

known encumbrances or claims against them; and

(5) Detailed information regarding the status of all debts and other obligations of the corporation, specifying the citizenship and residence of each creditor on the effective date and on the date of the application.

Dated: August 15, 1985.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved: August 16, 1985.

John M. Walker, Jr.

Assistant Secretary, Enforcement and Operations.

[FR Doc. 85-20005 Filed 8-20-85; 8:45 am]

BILLING CODE 4810-25-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[PR Docket No. 84-1311; RM-4764; FCC 85-285]

#### Amendment of Part 90 of the Commission's Rules and Regulations To Relax the Frequency Tolerance of Portable Seismic Telemetry Transmitters in the 72-76 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** The Commission has amended 47 CFR 90.65(c)(11) to allow seismic telemetry transmitters type-accepted with a mobile equipment frequency tolerance to be operated as temporary fixed stations. This action simplifies the licensing of this equipment in the Petroleum Radio Service.

**EFFECTIVE DATE:** July 10, 1985.

**FOR FURTHER INFORMATION CONTACT:** Eugene Thomson, Private Radio Bureau, (202) 634-2443.

#### SUPPLEMENTARY INFORMATION:

##### List of Subjects in 47 CFR Part 90

Private land mobile radio service, Radio.

##### Report and Order (Proceeding Terminated)

In the matter of Amendment of Part 90 of the Commission's Rules and Regulations to Relax the Frequency Tolerance of Portable Seismic Telemetry Transmitters in the 72-76 MHz Band; PR Docket No. 84-1311, RM-4764, FCC 85-285.

Adopted: May 29, 1985.

Released: June 3, 1985.

By the Commission.

## Background

1. On December 6, 1984, in response to a petition filed by Fairfield Industries, Inc. (Fairfield),<sup>1</sup> The Commission adopted a Notice of Proposed Rule Making which proposed to amend Part 90 of the Rules and Regulations.<sup>2</sup> The proposal would allow Petroleum Radio Service eligibles to utilize portable seismic telemetry transmitters that operate in the 72-76 MHz band and have a frequency tolerance of 0.005% for temporary fixed operation. Fixed and mobile operations are permitted in the 72-76 MHz band subject to protection of reception of TV Channels 4 and 5. Fixed stations must maintain a frequency tolerance of 0.0005% but mobile stations are allowed a less stringent tolerance of 0.005%.

2. In the NPRM, we noted that frequency tolerances tighter than 0.005% often required the use of crystal ovens, large batteries, and larger power supplies. Because these devices increase the weight, size, and expense of transmitters, we allow mobile units in this band to employ frequency oscillators which meet the less stringent 0.005% tolerance. Mobile transmitters normally emit less power than base stations and therefore have a reduced potential for interference with other operations. The less stringent mobile frequency tolerance has worked well in the 72-76 MHz band to date.

## Discussion

3. Comments on the NPRM were received from Fairfield and the Central Committee on Telecommunications of the American Petroleum Institute. Reply comments were received from Fairfield. Both parties supported our proposal. Portable seismic telemetry transmitters are low powered, have a low duty cycle, and are used in remote areas. Therefore the likelihood of interference to other devices is small. After considering the comments in this proceeding, we conclude that the rule change proposed in the NPRM would provide the relief sought by Fairfield without any significant increase in the potential of interference to existing operations. We are therefore adopting our proposal to permit Petroleum Radio Service eligibles to operate, in a temporary fixed mode,

<sup>1</sup> Petition for Rule Making, RM-4764, filed January 24, 1984.

<sup>2</sup> Notice of Proposed Rule Making, PR Docket No. 84-1311, 49 FR 48950, December 17, 1984.

seismic telemetry transmitters type-accepted at one watt or less power output with a  $\pm 0.005\%$  frequency tolerance.

4. As stated in the NPRM, the Commission certifies that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 do not apply to the rule change in this Report and Order because this change will not have a significant economic impact on a substantial number of small entities. The Secretary shall cause a copy of this Report and Order, including the above certification, to be published in the Federal Register, and to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605(b) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981).

5. Accordingly, it is ordered, that pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 90 of the Commission's Rules is amended, effective July 10, 1985, as set forth in the attached Appendix. It is further ordered that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

## Appendix

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

### PART 90—[AMENDED]

Section 90.65(c)(11) is revised to read:  
§ 90.65 Petroleum Radio Service.

(c) \* \* \*

(11) The frequencies available for use at operational fixed stations in the band 72-76 MHz are listed in § 90.257(a)(1). These frequencies are shared with other services and are available only in accordance with the provisions of Section 90.257. Seismic telemetry transmitters type accepted with 1 watt or less power and a frequency tolerance not exceeding  $\pm 0.005\%$  may be used as temporary operational fixed stations.

[FR Doc. 85-19897 Filed 8-20-85; 8:45 am]

BILLING CODE 6712-01-M



## DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety  
Administration

## 49 CFR Part 571

[Docket No. 74-09; Notice 18]

Federal Motor Vehicle Safety  
Standards; Child Restraint SystemsAGENCY: National Highway Traffic  
Safety Administration (NHTSA),  
Department of Transportation.

ACTION: Final rule.

**SUMMARY:** This rule amends Standard No. 213, *Child restraint systems*, with respect to the requirements applicable to buckles used in child restraints. The requirement regarding the force necessary to operate the buckle release mechanism in the pre-impact test is changed from the previous minimum level of 12 pounds to a range between 9 and 14 pounds. The maximum release force for the buckle release in the post-impact test is reduced from the previous level of 20 pounds to 16 pounds. Additionally, this rule adds buckle size and buckle latching requirements to the standard. The effect of this rule is to ensure that child restraint buckles are easier for adults to operate, while still ensuring that small children will not be able to open the buckles by themselves.

**EFFECTIVE DATE:** The changes made by this rule become effective February 18, 1986.

**ADDRESS:** Petitions for reconsideration may be submitted within 30 days after publication of this notice in the *Federal Register* to: Administrator, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. Samuel Daniel, Office of Vehicle Safety Standards, NRM-12, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590 (202-426-2242).

**SUPPLEMENTARY INFORMATION:** As an initial step toward ensuring that child restraint systems would offer adequate protection for their occupants, NHTSA issued Standard No. 213 in 1970. That version of the standard required, among other things, that the buckle release mechanism operate when a force of not more than 20 pounds was applied.

