.

An amateur radio station must not transmit:

(a) False or deceptive signals or communications by radio; *NOR*

(b) For purposes of identifying the station, any call sign which has not been assigned to it. Notwithstanding the foregoing, when a station is operated within the privileges of the operator's class of license but which exceed those of the station licensee, station identification must be made by following the station call sign of the station being operated with the operator's primary station call sign in accordance with § 97.84(b).

[FR Doc. 85-10937 Filed 5-7-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

48 CFR Parts 1301, 1302, 1304, 1305, 1306, 1314, 1315, 1319, 1331, 1337, and 1353

[Docket No. 50343-5043; Amdt. 85-1]

Acquisition Regulation; Competition in Contracting

AGENCY: Department of Commerce.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the Commerce Acquisition Regulation (CAR) to implement the Competition in Contracting Act of 1984, Pub. L. 98-369 (CICA), and amendments to the Federal Acquisition Regulation (FAR) which incorporate and reflect changes to Federal acquisition policy required by the CICA. This interim rule also makes a number of miscellaneous changes to the CAR unrelated to implementing the CICA and FAR revisions. These involve the issuance of internal policy guidance on acquisition matters, uniform procurement numbering, small purchase order forms, small business contracting

procedures, precontract costs, and data reporting forms.

DATES: This interim rule is effective as of April 1, 1985. Written comments on the interim rule will be considered if received on or before June 12, 1985.

ADDRESSES: Send written comments to: Director, Office of Procurement and Administrative Services, HCHB, Room H6316, U.S. Department of Commerce, 14th St. between Pennsylvania and Constitution Avenues, NW., Washington, D.C. 20230. Please cite CAR; Amendment 85-1 in any written comments submitted and mark the outside of the envelope, "Comments on CAR; Amendment 85-1". The public docket rulemaking file including all comments received on the interim rule may be inspected by the public during normal business hours in Room H6414 at the above address.

FOR FURTHER INFORMATION CONTACT: David Beveridge, Procurement Analyst, Office of Procurement Management HCHB, Room H6414, U.S. Department of Commerce, 14th St. between Pennsylvania and Constitution Avenues, NW., Washington, D.C. 20230, (202) 377-4248.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1984 the Department of Commerce issued a rule known as the Commerce Acquisition Regulation (CAR) (49 FR 12956-12969, March 30, 1984). That rule implemented and supplemented the Federal Acquisition Regulation (FAR) which was separately promulgated by the General Services Administration (GSA), the Department of Defense (DOD), and the National Aeronautics and Space Administration (NASA). The FAR was promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, "Federal Procurement Reforms".

The primary purpose of this amendment to the CAR is to implement the Competition in Contracting Act of 1984, Pub. L. 98-369 (CICA), and recent revisions to the FAR made by GSA, DOD, and NASA to implement that Act. The CICA and the revisions to the FAR require increased use of full and open competition in the acquisition of property and services by agencies of the Federal Government. The CICA requires that any solicitation for bids or proposals issued by the Department on or after April 1, 1985 comply with the requirements of the Act.

This amendment revises the CAR to provide for full and open competition for the Department of Commerce's procurements by requiring that sealed bids be solicited or competitive

proposals be requested, or that other competitive procedures be employed, unless a statutory exception permits other than full and open competition. There are new justification, approval, and notice requirements for contracts employing other than full and open competition. Appointment of the competition advocates required by the CICA is also provided for.

This amendment also revises the authority for issuing internal policy guidance on acquisition matters, provides for the issuance of a Commerce Acquisition Manual to provide long term internal policy guidance to Department contracting offices, changes the approval level for precontract costs, establishes procedures for the review by the Office of Small and Disadvantaged Business Utilization (OSDBU) of subcontracting plans, establishes new contract data reporting procedures and establishes and provides for the use of new small purchase order forms.

Administrative Procedure Act Requirements

Because this amendment involves matters of agency management, public property, and contracts, under subsection 553(a)(2) of the Administrative Procedure Act (APA) (5 U.S.C. 553(a)(2)), it is exempt from all requirements of section 553 including giving notice of proposed rulemaking, providing an opportunity for comment, and delaying the effective date until at least 30 days after publication or service.

Small Business and Federal Procurement Competition Enhancement Act Requirements

Section 302 of the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. 98-577, added a section 22 to the Office of Federal Procurement Policy Act requiring that notice of proposed rulemaking and at least 30 days opportunity for comment be given for acquisition regulations having a significant cost or administrative impact on contractors or offerors and specifying that such regulations may not take effect until 30 days after such notice.

Subsection 22(d) of the Office of Federal Procurement Policy Act allows the issuing officer to waive the notice of proposed rulemaking, at least 30 days opportunity for public comment, and 30 days delay in effective date requirements of section 22, if urgent and compelling circumstance make compliance with such requirements impracticable.

To the extent that any portions of the regulation are subject to the notices,

comment, and delay in effective date provisions of section 22, the issuing officer hereby finds that because the CICA requires that any solicitation issued by the Department on or after April 1, 1985 comply with the requirements of the CICA, that urgent and compelling circumstances exist which make compliance with the requirements impracticable.

Section 22(d) requires that if this waiver is utilized, the notice issuing the regulation must state that the rules are temporary and must allow the public at least 30 days in which to comment on the temporary rule, beginning on the date the rule is published.

Accordingly, the rule is issued on a temporary or interim final basis, effective retroactively to April 1, 1985. Written comments are invited and will be considered in promulgating a final rule if received on or before June 12, 1985.

Regulatory Flexibility Act Requirements

Since notice and an opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553), and since no other law requires that notice and an opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Impact Analysis has to be or will be prepared.

