on behalf of Memphis-Shelby County. In these submittals, Memphis-Shelby County adopted State regulations by reference.

(i) Incorporation by reference.

(A) Revisions to the following State of Tennessee regulations were effective on June 7, 1992.

(1) Rule 1200–3–2–.01 General Definitions: Subparagraphs (1)(b), (c), (z), (aa), (gg), (vv), (zz), (ccc), (lll), (mmm), (nnn), (eeee), (ffff), (gggg), and (iiii).

(2) Rule 1200–3–18–.01 Purposes and General Provisions: Paragraphs (1), (3), (4) introductory paragraph and (4)(a), (5), and (6).

(3) Rule 1200–3–18–.02 Definitions: Subparagraphs (1)(a), (b), (c), (f), (m), (ii), and (jj).

(4) Rule 1200–3–18–.04 Alternate Emission Standard.

(5) Rule 1200–3–18–.05 Automobile and Light Duty Truck Manufacturing.

(6) Rule 1200–3–18–.06 Paper Coating: Subparagraph (1)(b) and paragraphs (2), (3), and (4).

(7) Rule 1200–3–18–.07 Petroleum Liquid Storage: Introductory paragraph of paragraph (4).

(8) Rule 1200–3–18–.08 Bulk Gasoline Plants: Paragraphs (2) and (3).

(9) Rule 1200–3–18–.09 Bulk Gasoline Plants: Paragraph (2), subparagraph (3)(d), and paragraph (6).

(10) Rule 1200–3–18–.10 Gasoline Service Stations Stage I: Paragraphs (2), (3) (except subparagraph (3)(a)), (4), and (6).

(11) Rule 1200–3–18–.11 Petroleum Refinery Sources: Paragraph (2).

(12) Rule 1200–3–18–.12 Can Coating: Paragraphs (3) and (4).

(13) Rule 1200–3–18–.13 Coil Coating: Paragraphs (1), (2), and (4).

(14) Rule 1200–3–18–.14 Fabric and Vinyl Coating: Subparagraph (1)(b) and paragraphs (2), (3), and (4).

(15) Rule 1200–3–18–.15 Metal Furniture Coating: Paragraphs (3) and (4).

(16) Rule 1200–3–18–.16 Surface Coating of Large Appliances: Paragraphs (3), (4), and (5).

(17) Rule 1200–3–18–.17 Magnet Wire Coating: Paragraphs (2) and (3).

(18) Rule 1200–3–18–.18 Solvent Metal Cleaning: Paragraphs (2) and (3).

(19) Rule 1200–3–18–.20 Flat Wood Paneling Coating: Introductory paragraph of paragraph (2), paragraphs (4), (5), and (6).

(20) Rule 1200–3–18–.21 Surface Coating of Miscellaneous Metal Parts and Products: Subparagraphs (1)(g) and (h), paragraph (2), subparagraph (5)(1), and paragraphs (6), (7), and (8).

(21) Rule 1200–3–18–.22 Leaks from Gasoline Tank Trucks and Vapor Collection Systems: Introductory paragraph of paragraph (2), subparagraph (2)(a), paragraphs (3), (4), (5), and (6).

(22) Rule 1200–3–18–.23 Petroleum Refinery Equipment Leaks: Introductory paragraph of paragraph (2), subparagraph (2)(a), and paragraph (4).

(23) Rule 1200–3–18–.25 Petroleum Liquid Storage in External Floating Roof Tanks: Introductory paragraph of paragraph (2), and paragraph (5).

(24) Rule 1200–3–18–.26 Manufacture of Pneumatic Rubber Tires: Introductory paragraph of paragraph (2), paragraphs (4), (5), and (6).

(25) Rule 1200–3–18–.27 Manufacture of Synthesized Pharmaceutical Products: Introductory paragraph of paragraph (2), paragraphs (3), (4), and (5).

(26) Rule 1200–3–18–.28 Perchloroethylene Dry Cleaning: Introductory paragraph of paragraph (2), paragraphs (4) and (5), and subparagraph (6)(d).

(27) Rule 1200–3–18–.29 Graphic Arts–Rotogravure and Flexography: Introductory paragraph of paragraph (2), subparagraph (2)(b), paragraphs (5) and (6).

(28) Rule 1200–3–18–.30 Surface Coating of Aerospace Components.

(29) Rule 1200–3–18–.40 Regulations Required in Nonattainment Areas.

(30) Rule 1200–3–18–.41 Compliance Schedules.

(31) Rule 1200–3–18–.42 Individual Compliance Schedules: Paragraphs (1), (2), (3), and (4).

(32) Rule 1200–3–18–.43 General Provisions for Test Methods and Procedures.

(33) Rule 1200–3–18–.44 Determination of Volatile Content of Surface Coatings.

(34) Rule 1200–3–18–.45 Test Method for Determination of Volatile Organic Compound Emissions Control Systems Efficiency.

(35) Rule 1200–3–18–.46 Test Method for Determination of Solvent Metal Cleaning Organic Compound Emissions.

(36) Rule 1200–3–18–.47 Test Procedure for Determination of VOC Emissions from Bulk Gasoline Terminals.

(B) Revisions to the following State of Tennessee regulations were effective on March 18, 1993.

(1) Rule 1200–3–21–.01 General Alternate Emission Standard: Paragraphs (1), (2), (3), (4), and (9).

(2) Rule 1200–3–21–.02 Applicability.

(ii) Additional material—none.

4. Section 52.2225 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 52.2225 VOC rule deficiency correction.

* * * * *

(b) Revisions to sections 1200–3–2 "Definitions", 1200–3–18 "Volatile Organic Compounds" and 1200–3–21 "General Alternate Emission Standards" of the Tennessee SIP and the Memphis portion of the Tennessee SIP were submitted to correct deficiencies pursuant to the SIP call letter for ozone from Greer Tidwell, the EPA Regional Administrator, to Governor McWherter on May 26, 1988, and clarified in a letter dated June 10, 1988, from Winston Smith, Air, Pesticides & Toxics Management Division Director, to Harold Hodges, Director of the Tennessee Division of Air Pollution. These revisions are approved with the exception of the following which remain as deficiencies and must be corrected by Tennessee and Memphis and the deletion of section 1200–3–18–.03 "Standard for New Sources" in the Tennessee SIP which was disapproved. The deficiencies are common to both Tennessee and Memphis because Memphis adopts the Tennessee regulations by reference.