NHTSA issued a new Standard No. 213, *Child restraint systems* (49 CFR 571.213) at 44 FR 72131, December 13, 1979. This new standard substantially upgraded the performance requirements for child restraint systems. It also specified that the buckles must not release when a force of less than 12 pounds was applied to the buckle before conducting the dynamic systems test required by section S6.1 of Standard No. 213 and must release when a force of not

more than 20 pounds was applied after conducting that dynamic systems test. The test for measuring the amount of force needed to release the buckle was to be conducted in accordance with the procedures set forth in section S6.2 of the standard. The purpose of the buckle force requirements is to prevent young children from unbuckling the restraint belt(s), while allowing adults to do so easily.

After the adoption of the standard, the agency received information indicating that the minimum force level needed to release the buckles was too high to permit many adults to easily release the buckles. Some of the buckles tested in the field required more than 20 pounds of pressure to release, according to a report done for the agency by K. Weber and N.P. Allen (Docket No. 74-09-GR-120). This same report concluded that even a force of 20 pounds is difficult for most women to generate with one hand. The agency has also been provided with consumer letters received by one child restraint manufacturer commenting on the difficulty of operating the child restraint harness buckles. The agency itself has received numerous telephone calls from consumers complaining about the size of the release buttons on child restraint belts and the high force levels required to operate them.

The agency's safety concerns over child restraint buckle force release and size stem from the need for convenient buckling and unbuckling of a child and, in emergencies, to quickly remove the child from the restraint. This latter situation can occur in instances of post-crash fires, immersions, etc. A restraint that is difficult to disengage, due to the need for excessive buckle pressure or difficulty in operating the release mechanism because of a very small release button, can unnecessarily endanger the child in the restraint and the adult attempting to release the child.

This amendment is also intended to reduce the everyday misuse rate of child restraint harness and shields. Several studies conducted by Goodell-Graves, Inc. under contract to NHTSA indicate that the harness and shield misuse rate for infant and toddler restraints is between 25 and 40 percent. According to this study and others, misused child restraints may not only fail to protect the child in a crash situation, but may increase injury severity. The December 1984 study asked parents why they were apparently misusing the harness and shields. The misuse did not result from the lack of knowledge about the proper use of the harness and shields, because 95 percent of those parents knew the child restraint was being used incorrectly. Although the buckles were

not cited directly, the inconvenience of the harness and shield operation was the most frequent reason given for misuse. This amendment will improve the operational convenience of the harness and shield buckles and thus should increase the correct usage rate of child restraint systems.

Accordingly, NHTSA published a notice of proposed rulemaking (NPRM) at 48 FR 20259, May 5, 1983 which proposed several changes to the buckle release force measurement test procedures. Those changes were intended to facilitate the use of buckles which would require approximately 10 1/2 pounds of force to release. The buckle force release test procedure specified that the buckle was to be tested both before and after the impact testing of the child restraint. In both the pre- and post-impact tests, tension was applied to the buckle prior to measuring the buckle release force. The purpose of applying tension was to simulate the force that would be applied to the buckle by a child hanging upside down in the child restraint.

The first proposed change was to eliminate the tension applied to the buckle in the pre-impact test. While it was considered appropriate for the post-impact test to simulate tension which would be present on the buckle in the event of a rollover crash, it was tentatively concluded that there were no forces whose presence ought to be simulated in the pre-impact test. Therefore, the notice proposed to measure the buckle release force in the pre-impact test with no load applied to the belt buckle, except the load exerted by properly adjusting the belt system around a child.

The second proposed change was to reduce the minimum buckle force permitted in the pre-impact test by three pounds, from 12 pounds to 9 pounds. According to the evidence available to the agency, a minimum buckle force level of 9 pounds is sufficient to prevent children up to the age of approximately 4 from opening the buckle by themselves. Further, the notice proposed to set a force of 12 pounds as the maximum force permitted in the pre-impact test. The NPRM specifically sought comments on whether this 3 pound range was sufficient to account for the amount of buckle force variation which inevitably arises from mass production manufacturing techniques.

The third change was proposed for the post-impact testing of the buckles. The tension previously specified in the standard would still be applied to the buckles before the release force was measured. However, the maximum force



needed to release the buckles was proposed to be reduced from 20 pounds to 16 pounds. A higher force level is specified in the post-impact test as compared to the pre-impact test allow for damage which would occur to the buckles during an actual crash and to allow for the additional belt loading which is possible from a child suspended upside down in the restraint system. The proposed lowering of the maximum force level was intended to permit a large portion of adults to more easily and quickly release the buckle in normal use (thus encouraging routine correct use of the restraints which would provide enhanced child safety) and in emergency post-crash situations.

The NPRM also proposed a change to Standard No. 213 in response to complaints about instances where a child restraint buckle was seemingly securely fastened by a parent, but subsequently popped open. This problem is commonly referred to as false latching. To address this problem, the NPRM proposed to require that child restraint buckles meet the latching requirements in section S4.3(g) of Standard No. 209, *Seat Belt Assemblies*. These requirements ensure that the design and construction of the buckle release mechanism are sufficiently durable to permit repeated latching and unlatching of the buckle and that the buckle releases when it is falsely latched and a minimum force (in this case, 5 pounds) is applied to it.

The final change proposed in the NPRM related to the size of the buckle release area. The agency believed that some of the problems experienced by parents in fastening and unfastening the child restraint buckles might be attributable to the size of the buckle release mechanism. For instance, the smaller the area of a push button release mechanism, the more difficult it would be to use more than one finger, and hence apply a greater force, to open the buckle. The release mechanisms on some buckles were too small to allow sufficient engagement area for easy release of the buckle, particularly for persons with large hands. Most child restraint buckles use push buttons to release the buckle, so the NPRM proposed that push buttons have a minimum area of 0.6 square inch. The minimum surface area requirements applicable to motor vehicle seat belts were specified for other types of release mechanisms used on child restraint buckles.

The NPRM also requested comments on regulatory and non-regulatory ways in which the issues of belt length and shell width could be addressed. This

request was based on the Weber and Allen report referenced above which raised questions about the length of the harness webbing used in child restraints and the seating width of the shells. The researchers noted that use of winter clothing significantly increased the amount of harness webbing needed to accommodate a fully clothed child. They reported that a snowsuit can add six inches to the length necessary for a harness lap belt to accommodate a child. Further, researchers said that nearly all child restraints are too narrow for the size children they claim to accommodate.

