

Constitution Avenue, NW., Washington, DC 20423.

**STATUS:** Open Special Conference.

**MATTERS TO BE DISCUSSED:**

No. 38783—

*Omaha Public Power District v. Burlington Northern Railroad Company;*

Ex Parte No. 290 (Sub-NO. 2)—

*Railroad Cost Recovery Procedures;*

Ex Parte No. 328—

*Investigation of Tank Car Allowance System.*

**CONTACT PERSON FOR MORE**

**INFORMATION:** Alvin H. Brown, Office of

Legislative and Public Affairs,  
Telephone: (202) 275-7252.

Noreta R. McGee,

*Secretary*

[FR Doc. 86-17335 Filed 7-29-86; 12:37 pm]

BILLING CODE 7035-01-M

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**OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION**

**"FEDERAL REGISTER" CITATION OF**

**PREVIOUS ANNOUNCEMENT:** 51 FR 26628  
July 24, 1986.

**PREVIOUSLY ANNOUNCED TIME AND DATE  
OF THE MEETING:** 10:00 a.m. on August 4,  
1986.

**CHANGES IN THE MEETING:** The meeting  
is rescheduled at 2:00 p.m. on August 4,  
1986.

**CONTACT PERSON FOR MORE**

**INFORMATION:** Mrs. Mary Ann Miller  
(202) 634-4015.

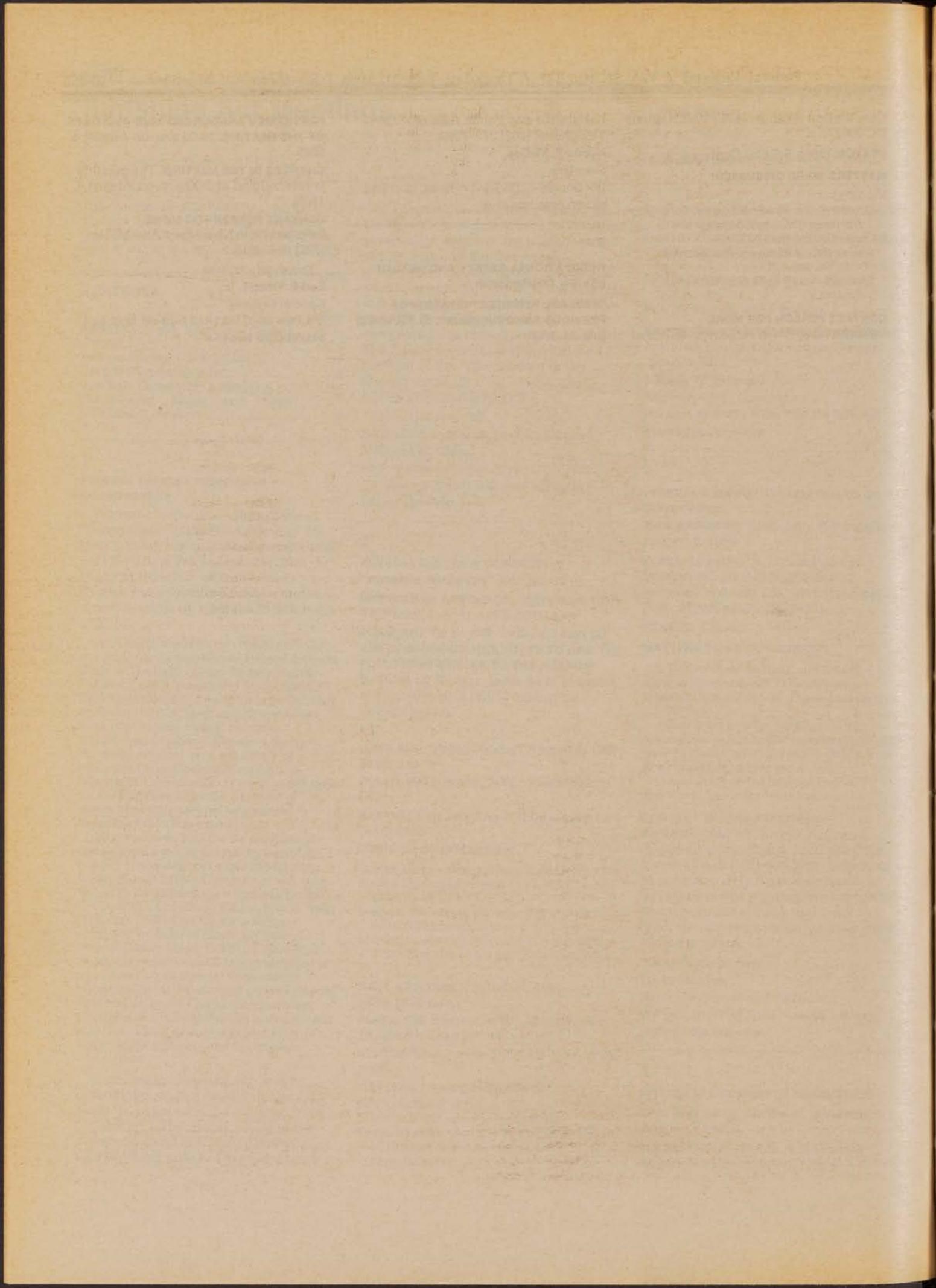
Dated: July 29, 1986.

Earl R. Ohman, Jr.,

*General Counsel.*

[FR Doc. 86-17342 Filed 7-29-86; 12:37 pm]

BILLING CODE 7600-01-M





# **Federal Register**

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**Thursday  
July 31, 1986**

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## **Part II**

### **Department of Defense General Services Administration National Aeronautics and Space Administration**

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**48 CFR Parts 9, 13, 19, and 31  
Federal Acquisition Regulations; Final  
Rule**



## DEPARTMENT OF DEFENSE

## GENERAL SERVICE ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 9, 13, 19, and 31

[Federal Acquisition Circular 84-19]

## Federal Acquisition Regulation

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** Federal Acquisition Circular (FAC) 84-19 amends the Federal Acquisition Regulation (FAR) with respect to the following: Small Business Size Standards, Small Business Administration (SBA) Certificate of Competency, and Travel Costs.