(1) Rule 1200–3–18–.01 subparagraph (4)(b) must be changed to provide for EPA Administrator approval and the reference to batch formulation data must be changed to batch analytical data.

(2) Rule 1200–3–18–.10 subparagraph (3)(a) must be changed to provide for EPA Administrator approval.

(3) Rule 1200–3–18–.13 paragraph (3) must be changed to apply to any coating, not just prime and topcoat or single coat for this rule to meet the RACT emission limits.

* * * * *

5. Section 52.2228 is amended by adding paragraph (e) to read as follows:

§ 52.2228 Review of new sources and modifications.

* * * * *

(e) The State of Tennessee proposed to delete section 1200–3–18–.03 "Standard for New Sources" from the Tennessee State Implementation Plan (SIP) and the Memphis-Shelby County portion of the Tennessee SIP. EPA is disapproving the deletion of this rule for the Tennessee SIP because Tennessee does not have federally approved New Source Review (NSR) regulations which apply to some of the sources in this chapter. EPA is approving the deletion of this rule for the Memphis submittal because the federally approved TN NSR applies to the Memphis-Shelby County area.

[FR Doc. 94–8969 Filed 4–15–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Review of Information Collection and Recordkeeping Requirements for Providers of Outpatient Physical Therapy and/or Speech Pathology

CFR Correction

In Title 42 of the Code of Federal Regulations, parts 400 to 429, revised as of October 1, 1993, on page 104, the introductory text of § 405.1720 should read as follows:

§ 405.1720 Condition of participation—rehabilitation program.

At a minimum, a rehabilitation agency provides physical therapy or speech pathology services, and a rehabilitation program that in addition to physical therapy or speech pathology services, includes social or vocational adjustment services by making provision for special, qualified staff to evaluate the social or vocational factors involved in a patient's rehabilitation, to counsel and advise on social or vocational problems arising from the patient's illness or injury, and to make appropriate referrals for required services.When hospitals, skilled nursing facilities, or Medicaid nursing facilities obtain services for their patients from the agency this requirement does not apply to those patients.

* * * * *

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91-281; FCC 94-59]

Calling Number Identification

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On March 8, 1994, the Commission adopted a Report and Order (R&O) and Further Notice of Proposed Rulemaking (FNPM) in CC Docket 91-281. The R&O amends the rules regarding common carriers to establish federal policies and rules concerning interstate calling number identification service (caller ID). The R&O finds that a federal model for interstate delivery of calling party numbers is in the public interest, that calling party privacy must be protected, and that certain state regulation of interstate calling party number (CPN) based services, including interstate caller ID, must be preempted.

EFFECTIVE DATE: April 12, 1995.

FOR FURTHER INFORMATION CONTACT: Suzanne Hutchings, Domestic Services Branch, Domestic Facilities Division, (202) 634-1802, or Olga Madruga-Forti, Chief, Domestic Services Branch, Domestic Facilities Division, (202) 634-1816.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's R&O in the matter of Policies and Rules Concerning Calling Number Identification Service—Caller ID (CC Docket 91-281, FCC 94-59, adopted March 8, 1994 and released March 29, 1994). The R&O and supporting file may be examined in the Commission's Public Reference Room, room 239, 1919 M Street, NW., Washington, DC, during business hours or purchased from the duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. The R&O also will be published in the FCC Record.

Analysis of Proceeding

This proceeding was initiated by the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket 91-281, FCC 91-300, 6 FCC Rcd 6752 (1991), (56 FR 57300, November 8, 1991), to establish federal policies and rules governing calling number identification service on an interstate basis.

In its NPRM, the Commission tentatively concluded that a federal model for interstate caller ID should be established; that the federal model should recognize privacy interests of both the called and the calling party; that it should do so efficiently and without interfering with other services (such as 911); that the costs of the service should be recovered from the beneficiaries, the users of the service; and that carriers should pass on the calling party number from the originating carrier to the terminating carriers. The Commission tentatively concluded that it was not necessary to propose to preempt any intrastate caller ID offerings. After reviewing the comments and/or reply comments submitted by interested parties, the Commission has adopted rules which require common carriers using Common Channel Signalling System 7 (SS7) and subscribing to or offering any service based on SS7 functionality must transmit calling party number and its associated privacy indicator on interstate calls. The rules require that carriers offering CPN based service provided automatic per call blocking at no charge to interstate callers, and that the privacy indicator be honored by terminating carriers. The Report and Order finds that the costs of interstate transmission of CPN are *de minimis*, and that the CPN should be transmitted among carriers without additional charge. The rules require that carriers participating in the offering of any service that delivers CPN on interstate calls must inform telephone subscribers regarding the availability of identification services and how to invoke the privacy protection mechanism. The rules restrict the reuse or sale of telephone numbers by subscribers to automatic number identification (ANI) or charge number services, absent affirmative subscriber consent. The rules are made a part of this publication.

Request for Comments

The Commission affirmed the tentative conclusion reached in the NPRM that deployment of interstate calling party number services should be accompanied by consumer education regarding the availability of identification services and how to invoke the privacy protection mechanism. For ANI or charge number services for which such privacy is not provided, the rules require that the notification inform telephone customers of the restrictions on the reuse or sale of subscriber information. The Commission seeks further comment on whether it should prescribe detailed instructions regarding what form education should take or prescribe more precisely responsibilities of various carriers. The Commission is also particularly interested in specific joint industry education proposals. The Commission tentatively concludes that its policies for calling party number delivery should apply equally to services delivering calling party name, and seeks comment on its tentative conclusion. The Commission also seeks comment on whether the policies for subscriber privacy should extend to other services. All proposals and other comments must reference CC Docket No. 91-281. In particular, parties should address any differences in privacy considerations that apply to calling party name delivery as opposed to calling party number delivery.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 601, *et seq.*, the Commission's final analysis in this Report and Order is as follows:

I. Need and Purpose of This Action

This Report and Order adopts policies governing the transmission of the calling party number parameter and its associated privacy indicator on interstate calls. Several commenters to the NPRM in this proceeding have identified a number of potential uses for interstate calling party number based services, including caller ID, and have indicated that it also will improve certain existing communication service offerings. We find that the potential benefits of interstate passage of calling party number far exceed any negative effects. We thus adopt the conclusion reached in the NPRM that interstate caller ID and other calling party number based services are in the public interest and should be available to interstate subscribers nationwide pursuant to the policies and rules set forth in this order.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were submitted in direct response to the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered

The Notice of Proposed Rulemaking in this proceeding requested comments on several proposals as well as the views of commenters on other possibilities. The Commission has considered all comments and has proposed regulations which require the passage of calling party number where SS7 is deployed, facilitate interstate calling party number based services, including caller ID, and implement federal policy on privacy.