The agency received 16 comments on the NPRM, and the commenters included private citizens, safety advocacy groups, child restraint manufacturers, and the National Transportation Safety Board. All these comments were considered in developing this final rule, and the most relevant ones were specifically addressed in the following discussion.

*Pre-Impact Test Buckle Release Force Limit.* In the NPRM, the agency specifically sought comments on the feasibility of manufacturing buckles within the 3 pound range. Many of the commenters objected to the proposed 9 to 12 pound force limits, primarily because the 3 pound range was said to be too narrow based on current manufacturing techniques, to ensure that all buckles would comply with the proposed requirement. Some of these commenters asserted that the proposed 3 pound range would cause the buckle manufacturers to increase buckle prices in order to recoup the costs of the changes in manufacturing techniques and quality control which would have to be implemented to satisfy the proposed requirement. One child restraint manufacturer offered a statistical analysis of buckle release force tests in an effort to demonstrate the difficulty of maintaining a 3 pound range with current buckle manufacturing techniques. The manufacturer indicated that buckle release forces can vary up to 3 times the standard deviation for a given sample. The standard deviation for current production buckles is sufficiently large that, given a mean of 10.5 pounds and a range of 3 pounds, some buckles would have release forces outside the range. A different manufacturer submitted data from tests of current buckle designs showing that the release force can vary by as much as 6 pounds for current buckles. Finally, several commenters objected to the proposed 9 pound minimum release force on the grounds that buckles manufactured in compliance with the Canadian child restraint standard,

which specifies an 8 pound minimum release and 16 pound maximum release force, would not satisfy the proposed U.S. standard. These commenters further stated that NHTSA should use this opportunity to harmonize this requirement with the Canadian standard.

In response to these comments, NHTSA has reconsidered its proposed 9 to 12 pound range for the buckle release force permitted in the pre-impact testing. The agency has concluded that a 3 pound range in release force would not be feasible with current manufacturing techniques, and the benefits of narrowing the feasible range to 3 pounds do not warrant requiring a change in current manufacturing techniques.

The only research study of which the agency is aware examining the most appropriate release force range for child restraint buckles is entitled "Child Restraint System", and was published in 1976 by Peter Arnberg of the National Swedish Road and Traffic Institute. This study, which is available in the General Reference section of Docket No. 74-09, presented the results of testing 60 children aged 2½ to 4½ years and 200 women. This study concluded that, child restraint buckles should have a release force of 40 to 60 Newtons (approximately 9 to 13½ pounds).

After analyzing the comments, NHTSA has determined that a 5 pound range in buckle release force is needed to allow for current buckle manufacturing techniques. Based on this determination and the recommendations of the Arnberg study, this requires child restraint buckles to have a release force of between 9 and 14 pounds before the buckles are subjected to dynamic testing.

The agency notes that this rule is not precisely harmonized with the Canadian standard for child restraint buckle release forces, which specifies a minimum release force of 8 pounds before dynamic testing and a maximum release force of 16 pounds after dynamic testing. NHTSA has adopted a 9 pound minimum release force because of its concern that 3½ to 4 year old children could open their child restraint buckles if the release force were 8 pounds, as shown in the Arnberg study. Further, the 14 pound maximum release force before dynamic testing was added in this rule because buckles with a release force of more than 14 pounds are difficult for many women to open in everyday use, as demonstrated in the Arnberg study. The result of these differing requirements on the United States and Canadian is that buckles which comply with the Canadian buckles force



requirements will not automatically comply with Standard No. 213. However, buckles which comply with Standard No. 213 will also comply with the buckle force requirements of the Canadian standard.

**Pre-Impact Buckle Test Procedure.** The NPRM proposed a new procedure for this test. The same procedures have been used for measuring the buckle release force in both the pre-impact and the post-impact testing. Briefly stated, the child restraint is installed on a standard seat assembly, the dummy is positioned in the child restraint, a sling is attached to each wrist and ankle of the dummy, and the sling is pulled by a designated force. As noted above, the presence of the dummy and the force applied to the sling simulate a rollover crash situation.

The NPRM proposed, and this final rule adopts, a new test procedure for the pre-impact testing, because there is no need to simulate a rollover crash situation before impact. The NPRM proposed placing the buckle on a hard, flat surface and loading each end of the buckle with a force of two pounds before measuring the force required to release the buckle. None of the commenters objected to this basic change in the test procedure, and it is adopted for the reasons stated in the NPRM.

Several commenters did object to the release force application device, which was proposed as a rigid, right circular cone with an enclosed angle of 90 degrees or less. This device would be used to transfer the release force to the push button release. Some commenters argued that this device would not adequately represent real world push button actuation. Specifically, they were concerned that the pointed device applies the release force over an area considerably smaller than that of a finger or thumb. Other commenters argued in favor of a different release force application device, contending that this device would permanently deface some of the tested buckles.

NHTSA had decided to adopt the proposed conical test device. Its small contact area allow accurate positioning on the release button, which will yield consistently repeatable test results. The buckle release force test procedures proposed in the NPRM, as modified for this final rule, were conducted by the Calspan Corporation in July 1984 during the annual FMVSS No. 213 compliance test procedures. On the basis of these tests, the agency concluded that the amended test procedures simulate real world actuation of push button release mechanisms because the release force is applied in a manner similar to hand

operation and tests with several alternative devices indicated that conical devices produce release force values consistent with those generated by different probes. Manufacturers choosing to test a large number of buckles to be used on their child restraints can place a protective surface between the button and the test device to prevent defacing of the buckles. Those manufacturers which want to use an alternative test device are free to do so, provided that they can correlate the results obtained with that alternative device with results obtained with the specified test device, which will be used by the agency in compliance tests.

The NPRM proposed that the force applied by the test device be "at the center line of the push button 0.125 inches from a movable edge and in the direction that produces maximum releasing effect." Many commenters argued that this procedure needed to be refined to take account of the different release mechanisms. One commenter stated that there are two different types of push button release mechanisms, hinged and floating. A hinged button has one fixed edge and release forces applied near the fixed edge may not activate the release mechanism. Instead, the hinged button is designed to release when force is applied near the center of the button or toward the edge opposite the fixed edge. On the other hand, the floating button has no fixed edges and is designed to release when force is applied near the center of the button. This commenter noted that, while the force application proposed on the NPRM may be suitable for hinged buttons, it would be inappropriate for floating buttons.