**EFFECTIVE DATES:** July 31, 1986, except for the provisions in section 19.102, which become effective August 8, 1986.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, Telephone (202) 523-4755.

## SUPPLEMENTARY INFORMATION:

## A. Background

*FAC 84-19, Item III.* The revised coverage to FAR 31.109 and 31.205-46(a) is intended to comply with Title II, section 201 of the Federal Civilian Employee and Contractor Travel Expense Act of 1985 (Pub. L. 99-234). The Act specifies, "... costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by subchapter I of Title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provision of such subchapter." The new rule provides that costs for lodging, meals, and incidental expenses incurred by contractor personnel shall be considered to be reasonable and allowable to the extent they do not exceed on a daily basis the per diem rates set forth in the (1) Federal Travel Regulations, (2) Joint Travel Regulations, or (3) Standardized Regulations. Additionally, the new rule provides for situations where actual costs in excess of the specified per diem limits may be allowable. Minor changes to the proposed rule have been incorporated into this final rule in order to

accommodate comments received. This revised cost principle is applicable to all contracts resulting from solicitations issued on or after July 31, 1986.

## B. Public Comments

*FAC 84-19, Items 1 and II.* Public comments have not been solicited with respect to these revisions in FAC 84-19 since such revisions either (a) do not alter the substantive meaning of any coverage in the FAR having a significant impact on contractors or offerors, or (b) do not have a significant effect beyond agency internal operating procedures.

*FAC 84-19, Item III.* A notice of proposed rule was published in the *Federal Register* on May 30, 1986 (51 FR 19690). The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council have considered the public comments solicited.

## C. Paperwork Reduction Act

*FAC 84-19, Items I and II.* The Paperwork Reduction Act does not apply because these final rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

*FAC 84-19, Item III.* The information collection requirements in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501, et seq., and have been assigned clearance number 9000-0088 (see FAR 1.105).

## D. Regulatory Flexibility Act

*FAC 84-19, Items I and II.* These final rules are not "significant revisions" requiring solicitation of public comment, as defined in FAR 1.501-1 and by the Regulatory Flexibility Act. Since such solicitation is not required, the Regulatory Flexibility Act does not apply.

*FAC 84-19, Item III.* These revisions will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because most supplies and services obtained from small entities are acquired on a competitive fixed-price basis and the cost principles do not apply. For the remainder of the supplies and services that are obtained from small entities, the cost principles are primarily used to establish negotiation objectives. Moreover, the proposed coverage merely implements Pub. L. 99-234, which requires comparable treatment of the costs of lodging, meals, and incidental expenses for contractors and Government employees.

## List of Subjects in 48 CFR Parts 9, 13, 19, and 31

Government procurement.

Dated: July 25, 1986.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

## Federal Acquisition Circular

[Number 84-19]

Except for the provisions in section 19.102, which become effective August 8, 1986, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-19 is effective July 31, 1986.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

T.C. Golden,

Administrator of General Services.

S. J. Evans,

Assistant Administrator for Procurement.

Federal Acquisition Circular (FAC) 84-19 amends the Federal Acquisition Regulation (FAR) as specified below.

## Item I—Small Business Size Standards

The table of industry size standards in FAR 19.102 is revised to reflect amended size standards for engineering, architectural, and surveying services. These revised size standards are effective August 8, 1986.

## Item II—SBA Certificate of Competency

FAR 19.601-1 is revised to require that all determinations that responsive small businesses lack certain elements of responsibility, shall be referred to SBA under the Certificate of Competency (COC) program. This revision reflects the requirements of Pub. L. 98-577 and current SBA rules. FAR 9.106-1, 13.104(h), and 19.602-1 are also revised in conjunction with this change.

## Item III—Travel Costs

FAR 31-109(h)(8) and 31.205-46(a) are amended to implement the requirements of Title II, section 201 of the Federal Civilian Employee and Contractor Travel Expense Act of 1985 (Pub. L. 99-234). The Act specifies, "... costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by subchapter I of Chapter 57 of Title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any revision of such subchapter."



The revised cost principle coverage provides that costs for lodging, meals, and incidental expenses incurred by contractor personnel shall be considered to be reasonable and allowable to the extent that they do not exceed on a daily basis the per diem rates set forth in the (1) Federal Travel Regulations, (2) Joint Travel Regulations, or (3) Standardized Regulations. Additionally, the revised rule provides for situations where contractors may be reimbursed for actual costs in excess of the per diem limits, as authorized for Federal civilian employees.

This revised cost principle is applicable to all contracts resulting from solicitations issued on or after July 31, 1986. Therefore, 48 CFR Parts 9, 13, 19, and 31 are amended as set forth below.

1. The authority citation for 48 CFR Parts 9, 13, 19, and 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

## PART 9—CONTRACTOR QUALIFICATIONS

### 9.106-1 [Amended]

2. Section 9.106-1 is amended in paragraph (a)(2) by inserting a period following the word "cost", and deleting the remainder of the sentence.

## PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

3. Section 13.104 is amended by adding paragraph (h) to read as follows:

### 13.104 Procedures.

(h) When a quotation, oral or written, is to be rejected because a small business firm is determined to be not responsible (see Subpart 9.1), see 19.6 with respect to Certificates of Competency.

## PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

### 19.102 [Amended]

4. Section 19.102 is amended in Major Group 89 by removing in SIC Code 8911 the figures "\$7.5" and "\$3.5" and inserting in each place the figure "\$2.5".

5. Section 19.602-1 is amended by revising paragraphs (a)(2) and (c)(2) to read as follows:

### 19.602-1 Referral.

(a) \* \* \*

(2) Refer the matter to the cognizant SBA Regional Office in accordance with agency procedures, except that referral

is not necessary if the small business concern—

(c) \* \* \*

(2) If applicable, a copy of the solicitation, drawings and specifications, preaward survey findings, pertinent technical and financial information, abstract of bids (if available) and any other pertinent information that supports the contracting officer's determination.

## PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

6. Section 31.109 is amended by revising paragraph (h)(8) to read as follows:

### 31.109 Advance agreements.

(h) \* \* \*

(8) Travel and relocation costs, as related to special or mass personnel movements, as related to travel via contractor-owned, -leased, or -chartered aircraft, or as related to maximum per diem rates;

7. Section 31.205-46 is amended by revising paragraph (a) to read as follows:

### 31.205-46 Travel costs.

(a)(1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to paragraphs (b) through (f) of this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(2) Except as provided in subparagraph (a)(3) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2) (i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the—

(i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office,

Washington, DC 20402, Stock No. 022-001-81003-7;

(ii) Joint Travel Regulations, Volume 2, DoD Civilian Personnel, Appendix A, prescribed by the Department of Defense, for travel in Alaska, Hawaii, The Commonwealth of Puerto Rico, and territories and possessions of the United States, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 906-010-00000-1; or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), section 925, "Maximum Travel Per Diem Allowances of Foreign Areas," prescribed by the Department of State, for travel in areas not covered in (a)(2) (i) and (ii) of this paragraph, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 744-088-00000-0.

(3) In special or unusual situations, actual costs in excess of the above-referenced maximum per diem rates are allowable provided that such amounts do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in (a)(2) (i), (ii), or (iii) or this subsection. For such higher amounts to be allowable, all of the following conditions must be met:

(i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referred in (a)(2) (i), (ii), or (iii) of this subsection, must exist.

(ii) A written justification for use of the higher amounts must be approved by an officer of the contractor's organization or designee to ensure that the authority is properly administered and controlled to prevent abuse.

(iii) If it becomes necessary to exercise the authority to use the higher actual expense method repetitively or on a continuing basis in a particular area, the contractor must obtain advance approval from the contracting officer.

(iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices provided that a receipt is required for each expenditure in excess of \$25.00. The approved justification required by (a)(3)(ii) and, if applicable, (a)(3)(iii) of this subparagraph must be retained.

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in (a)(2) (i), (ii), and (iii) in their entirety. Only the coverage in the referenced regulations dealing with



special or unusual situations, the maximum per diem rates, and definitions of lodging, meals and incidental expenses are incorporated herein.

(5) An advance agreement (see 31.109) with respect to compliance with subparagraphs (a)(2) and (a)(3) of this subsection may be useful and desirable.

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[FR Doc. 86-17141 Filed 7-30-86; 8:45 am]

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Thursday  
July 31, 1986

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## Part III

## Department of the Interior

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Fish and Wildlife Service

### 50 CFR Part 17

Endangered and Threatened Species;  
Florida Grasshopper Sparrow and  
Pondberry; Final Rules



## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Florida Grasshopper Sparrow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Florida grasshopper sparrow (*Ammodramus savannarum floridanus*), a bird endemic to the prairie region of south-central Florida, is determined by the Service to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended; no critical habitat is designated. In the early 1900's the populations of this bird were reportedly large and widespread in central Florida. However, surveys conducted between 1980 and 1984 indicate a present population of only about 250 adult birds. The principal reason for this decline is habitat loss or degradation resulting from conversion of native vegetation to improve pasture. This rule implements the Federal protection and recovery provisions afforded by the Act for the Florida grasshopper sparrow.

**EFFECTIVE DATE:** September 2, 1986.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Office, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

**FOR FURTHER INFORMATION CONTACT:** Mr. David J. Wesley, Endangered Species Field Supervisor at the above address (904/791-2580 or FTS 946-2580).

**SUPPLEMENTARY INFORMATION:**

## Background

The following information is abstracted primarily from a report by Delany and Cox (1985) prepared for the U.S. Fish and Wildlife Service.

The grasshopper sparrow (*Ammodramus savannarum*) occurs throughout most of temperate North America. The Florida subspecies (*A. s. floridanus*) is geographically isolated from its nearest conspecific, the eastern race (*A. s. pratensis*), by at least 500 kilometers (300 miles) and is limited in distribution to the prairie region of south-central Florida.

The Florida subspecies was discovered in 1901 by E.A. Mearns at a location "on the Kissimmee Prairie, 7 miles [11 km] east of Alligator Bluff,

Osceola County, Florida" (Mearns 1902). Howell (1932) set the northern limit of distribution as 13 km (8 mi) southwest of Kenansville (Osceola County), where 10 specimens were collected from a small colony in 1929. He also documented a 1927 report of "numerous" Florida grasshopper sparrows at a location 24 km (15 mi) northwest of Basinger (Okeechobee County); referred to two nests found south of Lake Hicpochee (Hendry County); and stated that Nicholson saw a "number" of birds southeast of Immokalee (Hendry County), where they appeared to be breeding. In 1932, an unspecified number of birds were found south of Fort Drum (Okeechobee County).

More recent records (cited by Delany and Cox 1985) include one male bird heard singing 14 km (9 mi) north of Okeechobee (1962), and two birds located 1.6 km (1 mi) south of Brighton in Glades County (1963). In 1968, one specimen was collected atypical habitat near the Everglades National Park (Dade County); one singing male was reported "west of Lake Okeechobee" in 1971. Finally, in 1973 and again in 1974, several birds were located southwest of Kenansville. Unfortunately, the lack of early distributional information precludes a precise delineation of the historical range of the subspecies.

Florida grasshopper sparrows are small, short-tailed birds, about 13 centimeters (5 inches) long. Dorsally they are much darker than the eastern race of the species (*A. s. pratensis*), being mostly black and gray, lightly streaked with brown on the nape and upper back. Ventrally, adults are whitish and unstreaked, with some buff on the throat and breast. The breast is streaked in the juvenile plumage. The stripe over the eye is ochraceous, and the bend of the wing in yellow; the feet are flesh colored. There are no obvious sexual differences. The Florida grasshopper sparrow is a well-marked subspecies that has been universally accepted as valid since it was described by Mearns in 1902. This subspecies is non-migratory, while the other two subspecies found east of the Rocky Mountains winter across the southern U.S. from Texas to South Carolina.

