

allows only a 575 foot credit, this SIP revision is based upon full credit for the actual stack height of 600 feet, due to the fact that the difference between formula credit and actual height in this case is insignificant for the purpose of establishing an emission limitation. This difference is explained in the technical support document accompanying this proposal.

However, portions of the stack height regulations have been overturned by a panel of the U.S. Court of Appeals for the D.C. Circuit. (*Sierra Club v. EPA*, 719 F.2d 436 (D.C. Cir., 1983)). The court decision has been appealed to the U.S. Supreme Court by a group of affected industries. Consequently, the actions taken today under the interim policy described above may be subject to modification when the judicial process is completed and any regulations revised in response. This may result in revised emission limitations.

EPA Actions

EPA has determined that the Consent Order for the Westvaco Mill and the accompanying control strategy demonstration meets all of the applicable requirements of section 110 of the Clean Air Act and 40 CFR Part 51. Therefore, EPA proposes to approve this Consent Order as a revision to the Maryland State Implementation Plan.

The Public is invited to submit comments to the above-noted addresses on whether the EPA should approve this revision to the Maryland SIP. All comments received on or before August 1, 1984 will be considered.

General

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

Under 5 U.S.C. 605(b), the Administrator has certified that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 6709.)

List of Subjects in 40 CFR Part-52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401-7642.

Dated: February 23, 1984.

Thomas P. Eichler,

Regional Administrator.

[FR Doc. 84-17485 Filed 6-29-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[OAR-FRL-2619-6]

Federal Assistance Limitations; State of Michigan; Correction

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of Proposed Rulemaking; Correction.

SUMMARY: This notice corrects the closing date of the public comment period which was incorrectly stated in the proposed rulemaking on federal assistance limitations for the State of Michigan. This proposed rulemaking was published in June 14, 1984, *Federal Register* (49 FR 24549).

FOR FURTHER INFORMATION CONTACT: Toni Lesser, (312) 886-6037.

Correction: In particular, on page 24549 in the third column, in the section for dates it was stated that written comments must be received on or before July 16, 1981. The correct date for the submission of public comments is July 27, 1984.

The section should have read as follows:

DATE: Written comments must be submitted to USEPA on or before July 27, 1984.

Similarly, on page 24551 in the third column, in Section D. Request for Comment, it is stated that the comment deadline is July 16, 1984. As stated above, the correct date for the comment deadline is July 27, 1984.

Dated: June 21, 1984.

Dale S. Bryson,

Acting Regional Administrator.

[FR Doc. 84-17483 Filed 6-29-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 15, 21, 22, 23, 68, 73, 76, 81, 83, 90, 94, and 95

[Gen. Docket No. 84-361]

List of Rules To Be Reviewed Pursuant to Section 610 of the Regulatory Flexibility Act During 1983-1984; Extension of Comment Date

AGENCY: Federal Communications Commission.

ACTION: List of rules to be reviewed under the Regulatory Flexibility Act; extension of comment period.

SUMMARY: The Federal Communications Commission extends comment period in Gen. Docket No. 84-361 to allow

interested persons additional time to file comments relative to the Federal Communications Commission's list of rules to be reviewed during 1983-1984 pursuant to section 610 of the Regulatory Flexibility Act.

DATE: Comments are now due by August 21, 1984.

FOR FURTHER INFORMATION CONTACT: James Keats, (202) 254-6530.

SUPPLEMENTARY INFORMATION:

Order Extending Comment Filing Period

In the matter of Federal Communications Commission's List of Rules to be Reviewed Pursuant to Section 610 of the Regulatory Flexibility Act During 1983-1984, Gen. Docket No. 84-361.

Adopted: June 22, 1984.

Released: June 25, 1984.

1. On April 4, 1984, the Commission adopted a Notice in the above-captioned proceeding relating to its periodic review as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) of rules issued by the agency which have a significant economic impact on a substantial number of small entities. The Notice listed rules targeted for review by the Commission from January 1984 through December 1984. The public was invited to file comments on the rules and to suggest changes. The Notice stated that the comment period would end 60 days after the Notice was published in the *Federal Register*. The Notice was published in the *Federal Register* on April 23, 1984 (49 FR 17045).

2. On June 14, 1984, the Association of Federal Communications Consulting Engineers (AFCCE) filed a petition for extension of time to file comments. AFCCE requested an additional sixty days. AFCCE supported its requests by stating that it "considers that the matters raised in this Docket are of such importance as to require certain studies, as well as the discussion of the results of such studies by the membership of the Association before such comments are filed. It believes the additional time requested herein is required for such function." In light of the circumstances presented here we believe the requested extension is warranted.

3. It is hereby ordered, that AFCCE's petition for extension of time is granted. Pursuant to applicable procedures set out in §§ 1.4 and 1.415, and the authority delegated in § 0.251 of the Federal Communications Commission's Rules and Regulations, 47 CFR 1.4 and 1.415, and the authority delegated in § 0.251 of the Commission's Rules, 47 CFR 0.251,

interested persons may file comments on or before August 21, 1984.

Bruce E. Fein,
General Counsel.