The agency agrees with the commenters that some further refinements should be made to the test procedures to account for the different types of push buttons. Accordingly, this rule specifies that, for hinged buttons, the force shall be applied according to the procedures proposed in the NPRM. For floating buttons, the force shall be applied at the geometric center of the button. These differing force application points will take into account the differing designs of push buttons, without favoring one or the other design.

Several commenters stated that the NPRM failed to specify any test procedures for buckles designed for the insertion of two or more buckle latch plates, even though a number of buckles on current models of child restraints are designed to secure more than one belt. Further, these commenters noted that, while the NPRM did specify a two pound pre-load force should be applied to buckles before conducting the pre-

impact buckle release test, it failed to specify the direction in which the force should be applied. To remedy these perceived shortcomings, some of the commenters recommended that the final rule specify that the two pound pre-load force be applied along the direction of the latch plate insertion for single latch plate buckles and that the two pound force be divided by the number of latch plates and the resultant force applied to each latch plate in the direction of latch plate insertion for multiple latch plate buckles. This final rule adopts this recommendation. The NPRM's intent was that the force be applied along the direction of latch plate insertion, and it is appropriate to make this intent explicit in this final rule. Further, the one pound pre-load force for multiple latch plate buckles is sufficient force to simulate the tension which would be present in properly adjusted belts, yet small enough so as not to simulate other forces which would not be present in normal everyday use.

Along these lines, one commenter suggested that the pre-load force be increased from two to five pounds. This commenter stated that the proposed pre-load force of two pounds might not be sufficient to release the buckles, while the five pound load would assure that the buckles always release. Further, the commenter noted that Standard No. 209 allows a false latching load of five pounds maximum, and that this change would make the two Standards consistent.

NHTSA is not persuaded by these comments, and has not incorporated the suggested change in this final rule. For the pre-impact buckle release force test procedure, the 2 pound pre-load is designed to simulate the separation tension in the harness restraint system during normal use and approximate the buckle loading on a restraint system adjusted for the compliance impact test.

Section S5.2(g) of Standard No. 209, on the other hand, is not intended to approximate forces present during normal buckle operation. That section requires that the buckle latching mechanism be tested for durability and then the latch plate or hasp inserted in any position of "partial" engagement (false latching). When the buckle and latch plate are in this position of "induced" partial engagement, a force of 5 pounds force or less shall separate the latch plate from the buckle. The separation of the latch plate is affected without operating the release mechanism. Since this procedure is not intended to simulate normal buckle operation but to test the susceptibility of the buckle to false latching, it would



not be appropriate to incorporate its loading into Standard No. 213.

**Post-Impact Buckle Test Procedure.** As noted above, the NPRM proposed to reduce the maximum force needed to release the buckle after it had been subjected to the impact test from the 20 pound level currently specified to 16 pounds. A higher release force is specified for the post-impact test to account for damage which might occur to the buckle during the impact test and to counter the forces which could be exerted on the buckle by a child hanging upside down in rollover crash conditions. The reason for proposing the lower force was that it was sufficient to account for damage which might occur to the buckle, and such force can be generated by almost all women using only one hand, according to the Arnberg study. The current 20 pound force requirement allows buckles which require two hand operation by many adults, and two hand operation is often awkward and may adversely affect safety in emergency situations. The agency notes that the Canadian standard also specifies a maximum post impact force of 16 pounds. No commenters objected to this proposed change, and it is adopted herein for the reasons explained above.

The preamble to the NPRM did not discuss any other changes to the post-impact testing procedure, because the agency did not intend to propose any changes other than reducing the maximum release force for the buckles. However, section S6.2.2 of Standard No. 213 as published in the NPRM indicated that the self-adjusting sling which is attached to the dummy to simulate a rollover crash situation should be attached only to the dummy's ankles. The Standard currently requires the sling to be attached to the dummy's wrists and ankles, and this requirement was inadvertently omitted from the NPRM language. This final rule corrects this omission, so no change is specified for the post-impact testing except the reduction in buckle release force.

**Buckle latching.** The NPRM proposed adding the latching performance requirements of sections S4.3(g) and S5.2(g) of Standard No. 209 to Standard No. 213. These procedures test the latching performance of seat belt buckles to ensure that the buckle materials and structure will operate properly after numerous cycles of latching and unlatching. As explained in the NPRM, this step should reduce or eliminate the false latching problems experienced by child restraint users. False latching occurs when buckles are apparently latched, but then subsequently pop open. NHTSA believes

that most of the false latching result from poorly designed or cycle degraded latching mechanisms, and that the Standard No. 209 requirements will eliminate latching mechanisms which are poorly designed or subject to cycle degradation.

Most of the commenters who addressed this proposal supported its adoption, although several commenters stated that additional requirements may be needed to ensure that false latching does not continue to be a significant problem. The National Transportation Safety Board stated that it had evidence that brand-new child restraint buckles, not yet subject to material wear, are prone to false latching, and that additional requirements, along the lines of the European requirement that latchplates be ejected by a spring located in the buckle when the buckle is not properly latched, may be necessary to prevent false latching. Other suggestions from the commenters included requiring the use of color-coded push buttons to show when the buckle was properly latched and requiring specific warnings in the manufacturer's instruction manuals urging parents to check for false latching every time they fasten the buckles.

NHTSA has adopted the requirements proposed in the NPRM to reduce the false latching problems. The agency believes that the Standard No. 209 seat belt buckle tests will identify buckles which are subject to false latching because of materials wear or poor design, because false latching complaints by consumers have been eliminated for motor vehicle seat belts and the agency expects that these tests will substantially reduce this problem for child restraint buckles as well. The agency will continue to monitor problems of false latching, and will consider additional requirements to address that problem if necessary.

**Buckle Size.** The NPRM proposed to specify a minimum area for the buckle release mechanism, because some of the difficulties reported in opening child restraint buckles were believed to arise from the small size of the buckle release mechanism. As noted earlier, the smaller the area of the push button, the more difficulty there is in applying the forces which must be exerted to open the buckle. Those commenters which addressed this issue supported the proposed requirement that push buttons used on child restraints have a minimum release area of 0.6 square inch, and it is adopted in this final rule.

**Belt Length/Shell Width.** The NPRM solicited comments on steps which

could be taken to address the issues of belt length and shell width. These issues arose after a research report noted that children clad in winter clothes need up to six additional inches of belt webbing, and that many current child restraints do not have this extra belt length. In addition, the report noted that nearly all child restraints are too narrow for the size children they claim to accommodate. The NPRM noted that a long-range solution was for the agency to use additional test dummies to simulate larger children. A possible short-term answer was to conduct the crash tests with the dummies clad in a typical snowsuit.