Ordering Clauses

Accordingly, It is Ordered, That, pursuant to sections 1, 4(i), 4(j), 201–205, 218 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 201–205, and 218, Part 64 of the Commission's Rules and Regulations are amended as set forth below, effective April 12, 1995.

It Is Further Ordered, that pursuant to authority contained in sections 1, 4(i), 4(j), 201–205, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 154(j), 201–205, and 218, Further Notice of Proposed Rulemaking[1] is hereby provided as indicated above.

It is Further Ordered, that, the Secretary shall cause a summary of this Report and Order and Further Notice of Proposed Rulemaking to be published in the **Federal Register** which shall include a statement describing how members of the public may obtain the complete text of this Commission decision. The Secretary shall also provide a copy of this Report and Order and Further Notice of Proposed Rulemaking to each state utility commission.

List of Subjects in 47 CFR Part 64

Communications common carriers.

Amended Rules

Part 64 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follow:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 226, 227, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225, 226, 227, unless otherwise noted.

2. Part 64 is amended by adding a new subpart P to read as follows:

Subpart P—Calling Party Telephone Number; Privacy

§ 64.1600 Definitions.
§ 64.1601 Delivery requirements and privacy restrictions.
§ 64.1602 Restrictions on use and sale of telephone subscriber information provided pursuant to automatic number identification or charge number services.
§ 64.1603 Customer notification.
§ 64.1604 Effective date.

§ 64.1600 Definitions.

(a) *Aggregate Information.* The term 'aggregate information' means collective data that relate to a group or category of services or customers, from which individual customer identities or characteristics have been removed.

(b) *ANI.* The term 'ANI' (automatic number identification) refers to the delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.

(c) *Calling Party Number.* The term Calling Party Number refers to the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signalling System 7 network.

(d) *Charge Number.* The term "charge number" refers to the delivery of the calling party's billing number in a Signalling System 7 environment by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.

(e) *Privacy Indicator.* The term Privacy Indicator refers to information, contained in the calling party number parameter of the call set-up message associated with an interstate call on an Signalling System 7 network, that indicates whether the calling party authorizes presentation of the calling party number to the called party.

(f) *Signalling System 7.* The term Signalling System 7 (SS7) refers to a carrier to carrier out-of-band signalling network used for call routing, billing and management.

§ 64.1601 Delivery requirements and privacy restrictions.

(a) Delivery. Common carriers using Signalling System 7 and offering or subscribing to any service based on Signalling System 7 functionality are required to transmit the calling party number associated with an interstate call to interconnecting carriers.

(b) Privacy. Originating carriers using Signalling System 7 and offering or subscribing to any service based on Signalling System 7 functionality will only recognize *67 dialed as the first three digits of a call (or 1167 for rotary or pulse-dialing phones) as a caller's request for privacy on an interstate call. No common carrier subscribing to or offering any service that delivers calling party number may override the privacy indicator associated with an interstate call. The terminating carrier must act in accordance with the privacy indicator unless the call is made to a called party that subscribes to an ANI or charge number based service and the call is paid for by the called party.

(c) Charges. No common carrier subscribing to or offering any service that delivers calling party number may:

(1) Impose on the calling party charges associated with per call blocking of the calling party's telephone number, or

(2) Impose charges upon connecting carriers for the delivery of the calling party number parameter or its associated privacy indicator.

(d) Exemptions. Section 64.1601 shall not apply to calling party number delivery services:

(1) Used solely in connection with calls within the same limited system, including (but not limited to) a Centrex, virtual private network, or private branch exchange system;

(2) Used on a public agency's emergency telephone line or in conjunction with 911 emergency services, or on any entity's emergency assistance poison control telephone line; or

[1] The further notice of proposed rulemaking is published elsewhere in this issue of the **Federal Register**.

(3) Provided in connection with legally authorized call tracing or trapping procedures specifically requested by a law enforcement agency.

§ 64.1602 Restrictions on use and sale of telephone subscriber information provided pursuant to automatic number identification or charge number services.

(a) Any common carrier providing Automatic Number Identification or charge number services on interstate calls to any person shall provide such services under a contract or tariff containing telephone subscriber information requirements that comply with this subpart. Such requirements shall:

(1) Permit such person to use the telephone number and billing information for billing and collection, routing, screening, and completion of the originating telephone subscriber's call or transaction, or for services directly related to the originating telephone subscriber's call or transaction;

(2) Prohibit such person from reusing or selling the telephone number or billing information without first: (i) Notifying the originating telephone subscriber and

(ii) Obtaining the affirmative consent of such subscriber for such reuse or sale; and

(3) Prohibit such person from disclosing, except as permitted by paragraphs (a) (1) and (2) of this section, any information derived from the automatic number identification or charge number service for any purpose other than:

(i) Performing the services or transactions that are the subject of the originating telephone subscriber's call,

(ii) Ensuring network performance security, and the effectiveness of call delivery,

(iii) Compiling, using, and disclosing aggregate information, and

(iv) Complying with applicable law or legal process.

(b) The requirements imposed under paragraph (a) shall not prevent a person to whom automatic number identification or charge number services are provided from using the telephone number and billing information provided pursuant to such service, and any information derived from the automatic number identification or charge number service, or from the analysis of the characteristics of a telecommunications transmission, to offer a product or service that is directly related to the products or services previously acquired by that customer from such person. Use of such information is subject to the requirements of 47 CFR 64.1200 and 64.1504(c).

§ 64.1603 Customer notification.

Any common carrier participating in the offering of services providing calling party number, ANI, or charge number on interstate calls must notify its subscribers, individually or in conjunction with other carriers, that their telephone numbers may be identified to a called party. Such notification must be made not later than April 12, 1995, and at such times thereafter as to ensure notice to subscribers. The notification shall inform subscribers how to maintain privacy by dialing *67 (or 1167 for rotary or pulse-dialing phones) on interstate calls. For ANI or charge number services for which such privacy is not provided, the notification shall inform subscribers of the restrictions on the reuse or sale of subscriber information.

