

**How to Obtain More Information**

If you have questions after reviewing this Handbook, you may obtain information from one of the following local INS offices. Direct your letter to the attention of the *Employer Relations Officer*.

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1100 Commerce Street  
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Houston, TX 77004

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El Centro, CA 92243

P.O. Box 9578  
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Grand Forks, ND 58206-1657

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Spokane, WA 99208

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Swanton, VT 05488

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231 Grand Island Boulevard  
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Yuma, AZ 85364

For Employer Information  
Call this toll-free number:

**1-800-777-7700**



# 14 CFR Part 121 Federal Register

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Friday  
June 5, 1987

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## Part IV

# Department of Transportation

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Federal Aviation Administration

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14 CFR Part 121  
Carry-On Baggage Program; Final Rule

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 121

[Docket No. 24996; Ref. Docket No. 24220; Amdt. 121-194]

## Carry-On Baggage Program

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule requires Part 121 air carriers to develop and use approved carry-on baggage programs. The rule also requires air carriers to verify that each article of baggage is properly stowed before the last cabin door is closed prior to pushback or taxi. This rule will enhance safety by controlling the amounts and size of carry-on baggage and ensuring that all such baggage is safely stowed.

**DATES:** Effective date: July 6, 1987. Certificate holders may comply any time after the effective date but before the final compliance date. Passengers must comply with the procedures that are part of the certificate holder's program as soon as it is approved and in place.

Final compliance date: January 1, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Mr. David L. Catey, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-8096.

**SUPPLEMENTARY INFORMATION:****Background**

The Federal Aviation Act of 1958 requires the Federal Aviation Administration (FAA) to regulate air carriers, as needed, to ensure the safety of air transportation. As air travel became more popular, carry-on baggage began to pose a safety problem. Many people, used to other modes of transportation where they had to carry all their luggage with them, brought their baggage into the passenger compartment of airplanes where it could not be safely stowed. Excessive carry-on baggage can endanger passengers and crewmembers in a number of ways: carry-on bags that block aisles or the spaces between seats can slow evacuation of the airplane in an emergency; improperly stowed carry-on bags can block access to emergency equipment and to under-the-seat lifevests; carry-on bags that fall from overhead racks or bins can injure passengers and flight crewmembers and hinder evacuation.

To control the problem of too much carry-on baggage, the FAA adopted § 121.589 of the Federal Aviation Regulations (FAR) in 1967 [32 FR 13268; September 20, 1967]. The rule stated that passengers could take to their seats only baggage that could be stowed under a seat. The strict under-the-seat rule was needed at that time because most airplanes in use had only open, overhead racks with no means to restrain items placed on them.

Since 1967, cabin interiors have changed considerably; many now have enclosed overhead bins and substantial closets for hanging bags. As interior configurations changed, the FAA revised § 121.589 to allow passengers to use the storage space the air carriers were adding. Each time it revised the rule, however, the FAA made it clear that its fundamental requirement remained the same: All carry-on baggage must be safely stowed.

The current rule requires air carriers to limit baggage taken aboard to that which can be safely stowed. However, the FAA has found strong evidence that this rule is not specific enough to ensure compliance. Too much carry-on baggage is being taken aboard some flights and the excess is being stowed improperly, creating unsafe conditions. During its National Air Transportation Inspection (NATI) Program in the spring of 1984, the FAA found numerous cases of passengers boarding with bags too large to be stowed and of flights where the quantity of bags exceeded the available storage space. Information collected by the Association of Flight Attendants (AFA) through surveys of its members supports the NATI Program findings that excess carry-on baggage is a serious problem on many flights. Passengers commenting on this rulemaking also testify to the widespread nature of this problem. More people are carrying on more bags and in some cases much larger bags than in the past. Some passengers have evidently come to expect that they will be able to carry on almost anything.

A number of factors have contributed to this situation. Passengers cite slow and unreliable baggage handling by the air carriers as the main reason they carry on baggage. In public comments in this rulemaking, passengers frequently state that they would check their bags and, in fact, would prefer checking bags to carrying them through airports, if they could be sure their bags would not be lost and they could retrieve the bags quickly at the end of the trip.

In response to pressure from passengers who want to be able to carry bags on board, air carriers have allowed more carry-on baggage and often

reconfigured airplanes cabins to provide more storage space. Carry-on baggage also saves the air carriers money; they need fewer baggage handlers; they have fewer claims for lost luggage; and, they can turn their airplanes around faster if they do not have to unload and load large quantities of baggage. Some carriers have made carry-on baggage a selling point, thereby pressuring their competition to do the same.