Several commenters stated that regulatory action was not needed in this area. Child restraint manufacturers generally believe that the industry will adjust belt length and shell width in response to consumer demand, and believe that any regulations at this time would only add costs and research burden without substantially benefiting child safety. The Physicians for Automotive Safety stated that the agency should approach those manufacturers with problems in these areas and request voluntary remedial action, instead of pursuing rulemaking. That group also stated that it knew of only one model of child restraint with problems along these lines. The National Transportation Safety Board stated that the agency should develop regulations in these areas.

Some of the commenters opposed the use of snowsuits on the test dummies because those snowsuits would absorb some of the crash energy. According to these commenters, the agency would, in effect, reduce the severity of the crash tests by so dressing the test dummies.

In view of the above comments rulemaking will be deferred in this area. The agency will continue to monitor the issues of seat shell size and harness webbing length associated with infant and toddler restraints (40 pounds and below) to determine if rulemaking in this area will be necessary in the future.

**Editorial Correction.** Several commenters noticed that there was a typographical error in section S5.4.3.5(a) of the NPRM. That section referred to testing in accordance with section S6.2.2, while the correct reference was to section S6.2.1. This error is corrected in this final rule.

**Economic Effects.** NHTSA has considered the effects of this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and



procedures. The reduction of the force levels needed to open the buckles, the incorporation of the latching requirements of Standard No. 209, the minimum release area requirements, and the slight changes to the pre-impact buckle testing procedure will have such minimal impacts on the industry and on the costs to consumers that a full regulatory evaluation is not needed.

The agency has also considered the impacts of this rule as required by the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not significantly increase the testing or design costs for child restraint manufacturers. Small organizations and governmental jurisdictions will be affected as purchasers of child restraints. However, the cost effect of these changes is minimal. Accordingly, a regulatory flexibility analysis has not been prepared.

Finally, the agency has analyzed this rule for the purposes of the National Environmental Policy Act, and determined that this rule will not have any significant effects on the human environment.

#### List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

#### PART 571—[AMENDED]

##### § 571.213 [Amended]

In consideration of the foregoing, § 571.213 of Title 49 of the Code of Federal Regulations is amended as follows:

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

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

2. Section S5.4.3.5 is revised to read as follows:

S5.4.3.5 *Buckle Release.* Any buckle in a child restraint system belt assembly designed to restrain a child using the system shall:

(a) When tested in accordance with S6.2.1 prior to the dynamic test of S6.1, not release when a force of less than 9 pounds is applied and shall release when a force of not more than 14 pounds is applied;

(b) After the dynamic test of S6.1, when tested in accordance with S6.2.3, release when a force of not more than 16 pounds is applied;

(c) Meet the requirements of S4.3(d)(2) of FMVSS No. 209 (§ 571.209), except that the minimum surface area for child restraint buckles designed for push button application shall be 0.6 square inch;

(d) Meet the requirements of S4.3(g) of FMVSS No. 209 (§ 571.209) when tested in accordance with S5.2(g) of FMVSS No. 209; and

(e) Not release during the testing specified in S6.1.

(3) Section S6.2 is revised to read as follows:

S6.2 *Buckle release test procedure.* The belt assembly buckles used in any child restraint system shall be tested in accordance with S6.2.1 through S6.2.4 inclusive.

4. Section S6.2.1 is revised to read as follows:

S6.2.1 Before conducting the testing specified in S6.1, place the locked buckle on a hard, flat, horizontal surface. Each belt end of the buckle shall be pre-loaded in the following manner. The anchor end of the buckle shall be loaded with a two pound force in the direction away from the buckle. In the case of buckles designed to secure a single latch plate, the belt latch plate end of the buckle shall be loaded with a two pound force in the direction away from the buckle. In the case of buckles designed to secure two or more latch plates, the belt latch plate ends of the buckle shall be loaded equally so that the total load is 2 pounds, in the direction away from the buckle. For pushbutton-release buckles the release force shall be applied by a conical surface (cone angle not exceeding 90

degrees). For pushbutton release mechanisms with a fixed edge (referred to in Figure 6 as "hinged button"), the release force shall be applied at the centerline of the button, 0.125 inches away from the movable edge directly opposite the fixed edge, and in the direction that produces maximum releasing effect. For pushbutton release mechanisms with no fixed edge (referred to in Figure 6 as "floating button"), the release force shall be applied at the center of the release mechanism in the direction that produces the maximum releasing effect. For all other buckle release mechanisms, the force shall be applied on the centerline of the buckle lever or finger tab in the direction that produces the maximum releasing effect. Measure the force required to release the buckle. Figure 6 illustrates the loading for the different buckles and the point where the release force should be applied, and Figure 7 illustrates the conical surface used to apply the release force to pushbutton-release buckles.

5. Section S6.2.2 is revised to read as follows:

S6.2.2 After completion of the testing specified in S6.1, and before the buckle is unlatched, tie a self-adjusting sling to each wrist and ankle of the test dummy in the manner illustrated in Figure 4.

6. Section S6.2.4 is revised to read as follows:

S6.2.4 While applying the force specified in S6.2.3, and using the device shown in Figure 7 for pushbutton-release buckles, apply the release force in the manner and location specified in S6.2.1 for the type of buckle. Measure the force required to release the buckle.