§ 64.1604 Effective date.

The provisions of §§ 64.1601 through 64.1603 shall be effective as of April 12, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–9358 Filed 4–15–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–21; Notice 3]

RIN 2127–AE76

Federal Motor Vehicle Safety Standards; Air Brake Systems; Automatic Brake Adjusters

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

ACTION: Final rule, response to petitions for reconsideration.

SUMMARY: This notice responds to petitions for reconsideration of a final rule amending Standard No. 121, *Air Brake Systems*, (49 CFR 571.121). The rule amended the standard by requiring, *inter alia*, automatic brake adjusters on all medium and heavy vehicles and establishing readjustment limits for the performance of the adjusters. NHTSA received several petitions requesting the agency to reconsider the limits on the adjusters. This document grants those petitions.

DATES: *Effective Date:* The amendment to § 571.121 becomes effective October 20, 1994.

Petitions for reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than May 18, 1994.

ADDRESSES: Any petition for reconsideration should refer to the docket and notice number set forth in the heading of this notice and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard C. Carter, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–5274).

SUPPLEMENTARY INFORMATION: On October 20, 1992, NHTSA published a final rule that amended Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, to require, *inter alia*, automatic brake adjusters on all air-braked vehicles. (57 FR 47793.) That amendment improves the braking performance of vehicles by ensuring that each vehicle has a device that automatically maintains proper brake adjustment, thus eliminating the need for frequent inspection and manual adjustment of the brakes. To provide for a specific performance requirement for the adjusters, the rule also specified that the adjuster would have to perform such that "the readjustment limits shall be in accordance with those specified in" a regulation of the Federal Highway Administration (FHWA).[1] (*See*, S5.1.8(a) of Standard No. 121.) The readjustment limits relate to the distance that a part of the brake (the pushrod) must travel, or stroke, before engaging the brake. The readjustment limits specify maximum distances for pushrod stroke.

NHTSA received timely petitions for reconsideration of the rule from Rockwell International (Rockwell) and White GM/Volvo. Petitioners asked for reconsideration of the requirements for the readjustment limits for the adjuster. Mr. John Kourik submitted a late petition to reconsider various aspects of the rule, including the readjustment limits. NHTSA is treating Mr. Kourik's petition as a petition for rulemaking, pursuant to the agency's regulations (see 49 CFR 553.35). However, NHTSA is responding in today's document to the issues raised by Mr. Kourik about the readjustment limits, since they are

[1] Appendix G to subchapter B of Chapter III—"Minimum Periodic Inspection Standards," 49 CFR parts 200 to 399.

almost identical to those of Rockwell and White GM/Volvo.

Each petitioner was concerned about the readjustment limit. Among the petitioners' criticisms were that the requirement is not objective, is inappropriate for certain air brake systems, and is likely to restrict new brake designs. Petitioners also believed that NHTSA did not provide adequate notice about the specification in the final rule for the FHWA readjustment limits.

The concern about the adequacy of notice resulted from the development of the requirement from the original proposal in the NPRM. In the NPRM, NHTSA proposed that a brake adjuster perform so that it "maintains brake adjustment within the manufacturer's recommended adjustment limits." 56 FR 20396, 20401, May 3, 1991. Several commenters, including White GM/Volvo, GM, Ford, and Midland-Grau, believed that the proposal would not provide any significant safety benefits and might cause unnecessary complications and confusion. For example, some commenters argued that, since there is no objective criteria as to what constitutes "maintains brake adjustment," the requirement would be vague. Also, White GM/Volvo, GM and Ford believed that the proposal might be misinterpreted as requiring the manufacturer to be responsible for brake adjustment throughout the vehicle's life, even though under the National Traffic and Motor Vehicle Safety Act the manufacturer is responsible for the compliance of the new vehicle only until the first consumer purchase. One commenter, Midland-Grau, recommended that NHTSA incorporate the FHWA's requirements for brake adjustment, set forth in the Minimum Periodic Inspection Standards.

After reviewing the comments, NHTSA agreed that the proposed requirement for readjustment limits was potentially vague and misleading. However, NHTSA believed Midland-Grau's recommendation about the FHWA alternative had merit. NHTSA stated:

> As for Midland-Grau's recommendation to use FHWA's regulations for "Driver Out-of-Service Criteria" for brake adjustment, NHTSA has decided to reference these provisions in Standard No. 121 because they are relevant to in-use heavy truck operation regulated by FHWA. Because amendments to Standard No. 121 require the use of brake adjustment indicators which require the display of underadjustment, a reference to adjustment limits is necessary.

57 FR at 47796.

Petitions for Reconsideration

All the petitioners raised identical concerns about the incorporation of the FHWA requirements.

1. Design Specific Requirements

Rockwell stated that the FHWA adjustment criteria that NHTSA incorporated would eliminate most air disc brakes from the market. The petitioner said that until 1988, FHWA's readjustment limits for the brake adjuster were in the form of guidelines. These guidelines provided separate requirements for air disc brakes, recognizing that air disc brakes need a slightly longer maximum stroke limit for each chamber size than that specified for drum brakes. For example, Rockwell said, for a type 30 chamber, the old FHWA "minimum criteria" provided for a maximum stroke of 2 inches for drum brakes and 2¼ inches for air disc brakes.

Rockwell stated there are fundamental differences between air disc brakes and drum brakes that account for why the FHWA guidelines permitted air disc brakes to have a slightly longer pushrod stroke limit than drum brakes. The petitioner explained:

> In both types of systems, the pushrod stroke length is proportionate to the clearance between the brake lining and the rubbing surface (the drum or the disc). On drum brakes, the clearance and therefore the pushrod stroke gets longer as the brakes become hot and the circular drum wall expands in diameter by as much as one-eighth inch at 800 degrees F. By contrast, a disc brake pushrod stroke gets shorter as the brake gets hotter, because the expansion of the hot rotor brings it closer to the pads which are also expanding in the direction of the rotors.

Rockwell said that when FHWA adopted its rule for readjustment limits (53 FR 49402, December 7, 1988), the rule did not continue to provide separate specifications for air disc brakes, as it had previously done in its guidelines. Rockwell argued that "by omitting the separate table for disc brakes, and requiring drum brakes and air disc brakes to meet the same adjustment criteria, the FHWA Final Rule had the effect of imposing a more stringent requirement on the air disc brakes than it imposed on drum brakes."