[FR Doc. 84-17462 Filed 6-29-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, and 175

[Docket No. HM-184B; Notice No. 84-5]

Implementation of the ICAO Technical Instructions

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Hazardous Materials Regulations (HMR) in order to permit the offering, acceptance and transportation by aircraft, and by motor vehicle incident to transportation by aircraft, of hazardous materials shipments conforming to the most recent edition of the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). These amendments are necessary to facilitate the continued shipment of hazardous materials in international commerce by aircraft when the 1985 edition of the ICAO Technical Instructions becomes effective on January 1, 1985, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation.

DATE: Comments must be received by September 14, 1984.

ADDRESS: Address comments to Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Branch is located in Room 8426, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward A. Altomos, International Standards Coordinator, Materials

Transportation Bureau, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-0656.

SUPPLEMENTARY INFORMATION: On November 29, 1983, the Materials Transportation Bureau (MTB) published amendments to the Hazardous Materials Regulations (48 FR 53710) which allow under certain conditions, and with certain limitations, hazardous materials packaged, marked, labeled, classified and described and certified on shipping papers as provided in the 1984 edition of the ICAO Technical Instructions to be offered accepted and transported by aircraft within the United States and aboard aircraft of United States registry anywhere in commerce. In addition, amendments were published to Part 175 of the HMR to align the requirements for the loading and handling of hazardous materials aboard aircraft with those in the 1984 edition of the ICAO Technical Instructions. It was necessary that these amendments be published in order to provide consistency between the Hazardous Materials Regulations and the ICAO Technical Instructions because the ICAO Technical Instructions have become the basic standard applied to the transport of hazardous materials by aircraft worldwide. A more detailed explanation of the reasons for this action was provided in the Notice of Proposed Rulemaking published under Docket No. HM-184 on August 2, 1982 (47 FR 33295).

Since publication of the final rule under Docket No. HM-184A, ICAO has developed a number of amendments to the Technical Instructions. These amendments have been incorporated in the 1985 edition of the ICAO Technical Instructions which will become effective on January 1, 1985. In order to continue to fulfill the intent of the amendments published under HM-184 and HM-184A (i.e., to facilitate the international transportation of hazardous materials by aircraft by insuring a basic consistency between the HMR and the ICAO Technical Instructions), the MTB believes it necessary to amend certain provisions of the HMR to reflect changes introduced in the 1985 edition of the ICAO Technical Instructions. The purpose of this rulemaking action to propose these necessary amendments to the HMR.

The following is an analysis of this proposal, by section, which provides the background behind the proposed changes:

Section 171.7. The reference to the 1984 edition of the ICAO Technical Instructions in the matter incorporated by reference would be updated to refer

to the 1985 edition. A copy of the Report of the Eighth Meeting of the ICAO Dangerous Goods Panel, indicating all changes introduced into the 1985 edition of the Technical Instructions, is on file in the public dockets.

Section 173.860. Subparagraph (b)(1) of this section would be removed and the exception for mercurial barometers contained therein added to § 175.10.

Section 175.10. One of the existing exceptions in this paragraph would be amended and an additional exception added. The exception for aircraft parts and supplies in subparagraph (a)(2), which is currently aligned with the corresponding text of the 1984 edition of the Technical Instructions, would be amended to reflect the wording introduced in the 1985 edition of the Technical Instructions. ICAO changed the exceptions for aircraft parts and supplies in the Technical Instructions in order to achieve consistency with paragraph 2.4.2 of annex 18 of the Convention. The proposed text provides that replacements for parts and supplies that would be classed as hazardous materials must be transported in accordance with the HMR except that batteries would be authorized up to a gross weight of 110 pounds. In addition, a new exception for mercurial barometers would be added as a new subparagraph (a)(22).

Section 175.33. Paragraph (a) of this section would be revised to provide that the net quantity or gross weight, as applicable for the particular hazardous material, must be shown on the notification to pilot-in-command unless the regulations impose no limit on the maximum quantity of that hazardous material that may be contained in one package. It would also be revised to improve editorial clarity.

Section 175.85. Subparagraph (c)(1)(v) would be revised to change the lower flashpoint limit of flammable liquids that may be carried in an inaccessible location from 90 °F(32 °C) to 73 °F (23 °C) in order to maintain alignment with the corresponding paragraph in the ICAO Technical Instructions.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

In consideration of the foregoing, 49 CFR Parts 171, 173, and 175 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. In § 171.7, paragraph (d)(27) would be revised to read:

§ 171.7 Matter incorporated by reference.

(d) * * *

(27) International Civil Aviation Organization Technical instructions for the Safe Transport of Dangerous Goods by Air, DOC 9284-AN/905 (ICAO Technical Instructions), 1985 edition.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

§ 173.860 [Amended]

2. In § 173.860, paragraph (b)(1) would be removed.

PART 175—CARRIAGE BY AIRCRAFT

3. In § 175.10, paragraph (a)(2) would be revised and a new paragraph (a)(22) would be added as follows:

§ 175.10 Exceptions.

(a) * * *

(2) Hazardous materials required aboard an aircraft for its operation. Items of replacement thereof must be transported in accordance with this subchapter except that aircraft batteries are authorized up to a gross weight of 110 pounds.

(22) A mercurial barometer carried as carry-on baggage only, by a representative of a government weather bureau or similar official agency. The barometer must be packaged in a strong outer packaging having a sealed inner liner or bag of strong, leak proof and puncture-resistant material impervious to mercury, which will prevent the escape of mercury from the package irrespective of its position. The pilot-in-command must be informed of the presence of any such barometer.