The Florida grasshopper sparrow inhabits the stunted growth of saw palmetto, dwarf oaks 30 to 70 cm (12-27 in) high, bluestems, and wiregrass, seemingly preferring this habitat to the grassy areas usually occupied by other subspecies of grasshopper sparrows (Howell 1932). According to Nicholson (1936), the Florida grasshopper sparrow uses the open spaces where saw palmetto are small (25 to 40 cm [10-16 in] high) and grass is sparse. A low, but

sparse growth of saw palmetto, woody shrubs, and bluestems and wiregrass, rather than sod forming grasses, is apparently needed for nesting. Dense vegetation and accumulated litter probably preclude effective foraging by the sparrow.

Delany and Cox (1985) found that, in general, grasshopper sparrows occurred on treeless, relatively poorly drained sites that have been burned frequently. Common shrubs in Florida grasshopper sparrow habitat include pawpaw (*Asimina* spp.), dwarf oak (*Quercus minima*), gopher apple (*Licania michauxii*), and St. John's Wort (*Hypericum fasciculatum*). The grass and herbaceous ground layer usually is rich in species, being dominated by pineland threeawn (*Aristida stricta*), bluestems (*Andropogon* spp.) and flat-topped goldenrod *Euthamia minor*. In wetter areas of lower elevation, the herbaceous layer includes beak rushes (*Rhynchospora* spp.), pipewort (*Eriocaulon* spp.), and yellow-eyed grass (*Xyris* spp.). Cattle grazing, at a rate of one per 8 hectares (20 acres), occurs on all sites occupied by the sparrows, and does not appear to be detrimental to the birds.

In the early 1900's the populations of Florida grasshopper sparrows were reportedly large and widespread (Howell 1932). Surveys by Delany and Cox, however, conducted between 1980 and 1984, located only 182 sparrows occurring at nine sites. These sites were in southern Osceola County, southern Polk County, northern Highlands County, western Okeechobee County, and western Glades County. Of the 182 sparrows located, 119 were males. Male sparrows are far more conspicuous than females. If each of the males was mated to a single female, a minimum population estimate for the subspecies would be less than 250 adults. In addition, Delany and Cox found sparrows at only two of the eight sites from which they have been known historically. These facts imply a reduction in both abundance and occupied range for the subspecies. Alteration and loss of habitat due to conversion of native grasslands to improved pastures have been, and continue to be, the greatest threats to the survival of the Florida grasshopper sparrow.

## Summary of Comments and Recommendations

The Service published a proposed rule in the **Federal Register** of December 15, 1985 (50 FR 51565) to list the Florida grasshopper sparrow as an endangered species. At that time, all interested



parties were requested to submit factual reports or information that might contribute to the development of a final rule. Comments on the proposal were due by February 18, 1986. Appropriate State agencies, county governments, Federal agencies, scientific authorities, private landowners, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Orlando Sentinel* on January 5, 1986, and in the *Okeechobee News* on January 10, 1986, which invited general public comment. Five comments were received as a result of the proposed rule, none of which were in opposition to it.

The Interior Department's Bureau of Land Management (BLM) pointed out that the principal range of the grasshopper sparrow contains mineral estates under BLM's management. In Polk County, there are six Federal leases totaling 243.55 ha (601.35 ac) that have been issued for phosphate mining; one tract of 16 ha (40 ac) is producing at the present time. Most of BLM's phosphate reserves are located in the Air Force's Avon Park Bombing Range in Polk and Highlands Counties, but there are no current or planned mineral leases in the Bombing Range. BLM stated that if Federal leasing is considered in any area it manages within the range of the Florida grasshopper sparrow, it will initiate consultation with the Service as required by section 7(a) of the Act.

The U.S. Air Force's Avon Park Bombing Range presented the following summary of its comments on the proposed listing: "... the present Florida grasshopper sparrow habitat in flatwood sites [on the Bombing Range] may eventually be changed as natural reforestation of pine forests occur in the future; our range impact areas should be surveyed for sparrows; wildfires from ordnance are extinguished wherever they occur outside of impact areas. We would recommend further study into the relationships of sparrows, cattle grazing, and prescribed burning."

Dr. Michael F. Delany of the Florida Game and Fresh Water Fish Commission corrected some minor errors in the proposed rule. These corrections have been made in the final rule.

The Florida Department of Natural Resources advised the Service that it had circulated the Service's Florida grasshopper sparrow proposal to appropriate staff members and requested them to provide pertinent information. No subsequent communications were received from the staff of the Department of Natural Resources.

### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Florida grasshopper sparrow should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Florida grasshopper sparrow (*Ammodramus savannarum floridanus*) are as follows (abstracted from Delany and Cox 1985, unless otherwise noted):

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The principle threat to the Florida grasshopper sparrow is habitat loss or degradation resulting from conversion of native grasslands to improved pastures. The subspecies apparently can tolerate some alteration in vegetation composition and structure, as evidenced by its occurrence in some improved pastures (Stevenson in Kale 1978). Sparrows have been found in improved pastures where some native vegetation exists. It appears, however, that the species cannot adapt to conditions that result from intensive pasture management which removes all shrubs and saw palmetto. Grasshopper sparrows have been found only in areas that have at least some saw palmetto, shrubs, bluestems and/or wiregrass. Nest sites are located on the ground beneath bushes or tall clumps of grass, features that do not exist in most improved pastures.

Delany and Cox believe that six of the eight historically known populations of the Florida grasshopper sparrow may have been extirpated as a result of range management. They located seven new localities for the subspecies, plus two of the historically known sites. Areas now occupied by sparrows are managed for cattle by periodic burning during the winter (November-January) at 2- to 3-year intervals. For the most part this does not appear to have adversely affected the grasshopper sparrow populations because prescribed burning improves the habitat for this subspecies by maintaining the prairie grassland community at an early successional stage.

There is a possibility that changes in intensity of management could render

these sites unsuitable for grasshopper sparrows. More intensive management (removing saw palmetto and planting grass) would eliminate nesting sites. Less intensive management, which would exclude burning or mechanical clearing, would allow vegetation to reach a successful stage that would be unusable by the birds. Much of the land within the range of the Florida grasshopper sparrow is contained in a few large, private ranches; most of the landowners are not aware of the sparrows' existence or needs. Present land use trends indicate a continued loss of habitat for the subspecies due to increased pasture conversion and changes in intensity of management of already converted pastureland.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no indication that any of these factors have had a significant impact on the Florida grasshopper sparrow in the past. However, there is a potential for adverse impact if isolated pairs are collected, or scientific collection is conducted at locations where numbers are small.