7. Section S6.2.5 is removed.

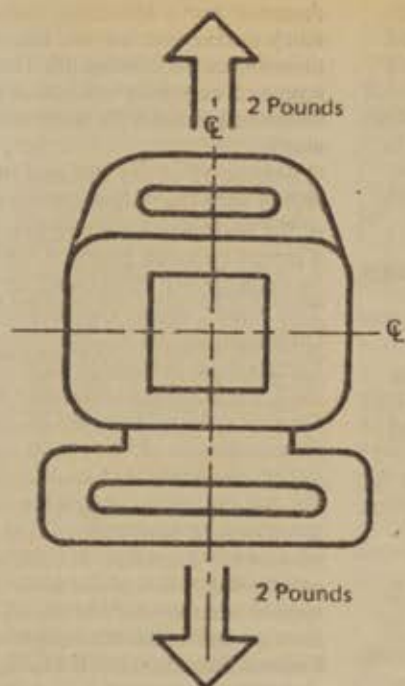
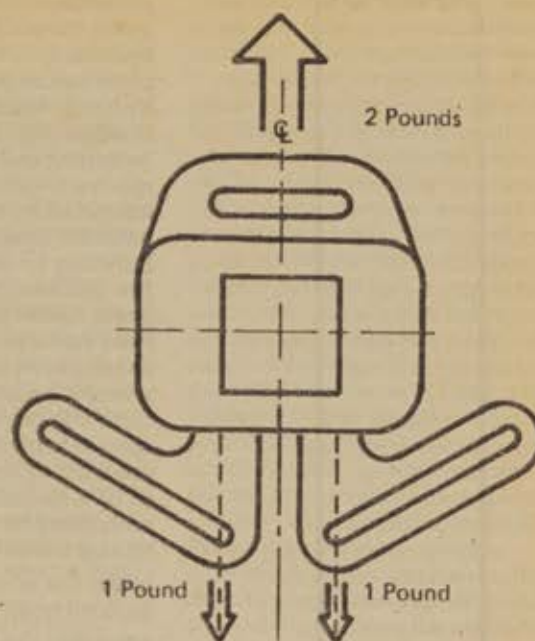
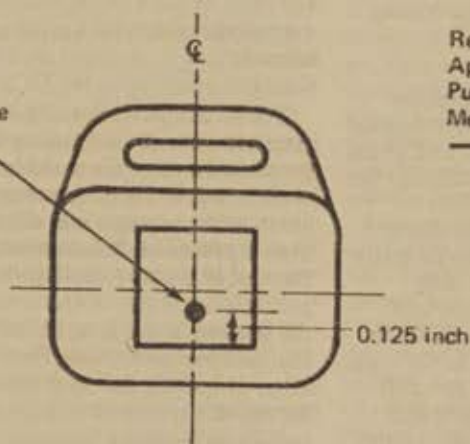
8. Two new drawings (Figures 6 and 7) are added at the end of § 571.213, appearing as follows:

Issued on August 15, 1985.

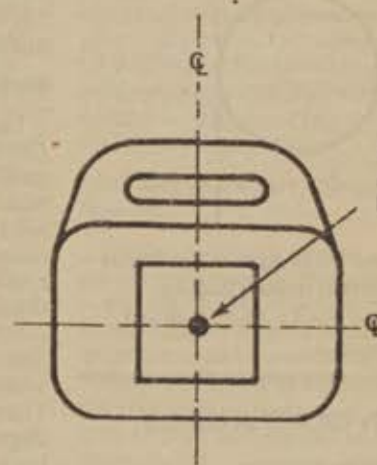
Diane K. Steed,  
Administrator.

BILLING CODE 4910-57-M



Buckle Pre-load6a. Single Latch Plate  
Pre-load6b. Double Latch Plate  
Pre-loadRelease Force  
Application Position-  
Push Button  
MechanismsRelease Force  
Application  
Position

6c. Hinged Button

Release Force  
Application  
Position

6d. Floating Button

Figure 6. Pre-impact Buckle Release Force Test Set-up



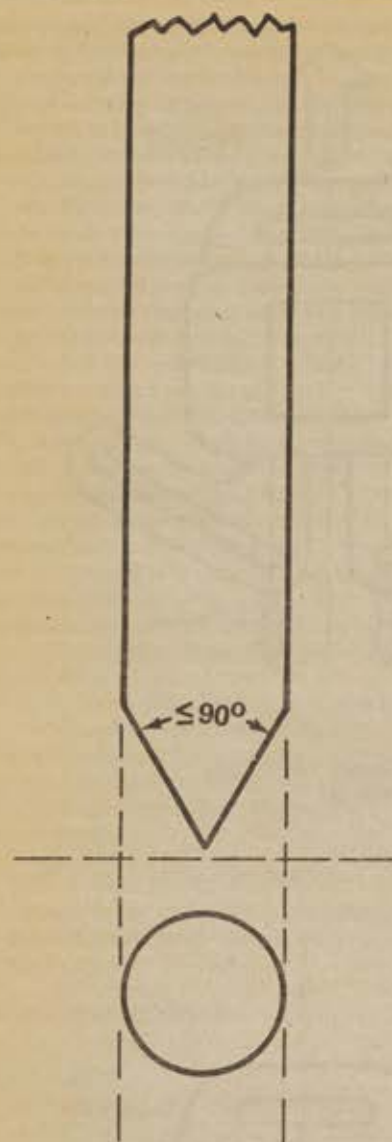


Figure 7. Release Force Application Device —  
Push Button Release Buckles  
[FR Doc. 85-19907 Filed 8-20-85; 8:45 am]  
BILLING CODE 4910-57-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Gardenia brighamii* (Na'u or Hawaiian Gardenia) and Withdrawal of Proposed Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Gardenia brighamii* (na'u or Hawaiian

gardenia) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended. This plant occurs in the wild on Lanai (about 6 plants), Molokai (2 plants), and Oahu (a single plant), but is now believed to be extinct on Hawaii and Maui. This species is vulnerable to any substantial habitat alteration and faces the potential threats of grazing and browsing by domestic and feral animals, fire, soil erosion, introduced insect pests, rodent predation, competition from exotic plants, and potential development on and/or near the sites where it occurs. This determination that *Gardenia brighamii* is an endangered species implements the protection provided by the Endangered Species Act of 1973, as amended. The Service further withdraws its proposal to designate critical habitat for this species.

DATE: The effective date of this rule is September 20, 1985.

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

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

#### SUPPLEMENTARY INFORMATION:

##### Background

Past collections and field notes on *Gardenia brighamii* indicate that it once grew on the islands of Hawaii and Maui, where it is not known to be extant in the wild today. The species was first collected in 1864-65 by Horace Mann and William Brigham, and was formally described by Mann in 1867. It still occurs on Lanai (about 6 plants) and Molokai (2 plants), as well as on Oahu, where a single plant remains in the wild. The current habitat has been severely degraded and altered by grazing and browsing animals (e.g., domestic cattle and feral goats, respectively). The invasion of exotic plants such as *Lantana camara*, *Leucaena leucocephala*, *Schinus terebinthifolius*, and various grass species crowds out the remaining dry forest and shades out any seedlings that may have survived rat predation on the fruits. The remaining habitats on Lanai and Molokai are found on marginal land used for grazing.