4. In § 175.33, the existing paragraphs (a)(3), (4), (5), and (6) would be redesignated (a)(5), (6), (7) and (8) respectively, paragraph (a)(2) would be revised and new paragraphs (a)(3) and (a)(4) added as follows:

§ 175.33 Notification of pilot-in-command.

(a) * * *

(2) The total number of packages;

(3) The net quantity or gross weight, as applicable, for each package except those containing radioactive materials

and for those for which there is no limit imposed on the maximum net quantity per package;

(4) the location of the packages aboard the aircraft;

* * *

§ 175.85 [Amended]

5. In § 175.85(c)(1)(v), the figures "90 °F (32 °C)" would be replaced by the figures "73 °F (23 °C)".

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 App. A to Part 1 and paragraph (a)(3) of App. A to Part 106)

Note.—The Materials Transportation Bureau has determined that this document will not result in a "major rule" under the terms of Executive Order 12291 or a significant regulation under DOT's regulatory policy and procedures (44 FR 11034) or require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) I certify that this proposal would not, if adopted, have a significant economic impact on a substantial number of small entities because the overall economic impact of this proposal would be minimal. A regulatory evaluation and environmental assessment are available for review in the docket.

Issued in Washington, D.C., on June 25, 1984.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[Fr Doc. 84-17573 Filed 6-29-84; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 73-34; Notice 7]

Motor Vehicle Safety Standards; School Bus Body Joint Strength

AGENCY: National Highway Traffic Safety Administration (NHTSA), Transportation.

ACTION: Notice of termination of rulemaking.

SUMMARY: This notice terminates rulemaking action begun when this agency published a notice of proposed rulemaking (NPRM) to solicit comments on a proposed amendment to Safety Standard No. 221, *School Bus Body Joint Strength* (46 FR 57939). The notice sought to amend the standard by requiring most maintenance access panels in school buses to comply with the standard. The comments received in response to the NPRM indicated that no safety problem has arisen due to a failed maintenance access panel; that extra fasteners on these panels may discourage prompt maintenance,

possibly leading to an overall degradation in bus safety; and that no examples of circumvention of the standard had been revealed. In light of the foregoing, the agency terminates this rulemaking action, but urges the bus industry to review its designs to minimize the number of maintenance access panels. This agency will continue to monitor information concerning maintenance access panels and, if appropriate, rulemaking action will be reinstated.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Williams, Crashworthiness Division, NRM-12, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: On November 27, 1981, the NHTSA published a notice proposing the removal of the blanket exemption of maintenance access panels from Safety Standard No. 221, *School Bus Body Joint Strength* (46 FR 57939). The proposed amendment would have required most maintenance access panels to be securely joined in compliance with the requirements of Standard No. 221. This end would have been accomplished by redefining the terms "bus body" and "bus panel joint," to reduce the number of exempted joints.

The agency had become concerned that manufacturers were apparently circumventing the mandates of the standard by artificially "creating" access panels that were not necessary for bus maintenance. Accident data had revealed that panels joined in compliance with the standard were less likely to separate and pose safety problems after sustaining heavy impacts.

By request of the Truck Body and Equipment Association (TBEA), the comment period was extended to March 29, 1982 (47 FR 4100). Ultimately, over 200 comments were submitted, with all but two commenters opposed to the proposed amendment. Mainly, commenters asserted that not a single injury could be attributed to maintenance access panel failure.

On March 4, 1982, a meeting was held with members of the school bus industries, school authorities and interested parties through the assistance of the TBEA. These representatives asserted publicly that the standard for access panels did not need to be amended. They stated that no safety problems and no standard abuses had been shown. The representatives further contended that extra fasteners would

delay proper maintenance because of difficulties in removing extra fasteners.

At a meeting on January 27, 1983, with the Administrator, members of the school bus industry and other school authorities reaffirmed their contentions involving maintenance difficulties. Further, they commented that the additional costs of compliance might be \$500 per bus without providing any greater safety benefits. Also, they suggested that the proposed redefinitions were likely to include other previously exempted joints that did not relate to maintenance access panels, thereby exceeding the original intent of the notice.

NHTSA undertook an internal review of the comments received and the available accident data. In light of this reevaluation, the agency determined that these arguments had substantial merit.

Injury Data

After reviewing in-depth studies of school bus accidents, the agency was unable to find a documented case of a single injury resulting from maintenance access panels. Several cases involving severe crash damage (including train crashes) indicated that even with instances of pronounced joint failures, no personal injuries resulting from such failures have been documented.

In its data reevaluation, the agency observed that some interior panels, particularly those in overhead areas, were constructed with a "doubled-over" edge fabrication. The agency noted that these panels with "doubled-over" edge fabrication substantially lessen the potential for lacerations and serious injury posed by exposure to jagged edges. Manufacturers have stated that "doubled-over" edge designs are a common practice within the industry, although the agency has yet to observe maintenance access panels with this design feature. Even though there have been no documented cases of injury resulting from maintenance access panels, manufacturers are urged to utilize the doubled-over edge or other designs to lessen the potential for injury from such panels.