C. *Disease or predation.* Hogs, snakes, and skunks are known to destroy nests and prey upon Florida grasshopper sparrows (Nicholson in Smith 1968). However, these natural losses do not appear to be causing any of the major reductions in range and numbers that have been observed.

D. *The inadequacy of existing regulatory mechanisms.* The Florida grasshopper sparrow occurs on private land, on a State Wildlife Management Area (WMA) (Three Lakes WMA in Osceola County), and on land managed and administered by the Federal Government (U.S. Air Force's Avon Park Bombing Range); the Air Force leases pastures on the Bombing Range for cattle grazing. There are no regulatory mechanisms to assure protection of prairie grassland habitat in private ownership; however, the needs of the grasshopper sparrow are considered by the Air Force when habitat decisions are made on the Bombing Range.

The species is listed as endangered by the State of Florida (Chapter 39-27, Florida Administrative Code), but this legislation does not provide habitat protection. Habitat protection is also not afforded under the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*).

E. *Other natural or manmade factors affecting its continued existence.* It is not known if grasshopper sparrows live directly within the target areas of the Air Force's Avon Park Bombing Range; if so, the birds might be directly affected



by exploding ordnance. The explosions might also cause fires that could spread to other areas and result in temporary damage to nearby resident sparrows' habitat. However, this is unlikely, as the Air Force has an aggressive fire control program. In addition, fires may benefit the sparrows, if they occur at the right frequency and at the right season, as indicated under factor A above. Because the Bombing Range cannot be entered, the Service cannot evaluate how many, if any, sparrows are present within the drop zone.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in making this rule final. Based on this evaluation, the preferred action is to list the Florida grasshopper sparrow as endangered. The total population of this bird may be less than 250 adults at nine scattered sites in the prairie region of south-central Florida. All available evidence indicates that it has declined greatly in range and in numbers. This has been due to habitat loss or degradation resulting from pasture conversion and changes in intensity of management of converted pasture. Present land use trends indicate a continued loss of acceptable habitat for the species. Given these factors, the Florida grasshopper sparrow appears to be in danger of extinction throughout all or a significant portion of its range and therefore is being listed as an endangered species. Critical habitat has not been designated for the Florida grasshopper sparrow for reasons discussed below in the "Critical Habitat" section.

#### Critical Habitat

In order for the Florida grasshopper sparrow to survive, it is necessary to maintain a habitat that has a low (30-70 cm [12-27 in]), but sparse growth of palmettos and woody shrubs. Prescribed burning or mechanical clearing is needed to maintain this sort of suitable habitat. Delany and Cox (1985) presented the following information to illustrate how grasshopper sparrow populations fluctuate depending upon the condition of the habitat. They reported that in 1981-82, only 4 adult grasshopper sparrows were found at the Three Lakes Wildlife Management Area in Osceola County. Many of the pastures at Three Lakes were burned in the winter of 1983-84, and 37 adult grasshopper sparrows were found there in 1984.

At a pasture site in Okeechobee County, no sparrows were found in 1982, but 32 were found in 1984. This particular pasture is burned every 3

years and was last burned in the winter of 1982-83. In the summer of 1982, when no sparrows were present, it had been two and a half years since the pasture was last burned. In another pasture, only one grasshopper sparrow was found in 1982, but eight were found in 1984. This pasture is burned every 2 or 3 years, and was last burned in the winter of 1982-83. In contrast, pastures in the Avon Park Bombing Range contained eight grasshopper sparrows in 1982, but only one could be found in 1984. Some of the pasture in this area had not been burned in the intervening years, and the vegetation was generally very dense, with little bare ground. From the above, it seems evident that periodic burning (and/or mechanical clearing) of vegetative cover greatly improves the quality of pastures for grasshopper sparrows, and that the birds move from area to area as habitat improves or deteriorates.

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. The Service finds that designation of critical habitat is not prudent for the Florida grasshopper sparrow for the following two reasons.

First, as discussed above, the Florida grasshopper sparrow is a species which moves around frequently in order to take advantage of the changing mosaic of available habitat. The habitat needs of the species are specific, and its presence in any one area over a long term cannot be predicted or assured. As one area becomes too thickly overgrown to support breeding populations, the birds move to more sparsely vegetated areas that have been recently burned or mechanically cleared. Thus, the sparrows are not stable residents of any specific area for long periods of time.

Second, most of the habitat occupied by the Florida grasshopper sparrow is on privately owned land and would not be affected by a determination of critical habitat. There would be no benefit to the species from determining any of this privately owned land as critical habitat. The only Federal agency that might be involved is the U.S. Air Force's Avon Park Bombing Range. The Air Force is already fully aware of its obligation under the Act to protect listed species.

Therefore, a determination of critical habitat would provide no benefits to the species that would not already be available through the listing itself without critical habitat. For the above reasons, the Service determines that a designation of critical habitat for the

grasshopper sparrow is not prudent at the present time.

#### 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 and harm 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 (see revision at 51 FR 19926), June 3, 1986). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The only Federal agency that might be affected by the Florida grasshopper sparrow listing is the U.S. Air Force (Avon Park Bombing Range). Grasshopper sparrows that are resident in target areas of the Bombing Range may be directly affected by exploding ordnance. Fires from exploding ordnance also could spread to nearby areas inhabited by grasshopper sparrows and may temporarily damage the sparrow populations. A 1000-foot extension of an existing runway may intrude into good sparrow habitat, but this will be determined via the consultation process. With the listing of the Florida grasshopper sparrow as endangered, the Air Force will be required to consult with the Service and to insure that actions it authorizes, funds, or carries out are not likely to jeopardize the continued existence of the species.