Executive Order 12291 Requirements

Under Executive Order (E.O.) 12291, the Department must judge whether this interim rule is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This interim rule is not major because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, preparation of a Regulatory Impact Analysis is not required and no preliminary or final Regulatory Impact Analysis has to be or will be prepared. This interim rule was submitted to the Office of Management and Budget (OMB) for review in accordance with E.O. 12291 and OMB Bulletin 85-7.

Paperwork Reduction Act Requirements

This interim rule does not contain collection of information requirements for purposes of the Paperwork Reduction Act.

List of Subjects in 48 CFR Ch. 13

Government procurement.

For the reasons set forth in the preamble, Chapter 13 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., April 30, 1985.

Hugh L. Brennan,

Director, Office of Procurement and Administrative Services, U.S. Department of Commerce.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Chapter 13 of Title 48 of the Code of Federal Regulation is amended as set forth below:

PART 1301—[AMENDED]

1. The authority citation for Part 1301 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

2. Section 1301.301(b) is revised to read as follows:

1301.301 Policy.

(b) The Procurement Executive or designee may issue internal Department guidance in the form of Acquisition Letters, policy manuals, or model operating procedures. Documents issued under this authority are not published in the Federal Register.

(1) Acquisition Letters are serially numbered letters which provide immediate short term policy guidance on selected acquisition topics to Department contracting offices. They normally expire within one year from the date of issuance.

(2) The Commerce Acquisition Manual is a manual which provides long term policy guidance on selected acquisition topics to Department contracting offices. The guidance contained in the manual normally remains in effect until cancelled or revised. The numbering system parallels the FAR to the greatest extent practical.

PART 1302—[AMENDED]

3. The authority citation for Part 1302 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

4. Section 1302.1-1 is amended by adding the following definition for "Head of the Operating Unit" after the definition for "Head of the contracting office":

1302.1-1 [Amended]

* * * * *

Head of the Operating Unit means the Administrator of the National Oceanic and Atmospheric Administration (NOAA), acting as the host for the Department's Regional Administrative Support Centers, and any Head of the Operating Unit as defined in Department Organization Order (DOO) 1-1 so long as that Operating Unit is responsible for its own contracting operations.

* * * * *

5. Section 1302.1-1 is further amended by revising paragraph (j) of the list of duties of the Procurement Executive to read as follows:

(j) Promote full and open competition; and

* * * * *

6. A new Part 1304 is added to read as follows:

PART 1304—ADMINISTRATIVE MATTERS**Subpart 1304.6—Contract Reporting****1304.601 Federal Procurement Data System.**

(c) The Department uses a computer generated reporting system to collect and report data for contract actions over \$10,000. The data collection points are identified within a standardized procurement numbering system format specified in the DOC Procurement Data System Handbook.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2)

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

7. The heading of Subchapter B is revised to read as set forth above.

PART 1305—[AMENDED]

8. The authority citation for Part 1305 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

9. Part 1305 is moved from Subchapter A to Subchapter B.

10. A new Part 1306 is added to Subchapter B to read as follows:

PART 1306—COMPETITION REQUIREMENTS

Sec.

Subpart 1306.2—Full and Open Competition After Exclusion of Sources

1306.202 Establishing or maintaining alternative sources.

Subpart 1306.3—Other Than Full and Open Competition

1306.304 Approval of the justification.

Subpart 1306.5—Competition Advocates

1306.501 Requirement.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1306.2—Full and Open Competition After Exclusion of Sources

1306.202 Establishing or maintaining alternative sources.

(b)(1) Every proposed contract action under the authority of FAR 6.202(a) shall be supported by a determination and findings (D&F) signed by the Head of the Contracting Activity.

Subpart 1306.3—Other Than Full and Open Competition

1306.304 Approval of the justification.

(a) If the action is within his or her delegated authority, the Head of the Contracting Activity may issue class justifications for other than full and open competition for:

(1) Contracts for electric power or energy, gas (natural or manufactured), water, or other utility services when such services are available from only one source;

(2) Contracts under the authority cited in FAR 6.302-4 or 6.302-5; or

(3) Contracts for educational services from nonprofit institutions.

(b) No other class justifications are authorized for other than full and open competition.

Subpart 1306.5—Competition Advocates**1306.501 Requirement.**

The Director of the Office of Procurement Management is designated as the Competition Advocate for the Department. The Head of the Operating Unit shall designate a competition advocate for each contracting activity under his direction. The contracting activity competition advocate shall be designated at a level no lower than the Deputy to the Head of the Contracting Activity.

PART 1314—SEALED BIDDING

11. The authority citation for Part 1314 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

12. The heading to Part 1314 is revised as set forth above.

13. A new subsection 1314.404-1 is added to Subpart 1314.4 of Part 1314 as follows:

1314.404-1 Cancellation of invitations after opening.

The head of the contracting office has been delegated the authority to make the determination under FAR 14.404-1 (c) and (e).

PART 1315—[AMENDED]

14. The authority citation for Part 1315 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

1315.307 [Removed]

15. Part 1315 is amended by removing Subpart 1315.3 consisting of section 1315.307.

16. A new section 1315.608 is added to Subpart 1315.6 of Part 1315 as follows:

1315.608 Proposal evaluation.

The head of the contracting office has been delegated the authority to make the determination under FAR 15.608(b).

PART 1319—[AMENDED]

17. The authority citation for Part 1319 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department

Organization Order 10-5 and Department Administrative Order 208-2.

18. A new subsection 1319.202-2 is added to Subpart 1319.2 of Part 1319 as follows:

1319.202-2 Locating small business sources.