Abuse of Safety Standard No. 221

Next, the agency reviewed its contention that manufacturers were circumventing Standard No. 221 by artificially "creating" maintenance access panels. It was noted that some manufacturers have replaced some panels that had to comply with Standard No. 221 with maintenance access panels in later model buses. However, the

agency assumes that this action was prompted by a legitimate need for the additional access panels. Although the agency has been unable to positively identify cases of abuse, it believes that the potential for abuse exists, and urges manufacturers to limit use of maintenance access panels to those areas where such panels are absolutely necessary. The agency will continue to monitor this issue and will not hesitate to take appropriate regulatory and/or enforcement actions if abuses are discovered.

Maintenance Difficulties

The agency, in its reevaluation, determined that requiring extra fasteners on maintenance access panels may not increase safety in the long run. For example, a maintenance access panel presently requiring 8 fasteners, might, had the amendment been promulgated, need 20 fasteners to comply with Standard No. 221. An increase in fasteners or a decrease in access panels will complicate the maintenance process and may discourage prompt maintenance.

Increased Costs

Those within the school bus industry have quoted increased compliance costs of \$200-\$500 per bus. The cost increases could be detrimental to safety to the extent that they induce owners of older buses to keep them in operation after the time they would normally be retired or replaced.

Conclusion

In light of the foregoing, this notice terminates this rulemaking action. The agency suggests that the bus industry review its designs and customer requests to minimize the number of maintenance access panels. For example, wires could be run down one side of the bus, eliminating the need for designating large areas of the bus interiors "maintenance access panels," or a wiring harness could be passed through a conduit installed behind conforming panels.

This agency will continue to monitor information involving maintenance access panels, and if appropriate, rulemaking action will be reinstated.

Issued on June 26, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-17472 Filed 6-29-84; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1160 and 1165

[Ex Parte No. 55, Sub-N43A; and Ex Parte No. MC-142; Sub-1]

Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property); Removal of Restrictions From Authorities of Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Supplemental Rulemaking.

SUMMARY: The Commission is reassessing its policy concerning the propriety of bulk restrictions on motor carrier operating authority. To develop a thorough and effective factual record concerning the bulk service restrictions issue, both as to specific commodities and as to commodities generally, the Commission (a) solicits public comment and evidence on the matter, and (b) will direct to interested parties specific information requests relating to their individual transportation interests.

DATES: All interested persons should file their comments and supporting evidence by August 16, 1984.

ADDRESSES: Send an original and 15 copies of all submissions and replies to: Ex Parte Nos. 55 (Sub-No. 43A) and MC-142 (Sub-No. 1), Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Suzanne Higgins, (202) 275-7181

or

Howell I. Sporn, (202) 275-7691

SUPPLEMENTARY INFORMATION: The Commission's recent decisions adopting final rules in Ex Parte No. 55 (Sub-No. 43A), 49 FR 15202, April 18, 1984, and Ex Parte No. MC-142 (Sub-No. 1), 49 FR 15207, April 18, 1984, reserved for further consideration in a supplemental rulemaking proceeding our proposal (48 FR 36288, August 10, 1983) to disallow bulk service restrictions on specified commodity authority. An adequate factual basis to determine whether to include or exclude bulk restrictions on various specific commodity classifications can be developed most effectively through the rulemaking process.¹ We are also interested in

¹ From a policy perspective, we have taken the position that commodity and service restrictions on specified commodities authorizations undermine

Continued

developing a record on the broader question of the restriction of general commodities authorities as to bulk service, and evidence on that issue is also solicited.

To ensure that the record developed in complete, we solicit the participation of the Department of Transportation and the Federal Trade Commission, and we will direct this Commission's Office of Transportation Analysis to participate as a party.

Substantive Focus—We seek a factual basis for determining whether the service features of providing bulk transportation are materially different from those involved in non-bulk transportation. We will (1) consider whether bulk transportation involves additional or different "fitness, willingness, and ability" requirements (such as operational safety obligations or levels of expertise on the part of participating carriers) than non-bulk transportation, and the related question whether such differences exist among different types of bulk transportation; (2) review the necessity of a separate demonstration of public need for bulk service in connection with grants of broader commodity classifications; and (3) examine the development of bulk service potential in the context of the Commission's statutory obligation to oversee a competitive motor carrier industry, affording a variety of pricing and service options.

Consistent with the focus of our inquiry, all parties should consider the following issues as a basis for formulating their submissions:

(1) The marketing and operating efficiencies associated with a carrier's involvement in one or both types of transportation; and

(2) The similarities and differences between bulk and non-bulk transportation in terms of fitness and safety requirements, service obligations, carrier resources, expertise and commitment of personnel.

We also solicit evidence of (1) those representative commodities for each STCC group that are shipped in both bulk and non-bulk form, and (2) commodities and/or STCC group that

rarely, if ever, move in bulk form. Additionally, we seek evidence of changes in shipping methods and patterns that affect whether commodities do now or will move in bulk form.

Focusing on these areas of inquiry should assist parties in developing their presentations. However, the areas of inquiry delineated here are not limitations on the scope of our investigation of the bulk restrictions issue. Parties need not confine their commentary to these issues. Moreover, where the preliminary submissions suggest supplementary or alternative courses of inquiry, we will request additional evidence.

Comments

All interested persons should file their comments and supporting evidence by August 16, 1984. Each party should specifically identify its bulk transportation interests and present the facts in support of its position.

Specific evidentiary requests: After the receipt of the initial filings, the Commission will issue specific evidentiary requests to the parties.

Environmental and Energy Considerations

We do not anticipate that any rules developed as a result of the supplemental proceeding will affect significantly the quality of the human environment or the conservation of energy resources. However, we invite comments on these issues.