*Gardenia brighamii* was a distinctive element of the lowland dry forest. It is a tree growing 20 to 30 feet in height, with a smooth trunk 6 to 12 inches or more in

diameter and a spreading canopy of shiny dark-green leaves. The white to cream-colored flowers are 1 to 2 inches long and very fragrant, and resemble the Tahitian gardenia (*G. taitensis*) in shape.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 CFR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, Federal Register publication. *Gardenia brighamii* was included in the July 1, 1975, notice and the June 16, 1976, proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, Federal Register publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979, the Service published a notice of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired (44 FR 70796); this notice of withdrawal included *Gardenia brighamii*. The Service published an updated notice of review on December 15, 1980 (45 FR 82480), which included *Gardenia brighamii*. A reproposal was published on October 12, 1984 (49 FR 40058), based on information available at the time of the 1976 proposal and information gathered after that time and summarized in a detailed status report prepared under contract by a University of Hawaii botanist (Gagne 1982). The Service now determines *Gardenia brighamii* to be an endangered species with the publication of this final rule.



## Summary of Comments and Recommendations

In the October 12, 1984, proposed rule (49 FR 40058) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, the county government, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the *Honolulu Advertiser* on December 7, 1984. Five comments were received and are summarized and discussed below.

The Hawaii State Department of Land and Natural Resources, Division of Forestry and Wildlife, supported the listing of *Gardenia brighamii* as an endangered species because of the low population numbers, the deterioration of its habitat, and the need for more protection of this species. The Division stated that its office is aware of three individuals on Lanai and two on Molokai, which have not been visited for several years and may no longer be alive; it had no information on the Oahu plant. The Division believes that the 685 acres proposed for critical habitat is too large an area to set aside for a single purpose, and may cause problems for the landowner. It recommended that alternate land uses, compatible with the survival of the tree, should be explored, as more than just the designation of critical habitat will be required to save this species.

A member of the Friends of the Maui Botanical Garden concurred that *Gardenia brighamii* should be listed as endangered. He also supported the designation of critical habitat. Because the trees need to be protected from exotic grasses and shrubs, and deer need to be fenced out, he commented that 685 acres would be too large an area to manage effectively. He suggested that a permanent botanical worker be hired to oversee and protect the endangered species in Hawaii.

Castle & Cooke, Inc. (C&C), owner of the land on Lanai that had been proposed as critical habitat, opposed the listing of *Gardenia brighamii* as an endangered species, although it stated that it is sensitive to the efforts to protect the species and will fully cooperate with conservation actions by Federal and State agencies should the species be listed. One of the main concerns of C&C is the impact that designating critical habitat would have upon its long-term land management plans. C&C noted that Betsy H. Gagne,

in the status report she compiled on the gardenia, reported that Kenepu'u population occurs within an area of only about 275 acres. Since her report, other plants have been located in remote areas of Lanai that are not contiguous with the proposed critical habitat. C&C believes that the proposed critical habitat is excessive, and, as it does not embrace all of the plants, questions the need for it. C&C continued, " \* \* \* we feel that the designation of a critical habitat for *G. brighamii* will cause more harm to the species by calling attention to the species. We have observed that often a greater damage results from well-meaning parties collecting plants with the intention of protecting the species by cultivation and propagation \* \* \*." Also, C&C questioned the accuracy of the species census and noted that the species is in cultivation in botanical gardens and has been offered for sale in plant sales.

The single individual plant known from Oahu occurs on land owned by the Campbell Estate and leased to the Tongg Ranch. Neither the owner nor the lessee provided recommendations or additional information in their letters.

In response to the comment on the accuracy of the census of the Lanai population, it appears that the original estimate of ten was high. Three plants are presently known from the Kanepu'u area and an additional three recently were discovered on the north and west slopes of Lana'ihale, making a total of six trees on that island. A re-estimate of the patchy remnants of dry forest at Kanepu'u also was undertaken. Two of the three trees of this area are in a 330-acre forested area; the other is in a 48-acre forested patch.

In response to the comment on cultivated plants and plants offered for sale, one of the purposes of the Act is to conserve the ecosystems which sustain endangered species. Cultivated plants do not aid in the conservation of native habitat, nor do they normally represent an adequate diverse sample of the gene pool of a species. Their value is as a backup resource for the wild population. The presence of the species in private gardens and the fact that it has been sold at plant sales in the past indicate that the species has potential ornamental value. This may be an added threat to its existence, as the collection of cuttings may damage the few remaining wild trees and the collection of seed may prevent reproduction in native populations.

In response to the question of critical habitat, the Service has considered the three that commented on critical habitat and has reconsidered its proposal to

designate critical habitat for *Gardenia brighamii*. The proposed critical habitat consisted of 685 acres in the Kanepu'u area of Lanai. The proposed critical habitat comprises a remnant of native forest; eroded, laterized areas; and areas vegetated with introduced grasses, shrubs, and trees. Only two of the six known gardenia trees on Lanai are now known to be within the boundary of the proposed critical habitat; a third is in another patch of native dry forest about a half mile away, while the remaining three trees are on other parts of the island. To designate the proposed area as critical habitat would not reflect the habitat needs of the plant. The area proposed for designation exceeds that which could be justified as critical habitat for the two trees it contains. However, any more narrowly delimited designation for these or other individuals of the species would expose them to an increased threat of collection or vandalism. Given the negligible increment of protection for the species that would be provided by such designation, the Service no longer believes it prudent to designate critical habitat for this species. Because *Gardenia brighamii* is presently in cultivation, and young plants have been sold in the past, the Service believes there is an interest in and a market for the species. The fact that there are documented acts of vandalism against plants in Hawaii and other parts of the United States further supports the inappropriateness of designating critical habitat in this case (see "Critical Habitat" section below).

## Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Gardenia brighamii* should be determined to be an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Gardenia brighamii* Mann (na'u or Hawaiian gardenia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* This species once grew on five of the Hawaiian Islands, where, at least on the island of Molokai, it was a fairly common component of



the native dryland forests. Today it still occurs on the islands of Lanai (about 6 plants), Molokai (2 plants), and Oahu (1 plant). It is now believed extinct on Hawaii and Maui. Grazing and browsing by domestic and feral animals and the invasion of exotic shrubs, forbs, and grasses have caused severe degradation of its habitat. Urbanization, pineapple fields (on Lanai and Molokai), sugar cane fields (on Oahu and Maui), and pastures (on Oahu, Maui, and Hawaii) have replaced most of the dryland forests in Hawaii. The Molokai population grows at the edge of an erosion gully; several trees were lost recently when the gully walls collapsed during winter storms. Further grazing and browsing by domestic and feral animals, further invasion and spread of exotic plants, potential urbanization or development, and, as the plants grow in dry parts of the islands, the continual possibility of fires, are all existing threats to the future survival of the species.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** Although the species has apparently not been adversely affected by collecting in the past, it is potentially an attractive garden subject. Because of the extremely low number of remaining individuals, any further horticultural collecting could jeopardize the species.