(b) The contracting officer shall send a copy of the requisition form for all procurement actions expected to exceed \$500,000 (\$1,000,000 for construction) to the Office of Small and Disadvantaged Business Utilization, as promptly after receipt as possible. The Office of Small and Disadvantaged Business Utilization shall review the procurement actions and recommend action to the contracting officer. Orders under GSA schedule contracts, orders under Department or Government-wide indefinite delivery contracts, or actions within the scope of the changes, value engineering, or similar contract clauses are exempt from the requirements of this subsection.

19. A new Subpart 1319.7 consisting of 1319.705-5 is added to Part 1319 as follows:

Subpart 1319.7—Subcontracting With Small Business and Small Disadvantage Business Concerns**1319.705-5 Awards involving subcontracting plans.**

Prior to making an award that requires a subcontracting plan, the contracting officer shall forward the proposed contract (including the plan and supporting documentation) to the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) to allow that office to review the material and submit advisory recommendations to the contracting officer. The contracting officer shall send the material to the following address:

Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of Commerce, Herbert C. Hoover Building, Room H6411, 14th St. between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. 20230.

The Director of the OSDBU will notify the Small Business Administration procurement center representative of the opportunity to review the proposed contract (including the plan and supporting documentation), to allow that representative an opportunity to participate in any advisory recommendations to be submitted to the contracting officer. The Director of the OSDBU shall return the material and any recommendations to the contracting officer within 5 working days after the

material is received by OSDBU, providing all pertinent documents have been received by the OSDBU.

PART 1331—[AMENDED]

20. The authority citation for Part 1331 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

21. Subsection 1331.205-32 of Subpart 1331.2 of Part 1331 is revised to read as follows:

1331.205-32 Precontract costs.

The payment of precontract costs must be approved in writing by the head of the contracting office.

PART 1337—[AMENDED]

22. The Authority citation for Part 1337 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

23. Subsection 1337.205 of Subpart 1337.2 of Part 1337 is revised to read as follows:

1337.205 Management controls.

(b) The Department's management controls for acquisition of consulting and related services are contained in the Department Administrative Order on *Approval of Advisory and Assistance Services* (DAO 216-13).

PART 1353—[AMENDED]

24. The authority citation for Part 1353 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

25. Subsection 1353.204-2 of Subpart 1353.2 of Part 1353 is revised to read as follows:

1353.204-2 Contract reporting (CD 409).

(a) *CD 409 (11/84) Report of Individual Procurement (over \$10,000)*. CD 409 is prescribed for Department-wide use in reporting individual contract actions above \$10,000, in lieu of SF 279.

26. A new section 1353.213 of Subpart 1353.2 of Part 1353 is added as follows:

1353.213 Small purchase and other simplified purchase procedures (CD 404).

(e) *CD 404 (1/84) Supply, Equipment of Service Order.* In lieu of OFs 347 and 348, CD 404 is prescribed for Department-wide use as follows:

- (1) To accomplish small purchases
- (2) To issue orders under basic ordering agreements
- (3) To issue orders for paid advertisements

(4) To issue orders for construction or dismantling, demolition, or removal of improvements.

27. A new section 1353.232 of Subpart 1353.2 of Part 1353 is revised as follows:

1353.232 Contract financing.

A Department approved procurement request form certifies the availability of adequate funds for contract actions (See FAR 32.702). The Department's procurement request form also transmits

technical and other specifications of the request, administrative approvals and clearances, and information for processing payments.

28. Appendix A is amended to remove Form CD 338 and add CD Forms 409 and 404.

Note.—This Appendix does not appear in the Code of Federal Regulations.

Appendix A—Forms

BILLING CODE 3510-17-M

FORM CD-409 (11-84)
 PRESCRIBED BY
 FAR (48 CFR 4.601)

U.S. DEPARTMENT OF COMMERCE

REPORT OF INDIVIDUAL PROCUREMENT (OVER \$10,000)

TRANSACTION TYPE

- 0 Add
- 1 Delete
- 2 Change

1. DOC CONTRACT, PURCHASE OR DELIVERY ORDER NUMBER

2. DOLLARS (Round to Nearest Dollar)

_____, _____, _____

3. OTHER CONTRACT NUMBER (Contract ordered Against)

4. MODIFICATION, TASK, OR CHANGE ORDER NO.

5. EFFECTIVE AWARD DATE

____ Mo. ____ Day ____ Yr.

5A. EST. COMPLETION DATE (Optional)

____ Mo. ____ Day ____ Yr.

6. READY REQUISITION DATE

____ Mo. ____ Day ____ Yr.

7. DOLLARS ASSOCIATED WITH ADVISORY AND ASSISTANCE SERVICES (Round to Nearest Dollar)

____, _____, _____

7A. ADVISORY AND ASSISTANCE PRODUCT SERVICE CODE

8. PRODUCT/SERVICE CODE (From FPDS Product Service Code Manual)

9. PRINCIPAL PLACE OF PERFORMANCE

____ State or Country _____ City, Place or County

10. KIND OF PROCUREMENT ACTION

- 1. Initial Letter Contract
- 2. Definitive Contract Superseding Letter Contract
- 3. New Definitive Contract
- 4. Order Under Reporting Agency's Contract
- 5. Modification
- 6. GSA Federal Supply Schedule
- 7. Order Under Another Agency's Contract
- 8. Termination for Default
- 9. Termination for Convenience

11. TYPE OF CONTRACT

- A - Fixed Price Redetermination
- J - Firm Fixed Price
- K - Fixed Price Economic Price Adjustment
- L - Fixed Price Incentive
- R - Cost Plus Award Fee
- S - Cost No Fee
- T - Cost Sharing
- U - Cost Plus Fixed Fee
- V - Cost Plus Incentive Fee
- Y - Time and Materials
- Z - Labor Hours

12. SUBJECT TO STATUTORY REQUIREMENTS

- A. Walsh-Healey Act, Manufacturer
- B. Walsh-Healey Act, Regular Dealer
- C. Service Contract Act
- D. Davis-Bacon Act
- E. Not Subject to above Statutory Requirements