Regulatory Flexibility Analysis

The Commission certifies that any regulations that will result from institution of this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose of this proceeding is to determine whether there is an adequate factual basis for disallowing bulk service restrictions. No possible conclusion that the Commission might reach would have a significant economic impact on a substantial number of small entities.

Any rules adopted as a result of this evidentiary proceeding will be implemented through the existing application evaluation processes for new or restriction removal authorities. Accordingly, this proceeding shall not result in imposition for additional reporting, recordkeeping, or compliance requirements upon small entities. Neither will this proceeding result in promulgation of rules which duplicate, overlap, or conflict with any existing Federal rule.

List of Subjects in 49 CFR Parts 1160 and 1165

Administrative practice and procedure, Motor carriers, Brokers.

This action is taken under the authority of 49 U.S.C. 10101, 10322, 10923, 10924, and 11102, and 5 U.S.C. 553.

Decided: June 11, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor dissented with a separate expression.

James H. Bayne,
Secretary.

[FR Doc. 84-17571 Filed 6-29-84; 8:45 am]

BILLING CODE 7635-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine the June Sucker (*Chasmistes liorus*) to be an Endangered Species With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the June sucker (*Chasmistes liorus*) to be an endangered species and to designate its critical habitat under the authority of the Endangered Species Act of 1973, as amended. The June sucker occurs only in Utah Lake, Utah and its major tributaries. It uses the lower portions of the Provo and Spanish Fork Rivers, the two largest tributaries of Utah Lake, for spawning and larval rearing. It is threatened with habitat alteration through dewatering and degrading water quality, competition and predation by exotic species, and illegal killing during the spawning run. Also, it has been suggested that the Central Utah Project (portions of the Bonneville unit), presently under construction, could impact this species by reducing and changing flows in the Provo River, the major spawning site of the June sucker, and affect portions of Utah Lake resulting in habitat loss for the species while potentially increasing habitat for exotic species. However, recent discussions between the Fish and Wildlife Service's Regional Endangered Species staff and representatives from the Bureau of Reclamation, Utah Water Conservancy District, and the Utah Division of Wildlife Resources have indicated that the proposed listing is

operating efficiencies and needlessly chill competition in the motor carrier industry, and thus should be disallowed. See Ex Parte No. 55 (Sub-No. 43A), *Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property)*, interim policy statement, 45 FR 45545, 45550 (July 3, 1980). See also, *C.D.B. Incorporated, Extension-Texas*, 133 M.C.C. 114 (1983), on appeal sub. nom. *Steele Tank Lines, Inc. v. I.C.C.*, No. 83-4175 (5th Cir. filed May 5, 1983); *Whiteford Truck Lines, Inc., Nationwide Points*, No. MC-136635 (Sub-No. 89) (unpublished) (served October 22, 1982); *OMH Trucking Company d/b/a Hubbard Corgage Company Common Carrier Application*, No. MC-158495 (unpublished) (served June 23, 1982).

compatible with the development of this project. This proposal, if made final, would implement protection provided by the Endangered Species Act of 1973, as amended. The Service is requesting comments on this action.

DATES: Comments from all interested parties must be received by August 31, 1984. Public hearing requests must be received by August 16, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for public inspection, by appointment, during normal business hours of the Service's Regional Endangered Species Staff at 134 Union Boulevard, 4th floor, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Staff Biologist, Regional Endangered Species Office, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/234-2496 or FTS 234-2496).

SUPPLEMENTARY INFORMATION:

Background

The June sucker (*Chasmistes liorus*) is endemic to Utah Lake in Utah and uses the lower portions of the Provo and Spanish Fork Rivers, the two largest tributaries of Utah Lake, for spawning and larval rearing. Utah Lake is a 38,000-hectare (approximately 38 kilometers long and 21 kilometers wide at the maximum points) remnant of ancient Lake Bonneville. The lake is shallow, slightly saline, turbid, highly eutrophic, and is the largest freshwater lake located entirely in Utah. The lake has an average depth of 2.9 meters and a maximum depth of 4.2 meters. In 1885, the compromise elevation (maximum level Utah Lake would be allowed to fill) was established at 1,368.35 meters (Radant and Sakaguchi, 1981).

The June sucker was first collected and described by David S. Jordan in 1878 (Jordan, 1878). The common name June sucker is based on the fact that peak spawning time for this species occurs during the month of June. Some confusion has existed over the systematics of Utah Lake suckers in recent years. It has been reported that at least three species of suckers occurred in Utah Lake (Stubbs, 1966; Lowder, 1951; and Jordan, 1878). However, recent information presented by Miller and Smith (1981) suggested that only two species, the Utah sucker (*Catostomus ardens*) and the June sucker occurred in Utah Lake. June suckers are readily

distinguished from Utah suckers by their subterminal mouth, relatively smooth divided lips, broad skull and greater numbers of gill rakers. The June sucker spawns in June while Utah suckers spawn in early April (Radant and Hickman, 1984).

Recently, Miller and Smith (1981) concluded that the June suckers present in Utah Lake today are different from the June suckers collected prior to 1900. They have hypothesized that the June and Utah suckers hybridized during the 1932 to 1935 drought when fish populations were stressed. As June suckers returned to abundance, the new genes were incorporated into the population and have become normal characteristics. They have assigned *Chasmistes liorus liorus* to specimens collected in the late 1800's and *Chasmistes liorus mictus* to specimens collected after 1939. However, to avoid confusion, this proposal is viewing the June suckers as a full species, since it has maintained its distinctiveness from other suckers and is not known to hybridize with any species today.