Rockwell said that it has asked FHWA to reconsider the agency's 1988 rule and that FHWA has agreed to reopen Docket MC–90–7 for additional comment on the issue of the appropriate requirements for air disc brakes. FHWA anticipates that a notice will be issued in the near future.

Rockwell stated that the effect of incorporating the FHWA readjustment limits would be to prohibit future sales of the air disc brake in certain applications. The petitioner argued that this would be anomalous in view of what Rockwell believes is an excellent safety record for the air disc brake system. Rockwell said that the system has been in use on the road for over 10 years, and,

> [S]ince 1985, Rockwell has been the sole North American manufacturer of air disc brakes. Many using customers have purposefully selected the air disc brake because of its unique performance features. High performance requirements of fire service vehicles, frequent braking requirements of refuse vehicles and minimal brake fade requirements desired by tractor/trailer operators hauling hazardous and flammable cargos are typical air disc brake applications.

The National Transportation Safety Board in their April 1992 Heavy Vehicle Airbrake Performance Safety Study noted:

> Air disc brakes have several advantages over drum brakes. When subjected to intense braking demands, disc brakes do not suffer the same performance degradations as do drum brakes. Disc brakes also reduce down hill runaways as well as brake imbalances caused by varied brake adjustments on the same vehicle.

2. Design Restrictions

The petitioners raised concerns that the incorporation of the FHWA requirements could hinder technological development, such as that of long stroke brake chambers. (On August 2, 1993, NHTSA published an NPRM to facilitate the use of long stroke brake chambers. 58 FR 41078). Rockwell stated:

> By referencing the FHWA readjustment criteria in FMVSS 121, NHTSA has "frozen" the FHWA criteria in their current form as of October 20, 1992, for purposes of FMVSS 121. Even if FHWA later amends its criteria in response to Rockwell's petition or to accommodate new technology, NHTSA will have to take affirmative action to update its cross-reference. * * * The time consuming process of adopting future changes to FMVSS 121 will deter air brake technology or, at least, prevent its rapid introduction into the marketplace. Rockwell believes that NHTSA did not intend this result.

Agency's Decision

After reviewing the petitions, NHTSA has decided to delete reference to the FHWA's regulations at issue. It appears that the FHWA readjustment limits are suitable for conventional drum brakes, but do not account for differences between conventional drum brakes and new types of air brake systems. When the agency adopted the readjustment

limits, NHTSA did not intend to impede the development of brake systems that could provide comparable performance to conventional drum brakes, such as piston-type brakes. The FHWA requirements appear to be not fully appropriate for piston-type brakes because of substantially longer stroke length air brake chambers, which are fully developed and are undergoing fleet testing. Additional air brake chamber categories will have to be added to the FHWA Schedule A inspection tables as technology moves forward. Moreover, when NHTSA adopted the readjustment limits, the agency did not intend to prevent or hinder the development of brake designs that may offer *potentially* superior performance over drum brakes in specific applications, such as the air disc brake system.

The air disc brake system is subject to the same readjustment limits in the FHWA requirements as conventional drum brakes, which does not seem appropriate, given differences between the two types of air brake systems. Rockwell's air disc brake system has a stroking distance that is about ¼ inch longer than that permitted by the current FHWA requirement. However, Rockwell submitted test data to NHTSA that show that, with this stroking distance, the air disc brake system performs well when tested to the specifications and requirements of Standard No. 121. (These data have been placed in docket 91–21, Notice 3.)

Available information indicates that the air disc brake system appears to perform to Standard 121 specifications and may perform better than conventional drum brakes in some situations. There does not appear to be any data to support the need to impose a shorter stroke limit on air disc brake systems such as Rockwell's, that would impede the development of those systems. NHTSA believes the development of alternative, potentially superior brake systems, such as the air disc brake systems, should be facilitated to the extent possible. NHTSA believes there is an alternative requirement that would address the need for readjustment limits, yet avoid the problems the petitioners addressed.

Alternative Approach

Rockwell recommended that NHTSA require that the automatic adjuster's readjustment limits "be in accordance with the manufacturer's recommended limits." It commented that this language would be sufficiently objective because NHTSA could confirm the compliance of a brake system by comparing the actual readjustment limits of a brake system with those recommended by the manufacturer. These manufacturer recommendations are routinely provided by the manufacturer with each vehicle. The petitioner stated that NHTSA has taken this approach in other circumstances, such as with respect to testing safety belts for permissible levels of slack. (See, Standard No. 208, section S7.4.2.)

The agency adopted the FHWA readjustment limits to provide a clear means of determining whether a brake adjuster was performing properly. However, as explained above, the agency now believes that the FHWA requirement is inappropriate for use by NHTSA given the differences among air brake systems. As mentioned above, FHWA's in-use inspection requirements were developed primarily with drum brake systems in mind, and thus place disc brake systems, long stroke brake chambers and piston-type systems at a competitive disadvantage.

After reviewing the petitions, NHTSA has decided to delete reference to the FHWA requirements and to adopt a requirement that "the adjustment of the service brakes shall be within the limits recommended by the vehicle manufacturer." This language is similar to that of the NPRM (which would have required air brake adjusters to "maintain brake adjustment within the manufacturer's recommended adjustment limits"), in that the adjuster would be required to perform as intended by the vehicle manufacturer. However, NHTSA believes that the language adopted in this document avoids the concerns about objectivity and vagueness engendered by the NPRM.

Those concerns about the NPRM stemmed from the word "maintain" in the language quoted above. Since there was no objective criteria specified for determining whether a particular brake adjuster would "maintain adjustment" of the brakes, manufacturers were concerned that questions could arise between a manufacturer and NHTSA as to whether a particular system complied with the standard, particularly when it was unclear when exactly the determination of compliance would be made. Manufacturers were concerned that the proposed language implied that Standard 121 requires a vehicle to "maintain" conformance to the FMVSS's throughout the life of the vehicle, which is incorrect and confusing.

NHTSA concurred with the commenters that the proposed language was inappropriate (57 FR at 47796):

> The agency notes that there is no objective criteria as to what constitutes "maintains adjustment." In addition, as a general rule, the agency does not establish extended durability testing. The agency believes that to require that the adjustment be maintained throughout the lifetime of the vehicle is unrealistic, dependent upon the vehicle's exposure, and beyond the scope of NHTSA's authority.