13. METHOD OF CONTRACTING

- 1. 2 Step Formal Advertising
- 2. Other Formal Advertising
- 3. Negotiated Competitive
- 4. Negotiated Noncompetitive
- 5. Directed Acquisitions for Foreign Governments
- 6. Tariff or Regulated Acquisition
- 7. Negotiated Competitive-Restricted Advertising

14. NEGOTIATION AUTHORITY (See Reverse for Codes)

15. EXTENT OF COMPETITION

- Competitive*
- A1 Small Business Total Set-Aside
- A2 Small Business Partial Set-Aside
- A3 Labor Surplus Area Set-Aside
- A4 LSA/Small Business Set-Aside
- A9 Other Negotiated Competitive
- Noncompetitive Negotiated*
- B1 Buy Indian
- B2 B(a) Program
- B3 Follow-On After Competition
- B9 Other Negotiated Noncompetitive

16. LABOR SURPLUS AREA (LSA)

- 3. LSA-Tie Bid Preference
- 5. Not a LSA Award
- 7. Total LSA/Small Business Set-Aside Preference
- 8. Total LSA Set-Aside Preference

17. TYPE OF BUSINESS

- Small Business*
- A1 Disadvantaged B(a)
- A2 Owned by Minority
- A3 Other Small Business or Individual
- Large Business*
- B1 Minority Business
- B2 Other Large Business
- Outside U.S.*
- E1 Acquired & Used Outside U.S.
- E2 Acquired Outside U.S.; Used Inside U.S.
- Non-Profit*
- C1 Private Educ. Org.
- C2 Hospital
- C3 Research Inst. Foundation, Lab.
- C4 Other Institutions
- C5 Minority Non-Profit
- C6 Minority Private Educ. Org.
- State/Local Gov.*
- D1 Educational
- D2 Hospital
- D3 Research Organization
- D4 Other State/Local
- D5 Minority Educational

18. WOMAN-OWNED BUSINESS

- 1. Yes
- 2. No
- 3. Not Certified
- 0. Exempt

19. TRADE DATA

- Number of Bidders Offering Foreign Items
- Buy American Act: % Difference
- Country of Manufacturer

20. SYNOPSIS CODE

- 1. Synopsized Prior to Award
- 2. Not Synopsized Due to Emergency
- 3. Not Synopsized Due to Other Reasons

21. MULTI-YEAR PROCUREMENT

- 1. Yes
- 2. No

22. SUBCONTRACTING PLAN

- 1. Yes
- 2. No

23. CONTRACTOR CODE

24. CONTRACTOR NAME AND ADDRESS (Incl. Division)

25. CONTRACT SPECIALIST/PROCUREMENT AGENT

Name _____

26. CONTRACTING OFFICER SIGNATURE

I certify that the above information is accurate.

TRANSACTION TYPE

1 Delete = Removal of invalid report.

2 Change = Correction of errors on a previous report except for control field error.

0 Add = A new action not previously reported.

	CODE	MEANING
1. DOC CONTRACT, PURCHASE OR DELIVERY ORDER NUMBER Enter the DOC contract, purchase, or delivery order number. LEFT JUSTIFY	01	-National Emergency (i.e., Small Business Unilateral Set-Aside, Labor Surplus Area Set-Aside)
	02	-Public Exigency
	03	-Purchase not more than \$25,000
	04	-Personal or Professional Service
	05	-Services of Educational Institutions
	06	-Purchase Outside the United States
	07	-Medicine or Medical Supplies
	08	-Supplies Purchased for Authorized Resale
	09	-Perishable or Non-Perishable Subsistence
	10	-Impractical to Secure Competition by Formal Advertising
	11	-Experimental, Developmental, Test or Research
	12	-Classified Purchases
	13	-Technical Equipment Requiring Standardization and Interchangeability of Parts
	14	-Negotiation after Advertising
	15	-Otherwise Authorized by Law (i.e., Small Business Joint Set-Asides, 8(a) awards)
2. DOLLARS Enter the dollars (round to the nearest dollar) obligated or deobligated. RIGHT JUSTIFY		
3. OTHER CONTRACT NUMBER Enter the number of the contract being ordered against when placing a delivery order. If not placing a delivery order, leave this blank. LEFT JUSTIFY		
4. MODIFICATION NUMBER Enter the modification, task order or change order number. RIGHT JUSTIFY		
5. EFFECTIVE AWARD DATE Enter the effective date of award		
5A. ESTIMATED COMPLETION DATE Enter the estimated completion date.		
6. READY REQUISITION DATE Enter the date the requisition was ready for processing by procurement.		
7. DOLLARS ASSOCIATED WITH ADVISORY AND ASSISTANCE SERVICES Enter dollars obligated or deobligated for advisory and assistance services. (See DOC FPDS Handbook for the list of services reportable under this heading and DAO 216-13 section 3. for their definition.)		
7A. ADVISORY AND ASSISTANCE PRODUCT / SERVICE CODE Enter code for services specified in DOC FPDS Handbook.		
8. PRODUCT SERVICE CODE Enter the 4-character product/service code.		
9. PRINCIPAL PLACE OF PERFORMANCE Enter the code to report the principal place of performance.		
10. KIND OF PROCUREMENT ACTION Enter the kind of procurement action.		
11. TYPE OF CONTRACT Enter the type of contract.		
12. SUBJECT TO STATUTORY REQUIREMENTS Enter the code that identifies the statutory requirement.		
13. METHOD OF CONTRACTING Enter the method of contracting.		
14. NEGOTIATION AUTHORITY Enter the 2-character negotiation authority only if reporting a negotiated procurement.		
	15.	EXTENT OF COMPETITION Enter the extent of competition.
	16.	LABOR SURPLUS AREA (LSA) Enter the appropriate code.
	17.	TYPE OF BUSINESS Enter the type of business.
	18.	WOMAN-OWNED BUSINESS Enter the appropriate code.
	19.	TRADE DATA - Enter the number of bidders offering foreign items. - Enter the percentage difference applied under the Buy American Act. - Enter the country of manufacturer.
	20.	SYNOPSIS CODE Enter the code reflecting Commerce Business Daily synopsis.
	21.	MULTI-YEAR PROCUREMENT Enter whether or not this is a multi-year procurement action.
	22.	SUBCONTRACTING PLAN Enter whether or not a subcontracting plan is required.
	23.	CONTRACTOR CODE Enter the contractor's 9-character DUNS number.
	24.	CONTRACTOR NAME AND ADDRESS Print the name and address of the contractor. Include the name of the contractor division if applicable.
	25.	CONTRACT SPECIALIST/PROCUREMENT AGENT Enter the last name of the contract specialist or procurement agent who is responsible for processing this procurement action.
	26.	CONTRACTING OFFICER SIGNATURE To be signed by Contracting Officer who certifies that the information on this form is correct. The original of this form is to be retained in the contract file.