Decline in abundance of June suckers can be attributed to habitat alteration through dewatering and degrading water quality, competition and predation by exotic species, commercial fishing, and killing of the adults during the spawning run.

Historically, the June sucker was very abundant in Utah Lake. Jordan (1891) reported millions of suckers existing in the lake when he visited there in 1889. As a result of this visit, he proclaimed Utah Lake as "the greatest sucker pond in the universe." In the late 1800's it was estimated that 1,361 metric tons of spawning suckers were killed in 3.3 kilometers of the Provo River due to dewatering (Carter, 1969). Carter (1969) again reported that 2.3 metric tons of suckers were removed from a dewatered irrigation ditch during the early 1920's.

Utah Lake suckers were an important part of the total commercial fish harvest until their numbers became too low. Cope and Yarrow (1875) reported that the June sucker was extremely numerous and the fishermen considered them a nuisance; however, they sold readily in the winter for an average price of 2½ cents per pound (Cope and Yarrow, 1875, reported that fresh trout were selling for 30 cents per pound during this same period). In the early 1900's, commercial fishermen were still reporting large catches of suckers annually. Between 1901 and 1905, an average of 162 metric tons of suckers were harvested annually (Carter, 1969). Larger numbers of suckers were still being caught in the early 1950's; Lowder (1951) reported that in 1951, as many as

1,350 suckers could still be taken in a single day of commercial seining. Today, few, if any, suckers are captured in the nets of commercial fishermen in Utah Lake.

Hundreds of tons of suckers were lost during the 1932 to 1935 drought due to crowding and freezing when irrigation practices nearly drained Utah Lake dry (Tanner, 1936). Tanner (1936) reported that in the spring of 1935 there were no suckers running up the Provo River to spawn. "Something that had never happened before in the history of Utah Lake."

In 1951 suckers were still considered to be the second most abundant species in Utah Lake. However, by 1959 suckers were the fourth most abundant species in the Lake with gillnet catch rates of 0.16 suckers per net hour (Arnold, 1959). Similar gillnetting efforts in 1970 captured only 0.01 suckers per net hour (White and Dabb, 1970). During this 1970 study, suckers were reported to be the sixth most abundant species in the lake.

An intensive inventory of the Utah Lake fishery during 1978 and 1979 using a variety of sampling gear resulted in 2,097 separate net collections which captured 34,292 adult fish. However, only 102 (0.3 percent of the total catch) were identified as June suckers, while only 18 were identified as Utah suckers. The Utah sucker is still abundant in areas outside Utah Lake. No young-of-the-year suckers were taken during the study. Gillnetting collections during this study produced no suckers (Radant and Sakaguchi, 1981).

The decline of sucker numbers to present levels appears to correspond closely with the introduction of white bass and walleye in the mid-1950's. Competition and predation from exotic species is one of the serious threats to the survival of the June sucker. Over 20 exotic fish species have been introduced into Utah Lake during the past 100 years. Radant and Sakaguchi (1981) reported that the most successful introductions of exotic species has been with the carp (1886), largemouth bass (1890), black bullhead (1893), channel catfish (1919), walleye (1955), and white bass (1956). The dominant fish in Utah Lake today are the white bass, walleye, channel catfish and carp, all exotic species.

Declines in the June sucker can also be attributed to killing during the spawning run. The sucker is highly vulnerable at this time; often their backs are out of the water. This aspect, in addition to clear water conditions and the congregating nature of their spawning behavior, makes them easy prey for guns, arrows, rocks, nets, etc.

The State of Utah in 1983 included this species on its protected list, making it illegal to capture or kill the June sucker. However, the potential for illegal killing still occurs, especially during low water years.

Prior to 1978, biological information for the June sucker was virtually nonexistent, and even today much remains to be learned about this species. Due to their rarity, little biological data have been collected pertaining to their life history requirements in the lake. Much of the information pertaining to biological requirements of the species deals with the spawning and larval rearing period in the Provo River. June sucker spawning is restricted primarily to the Provo River, with limited spawning probably occurring in the Spanish Fork River (Radant and Sakaguchi, 1981; Shirley, 1983; Radant and Hickman, 1984). The adult June sucker ascends the Provo River during the second or third week of June (on the average) and completes spawning within 5 to 8 days. They travel as far as 6 kilometers upstream to a diversion barrier. Spawning occurs throughout this reach of river. Details on spawning behavior, habitat, water velocities, hatching time, larval development, etc., can be found in papers by Shirley (1983) and Radant and Hickman (1984).

Young-of-the-year June suckers have been collected in the Provo River up to 5 months after hatching. However, no young-of-the-year or juvenile suckers are known to have been collected from Utah Lake in recent years. Accurate population estimates for the June sucker have not been made. It is suspected that there are less than 1,000 adults (based upon spawning run estimates) today. They all appear to be over 15 years in age. It is possible that the June sucker population existing today is very old, with little or no recruitment occurring.