On August 31, 1984, AFA petitioned the FAA for a change in § 121.589. AFA asked the FAA to set limits on the size and number of carry-on bags. After publishing a summary of the petition (49 FR 37109, September 21, 1984), the FAA received over 300 comments, most in favor of the petition. On July 11, 1985, the FAA held a public seminar on the carry-on baggage issue at which it circulated a "working paper" outlining a possible carry-on baggage rule for discussion. After the seminar, a number of airlines sent their frequent flyers a letter from the Air Transport Association (ATA) telling them that the FAA was considering regulatory action on carry-on baggage. The letter did not contain specifics of the AFA proposal or the FAA working paper and left many of the frequent flyers with the impression that the FAA was planning to ban carry-on baggage or limit it to a single bag. Several thousand people wrote to the FAA in response to that letter. Although a number of these people opposed a rule change, a large percentage of those opposed said all they wanted to be able to carry on were one or two pieces (e.g., a briefcase and a hanging bag). This would have been permitted under the AFA proposal. A large number of commenters disagreed with the position being taken by the "frequent flyer" letter and, instead, wrote in support of more strict control of carry-on baggage. Although these letters were not written in direct response to the AFA petition, the FAA reviewed them and considered the writers' concerns when developing its Notice of Proposed Rulemaking (NPRM), Notice No. 86-6 (51 FR 19134; May 27, 1986). Because of the public interest in this issue, the FAA held a public meeting on July 16, 1986, to solicit further information from the public and to ensure the broadest possible public participation and knowledge.

In the NPRM, the FAA proposed that each air carrier be required to develop procedures for handling and controlling carry-on baggage and incorporate them in an overall carry-on baggage program that the FAA would approve individually. In addition, the FAA proposed that the last passenger cabin door could not be closed until an

employee of the air carrier, other than a required crewmember, verified that all carry-on baggage was properly stowed.

The air carriers' programs would be required to include at least one baggage control point located outside the airplane (but not located at the passenger security screening point). The NPRM stated that the following are some of the areas of concern air carriers should consider in developing their carry-on baggage programs.

- (1) Types of airplanes operated by the carrier.
- (2) Volume and weight capability of onboard storage.
- (3) Consistency with the existing FAR.
- (4) Procedures for handling of excess carry-on baggage.
- (5) Methods of ensuring proper stowage of all carry-on baggage.
- (6) Anticipated load factor.
- (7) Methods of stowing carry-on baggage in the passenger compartment.
- (8) Airplane weight and balance assessment of carry-on baggage.
- (9) Areas of operations including terminal facilities (including charter operations).
- (10) Facilities for handling excess carry-on baggage.
- (11) Training of crewmembers and station personnel.

The FAA anticipated that the programs would vary considerably depending on these factors. Some programs might include limits on size, weight, or number of bags; others might be geared to load factors. Devising their own programs would give the air carriers the flexibility to develop innovative approaches. The requirement that such a program exist also provides a powerful incentive that airlines comply with its terms.

#### Discussion of Comments

The FAA received over 200 comments on the NPRM from air carriers, flight attendant and pilot unions, foreign governments, consumer groups, special interest groups, and the traveling public. About 75 percent of these comments favor controlling carry-on baggage; about 25 percent oppose the proposed rule. Their specific objections are discussed below.

Of the comments from the general traveling public, almost 90 percent approve of the proposal. Besides mentioning the safety hazards of too much carry-on baggage, those in favor of the rule cite the inconvenience of waiting while passengers load and unload their luggage. Those opposed generally cite the problems of retrieving and of losing checked luggage.

The National Transportation Safety Board says that it "supports the intent of

this NPRM and believes this rulemaking effort can lead to improvement in passenger protection."

A number of commenters say that the FAA should establish a single standard that would apply to all air carriers or all airplanes of the same type because this would make compliance easier, both for the airlines and for passengers. The Regional Airline Association (RAA) and many business flyers state that allowing each carrier to have different standards will make it difficult for passengers who have to change airlines during their trips. The International Foundation of Airline Passengers Associations states that "the airline passenger whose journey includes a change of planes from domestic carrier to international operator expects consistency of approach as far as safety aspects are concerned."

While the FAA recognizes that a single standard has a certain appeal, a uniform standard for all air carriers and airplanes would necessarily have to be designed for the lowest common denominator (i.e., the smallest available stowage space, fleet-wide) and would therefore drastically and needlessly limit carry-on baggage. Many airplanes covered by this rule do not have enclosed overhead bins or closet space for hanging bags. Even the most commonly cited standard for under-the-seat bags—16 inches by 20 inches by 9 inches—is too large for some airplanes. In addition to these variations among airplane types, many air carriers have reconfigured the interiors of their airplanes, some to add storage space, others to remove it and add seats. Given this variety of available storage space, the FAA has decided that a flexible program, designed to accommodate the variations, is preferable. The FAA would be receptive to carriers joining together, consistent with the antitrust laws, to develop standardized programs. In fact, the RAA might perform that function for its members.

Flexible programs will not necessarily make it harder for passengers to know what to expect. At present, carry-on baggage practices and procedures vary from airline to airline; passengers who shift from one type of airplane to another or from one carrier to another must deal with the differing amounts of available onboard storage space. In addition, the FAA expects that each air carrier will develop means to educate its customers and travel agents about the substance of its new programs and the sanctions in the regulations that apply to passengers. Each air carrier should also have a mechanism for informing travellers and travel agents about the

specific carry-on requirements of each flight.