UNITED STATES DEPARTMENT OF COMMERCE
SUPPLY, EQUIPMENT OR SERVICE ORDER

THIS NUMBER MUST
 APPEAR ON ALL
 INVOICES, PACKAGES AND
 PAPERS RELATING TO
 THIS ORDER

PAGE NUMBER	QUOTATION, REF. OR CONTRACT NO.	ORDER DATE	ORDER NUMBER	SUB
OF				

CHECK ONE	TO (Seller)	SHIP TO (Consignee and Destination)
<input type="checkbox"/> Purchase Order (See Reverse)		
<input type="checkbox"/> Delivery Order (See Block 3)		
1039 <input type="checkbox"/> TAX	EMPLOYER IDENTIFICATION NUMBER (EIN)	

LINE ITEM	ACTION CODE	DESCRIPTION	QUANTITY	UNIT ISSUE	UNIT PRICE	AMOUNT
<p>S E L L E R '' S O R I G I N A L</p>						

FOB POINT	DISCOUNT TERMS	TOTAL
TIME FOR DELIVERY	SHIP VIA	

BILLING INSTRUCTIONS:

**DO NOT
 SHIP ORDER TO
 THIS ADDRESS
 (Ship to Consignee
 Address Above)**

Furnish invoice with our ORDER NUMBER to: **U.S. Department of Commerce
 Management Service Center/P.O.
 Caller Service Number 4025
 Germantown, Maryland 20874**

FAILURE TO SHOW OUR ORDER NUMBER ON INVOICE WILL DELAY PAYMENT. FREIGHT CHARGE OVER \$100 REQUIRES BILL OF LADING

ISSUING OFFICE NAME AND ADDRESS	ORDERED BY (Name and Title)
	PHONE (Area Code and Number)
	CONTRACTING/ORDERING OFFICER SIGNATURE

SELLER'S ORIGINAL

U.S. DEPARTMENT OF COMMERCE TERMS AND CONDITIONS OF PURCHASE ORDER

THE FOLLOWING CLAUSES APPLY TO ALL PURCHASE ORDERS. IN ACCORDANCE WITH FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) 52.252, CLAUSES INCORPORATED BY REFERENCE, THOSE CLAUSES LISTED BY REFERENCE HAVE THE SAME FORCE AND EFFECT AS IF THEY WERE GIVEN IN FULL CONTEXT. UPON REQUEST THE CONTRACTING OFFICER WILL MAKE THEIR FULL TEXT AVAILABLE.

1. INSPECTION AND ACCEPTANCE - Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejections, risk of loss will be on the Contractor unless loss results from negligence of the Government.
2. VARIATION IN QUANTITY (APRIL 84) - FAR 52.212-9
3. PAYMENTS (APRIL 84) - FAR 52.232-1
4. DISCOUNTS FOR PROMPT PAYMENT (APRIL 84) FAR 52.232-8
5. CHANGES - FIXED PRICE (APRIL 84) FAR 52.243-1
6. DISPUTES (APRIL 84) FAR 52.233-1
7. BUY AMERICAN ACT - SUPPLIES (APRIL 84) - FAR 52.225-3
8. SERVICE CONTRACT ACT OF 1965 - CONTRACTS OF \$2,500 OR LESS (APRIL 84) - FAR 52.222-40
9. SERVICE CONTRACT ACT OF 1965 (APRIL 84) - FAR 52.222-41
10. EQUAL OPPORTUNITY (APRIL 84) - FAR 52.222-26
11. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APRIL 84) - FAR 52.222-36
12. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION - GENERAL (APRIL 84) - FAR 52.222-4
13. CONVICT LABOR (APRIL 84) - FAR 52.222-3
14. OFFICIALS NOT TO BENEFIT (APRIL 84) - FAR 52.203-1
15. GRATUITIES (APRIL 84) - FAR 52.203-3
16. COVENANT AGAINST CONTINGENT FEES (APRIL 84) - FAR 52.203-4
17. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (SHORT FORM) (APRIL 84) - FAR 52.249-1
18. FEDERAL, STATE, AND LOCAL TAXES - Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties in effect on the date of this contract but does not include any taxes from which the Government, the Contractor or this transaction is exempt. Upon request of the Contractor, the Government shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the contract price pursuant to this clause. For the purpose of this clause, the term "date of this contract" means the date of the contractor's quotation or, if no quotation, the date of this purchase order.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of *Carex specuicola* to be a Threatened Species With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Carex specuicola*, to be a threatened species under the authority contained in the Endangered Species Act of 1937 (Act), as amended. Critical habitat is being designated. This plant occurs in Coconino County, Arizona, on the Navajo Indian Reservation. The three known populations and their habitat are currently threatened with impacts from livestock grazing and water development. This action implements the protection provided by the Act.