Past actions affecting this taxon began on December 30, 1982, when the Service included the June sucker in a notice of review published in the *Federal Register* (47 FR 58456). This notice pertained to vertebrate species that were currently under review for listing as endangered or threatened. This notice indicated that substantial information was available to support the biological appropriateness of proposing to list this species as endangered or threatened. On April 12, 1983, a petition was received by the Service from the Desert Fishes Council requesting that the June sucker be listed as an endangered species. A notice of finding on this petition was published by the Service in the June 14, 1983, *Federal Register* (48 FR 27273). This notice stated that the petition was accepted

and that the Service had 1 year from the date that the petition was received to publish its findings in the *Federal Register*. This proposed rule constitutes the required 1-year finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

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 (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) set forth the procedures for adding species to the Federal lists. 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). These factors and their application to the June sucker (*Chasmistes liorus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Alteration of habitat has been a major factor in the decline of this species. Currently, the main threats to the June sucker are: (1) Habitat modification through the diversion of water for irrigation, municipal, and industrial purposes; and (2) the possibility of habitat modification from upstream impoundments associated with the Central Utah Water Project. However, recent discussions between the Fish and Wildlife Service's Regional Endangered Species staff and representatives from the Bureau of Reclamation, Utah Water Conservancy District, and the Utah Division of Wildlife Resources has indicated that the proposed listing is compatible with the development of this project. Alteration of habitat through water diversions and intermittent releases from upstream impoundments could seriously impact the spawning habitat of the June sucker. If a large volume of water was diverted during a drought year it could adversely modify the lake habitat.

B. *Overutilization for commercial, scientific, or educational purposes.* Illegal killing of the adult June suckers occurs during the spawning migration. This is usually done with guns, arrows, rocks, nets, etc. Although the State of Utah has included this species on its protected list, illegal killing still occurs, especially during low water years. The species is very vulnerable during this time period. It is possible that a majority of the entire June sucker population is concentrated in one section of the Provo River during this 3 to 4 week period. Some commercial fishing occurs on Utah

Lake; however, because of their rarity, few, if any, June suckers are captured. Monitoring of the commercial catch could be necessary, especially if the June sucker population begins to increase in the future.

C. *Disease or predation.* The June sucker currently faces predation and competition from various exotic piscivorous fish which have been introduced into Utah Lake. The decline of sucker numbers to present levels appears to correspond closely with the introduction of white bass and walleye in the mid-1950's. Competition and predation from exotic species is one of the serious threats to the survival of the June sucker. Over 20 exotic fish species have been introduced into Utah Lake during the past 100 years. Radant and Sakaguchi (1981) reported that the most successful introductions of exotic species has been with the carp (1886), largemouth bass (1890), black bullhead (1893), channel catfish (1919), walleye (1955), and white bass (1956). The dominant fish in Utah Lake today are the white bass, walleye, channel catfish and carp, all exotic species.

Although parasitism is not a known problem at this time, very little information is available. More work needs to be done on impacts of various diseases on the June sucker (Hickman, 1984).

D. *The inadequacy of existing regulatory mechanisms.* Although the State of Utah lists the June sucker as a protected species, illegal killing still occurs. Protected species status by the State of Utah does not provide any protection for the habitat of the June sucker.

E. *Other natural or manmade factors affecting its continued existence.* The impact of pollution from local communities may be adversely affecting this species but more information is needed to document this threat.

The Service has carefully assessed the best scientific information available, regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the June sucker as an endangered species. The habitat of this fish is threatened with alteration through dewatering and degrading water quality, competition by exotic species, and illegal killing during the spawning run. Those threats are too significant to merit a proposed listing as "threatened."

Critical Habitat

Critical habitat, as defined by section 3 of the Act means: (1) The specific areas within the geographical area

occupied by the 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 proposed for the June sucker to include the lower sections of two major tributaries of Utah Lake. Included as critical habitat are the lower 7.4 kilometers (4.3 miles) of the main channel of the Provo River (as measured from its confluence with Utah Lake) and the lower 3 kilometers (2 miles) of the main channel of the Spanish Fork River (as measured from its confluence with Utah Lake). These sections of the Provo and Spanish Fork Rivers are all located in Utah County, Utah. While the June sucker is found throughout Utah Lake, these areas are those vital to its recruitment and requiring special management considerations. In the future, however, suitable habitat in Utah Lake and additional sections of the Provo and Spanish Fork Rivers could be proposed as critical habitat if they are found to be essential to the conservation of the species.

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) which may adversely modify such habitat or may be affected by such designation. Any activities such as habitat alteration or increased water use from Utah Lake, Provo, and Spanish Fork Rivers could be detrimental to this species and would need to be examined on a case by case basis. Additionally, the introduction of exotic species into the June sucker's habitat along with their associated parasites, could easily harm the June sucker through predation, competition and possibly parasitism. If any Federal activities are planned for the Provo and Spanish Fork Rivers (portions designated as critical habitat) which might affect the sucker or its habitat, these actions would have to be taken under Section 7 consultation to prevent any adverse impacts on the species.

It has been suggested that the Central Utah Project (portions of the Bonneville

Unit), presently under construction, could impact this species by reducing and changing flows in the Provo River, the major spawning site of the June sucker, and affect portions of Utah Lake resulting in habitat loss for the species while potentially increasing habitat for exotic species. However, recent discussions between the Fish and Wildlife Service's Regional Endangered Species staff and representatives from the Bureau of Reclamation, Utah Water Conservancy District, and the Utah Division of Wildlife Resources have indicated that the proposed listing is compatible with the development of this project.