The requirement adopted today provides an objective requirement that allows the vehicle manufacturer to evaluate conformance to the standard. As Rockwell stated, NHTSA can readily confirm the compliance of a brake system by comparing the actual readjustment limits of the system with those recommended by the manufacturer. Further, the requirement does not use "maintain" and therefore avoids the implication that compliance with Standard 121 must be maintained through a vehicle's lifetime. However, as explained below, since NHTSA is specifying a requisite level of performance for the brake adjusters, the agency must also specify when, during compliance testing, NHTSA will evaluate the brake adjusters to determine if they are performing according to the recommendations of the vehicle manufacturer.

Inspection

During NHTSA's review of the petitions for reconsideration, the agency realized that the standard had no express requirement for when the adjustment indicators are to be inspected. However, the brake adjuster amendment implicitly required that the brakes be inspected, because the amendment states that the readjustment limits must be in accordance with the FHWA inspection standards. Also implicit in this amendment is that inspection will occur at the end of the Standard No. 121 test procedures, since the need for readjustment will only occur after the vehicle has been driven. In addition, inspection of the vehicle at the end of testing for conformance with the braking standard is consistent with the specifications for hydraulic brake systems (Standard No. 105). Accordingly, in this document, NHTSA is including a "final inspection provision" at the end of the test procedures to require that the service brake system be inspected at the end of the test sequence.

Procedural Concerns

NHTSA notes that the petitioners' concerns about the adequacy of notice for the FHWA provisions are now moot. Therefore, these concerns are not further addressed.

The amendment to § 571.121 becomes effective October 20, 1994, the effective date for the automatic brake adjusters.

Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866, "Regulatory Planning and Review." This rulemaking has been determined to be not "significant" under the Department of Transportation regulatory policies and procedures. The amendment will not result in any additional cost impacts beyond those resulting from the initial final rule. The agency further concludes that, because the cost impacts are minimal, a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Any impact on small entities from this action will be minimal since the amendments make minimal changes to the Standard that will not impose additional costs or result in any savings. Accordingly, the agency has determined that preparation of a regulatory flexibility analysis is unnecessary.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will not have a significant impact on the quality of the human environment.

D. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. No state laws will be affected.

E. Civil Justice Reform

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. Section 571.121 is amended by revising S5.1.8, S5.2.2, and Table I to read as follows and by adding S5.9:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.1.8 *Brake distribution and automatic adjustment.* Each vehicle shall be equipped with a service brake system acting on all wheels.

(a) *Brake adjuster.* Wear of the service brakes shall be compensated for by means of a system of automatic adjustment. When inspected pursuant to S5.9, the adjustment of the service brakes shall be within the limits recommended by the vehicle manufacturer.

(b) *Brake indicator.* For each brake equipped with an external automatic adjustment mechanism and having an exposed pushrod, the condition of service brake under-adjustment shall be displayed by a brake adjustment indicator that is discernible when viewed with 20/40 vision from a location adjacent to or underneath the vehicle, when inspected pursuant to S5.9.

* * * * *

S5.2.2 *Brake distribution and automatic adjustment.* Each vehicle shall be equipped with a service brake system acting on all wheels.

(a) *Brake Adjuster.* Wear of the service brakes shall be compensated for by means of a system of automatic adjustment. When inspected pursuant to S5.9, the adjustment of the service brakes shall be within the limits recommended by the vehicle manufacturer.

(b) *Brake Indicator.* For each brake equipped with an external automatic adjustment mechanism and having an exposed pushrod, the condition of service brake under-adjustment shall be displayed by a brake adjustment indicator in a manner that is discernible when viewed with 20/40 vision from a location adjacent to or underneath the vehicle, when inspected pursuant to S5.9.

* * * * *

Table I—Stopping Sequence

1. Burnish.

2. Control trailer service brake stops at 60 mph (for truck-tractors tested with a control trailer in accordance with S6.1.10.)

3. Control trailer emergency brake stops at 60 mph (for truck-tractors tested with a control trailer in accordance with S6.1.10.7.)

4. Stops with vehicle at gross vehicle weight rating:

(a) 20 mph service brake stops on skid number of 81.

(b) 60 mph service brake stops on skid number of 81.

(c) 20 mph service brake stops on skid number range 30.

(d) 20 mph emergency brake stops on skid number of 81.

(e) 60 mph emergency brake stops on skid number of 81.

5. Parking brake test with vehicle loaded to GVWR.

6. Stops with vehicle at unloaded weight plus 500 lbs.

(a) 20 mph service brake stops on skid number of 81.

(b) 60 mph service brake stops on skid number of 81.

(c) 20 mph service brake stops on skid number range 30.

(d) 20 mph emergency brake stops on skid number of 81.

(e) 60 mph emergency brake stops on skid number of 81.

7. Parking brake test with vehicle at unloaded weight plus 500 lbs.

8. Final inspection of service brake system for condition of adjustment.

* * * * *

S5.9 *Final Inspection.* Inspect the service brake system for the condition of adjustment and for the brake indicator display in accordance with S5.1.8 and S5.2.2.

* * * * *

Issued on April 12, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–9226 Filed 4–15–94; 8:45 am]

BILLING CODE: 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC44

Endangered and Threatened Wildlife and Plants; Emergency Rule To List the Saint Francis' Satyr as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The Service exercises its emergency authority to determine the Saint Francis' satyr (*Neonympha mitchellii francisci*) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. This butterfly is known from a single locality in North Carolina. Recent heavy collecting pressure has resulted in a reduction of the only known population and is believed to pose an imminent threat to the butterfly's existence. Protection from collecting is needed during the species' 1994 flight season while the Service proceeds with adopting permanent protection in accordance with the Act's requirements. This emergency rule will implement Federal protection for 240 days. A proposed rule to list the Saint Francis' satyr as endangered is published elsewhere in today's **Federal Register.** The proposed rule provides for public comment and a hearing (if requested).

EFFECTIVE DATE: This emergency determination is effective on April 18, 1994 and expires on December 14, 1994. Due to the need for protecting the St. Francis' satyr from the effects of collecting, the Service finds that good cause exists for making this rule effective upon publication, as provided by 50 CFR 424.18(b)(1) and the Administrative Procedure Act (5 U.S.C. 553(d)(3)).