DATES: The effective date of this rule is June 7, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Region 2, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Botanist, Region 2, Office of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:**Background**

Carex specuicola is a perennial member of the family Cyperaceae (sedge family). This species was first collected by J.T. Howell in 1948, and the description was published by him in 1949. *Carex specuicola* has a triangular stem 25-40 centimeters (10-16 inches) high, which extends from an elongate, slender rhizome (underground stem). The leaves are pale green, 1-2 millimeters (.04-.08 inches) wide, 12-20 centimeters (4.7-7.9 inches) long, and clustered near the base. The flowers are in 2-4 groups or spikes. The terminal spike has both male and female flowers, with the female flowers above the male flowers. The lateral spikes contain only female flowers. The flowers are reduced and not showy; they consist of small, green-brown, scale-like parts 2-3 millimeters (.08-.12 inches) long and 1-1.5 millimeters (.04-.06 inches) wide. Flowering and fruit set occur from spring

to summer, but most of the reproduction appears to be vegetative.

Carex specuicola is known only from sites near Inscription House Ruin on the Navajo Indian Reservation in Coconino County, Arizona. The plants are found around three shady seep-springs. The vegetation is pinyon-juniper woodland at elevations of 1,740-1,824 meters (5,707-5,983 feet), with an average annual precipitation of approximately 19.4 centimeters (7.6 inches). Within its habitat *Carex* is locally common, growing in dense clumps from the rhizomes. Each population covers an area of less than 200 square meters (2,152 square feet) along the outflow from its respective seep-spring. In 1980, all plants were healthy and vigorous (Phillips *et al.*, 1981).

Federal actions involving *Carex specuicola* began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. *Carex specuicola* was included in the Smithsonian petition and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, *Federal Register* publication (43 FR 7909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, *Federal Register* (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired. *Carex specuicola* was included as a category-1 species in a revised list of plants under review for threatened or endangered classification published in the December 15, 1980, *Federal Register* (45 FR 82480). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Carex specuicola*, was October 13, 1983.

On October 13, 1983, the petition finding was made that listing *Carex specuicola* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B) (iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(f) of the Act. A proposed rule published April 11, 1984 (49 FR 14406), constituted the next required finding that the petitioned action was warranted in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Comments and Recommendations

In the April 11, 1984, proposed rule (49 FR 14406) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Flagstaff, Arizona, *Arizona Daily Sun* on May 9, 1984, which invited general public comment. Six comments were received, one each from the U.S. Forest Service, the Bureau of Indian Affairs (BIA), the Arizona State Agriculture and Horticulture Department, the Arizona Wildlife Federation, the International Union for Conservation of Nature and Natural Resources (IUCN), and a professional botanist at the University of Arizona. No public hearing was requested or held.

None of the comments contradicted the Service's findings of rarity or need of protection for *Carex specuicola*. Two commenters, the Forest Service and the BIA, however, did suggest additional field surveys be conducted to locate more plants. The Service agrees that the discovery of any currently unknown populations would be very beneficial, but these three populations were the only ones located in past survey work. Three commenters, the Arizona State Agriculture and Horticulture Department, the Forest Service, and the Arizona Wildlife Federation, suggested fencing be used to exclude livestock from the three springs where the species occurs and that water for livestock then

be piped outside the fenced enclosures. The Service finds that these measures may help protect the species, and watering sights are now found away from the *Carex* locations. The Arizona State Agriculture and Horticulture Department suggested not posting fenced areas or mapping plant habitat as these activities could provide locality information to unscrupulous collectors. Because *Carex specuicola* is inconspicuous and not subject to commercial or other trade, the Service does not believe posting fenced areas or mapping habitat will substantially increase the threats to the species. The Arizona Wildlife Federation suggested a monitoring system be established to ascertain population status, and the BIA suggested that in any monitoring system the effect of erosion be considered along with other factors that might jeopardize the species. The Service agrees monitoring will be needed to ensure maintenance of the species.

The BIA described grazing and water use in the areas occupied by *Carex specuicola*. In regard to grazing, the BIA stated there is not record of the number of livestock grazing in the areas prior to 1943. Carrying capacities were established in 1943 and livestock numbers have since remained constant, being regulated by permit. Grazing permits are renewed automatically but BIA action is required to cancel or modify them. With regard to water use, the BIA stated that two of the three seep-springs with *Carex specuicola* populations are presently used to water livestock. At one, livestock drink water caught in a natural basin downhill from the spring. At the other, a stone and mortar diversion has been built to direct water from the spring to a storage structure. Water from the storage structure flows through a pipe to a livestock drinker located away from the area occupied by *Carex specuicola*. These structures were built in the 1930's. Application for any additional livestock water development would have to be approved by the BIA, which states that it would review any proposal for water development with protection of *Carex specuicola* as a priority.

Neither the professional botanist at The University of Arizona nor the IUCN had any substantive comments on the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Carex specuicola* should be classified as a threatened species. Procedures found at section 4(a)(1) of

the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Carex specuicola* J.T. Howell are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Carex specuicola* has only been found at its original locality around three seep-springs in the vicinity of Inscription House Ruin on the Navajo Indian Reservation. This habitat is vulnerable to changes resulting from water development for livestock. Heavy trampling in conjunction with livestock watering already occurs around two of the three seep-springs. An increase in the number of livestock could possibly damage the *Carex* populations. Severe impacts to any one of the three populations would have a substantial detrimental effect on the species (Phillips *et al.*, 1981).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial or other trade in this plant is not known to exist (Phillips *et al.*, 1981).