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 (including harass, harm, etc.—see definitions at 50 CFR 17.3), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any 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. The Florida grasshopper sparrow is not used for economic purposes, is not a commercial species, and is not legally hunted, sold, or traded. Only a few requests for taking permits (mostly research on marked individuals) are anticipated. This bird is presently

protected under 50 CFR Parts 10 and 20 as a migratory bird.

#### 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).

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#### Author

The primary author of this final rule is John L. Paradiso, Endangered Species Field Office, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580 or FTS 946-2580).

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

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

#### Regulation 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 continues to read 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 § 17.11 by adding the following, in alphabetical order under Birds, to the List of Endangered and Threatened Wildlife:

#### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Species				Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name								
BIRDS									
Sparrow, Florida grasshopper.....	<i>Ammodramus</i>	<i>savannarum</i>	<i>flori-</i>	U.S.A. (FL).....	Entire.....	E	239	NA	NA
	<i>denus</i> .								

Dated: July 11, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-17221 Filed 7-30-86; 8:45 am]

BILLING CODE 4310-55-M

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Lindera melissifolia*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Lindera melissifolia* (pondberry), a

small shrub limited to 19 locations in the southeastern United States, to be an endangered species under authority of the Endangered Species Act of 1973, as amended (Act). *Lindera melissifolia* is endangered by land clearing operations, timber harvesting, drainage activities, and encroachment by competitor species. This action will implement the protection provided by the Act, for *Lindera melissifolia*.

EFFECTIVE DATE: September 2, 1986.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Robert R. Currie at the above address (704/259-0321 or FTS 672-0321).

#### SUPPLEMENTARY INFORMATION:

#### Background

*Lindera melissifolia* (pondberry) was described as a new species by Thomas Walter in 1788. The material upon which he based this description was collected from what is present-day Berkeley County, South Carolina (Maxon 1936). This deciduous shrub grows to approximately 2 meters (6 feet) tall and spreads vegetatively by stolons. Pale yellow flowers appear in early spring before the leaves. The fruit, a bright red drupe (a fleshy, single-seeded fruit), matures in late autumn (Tucker 1984). *Lindera melissifolia* is distinguished



from the two other North American members of the genus (*Lindera benzoin* (L.) Blume and *Lindera subcoriacea* Wofford) by its drooping, membranaceous, and ovately to elliptically shaped leaves that have a strong, sassafras-like odor when crushed (Wofford 1983). Since the description of *Lindera melissifolia* in 1788, the species has been reported from nine southeastern States. It currently is known to occur in six States and is believed to have been extirpated from three. The bottomland hardwood stands, the poorly drained depressions, and the margins of limestone sinks in which it grows have been tremendously reduced in number and/or quality by land clearing and drainage activities in recent and historic times (Klomp 1980, Morgan 1983, Tucker 1984). The loss or alteration of its habitat has been and continues to be the most significant threat to the continued existence of *Lindera melissifolia*.

*Lindera melissifolia* is known from only 19 populations in Arkansas, Georgia, Mississippi, Missouri, North Carolina, and South Carolina. The species is believed to have been extirpated from Alabama, Florida, and Louisiana. A summary of the information currently available on the status of this species in each of these States follows:

#### Alabama

*Lindera melissifolia* was collected in 1839 and 1840 from Wilcox County. It has not been observed or collected since then and is considered to be extirpated from the State (Tucker 1984, Miller 1984).

#### Arkansas

The Arkansas Natural Heritage Program conducted an intensive aerial and ground survey for potential *Lindera melissifolia* habitat during the summer and fall of 1985. This survey encompassed a 13-county portion of northern Arkansas. All potential sites were closely examined on the ground for the presence of pondberry. Grimmett (1985) states that it is highly unlikely that any additional pondberry sites will be found in Arkansas. Nine populations are known from the State; most of these populations have been adversely affected by timbering, land clearing, and drainage activities. One population is located along the northern border of Clay County adjacent to Missouri. This population was discovered in 1973 and historically was probably part of a larger population that extended across the Missouri-Arkansas border. Habitat alteration and destruction has reduced this population into two subunits, one on

each side of the border (S. Orzell, Arkansas Natural Heritage Commission, personal communication 1985). A second Clay County population consists of several colonies that were discovered in 1977; all have subsequently suffered severe adverse effects from timber harvesting. A third Clay County population was discovered in 1977 and occurs in an area that is heavily grazed by cattle. *Lindera melissifolia* persists at this site but probably will eventually be replaced by more aggressive weedy species. The site of a fourth Clay County population, also discovered in 1977, has since been cleared of timber and now contains few plants. In 1985, one population each was found in Woodruff and Lawrence Counties and three populations were found in Jackson County (S. Orzell, personal communication 1986). The Woodruff County population is small (less than 50 stems) and is located within a wooded depression surrounded by agricultural lands. The hydrology of the Lawrence County site has been adversely affected by flooding from adjacent rice fields and agricultural drainage ditching. The first Jackson County site consists of several scattered colonies of plants which have been adversely impacted by past cattle grazing, timbering, and trash dumping. The second site in Jackson County contains a small population occupying a 21 square foot area within a bottomland hardwood stand. The third Jackson County population is growing in a depression within a relatively undisturbed bottomland hardwood stand which is surrounded by agricultural lands. These recently discovered sites and all of the Clay County sites are on privately owned, unprotected land and are endangered by further habitat alteration (Peacock 1985).

#### Florida

Steyermark (1949) reports early collections of *Lindera melissifolia* from Florida by Hale and Mohr. The species has not been observed or collected in the State since then and is currently considered to be extirpated from Florida (Tucker 1984). Cooper (1984) believes that these reports may be based upon erroneous locality data on the specimens. She further states that the amount of potential habitat for *Lindera melissifolia* in Florida is very limited.

#### Georgia

R.B. McCartney (Woodlander's Inc., pers. comm. 1986) reports that two populations of *Lindera melissifolia* are known from Wheeler County, Georgia. Both populations are privately-owned lands. One of the two Georgia populations has been severely impacted

by domestic hogs. Part of this population has been salvaged and relocated to adjacent State owned lands; however the continued existence of both groups is tenuous at best. The other known Georgia population is relatively undisturbed at present; however, it receives no protection and could be lost to future agricultural, silvicultural, or residential development. An additional 1903 record from Montgomery County apparently involved one of the Wheeler County populations; prior to Wheeler County's creation in 1913, these locations were a part of Montgomery County.