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/665–1195, Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Neonympha mitchellii francisci is a subspecies of one of two North American species of *Neonympha*. One of the rarest butterflies in eastern North America, it was described by Parshall and Kral in 1989 from material collected in North Carolina. These authors estimated that the single known population probably produced less than 100 adults per year. Shortly thereafter, Saint Francis' satyr was reported to have been collected to extinction (Refsnider 1991, Schweitzer 1989). The subspecies was rediscovered at the type locality in 1992 during the course of a Service-funded status survey. The Act defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife * * *." Therefore, although *N. m. francisci* is recognized taxonomically as a subspecies, it will be referred to as a "species" throughout the remainder of this emergency rule.

Saint Francis' satyr is a fairly small, dark brown butterfly and is a typical member of the *Satyrinae*, a subfamily of the *Nymphalidae* family, which includes many species commonly called satyrs and wood nymphs. The wingspan for the species ranges from 34 to 44 mm (Opler and Malikul 1992). Saint Francis' satyr and Mitchell's satyr, the northern subspecies (*N. m. mitchellii*), which was classified as endangered on May 20, 1992 (57 FR 21569), are nearly identical in size and show only a slight degree of sexual size dimorphism (Hall 1993, Parshall and Kral 1989). Like most species in the wood nymph group, Saint Francis' satyr has conspicuous "eyespots" on the lower surfaces of the wings. These eyespots are dark maroon brown in the center, reflecting a silver cast in certain lights. The border of these dark eyespots is straw yellow in color, with an outermost border of dark brown. The eyespots are usually round to slightly oval and are well-developed on the fore wing as well as on the hind wing. The spots are accented by two bright orange bands along the posterior wing edges and two darker brown bands across the central portion of each wing. Saint Francis' satyr, like the nominate subspecies, can be distinguished from its North American congener, *N. areolata*, by the latter's well-marked eyespots on the upper wing surfaces and brighter orange bands on the hind wing, as well by its lighter coloration and stronger flight (Refsnider 1991, McAlpine *et al.* 1960, Wilsman and Schweitzer 1991, Hall 1993).

Saint Francis' satyr is extremely restricted geographically. Mitchell's satyr, the nominate subspecies, has been eliminated from approximately half its known range, primarily due to collecting (Refsnider 1991). Saint Francis' satyr is now known to exist as only a single population in North Carolina.

The annual life cycle of *N. m. francisci*, unlike that of its northern relative, is bivoltine. That is, it has two adult flights or generations per year. Larval host plants are believed to be graminoids such as grasses, sedges, and rushes. Little else is known about the life history of this butterfly. The habitat occupied by this satyr consists primarily of wide, wet meadows dominated by sedges and other wetland graminoids. In the North Carolina sandhills, such meadows are often relicts of beaver activity. Unlike the habitat of Mitchell's satyr, the North Carolina species' habitat cannot be properly called a fen because the waters of this sandhills region are extremely poor in inorganic nutrients. Hall (1993) states:

> Whereas true fens—apparently the habitat of the northern form of *N. mitchellii* (Wilsman and Schweitzer 1991)—are circumneutral to basic in pH and are long-lasting features of the landscape, the boggy areas of the sandhills are quite acidic as well as ephemeral, succeeding either to pocosin or swamp forest if not kept open by frequent fire or beaver activity.

Hall (1993) further states:

> Under the natural regime of frequent fires ignited by summer thunderstorms, the sandhills were once covered with a much more open type of woodland, dominated by longleaf pine, wiregrass, and other fire-tolerant species. The type of forest that currently exists along [the creek inhabited by Saint Francis' satyr] can only grow up under a long period of fire suppression. The dominance on this site of loblolly pine, moreover, is due primarily to past forestry management practices, not any form of natural succession.

Parshall and Kral speculated that *N. m. francisci* is a relict from a more widespread southern distribution during the Pleistocene period. Hall (1993) presents the following alternative hypothesis:

> The current narrow distribution of *francisci* could also be a result of the enormous environmental changes that have occurred in the southern coastal plain just within the past 100 years. Only the discovery of additional populations or fossil remains can clarify this situation.

Extensive searches have been made of suitable habitat in North Carolina and South Carolina, but no other populations of this butterfly have been found (Hall 1993, Schweitzer 1989).

Federal government actions on this species began when it was included as a category 2 species in the November 21, 1991, animal notice of review (56 FR 58804). Category 2 species are those for which the Service believes that Federal listing as endangered or threatened is possibly appropriate but for which conclusive data on biological

vulnerability and threat are not currently available to support proposed rules. Recent surveys have been conducted by Service and State personnel, and the Service now believes sufficient information exists to proceed with an emergency rule to list *Neonympha mitchellii francisci* as endangered.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act 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 Saint Francis' satyr (*Neonympha mitchellii francisci*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Because of its relatively recent discovery, it is impossible to determine what the original range of Saint Francis' satyr might have been. However, based upon its demonstrated dependency on periodic fires and the general trend of fire suppression on private lands, it seems reasonable to assume that it once occupied a more extensive area. As stated by Hall (1993):

> In order for *francisci* to have survived over the past 10,000 years, there must surely have been more populations and greater numbers of individuals than apparently now exist * * * As is true for many species that were once widespread in the sandhills, massive habitat alteration must also be a major factor in the diminution of the range of *francisci* * * * reductions in *francisci*'s range would have accompanied the extensive loss of wetland habitats in the coastal plain. Again, the draining of swamps, pocosins, Carolina bays, savannas, flatwoods, and bogs for conversion to agriculture and silviculture is well known. In the case of *francisci*, however, the extirpation of beavers from the Carolinas may have been the greatest factor.

Beavers had been virtually eliminated from North Carolina by the turn of the century. Reintroductions began in 1939, but it was several decades before they again became an agent for creation of the sedge meadow habitats favored by Saint Francis' satyr (Hall 1993, Woodward and Hazel 1991). Hall further states:

> As the landscape mosaic of open woodlands and wetlands of the coastal plain declined throughout the past two centuries, the range of *francisci* must have become increasingly fragmented. Although isolated populations may have persisted as long as suitable habitat remained, the structure of their meta-populations would have been destroyed. Opportunistic colonization of newly available habitats as well as the repopulation of sites wiped clean by fire or other catastrophe would have become eventually impossible; one by one, the isolated remnants would have blinked out of existence. Although again speculative, the fracturing of meta-populations has been used to explain the decline of the arogos skipper and a number of butterflies associated with the tall-grass prairies (Panzer, 1988, D. Schweitzer, pers. comm.). That *francisci* was a relict to begin with only exacerbated this problem; the overall effect was to bring it as close to extinction as any butterfly in the country.