C. *Disease or predation.* Many species within the genus *Carex* are palatable to livestock and wildlife. Two of the three *Carex* sites are used as livestock water sources and grazing areas (mainly for sheep), especially the one at Inscription House Ruin Spring. While not expected, an increase in grazing pressure could be harmful to the species, and should be avoided until the grazing impact is thoroughly assessed (Phillips *et al.*, 1981).

D. *The inadequacy of existing regulatory mechanisms.* *Carex specuicola* is not protected by Federal law or the Arizona Native Plant Law. A permit is needed, however, from the Navajo Tribe for plant study or collection on the Reservation.

E. *Other natural or manmade factors affecting its continued existence.* The specific habitat requirements of *Carex specuicola*, the limited distribution, and small number of populations (3) make the existence of this species especially precarious in the event of habitat disturbance or any activity that results in the loss of a significant number of individuals.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule

final. Based on this evaluation, the preferred action is to list *Carex specuicola* as threatened with critical habitat. Threatened status seems appropriate because of the restricted distribution of the species and the small size of populations which, although they are vigorous and reproducing well, are threatened by livestock grazing, habitat deterioration due to water development, and livestock trampling of areas around water sources. Also, the only protection for this species is a Navajo Tribal Law prohibiting study or collection of this species without a permit. No other laws, State or Federal, provide protection to this species.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for *Carex specuicola* to include the entire areas occupied by the three known populations of the plant. The locations are on the Navajo Indian Reservation in Coconino County, Arizona, and are 40 x 5 meter (about 200 square meters) rectangular areas with their long axes in the direction of seep-spring flow, centered on the following points: (1) latitude 36°39'53" N, longitude 110°47'18" W; (2) latitude 36°40'07" N, longitude 110°47'55" W; and (3) latitude 36°40'18" N, longitude 110°48'15" W. The total area designated comprises about 600 square meters (about 0.15 acres), and contains all habitat presently known to be occupied by the species. Constituent elements are moist sandy to silty soils at shady seep-springs within the Navajo Sandstone Formation (Phillips *et al.*, 1981).

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may

be affected by such designation. The activities that may potentially affect the critical habitat of *Carex specuicola* or be affected by its designation are spring development and grazing. Spring development could affect the free-flowing seep-springs upon which the species depends. Livestock trampling has contributed to some soil erosion on the steeper sandy soil sites at the Inscription House Ruin Spring site. Withdrawal of the critical habitat area from grazing (representing less than one Animal Unit Month and no grazing fees) or fencing may be warranted to protect the critical habitat from soil erosion or trampling. It is not expected that use of the seep-spring water for livestock watering will affect or be affected by the critical habitat designation because the watering sites are located away from the area where *Carex specuicola* is found. There is a coal mining operation about ten miles away from the critical habitat, but it is located in a different geologic formation and has a different water source than the critical habitat's water source. Small farms in the area may use excess water runoff, but are not expected to affect or be affected by the critical habitat designation. The BIA has informed the Service that it plans to monitor the critical habitat of *Carex specuicola* as part of its plans to develop an informal monitoring system for the resources under its jurisdiction. Currently, no plans for water development, farm use, or additional grazing permit applications are known that would involve Federal funds or permits for the area affected by the critical habitat designation.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of relevant additional information obtained during the public comment period and concludes that no significant economic impacts are expected as a result of the designation and no adjustments to the area proposed as critical habitat are warranted.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land

acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies, and the taking prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provisions of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29890; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. With respect to *Carex specuicola*, if an adverse effect pertaining to spring development is expected and BIA funding or authorization is involved, the BIA must enter into consultation with the Service prior to issuance of a BIA permit. Permits for grazing are also issued by BIA.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Carex specuicola*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. International and interstate commercial trade in *Carex specuicola* is not known to exist. It is anticipated that few trade permits would ever be sought or issued since

this plant is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. This new protection will apply to *Carex specuicola* when revised regulations are promulgated. Permits for exceptions to this prohibition are available through sections 10(a) and 4(d) of the Act, until revised regulations are promulgated to incorporate the 1982 amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. All three populations of *Carex specuicola* are on the Navajo Indian Reservation. It is anticipated that few collection permits for the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The critical habitat designation as defined in the proposed rule for *Carex specuicola* did not bring forth economic or other impacts to warrant consideration of adjusting the critical habitat designation. The critical habitat area is located entirely on Indian land within the Navajo Indian reservation in Coconino County, Arizona. The Navajo Indian Tribe owns and manages the critical habitat area. The BIA also has

some permitting and management authority over the critical habitat area. Based on BIA's current management and planned monitoring of the critical habitat area, it is not expected that significant economic impacts will result from the designation of critical habitat on the Navajo Indian Reservation. These determinations are based on a Determination of Effects that is available at the Regional Office, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

Literature Cited

- Howell, J.T. 1949. Three new Arizona plants. *Leaflets of Western Botany* 5(9):148.
 Phillips, A.M., B.G. Phillips, L.T. Green, J. Mazzoni, and N. Brian. 1981. Status report: *Carex specuicola* J.T. Howell. Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 12 pp.

Authors

The authors of this final rule are Charles McDonald and Peggy Olwell, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972). The editor was E. LaVerne Smith, Office of Endangered Species,

Washington, D.C. 20240 (703/235-1975 or FTS 235-1975). Status information and a preliminary listing package were provided by Dr. A.M. Phillips, Dr. B.G. Phillips, L.T. Green, J. Mazzoni, and N. Brian, Museum of Northern Arizona, Route 4, Box 720, Flagstaff, Arizona 86001.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17 Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Cyperaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cyperaceae—Sedge family:						
<i>Carex specuicola</i>	None	U.S.A. (AZ)	T	178	17.96(a)	NA

3. Amend § 17.96(a) by adding the critical habitat of *Carex specuicola* as follows: The position of this entry under § 17.96(a) will follow the same sequence as the species occurs in § 17.12.