The FAA specifically requested comments regarding which person should be responsible for verifying that all carry-on baggage is properly stowed. Air carriers, AFA, other unions, and foreign governments object to the provision in the proposed rule that would have required someone other than a required crewmember to verify that all carry-on baggage was properly stowed. The air carriers cite the cost of hiring and training additional personnel as well as the cost of delays they feel would be inevitable in such a situation. AFA states that the verification "is logically the job of the flight attendants and it is something they are uniquely qualified to do."

This requirement was originally included primarily to relieve flight attendants of a duty that the FAA perceived was taking too much time and hindering them from completing their other safety duties. However, after considering AFA's position that preboarding control will make the job much less time-consuming, the FAA has changed the proposal to require air carriers to designate at least one required crewmember to verify that all carry-on baggage is stowed before the last cabin door is closed. In addition, this change will alleviate the air carriers' concerns about increased costs. The FAA is requiring that the person or persons designated be required crewmembers because they are trained and familiar with the airplane and must be on board.

ATA objects to the requirement that all baggage be stowed before the cabin doors are closed. ATA states that flight attendants can use the time after the doors have been closed "for verifying and repositioning of improperly stowed baggage." ATA goes on to say, "It is unreasonable to presume that all passengers will stow all baggage for pretaxi verification when they know takeoff is still perhaps twenty or more minutes away."

The FAA does not agree with this position. The rule will require that at least one crewmember must verify that all baggage is properly stowed before the doors are closed. Before the doors close, if an item cannot be stowed, the item can be removed and stowed as checked baggage. If the verification is done after the doors are closed and the airplane has pushed back for taxiing, the airplane would either have to return to the terminal so items that could not be stowed could be checked, or take off, in violation of the rules, with items improperly stowed. While the

preboarding check should limit the stowage problems, it may not entirely eliminate them. If an item has to be checked, this can only be done before the doors are closed. Once the doors are closed, the pressure is on the crewmembers to get the flight underway, and there is no access to the cargo compartment.

The majority of commenters in favor of this rulemaking cite the safety hazard caused by excessive amounts of carry-on baggage. A number mention being hit and sometimes seriously hurt by heavy bags falling out of overstuffed overhead bins. Others cite the danger posed when aisles and the spaces between seats are effectively blocked by oversized bags; evacuation would be difficult in these circumstances.

Many commenters raise the question of heavy items in overhead bins. Others question the safety of the overhead bins themselves as opposed to their contents. Each bin is certificated for a maximum weight. If that weight is not exceeded and if the bin is properly packed and latched, the bins are safe and should not open. Many of the accidents involving luggage falling out of overhead bins have occurred because too much has been packed into the bins; when the bins are opened, the contents spill out immediately. If the bins were not too full, this would not occur. Carry-on baggage programs must include procedures to ensure that no bin or authorized stowage space is overloaded with either too much weight or too great a volume of baggage.

A number of commenters, including RAA, question how the FAA will ensure that the principal operations inspectors (POI's) use the same standards when approving programs for different carriers and in different parts of the country. RAA states that the FAA should at least set standards for types of airplanes that do not have significant variations.

The FAA will provide guidance to POI's, which will be available to carriers, that will spell out which elements should be included in the programs and what degree of variation is acceptable. The items listed in this preamble will be part of this guidance. FAA headquarters will monitor the approvals to ensure that they are consistent with this guidance. In addition, because the programs will be included in an air carrier's operations specifications, a means for appealing a POI's decision to headquarters is provided in § 121.79.

A number of commenters, including ATA, state that the only problem with the current rule is that the FAA is not enforcing it adequately. The FAA

conducts surveillance of the air carriers, but because the number of FAA inspectors is limited and the range of their responsibilities is broad, the FAA cannot conduct surveillance on every flight. The FAA and the public expect air carriers to comply with all the rules all the time; air carrier compliance should not be proportionate to the FAA's ability to monitor and enforce a particular rule. Normally this expectation is met. In the area of carry-on baggage, however, it is clear that customer pressure and other factors have caused some air carriers to become lax in their compliance practices. At the public hearing on this rule, representatives of air carriers acknowledged that, as a result of these practices, flight attendants were sometime forced to stow excess baggage in lavatories, galleys, and other unauthorized areas. The representatives dismissed this stowage as no problem although it is a violation of the current rules.

Poor compliance with this rule must be changed because improperly stowed carry-on bags can pose a safety hazard. This rule will require the air carriers to develop procedures for handling carry-on baggage in a way that ensures that every bag taken on board can be properly stowed. With the flexibility to devise their own programs, the air carriers will have the chance to find ways to provide passengers with the services they want while meeting the safety requirement for proper stowage of all bags. Having developed the procedures themselves, the air carriers should find compliance easier. Carriers should expect the FAA to demand strict compliance with the procedures in their carry-on baggage programs. Indeed, continued compliance with the provisions of a carrier's carry-on baggage program is a condition for maintaining the approval of that program.