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 will consider the critical habitat designation in light of all additional relevant information obtained prior to the time the final rule is prepared.

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 prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires all Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, 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 such a 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 consultation with the Service. Since there is Federal funding involved in the Central Utah Water Project, consultation will be required if this listing is finalized.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered fish or wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the June sucker;
- (2) The location of any additional populations of the June sucker and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;
- (3) Additional information concerning the range and distribution of this species;
- (4) Current or planned activities in the subject area and their possible impacts on the June sucker; and
- (5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Final promulgation of the regulations on the June sucker will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

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* October 25, 1983 (48 FR 49244).

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Authors

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List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: Pub. L. 93-205, 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. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order, under fishes, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
Sucker, June.....	<i>Chasmistes liorus</i>	U.S.A. (UT)....	Entire.....	E.....		17.95(e)	N/A

3. It is further proposed to amend § 17.95(e) by adding critical habitat of the June sucker as follows: The position of this entry under § 17.95(e) will follow the same sequence as the species occurs in § 17.11.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes.

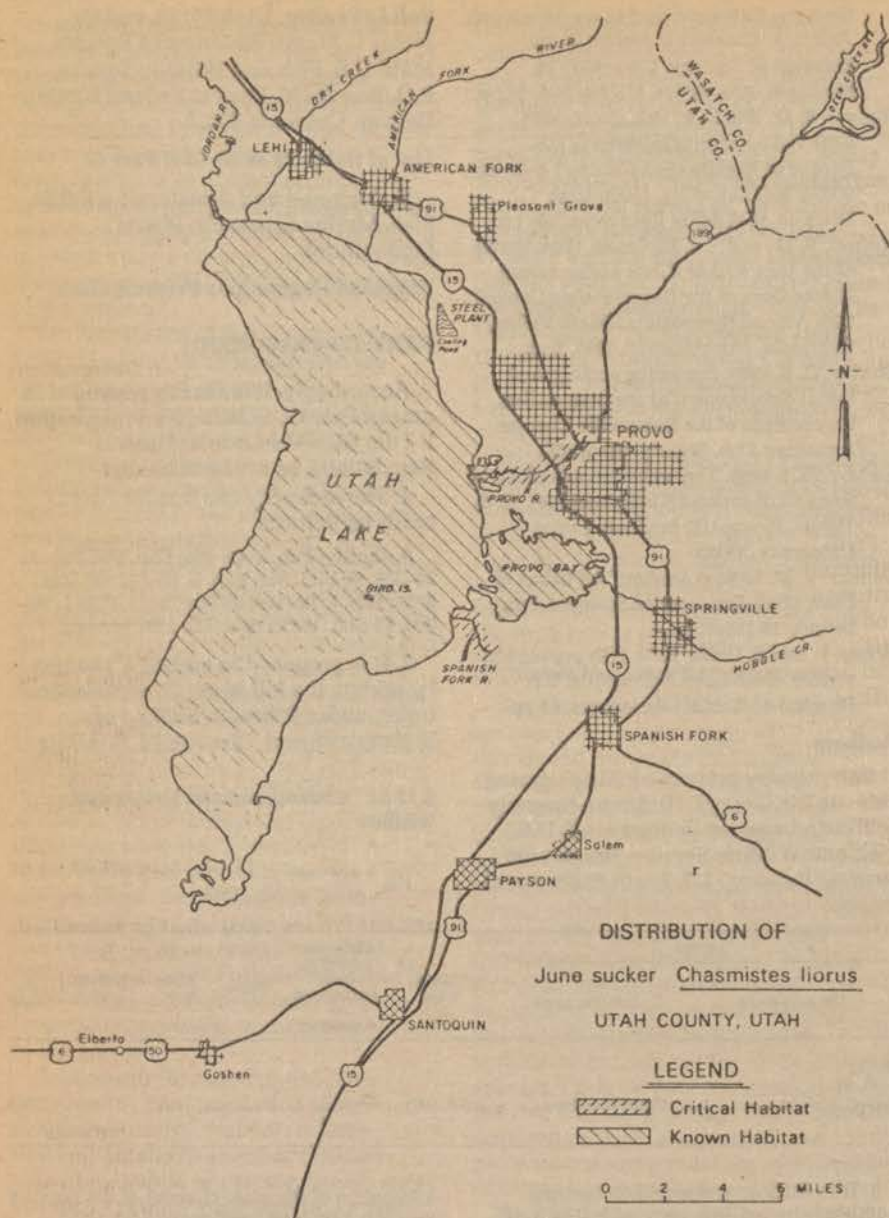
June sucker (*Chasmistes liorus*)

Utah, Utah County; Provo River; Sec. 4, T7S, R2E; to Sec. 2, T7S, R2E—the lower 7.4

kilometers of the main channel of the river as measured from its confluence with Utah Lake.

Utah, Utah County; Spanish Fork River; Sec. 32, T7S, R2E, to Sec. 15, T8S, R2E—the lower 3 kilometers of the main channel of the river as measured from its confluence with Utah Lake.

Known constituent elements for all areas proposed as critical habitat include streams with clean unpolluted constantly flowing water 1 to 3 feet deep over a clean unsilted gravel substrate with quiet backwater areas and pools 1 to 3 feet deep along the margin of the stream.



Dated: June 18, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and
Parks.

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