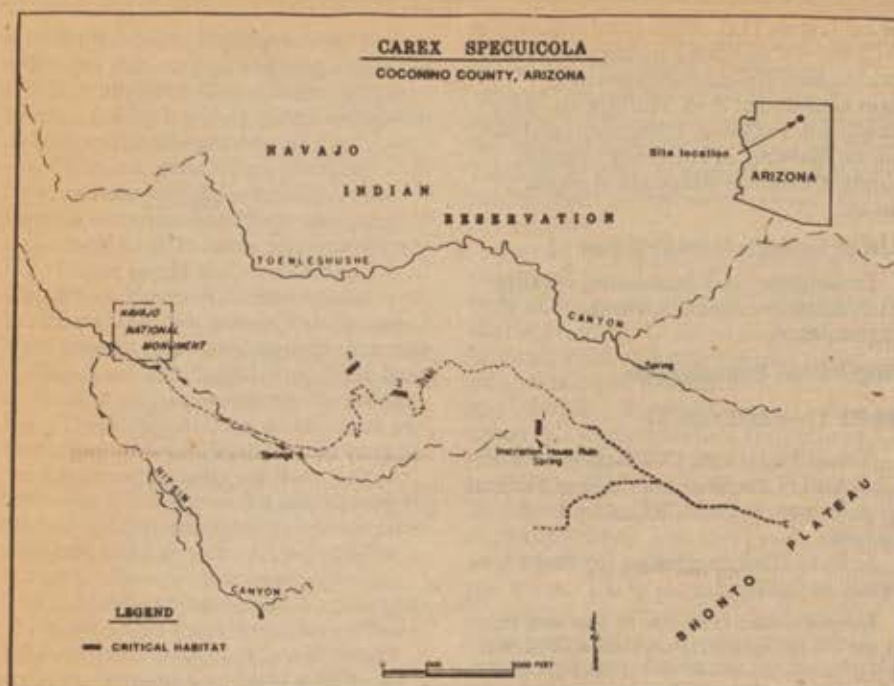
§ 17.96 Critical habitat—plants.

(a) * * *

Cyperaceae—*Carex specuicola*

Arizona; Coconino County; Navajo Indian Reservation. A 40 x 5 meter rectangular area,

with its long axis in the direction of seep-spring flow, around each of the following points: (1) Latitude 36°39'53" N, longitude 110°47'18" W; (2) latitude 36°40'07" N, longitude 110°47'55" W; and (3) latitude 36°40'18" N, longitude 110°48'15" W. Primary constituent elements include moist sandy to silty soils at shady seep-springs within the Navajo Sandstone Formation.



Dated: March 25, 1985.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-11097 Filed 5-7-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination That *Amsinckia grandiflora* is an Endangered Species and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status and designates critical habitat for *Amsinckia grandiflora* (large-flowered fiddleneck). This action is being taken because population numbers have declined since historic times, possibly as a result of modification of habitat for agricultural use, intensive livestock grazing, urban development, and other land use activities that have altered the natural plant communities within the large-flowered fiddleneck's historic range. Weedy exotic plants and aggressive *Amsinckia* species are presently invading the grassland habitat at the one site it now occupies. The species

has an extremely restricted range, reduced gene pool, and low reproductive potential. The single known population, found in southwestern San Joaquin County, California, on Department of Energy land, has been observed from 1980 to 1984 and found to vary in size from 30 to 70 individuals for those years. There is the possibility that controlled burning and the testing of chemical explosives (both activities occur near its present environment) may be affecting the species. A determination that *Amsinckia grandiflora* is an endangered species and designation of its critical habitat will implement the protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is June 7, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address or 503/231-6131 or FTS 429-6131.

SUPPLEMENTARY INFORMATION:

Background

Amsinckia grandiflora was first

collected in 1869 by Kellogg and Harford and was described in 1876 by Asa Gray. This annual species has red-orange flowers arranged in a fiddleneck-shaped inflorescence. Its bright green foliage is covered with coarse, stiff hairs. Historically, the species was found in Alameda, Contra Costa, and San Joaquin Counties, California. Today, it is known to survive only at a ½-acre site on Department of Energy (DOE) land, near Livermore, San Joaquin, California. The site is a grassy, steep, west- and south-facing slope of a small ravine with light-textured clay soil.

The reasons for the species' decline are not known, but two factors have been suggested. The reproductive system of *Amsinckia grandiflora* is considered "primitive." The species has two flower morphs, a condition that encourages outcrossing and may lead to lowered fecundity. The displacement of the large-flowered fiddleneck by aggressive fiddleneck species may be due to its inability to compete with species having higher fecundity (Ray and Chisaki, 1957; Ornduff, 1976). Also, the introduction of grazing animals into the Livermore area and the development of lands for agricultural and urban uses are believed to have been responsible for the extirpation of some populations. At this time fewer than 50 individuals are known to exist.

The Secretary of the Smithsonian Institution, as directed by section 12 of the Endangered Species Act of 1973, prepared a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94-51) was presented to Congress on January 9, 1975. On July 1, 1975, the Fish and Wildlife Service published a notice in the *Federal Register* (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) of the Endangered Species Act (petition acceptance provisions are now contained in section 4(b)(3)(A)), and giving notice of its intention to review the status of the plant taxa named therein, including the large-flowered fiddleneck. As a result of this review, on June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species, including the large-flowered fiddleneck, to be endangered pursuant to Section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2