The International Association of Duty Free Shops, the City of Los Angeles, and the State of Hawaii object to the proposed rule on the grounds that it will discourage people from purchasing duty free items at airport duty free shops because they will be prevented from carrying them on board.

Nothing in this rule will prevent such purchases; this rule will only prevent passengers from taking on board more baggage than can be safely stowed, as should the present rule. Air carriers operating on routes that include duty free shops will be able to adapt their carry-on programs to accommodate their passengers if sufficient stowage space is available, or they may reconfigure the

airplanes used on those routes to provide such space.

One commenter objects to applying this rule to cargo-only operators who carry additional crewmembers, other employees, etc. This rule should not cause problems for these carriers. They still must see that baggage is safely stowed, as they must under the current rule. It is unlikely, however, that their program for the management of carry-on baggage will need to be complicated or extensive.

A number of jewelers and musicians object to the proposed rule because they believe the rule would seriously hamper their business. The jewelers state that they must carry on their sample cases; unless they do, their insurance will not cover losses. Musicians state that they must carry on instruments; if checked, the instruments could be seriously damaged.

This rule allows the air carriers to make provisions to accommodate travelers with special baggage problems, provided the baggage can be safely stowed. We would expect that carriers would establish procedures to allow passengers to notify the airlines prior to traveling to see if special baggage needs can be accommodated.

A variation on this problem is the passenger who wants to carry on large, fragile objects that cannot be stowed in accordance with the rules set out in § 121.285. The FAA realizes that airlines many times do not want to check these fragile items. However, the solution is not to carry the items on board and stow them unsafely. The passenger compartment of an airplane is not meant primarily as a cargo stowage area. The best solution, of course, is for passengers to ensure that such fragile objects are securely packed to withstand normal handling. If an item cannot be safely checked or stowed, it should be shipped by some other means.

Some commenters state that the proposed rule would increase boarding time. The FAA disagrees. At present, boarding is often slowed while passengers wait for the people ahead of them to stow baggage and while the last people to board struggle to find space for their carry-ons. Under this rule, people should know beforehand what they will be able to take on board and will have time to check extra baggage. Boarding itself should be smoother and quicker.

AFA requests additional language in the rule stating: (1) that each approved program include specific criteria, set by the air carrier, for the size and amount of carry-on baggage allowed each passenger; and (2) that the air carrier

provide baggage screeners with a means to determine if the baggage meets the criteria.

This language is not necessary because the approved program would be meaningless unless they include criteria about what can be safely stowed and the number of bags that will be permitted and provide baggage scanners with adequate procedures for handling baggage not permitted to be carried on board.

AFA and the Air Line Pilots Association (ALPA) recommend that the FAA extend the proposed rule to include taxiing in the phrase, "no certificate holder may allow an airplane to takeoff or land . . ." unless all baggage is stowed. This problem has been dealt with in the rule by the requirement that all baggage be towed before the last cabin door is closed. However, once this verification is complete, the passenger should be free to remove stowed items from storage spaces in order to retrieve personal belongings as long as all items are again properly stowed prior to takeoff.

ATA objects to including the carry-on baggage program in the air carriers' operations specifications. ATA states that operations specifications are a pilot and dispatcher working document while the carry-on baggage program is basically a passenger service program.

The FAA disagrees. Operations specifications cover many aspects of an air carrier's operations. One purpose of operations specifications is to document, in a form that is enforceable and is easily accessible to safety inspectors, agreements between the carrier and the FAA on what operations are approved. Approved carry-on baggage programs are an appropriate addition. If the text of a program is very long, it may be included in the air carriers' manual and incorporated by reference in the operations specifications.

ALPA questions whether the weight allotments that the FAA recommends air carriers use for their weight and balance calculations are high enough.

Such questions are outside the scope of this proceeding and cannot be specifically dealt with in this rulemaking. However, it should be noted that weight and balance assessments are one factor in the carry-on baggage program. If, under its program, an air carrier permits passengers on any of its flights to carry such significant amount of baggage on board that the FAA's carry-on baggage weight allowance guidelines are substantially exceeded, the air carrier is responsible for adjusting its weight allowance calculation for each flight affected to ensure that accuracy of aircraft weight

and balance and performance calculations.

The FAA's concern is safety; some of the factors that have contributed to the current problem, such as baggage handling procedures, are beyond the FAA's safety mandate. In general, the FAA believes that fewer bags are better than more bags, and smaller bags are better than larger. Nonetheless, safety is determined by the ability to stow every item properly, not by size or number alone. While passengers must comply with this rule, the ultimate responsibility for safety lies with the air carrier. In this rulemaking the FAA is adopting a flexible regulation to give air carriers a chance to develop programs that suit their needs and ensure safety. The agency believes that this rule strikes a fair balance between these safety concerns and the convenience expected by the traveling public. The FAA will monitor these programs to ensure that the carriers are using the procedures they have developed and that the procedures are effective. If it finds that the air carriers are not complying, the agency will have the option of withdrawing approval of the programs or prescribing more specific standards.