#### Louisiana

Steyermark (1949) reports an early Hale collection from Louisiana. No specific locality information was recorded with the specimen. The species has not been observed or collected in the State since then and is assumed to be extirpated (Tucker 1984, Mercer 1984).

#### Mississippi

*Lindera melissifolia* occurs in two populations in this State. One population is in Sharkey County on lands administered by the U.S. Forest Service. A portion of this population is within an officially designated Research Natural Area (Carter 1985). The second population occurs on privately owned lands in nearby Sunflower County (C. Norquist, U.S. Fish and Wildlife Service, personal communication 1986). Field work, conducted by the Mississippi Natural Heritage Program, has failed to reveal the presence of other new populations of pondberry (Gordon 1984).

#### Missouri

One population of *Lindera melissifolia* is found in Ripley County. As stated previously, this population was probably part of a larger Arkansas-Missouri population at one time. Most of this population is on lands owned by the Missouri Department of Conservation and The Nature Conservancy. A few small groups of plants are located on adjacent privately owned land. In October 1985, a portion of the *Lindera melissifolia* population owned by The Nature Conservancy was adversely affected by unauthorized timber harvesting at the site (Chaplin 1985).

#### North Carolina

One extant population of *Lindera melissifolia* occurs in Bladen County, North Carolina. The area in which the plant occurs has been severely impacted by logging activities, drainage ditching, and conversion of adjacent lands to



agriculture and pine monoculture (J. Moore, North Carolina Natural Heritage Program, personal communication 1985). An adjacent site, discovered by Tucker in 1979 (Tucker 1984) has apparently been destroyed by logging and land clearing operations. One other record from Robeson County has since been determined to refer to the related species *Lindera subcoriacea*.

#### South Carolina

Four populations of *Lindera melissifolia* occur on U.S. Forest Service land in Berkeley County (Porcher 1980). Radford *et al.* (1968) report that the species also occurs in Colleton County. However, D. Rayner (South Carolina Department of Wildlife and Marine Resources, personal communication 1985) reports that searches of all major herbaria have failed to reveal the existence of a specimen to document the occurrence of the species in Colleton County. During 1984 Rayner conducted field searches of most of the available habitat in Colleton County and did not locate any populations.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, *Federal Register* (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now Section 4(b)(3)) of the Act, and of its intention thereby to review the status of the plant taxa named within. *Lindera melissifolia* was included in the July 1, 1975, notice of review. On December 15, 1980, the Service published a revised notice of review for native plants in the *Federal Register* (45 FR 82480); *Lindera melissifolia* was included in that notice as a category-2 species. Category-2 species are those for which listing as endangered or threatened may be warranted, but for which the substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Lindera melissifolia* because of

the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, and again on October 12, 1984, the Service found that the petitioned listing of *Lindera melissifolia* was warranted, but precluded in accordance with 4(b)(3)(B)(iii). Subsequent to this finding, the Service received a report on the status of *Lindera melissifolia* (Tucker 1984). This status report and other available information indicated that the addition of *Lindera melissifolia* to the Federal List of Endangered and Threatened Plants was warranted. On August 13, 1985, the Service published, in the *Federal Register* (50 FR 32581), a proposal to list *Lindera melissifolia* as an endangered species. That proposal constituted the next one-year finding as required by the 1982 amendments to the Endangered Species Act. The proposal provided information on the species' biology, status, and threats, and the potential implications of listing. The proposal also solicited comments on the status, distribution, and threats to the species.

#### Summary of Comments and Recommendations.

In the August 13, 1985, proposed rule (50 FR 32581) 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, country governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following newspapers: *The Press and Standard*, Walterboro, South Carolina; *The Southeastern Times*, Elizabeth City, North Carolina; *The Wheeler Country Eagle*, Alamo, Georgia; *The Piggott Times*, Piggott, Arkansas; *The Clay County Democrat*, Rector, Arkansas; and *The Prospect News*, Doniphan, Missouri; *Sunflower Country News*, Drew, Mississippi; and *Deer Creek Pilot*, Rolling Fork, Mississippi.

Twenty-six comments were received and are discussed below. Four non-substantive comments were received, one from a State agency, one from a Federal agency, and two from local representatives of a Federal agency. Thirteen comments were received expressing support for the proposal, three from Federal agencies, six from State agencies, and four from private organizations and individuals. Five comments from State agencies and two from professional botanists were received expressing support for the proposal and providing additional

information on the distribution of and threats to *Lindera melissifolia*.

The South Carolina Nature Conservancy supported the proposal and recommended that a portion of the habitat supporting *Lindera melissifolia* in South Carolina be designated as critical habitat.

Mr. Robert McCartney of Woodlanders (a native plant nursery) expressed support for the proposal, provided information on additional threats to the species, discussed the role that cultivation of endangered plants can play in the conservation of endangered plants, and provided general comments on the frustrations he has experienced in dealing with the permits required for interstate commerce in listed plants.