The sole surviving population of this species is now fragmented into less than half a dozen small colonies that occupy a total area no larger than a few square miles.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Both subspecies of the Saint Francis' satyr are highly prized by collectors, including commercial collectors who often systematically collect every individual available. Several populations of the nominate subspecies are known to have been obliterated by collectors, and others are believed extremely vulnerable to this threat (Refsnider 1991). As mentioned in the "Background" section, the single known population of Saint Francis' satyr was so hard-hit by collectors in the 3 years following its initial discovery that it was believed to have been collected to extinction. Subsequent to the emergency listing of the nominate subspecies and prior to the publication of this rule, the North Carolina population was the last where *Neonympha mitchellii* could legally be collected. Following the emergency listing of Mitchell's satyr, the North Carolina Heritage Program received several inquiries from collectors about access to the last available population. Several expressed apprehension about any restriction on collecting of this rare and much-sought-after satyr. Collectors reportedly visited the known site every day throughout the flight periods, taking every adult they saw (Hall 1993). After this first wave of over-collection, many unsuccessful searches for the butterfly were made before it was eventually rediscovered. Numbers of individuals then seen were much lower than those reported by Parshall and Kral (1989), with the highest single count consisting of only 11 butterflies (Hall 1993). Even though part of this population is protected from collectors by virtue of being within dangerous artillery impact areas, intensive collecting from the periphery of these areas could reduce total population numbers below levels needed for long-term survival. Very little is known about this species' life history and ecological requirements, but it appears to be a more vagile species than its northern relative. It may well be dependent upon a large meta-population structure in order to colonize new sites or recolonize those from which it has been extirpated.

C. *Disease or predation.* This butterfly, like others, is undoubtedly consumed by predators, but there is no evidence that predation is a threat to the species at this point. Disease is not known to be a factor in its decline.

D. *The inadequacy of existing regulatory mechanisms.* Insects are not protected from collection under North Carolina law. There are also no Department of Defense regulations that would restrict collecting of Saint Francis' satyr in North Carolina. Federal listing of this species will provide legal protection against indiscriminate taking and illegal trade.

E. *Other natural or manmade factors affecting its continued existence.* Although the habitat occupied by this species is dependent upon some form of disturbance to set back succession (e.g., periodic fire and/or beaver impoundments), intense fires at critical times during the life cycle of the species can eliminate small colonies. Historically, this did not present a problem since there were undoubtedly other adjacent populations that could recolonize extirpated sites. However, the fact that only one population of this species now remains makes it more vulnerable to such threats as catastrophic climatic events, inbreeding depression, disease, and parasitism. Part of the occupied area is adjacent to regularly traveled roads, where there is the threat of toxic chemical spills into the species' wetland habitat. Current military use of the impact areas is favorable to this species; the frequent fires associated with shelling are undoubtedly a principal reason why the species is surviving on military lands and not on surrounding private lands. Department of Defense personnel are aware of the species' plight and have been cooperative in protection efforts. However, heavy siltation is a potential problem that could threaten the small drainages occupied by the species. Although troop movements directly through an area occupied by the satyr could have negative impacts, this has not occurred to date; these activities have now been directed away from areas where the satyr occurs. Other potential threats to the species include pest control programs (for mosquitoes or gypsy moths) and beaver control.

Reasons for Emergency Determination

In developing this rule the Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to list Saint Francis' satyr as endangered on an emergency basis. With only one population remaining (and this one having already been diminished by intensive collecting) and with the other subspecies having been completely eliminated from half the States where it historically occurred, the threat of over-collection cannot be denied. The Service has concluded that conducting the normal listing process will delay protection of the species until after the 1994 flight period, thus subjecting the species to an additional year of excessive collecting pressure. The resulting potential for further reduction of this last population could severely reduce the probability of the species' survival. Therefore, the Service is listing the species on an emergency basis to provide maximum protection to the known population during the 1994 flight period.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. At this time the Service has made a preliminary finding that designation of critical habitat is not prudent for this species. As discussed under Factor B in the "Summary of Factors Affecting the Species" section, Saint Francis' satyr has already been impacted by over-collecting and continues to be threatened by collecting pressure. Publication of critical habitat descriptions and maps would make the satyr more vulnerable to collection and would increase enforcement problems and the likelihood of extinction. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. The single remaining population is located on military lands, where the Department of Defense is aware of its occurrence. Comments regarding the designation of critical habitat will be accepted and reviewed during the comment period established by the proposed rule, which is published in this issue of the **Federal Register.**

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. The protection required of Federal agencies and the prohibitions against certain activities involving listed animals 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, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If the species is listed subsequently, 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 formal consultation with the Service. Federal activities that could impact Saint Francis' satyr and its habitat in the future include, but are not limited to, the following: road and firebreak construction, pesticide application, beaver control, troop movements, prescribed burning and fire suppression, and facilities construction. The only known population is located on military lands, where the Department of Defense is already working with the Service to secure the protection and proper management of Saint Francis' satyr while accommodating military activities to the extent possible. Conservation of this butterfly is consistent with most ongoing military operations at the occupied site, and the listing of the species is not expected to result in significant restrictions on military use of the land.

The Act and 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, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce and listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species 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.

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Woodward, D., and R. Hazel. 1991. Beavers in North Carolina; ecology, utilization, and management. Cooperative Extension Service Publication No. AG–434, North Carolina State University, Raleigh, NC.

Author

The primary author of this proposed rule is Ms. Nora Murdock (see

ADDRESSES section) (704/665–1195, Ext. 231).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, effective April 18, 1994 until December 14, 1994, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

(1) The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

(2) Section 17.11(h) is amended by adding the following, in alphabetical order under "Insects," to the List of Endangered and Threatened Wildlife to read as follows:

§ 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						
*	*	*	*	*	*		*
Insects:							
*	*	*	*	*	*		*
Butterfly, Saint Francis' satyr.	*Neonympha mitchellii francisci.*	U.S.A. (NC)	NA	E	539	NA	NA
*	*	*	*	*	*		*

Dated: April 8, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–9218 Filed 4–17–94; 8:45 am]

BILLING CODE 4310–55–M