**C. Disease or predation.** The introduced black twig borer, *Xylosandrus compactus* (Scolytidae), attacks terminal shoots and has severely affected the one wild tree on Oahu. Rats appear to gnaw the fruit while it is still on the tree, severely reducing the chances of successful regeneration. The full impact of grazing remains to be determined.

**D. The inadequacy of existing regulatory mechanisms.** No regulatory mechanisms exist at the present time. Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies.

**E. Other natural or man made factors affecting its continued existence.** The number of plants of this species has been greatly reduced due to factors enumerated above. Further reduction of the breeding population (gene pool) may have adverse effects of the reproductive capacity and survival of this species.

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

preferred action is to list *Gardenia brighamii* as endangered. Due to the low number of extant trees and the threats posed to the species, threatened status is not appropriate. The designation of critical habitat is discussed below.

#### 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. Critical habitat is not being designated for *Gardenia brighamii*, as it is believed to be neither prudent nor beneficial to the species to do so. Due to the additional information provided during the open comment period (see "Summary of Comments and Recommendations" section, above), the area proposed as critical habitat would not accurately reflect the habitat requirements of the species. Any reduction or further refinement of the area to be designated might threaten the plant with taking, an activity difficult to enforce against and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from areas under Federal jurisdiction. Publication of critical habitat descriptions would make this species more vulnerable and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for *Gardenia brighamii* at this time. The proposed designation of critical habitat for this species is therefore withdrawn.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking 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, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species, or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Currently, no Federal involvement is known to exist with regard to *Gardenia brighamii*.

The only known potential action that may be affected by the listing is the casual use of the Kanepu'u area. Federal listing automatically results in similar listing by the State and, therefore, enforcement of the State's own regulations comes into effect. These regulations may limit casual use by prohibiting the taking of the plants. Take, in the State law, is defined as picking or otherwise damaging the plants. Voluntary or mandatory protection of this species and its habitat will require cooperation among the land owners, Castle & Cooke, Inc., the State of Hawaii, the County of Maui, and the U.S. Fish and Wildlife Service.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Gardenia brighamii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No interstate or foreign trade in this species is known, although it has been sold locally. It is anticipated that few trade permits involving *Gardenia brighamii* would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal



and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition is not expected to be significant for *Gardenia brighamii*, since all of the known plants are on private property. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

#### National Environmental Policy Act

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

#### Literature Cited

- Foots, D.E., E.L. Hill, S. Nakamura, and F. Stephens. 1972. Soil survey of the islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii. U.S. Dept. of Agriculture, Soil Conservation Service: Washington, D.C. 232 pp., 130 maps.
- Gagne, B.H. 1982. Status report of *Gardenia brighamii*. Research Corporation of the University of Hawaii, under contract 14-16-0001-79096 to the U.S. Fish and Wildlife Service. 42 pp.
- Spence, G., and S.L. Montgomery. 1976. Ecology of the dry land forest of Kanepu'u, island of Lanai. Newsletter, Hawaiian Bot. Soc. 15(4): 62-80.

#### Author

The primary author of this final rule is Dr. Derral Herbst, U.S. Fish and Wildlife Service, P.O. Box 50167, Honolulu, Hawaii 96850 (808/546-7530).

#### List of Subjects in 50 CFR Part 17

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

#### Regulations Promulgation

#### PART 17—[AMENDED]

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

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

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

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

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Rubiaceae—Coffee family: <i>Gardenia brighamii</i>	Na'u (Hawaiian gardenia)	U.S.A. (HI)	E	195	NA	NA

Dated: August 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-19909 Filed 8-20-85; 8:45 am]

BILLING CODE 4310-55-M

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Final Rule To Determine *Primula maguirei* (Maguire Primrose) To Be a Threatened Species

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

**ACTION:** Final rule.

**SUMMARY:** The Service has determined *Primula maguirei* (Maguire primrose) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended. Critical habitat is not included in this final rule. There are nine known populations of *Primula maguirei*; all are located in Logan Canyon, Cache County, Utah, on U.S. Forest Service lands. The species is found only on ledges and in cracks of vertical cliffs and outcroppings of rock within the canyon. The plant is threatened by rock climbing, collecting,

and potential campground and highway construction. The determination that *Primula maguirei* is a threatened species will provide it protection under the authority of the Endangered Species Act of 1973, as amended.

**DATES:** The effective date of this rule is September 20, 1985.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Regional Endangered Species Office, U.S. Fish and Wildlife Service, 134 Union Boulevard, Fourth Floor, Lakewood, Colorado, and at the Endangered Species Field Office, U.S. Fish and Wildlife Service, Room 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. England, Botanist, Endangered Species Field Office at the Salt Lake City address (801/524-4430 or FTS 588-4430).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Primula maguirei* was first collected by Aldous and Owen on May 10, 1911, and was later described by L.O. Williams (Williams 1936). The plant is a

perennial herb, with conspicuous and showy lavender flowers. Stems are 1.5–4 inches (4–10 cm) tall and bear from one to three flowers. Leaves are broadly spatulate, rounded at the tip, and 1–2.5 inches (3–7 cm) long and 0.3–0.5 inch (0.9–1.3 cm) broad (Welsh and Thorne 1979).

This species is found only in Logan Canyon, Utah, and grows on damp ledges, crevices, and overhanging rocks of the canyon walls. It occurs within an area approximately 10 miles (16 km) by 0.5 mile (0.8 km) (L.M. Shultz, Utah State University, pers. comm. 1984). Montane shrubs, aspen, spruce, and fir are the dominant species of the plant community in this area. *Primula maguirei* is typically found on northerly exposures with a slope of 50 to 100 percent and at elevations of 4,800 to 5,500 feet (1,350–1,700 m). Geological formations of the canyon are composed mostly of carboniferous limestones and dolomites (Welsh 1979).

*Primula maguirei* was first observed in Logan Canyon in 1911, and was seen again in 1932, 1937, and periodically since then (A. Cronquist, New York Botanical Garden, pers. comm. 1984); however, there is no estimate of the number of plants found on these