After considering the comments, the FAA is adopting the rule as proposed, except that § 121.589(b) will require that at least one required crewmember verify that baggage is properly stowed before the last cabin door is closed. The rule has a compliance date of 180 days after the effective date to give air carriers time to develop, submit, and obtain approval for their programs. All programs must be approved by the compliance date. Airlines without approved programs may not permit carry-on baggage aboard their flights. Passengers will have to comply with the programs as soon as they are approved and put into effect. Since the FAA anticipates that approving the programs may require considerable FAA review, the air carriers should submit their programs as soon as possible but no later than December 2, 1987 so that the review process may be completed before the compliance date.

#### Economic Summary

The FAA will require Part 121 certificate holders that carry passengers to develop and use an approved carry-on baggage program after 180 days after the effective date.

The amendments to § 121.589 specify that no certificate holder may allow the boarding of carry-on baggage on aircraft unless each passenger's baggage has been scanned to control the size and amount carried on board in accordance with an approved carry-on baggage

program in its operations specifications. The rule also requires air carriers to verify that each article of baggage is properly stowed before the last cabin door is closed prior to pushback or taxi.

These amendments are in part a response to the August 31, 1984, petition submitted by the FAR to amend § 121.589 of the FAR to limit the amount and size of carry-on baggage on aircraft. The AFA petition and a recent FAA study of carry-on baggage aboard Part 121 air carriers indicate that the size of articles and overall volume of carry-on baggage frequently exceed the stowage capacity in the passenger compartments. The excess baggage cannot be safely stowed, giving rise to a potential safety hazard. The rule also takes into account the large number of public complaints addressing the unsafe stowage of large and heavy items and the clutter created by excess carry-on baggage.

The FAA anticipates that the affected air carriers will elect to develop FAA-approved carry-on baggage programs prior to the compliance date specified in this amendment. This evaluation estimates that the total cost of compliance to the 146 Part 121 certificate holders affected by the carry-on baggage program requirements of this rule is \$540,000 in 1986 dollars.

The primary benefit of this rule will be the prevention of fatalities or injuries resulting from improperly stowed items obstructing rapid passenger egress in otherwise survivable impacts and from improperly stowed items dislodging and striking passengers and crew when abrupt aircraft deceleration or attitudinal changes occur.

Quantification of these benefits is not possible because the safety records of the FAA and the NTSB do not detail the extent to which improperly stowed items have contributed to fatalities and injuries in air carrier accidents.

Economists generally agree that the economic value of a human life is no less than \$1 million. Hence, if even one fatality is prevented as a result of this amendment during the 10-year period following implementation of the rule, the \$540,000 cost of compliance will be substantially exceeded by the benefits.

#### Regulatory Flexibility Determination

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) of 1980, this amendment will not have a significant economic impact on a substantial number of small entities.

FAA's thresholds for significant economic impact vary according to the equipment type operated and the kind of service provided. The annualized cost

threshold for scheduled carriers is \$92,700 or \$51,800, depending on whether the fleet operated includes aircraft having more than or a fewer than 60 seats, respectively. The threshold for nonscheduled air carriers is only \$3,600.

The cost of compliance with these amendments for a small nonscheduled air carrier is estimated to be \$1,104. This is substantially lower than the \$3,600 threshold established for small nonscheduled air carriers and far below the threshold of \$51,800 for scheduled carriers operating airplanes with 60 or fewer seats. Therefore, small carriers will not incur a significant economic impact as a result of the amendment to § 121.589.

#### Trade Impact Assessment

This rule affects only U.S. air carriers operating under the rules of Part 121 of the FAR. The regulation will have little or no impact on trade opportunities for U.S. firms doing business overseas and does not apply to foreign firms doing business in the United States.

#### Conclusion

Compliance with this rule will involve only a one-time cost on the part of air carriers to develop an FAA-approved carry-on baggage program. Because this amendment will not result in an annual effect on the economy of \$100 million or more or a major increase in costs for consumers; industry; or Federal, State, or local government agencies, it has been determined that this is not a major amendment under Executive Order 12291. In addition, the amendment will have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Since the amendment concerns a matter on which there is a substantial public interest, the FAA has determined that this action is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, as noted above, the FAA certifies that under the criteria of the Regulatory Flexibility Act, this amendment will not have a significant economic impact on a substantial number of small entities.

A regulatory evaluation of the amendment including a Regulatory Flexibility determination and Trade Impact Assessment, has been placed in the regulatory docket. A copy may be obtained by contact the person identified under "FOR FURTHER INFORMATION CONTACT."

#### List of Subjects in 14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airports, Cargo, Handicapped, Transportation, Common carriers.