The additional information provided on the distribution of, ownership of, and threats to *Lindera melissifolia* has been incorporated into the appropriate sections of this rule. For the reasons outlined under the Critical Habitat section of this rule, the Service does not believe that designation of critical habitat for *Lindera melissifolia* is appropriate in South Carolina or elsewhere within its range. Provisions for permits are discussed in the "Available Conservation Measures" section of the rule.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined *Lindera melissifolia* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act 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 *Lindera melissifolia* (Walt.) Blume (pondberry) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Lindera melissifolia* has been and continues to be jeopardized by destruction or adverse modification of its habitat. The most significant threat is drainage ditching and subsequent conversion of its habitat to other uses. Even ditching without later conversion of land use can alter the water regime in a manner that reduces the plant's vigor or eliminates it from a site. In Clay County, Arkansas, between 1957 and 1977, the bottomland



hardwood stands were reduced by 24 percent. Adjacent counties that have similar habitat suffered bottomland hardwood losses between 11 and 45 percent during this same period (U.S. Fish and Wildlife Service 1979). In Missouri, Korte and Fredrickson (1977) report a 95 percent loss of lowland forest since settlement times. The single Missouri population has recently been adversely impacted by unauthorized timber harvesting on Nature Conservancy lands (Chaplin 1985). North Carolina's coastal wetlands are being drained and cleared for agricultural use, home building, and pine plantations. The Bladen County site, which is the only remaining North Carolina location for *Lindera melissifolia*, has been adversely impacted by an intensive fire and by clearing and drainage of adjacent lands (Moore, personal communication 1985). The South Carolina sites are on National Forest lands. Activities such as timber harvesting, road building, and drainage ditching, if done in a manner not consistent with the protection of the pondberry populations, could adversely affect the species. One of the Mississippi populations of *Lindera melissifolia* also occurs on National Forest lands. A portion of the site where this population grows has been designated a Research Natural Area and is thereby afforded significant protection by the Forest Service. The other population in Mississippi occurs on private land and is unprotected. However, activities on lands immediately adjacent to the Research Natural Area could, if not carried out in a manner designed to protect the pondberry, have an adverse impact on the species both within and outside of the Research Natural Area (Orzell, personal communication 1985, Carter 1985, Strong 1985). One Georgia site and one Arkansas site are being adversely impacted due to trampling by domestic animals (hogs and cattle).

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** *Lindera melissifolia* is not currently a significant component of the commercial trade in native plants; however, the species has potential for horticultural use, and publicity surrounding the listing of the species could generate an increased demand.

**C. Disease or predation.** Not applicable to this species at this time. McCartney (1985) states that all populations of *Lindera melissifolia* appear to be affected by stem die-back which destroys older stems. He further states this may be directly or indirectly related to a fungal infection.

**D. The inadequacy of existing regulatory mechanisms.** *Lindera melissifolia* is afforded legal protection in only two of the States in which it is known to occur. North Carolina General Statute 19-B, 202.12-202.19, provides for protection from intrastate trade without a permit and for monitoring and management of State listed species. Missouri's legislation and regulations dealing with rare and endangered species provide for the protection of *Lindera melissifolia* from commercial exploitation without a permit. In Missouri, listed plants, such as pondberry, can be protected through acquisition of significant areas supporting the species. Both North Carolina and Missouri list *Lindera melissifolia* as an endangered species. Although unofficially recognized as an endangered or threatened component of the flora of the other four States in which it occurs, *Lindera melissifolia* has no official protection status in these States. Section 404 of the Clean Water Act (CWA) could potentially provide some protection for the pondberry's habitat; however, most, if not all, of the sites where it occurs do not meet the wetlands criteria of the CWA. The Endangered Species Act will provide additional protection for *Lindera melissifolia*.

**E. Other natural or manmade factors affecting its continued existence.** Observations of the species by Tucker (1984) and the Missouri Department of Conservation (Morgan 1983) have revealed that despite the regular production of mature fruits, no seedlings of *Lindera melissifolia* have been observed at any of the known sites. The cause of this apparent lack of sexual reproduction is unknown, and in the long term could have significant adverse effects upon the species. Chaplin (1985) states that *Lindera melissifolia* in Missouri seems to suffer severe stress during some winters. He further notes that this may be caused by low moisture availability and/or low temperatures. In any case the plants are killed back to the root crown on occasion.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Lindera melissifolia* as endangered. With a small number of populations of this species known to exist, it definitely warrants protection under the Act; endangered status seems appropriate because of the severe threats facing most of its remaining habitat. Critical

habitat is not being designated for the reasons 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. The Service finds that designation of critical habitat is not prudent for *Lindera melissifolia* at this time. The species has potential for horticultural use. Increased publicity and the provision of specific location information associated with critical habitat designation could result in taking pressures on pondberry. Although taking and reduction to possession of endangered plants from lands under Federal jurisdiction are prohibited by the Endangered Species Act, taking provisions are difficult to enforce. Publication of critical habitat descriptions would make *Lindera melissifolia* more vulnerable and would increase enforcement problems for the U.S. Forest Service. Also, the populations on private lands would be vulnerable to taking. Increased visits to population locations stimulated by critical habitat designation could therefore adversely affect the species. The Federal agency and landowners involved in managing the habitats of pondberry will be informed of the locations of this species and of the importance of protecting it. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore it is not prudent to determine critical habitat for *Lindera melissifolia* at this time.

#### 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 [see revision at 51 FR 19926, June 3, 1986]. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service has jurisdiction over a portion of this species' habitat, and the Soil Conservation Service is responsible for developing watershed protection plans that could impact its habitat. Federal activities that could impact *Lindera melissifolia* and its habitat in the future include, but are not limited to, the following: timber harvesting, recreational development, drainage alterations, road construction, permits for mineral exploration, and implementation of forest management plans. It has been the experience of the Service that the large majority of Section 7 consultations are resolved so that the species is protected and the project can continue.

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 plants. 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 *Lindera melissifolia*, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or to remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can 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. It is anticipated that few trade permits would ever be sought or issued for *Lindera melissifolia* since it is not common in cultivation or in the wild.

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).

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- U.S. Fish and Wildlife Service. 1979. Documentation, chronology, and future projections of bottomland hardwood habitat loss in the lower Mississippi Alluvial Plain. Vol. II Appendices. Division of Ecological Services. U.S. Department of the Interior.
- Wofford, E.B. 1983. A new *Lindera* (Lauraceae) from North America. Jour. Arnold Arb. 64:325-331.

#### Author

The primary author of this final rule is Mr. Robert R. Currie, Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

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

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

#### Regulation 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 continues to read 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 Lauraceae, to the list of Endangered and Threatened Plants:

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*



Scientific name	Species	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Lauraceae—Laurel family: <i>Lindera melissifolia</i> .....	Pondberry.....		U.S.A. (AL, AR, FL, GA, LA, MO, MS, NC, SC)	E	240	NA	NA

Dated: July 11, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and  
Wildlife and Parks,

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