#### The Rule

Accordingly, the Federal Aviation Administration amends Part 121 of the Federal Aviation Regulations [14 CFR Part 121] as follows:

#### PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 App. U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

2. Section 121.589 is revised to read as follows:

#### § 121.589 Carry-on baggage.

(a) No certificate holder may allow the boarding of carry-on baggage on an airplane unless each passenger's baggage has been scanned to control the size and amount carried on board in accordance with an approved carry-on baggage program in its operations specifications. In addition, no passenger may board an airplane if his/her carry-on baggage exceeds the baggage allowance prescribed in the carry-on baggage program in the certificate holder's operations specifications.

(b) No certificate holder may allow all passenger entry doors of an airplane to be closed in preparation for taxi or pushback unless at least one required crewmember has verified that each article of baggage is stowed in accordance with this section and § 121.285(c) of this part.

(c) No certificate holder may allow an airplane to take off or land unless each article of baggage is stowed:

(1) In a suitable closet or baggage or cargo stowage compartment placarded for its maximum weight and providing proper restraint for all baggage or cargo stowed within, and in a manner that does not hinder the possible use of any emergency equipment; or

(2) As provided in § 121.285(c) of this part; or

(3) Under a passenger seat.

(d) Baggage, other than articles of loose clothing, may not be placed in an overhead rack unless that rack is equipped with approved restraining devices or doors.

(e) Each passenger must comply with instructions given by crewmembers regarding compliance with paragraphs (a), (b), (c), (d), and (g) of this section.

(f) Each passenger seat under which baggage is allowed to be stowed shall be fitted with a means to prevent articles of baggage stowed under it from sliding forward. In addition, each aisle seat shall be fitted with a means to prevent articles of baggage stowed under it from sliding sideward into the aisle under crash impacts severe enough to induce the ultimate inertia forces specified in the emergency landing condition regulations under which the airplane was type certificated.

(g) In addition to the methods of stowage in paragraph (c) of this section, flexible travel canes carried by blind individuals may be stowed—

(1) Under any series of connected passenger seats in the same row, if the cane does not protrude into an aisle and if the cane is flat on the floor; or

(2) Between a nonemergency exit window seat and the fuselage, if the cane is flat on the floor; or

(3) Beneath any two nonemergency exit window seats, if the cane is flat on the floor; or

(4) In accordance with any other method approved by the Administrator.

Issued in Washington, DC on May 29, 1987.

Donald D. Engen,  
Administrator.

[FR Doc. 87-12775 Filed 6-4-87; 8:45 am]

BILLING CODE 4910-13-M

# 50 CFR Part 17

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Friday  
June 5, 1987

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## Part V

### Department of the Interior

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Fish and Wildlife Service

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50 CFR Part 17

Running Buffalo Clover and Jesup's Milk  
Vetch; Determination of Endangered  
Status; 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 *Trifolium stoloniferum* (Running Buffalo Clover)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Service determines *Trifolium stoloniferum* (running buffalo clover) to be an endangered species. This clover ranged from eastern Kansas to West Virginia until perhaps the mid-1800's and was apparently abundant in certain locations. Presently, only a single extant population of *T. stoloniferum* is known. This occurs on private land in Fayette County, West Virginia, and consists of only four individuals. This species is clearly endangered by its rarity alone; threats include trampling or other inadvertent destruction by humans or other animals, crushing by off-road vehicles, and competition with weedy species. This determination implements the protection provided by the Endangered Species Act of 1973, as amended, for *Trifolium stoloniferum*.

**DATES:** The effective date of this rule is July 6, 1987.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825B Virginia Street, Annapolis, Maryland 21401.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Jacobs at the above address (301/269-6324).

**SUPPLEMENTARY INFORMATION:****Background**

The running buffalo clover (*Trifolium stoloniferum*) is a member of the Fabaceae (pea family), native to the eastern United States. This short-lived perennial forms long runners from its base. The flowerheads are terminal and large, up to an inch in diameter. Flowers are white, tinged with purple. Flowering normally occurs from mid-April to June and fruits (seed heads) are present into July.

*Trifolium stoloniferum* was originally named by Henry Muhlenberg in 1813; however, the name was invalid, since it was published without a description. The name was validated by Amos Eaton in his "Manual of Botany for the Northern and Middle States," published in 1818.

*Trifolium stoloniferum* is morphologically similar to the native buffalo clover *T. reflexum*, but as the name implies, the former species has a stoloniferous habit, while the latter does not. *T. stoloniferum* has also been considered very similar to the stoloniferous introduced species *Trifolium repens*; however, the former has a chromosome number of  $n=16$ , while the number for *T. repens* is  $n=32$  (N. Taylor, University of Kentucky, pers. comm.). A detailed character analysis by Brooks (1983) reveals further morphological differences among these three species.

Documented specimens of *Trifolium stoloniferum* are available from the States of Illinois, Indiana, Kansas, Kentucky, Missouri, Ohio, and West Virginia, indicating the original range of this plant (Brooks 1983). A record from Arkansas is believed to be based on an introduction (R. Brooks pers. comm.). A recent review of historical accounts indicates that before the arrival of white settlers, this species was abundant in several areas of the Ohio Valley and adjacent regions, and may have been a local dominant within the "bluegrass region" of Kentucky (Campbell 1985). Running buffalo clover was apparently adapted to rich soils in "relatively stable ecotones, with continual, moderately intense disturbance," between open forest and pastures or prairies (Campbell 1985). Campbell speculates that the vegetation of these areas was likely maintained by "buffalo" (*Bison bison bison*). After the extirpation of the buffalo from the East, the abundance of *T. stoloniferum* apparently decreased. Brooks (1983) indicates that by the late 19th century, populations of running buffalo clover were, "limited and widely scattered. . . . Shortly thereafter . . . the number of collections dwindled rapidly, with a mere five sites documented after 1900." Brooks field-checked all the documented locations as well as other likely habitat for *T. stoloniferum* in Missouri, and Kansas, without finding any extant populations (R. Brooks pers. comm.). Extensive field work in Kentucky has also revealed no extant populations of *T. stoloniferum* (J. Campbell pers. comm.). The plant is also believed to be extirpated in Illinois, Indiana, Missouri, and Ohio (pers. comm. with State Heritage Programs). Based on this information and his conversations with field botanists, Brooks (1983) concluded that *T. stoloniferum* was possibly extinct.

In 1983 and 1984, two small populations of running buffalo clover were discovered in West Virginia (Bartgis 1985). One of these, a relocation

of the most recent historical record (Webster County 1940), occurred at the margin of a mowed field and in 1984 contained only four plants. During field inspections in 1985 and 1986, these plants could not be relocated. Therefore this population is likely extirpated. The remaining population, located along an off-road-vehicle trail adjacent to the New River in Fayette County, contained 18 plants in the fall of 1985. Repeated disturbances in the spring and summer of 1986 (most likely by motor vehicles) decreased the population to its present level of four plants. This population occurs within the area of an existing hydropower project licensed by the Federal Energy Regulatory Commission. At present, *T. stoloniferum* is not directly impacted by any operational aspect of the hydropower facility. The landowner has blocked the road and is committed to continued protection of the clover. Live shoots from the Fayette County population were sent to the University of Kentucky (UK) and West Virginia University (WVU) greenhouses. The plants at UK have been vegetatively propagated, and those over-wintering outside have produced viable seeds (N. Taylor pers. comm.). Some of these propagules will soon be ready for reintroduction to sites within the clover's original range. At WVU, clover tissues have been cultured to produce more plants. *T. stoloniferum* apparently responds well to this technique (B. Baker, West Virginia University, pers. comm.), which may be important to the species' recovery.

*Trifolium stoloniferum* was first recognized by the Service in the Federal Register notice of review published on November 28, 1983 (48 FR 53641). That notice, which covered plants being considered for classification as endangered or threatened, included *Trifolium stoloniferum* in category 2\*. Category 2 comprises those taxa for which proposed listing is possibly appropriate but for which conclusive data on biological vulnerability are not currently available to support a proposed rule. The asterisk (\*) indicates taxa that are possibly extinct. The Service was informed of the extant populations of this species in December 1984. On March 10, 1986, the Service proposed endangered status for this species (51 FR 8217).

**Summary of Comments and Recommendations**

In the March 10, 1986, proposed rule (51 FR 8217) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the

development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited public comment was published in the *Charleston Gazette* on April 12, 1986. Nine comments were received and are discussed below.

Letters supporting the listing were received from the West Virginia Department of Natural Resources, Ohio Department of Natural Resources, Dr. Ralph Brooks of the Kansas Biological Survey, Indiana Department of Natural Resources, Federal Energy Regulatory Commission, and The Nature Conservancy. The proposal received further letters of support from two researchers at the University of Kentucky. One of these letters, from Dr. Julian Campbell, supplied some comments and additional information on threats, which have been incorporated into this final rule.

Finally, a letter was received from the law firm representing the landowner corporation, commenting on this listing as it relates to FERC relicensing. On June 13, a meeting was held in Newton Corner, Massachusetts, to discuss concerns raised in this letter. These will not be discussed in detail here, since they relate primarily to the relicensing, rather than to this listing. All of the corporation's concerns relative to the listing were addressed at the meeting; it now fully supports the listing and has been extremely cooperative in protecting the clover population on its land.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the running buffalo clover should be classified as endangered. 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 *Trifolium stoloniferum* are as follows:

**A. The present or threatened destruction, modification, or curtailment of its habitat or range.** It is difficult to determine the original extent and abundance of running buffalo clover, since elimination of the natural ground cover within its range began during the 1790's, before *T. stoloniferum* was even

described, and long before the area was adequately botanized. By 1850, native vegetation of the Kentucky bluegrass region had been largely replaced by pasture plants, including bluegrass (*Poa pratensis*) and introduced white clover (*Trifolium repens*) (Campbell 1985). Therefore, we must rely on early, nontechnical accounts, such as those summarized by Campbell (1985) to infer the original extent of running buffalo clover. Quotations from early observers in the Kentucky bluegrass region indicate at least localized abundance: "rich soil . . . adorned with great patches of fine white clover" (Ranck 1901, *re* 1775), "covered with clover in full bloom" (Walker 1924, *re* 1775), "a turf of white clover" (Henderson 1775) "an abundance of wild rye, clover and buffalo grass covering vast tracts of country" (Filson 1784) (all quoted in Campbell 1985). Campbell argues that many of these and other early accounts referred to *Trifolium stoloniferum*, the only clover known to have been native to the region. White clover (*Trifolium repens*) was introduced and began to spread shortly after settlement, and apparently running buffalo clover began to decline at about the same time. By the late 1800's, when the majority of collections were made, the species was known only from localized, widely scattered localities. Today, *T. stoloniferum* is believed to be extirpated throughout its range, with the exception of the one population in West Virginia.

The precise reasons for this striking decline are unclear. It is likely that running buffalo clover was to some extent dependent on the buffalo for soil enrichment, periodic intense disturbance and seed dispersal (Campbell 1985, Larson 1940, Reynolds *et al.* 1982). In this regard it is interesting that the Webster County, West Virginia population was in the immediate vicinity of the last recorded site for buffalo in the State, and all other West Virginia records are in the immediate vicinity of known buffalo trails (Bartgis 1985). Other factors contributing to the species' demise could include clearing of its habitat for pasture and agriculture, competition with introduced species, and other habitat changes resulting from the industrial revolution (Brooks 1983), and possibly, diseases introduced with non-native clovers (see below).

**B. Overutilization for commercial, recreational, scientific or educational purposes.** Running buffalo clover is not known to be used for any commercial or recreational purpose. Because of its rarity, it is subject to collection by botanists and/or curiosity seekers. Given the fact that only four individuals of this species are known to exist in the

wild, any collection would be over-collection. The species could also be eliminated in the wild by a single act of vandalism.

**C. Disease or predation.** Dr. Julian Campbell (pers. comm.) has observed that *T. stoloniferum* is highly palatable to herbivores, apparently having evolved no chemical defenses, unlike white clover, which has cyanide in its leaves. Campbell has noted heavy slug damage to some of his plants and cited an incident of rabbit depredation on another plant. Some greenhouse plants at UK have recently succumbed to a viral or virus-like disease, possibly transmitted from white clover (*Trifolium repens*). Susceptibility to this or other recently introduced diseases may have contributed to the species' decline (N. Taylor pers. comm.), and must be studied with regard to the species' recovery.

**D. Inadequacy of existing regulatory mechanisms.** The extant population of *T. stoloniferum* presently receives no protection under any Federal, State or local law or regulation, other than the protection afforded by its proposed endangered status under the Endangered Species Act.

**E. Other natural or manmade factors affecting its continued existence.** As stated above, the Fayette County population of running buffalo clover is located immediately adjacent to an off-road-vehicle path that provides the only public access to a 10-mile stretch of the New River. Due to its location, the population is extremely vulnerable to being run over, trampled, covered by trash or killed by petroleum or other pollutants. Closing the road has alleviated the potential for these impacts to some extent, but the recent population declines underscore the precarious nature of the present situation.

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 the running buffalo clover as endangered. The Act defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range." This definition is most appropriate for *Trifolium stoloniferum* at this time. The reasons for not designating critical habitat are 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 any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Trifolium stoloniferum*, because its very restricted distribution makes it vulnerable to extinction from taking. Public access to published habitat descriptions and precise maps would almost certainly result in collection or vandalism, which would be fatal for this species in the wild. Therefore, it would not be prudent to determine critical habitat for *Trifolium stoloniferum*.

**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 listed as endangered or threatened and with respect to its critical habitat if any is designated. Regulations implementing this interagency cooperation provision of the Act, published on June 3, 1986 (51 FR 19926), are codified at 50 CFR Part 402. 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 consultation with the Service. The Federal Energy

Regulatory Commission (FERC) has licensing authority for the project area on which the Fayette County population of *T. stoloniferum* occurs. The existing project does not directly impact *T. stoloniferum*; however, any future project developments possible impacting this species would require section 7 consultation to ensure protection for this species and its habitat.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plant species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell it or offer it for sale in interstate or foreign commerce, or remove it from an area 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. With regard to *T. stoloniferum*, it is anticipated that few permits will ever be sought or issued since the species is not common in cultivation or in the wild, and is not presently known to occur on Federal land. Any populations re-established on Federal lands would be carefully monitored by authorized personnel. 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, DC 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**

Bartsis, R. 1985. Rediscovery of *Trifolium stoloniferum* Muhl. ex A. Eaton. *Rhodora* 87: 425-429.  
 Brooks, R.E. 1983. *Trifolium stoloniferum*, Running Buffalo Clover: Description, Distribution and Current Status. *Rhodora* 85: 343-354.  
 Campbell, J.J.N. 1985. The land of Cane and Clover: Pre-settlement Vegetation in the So-called Bluegrass Region of Kentucky. Unpubl. ms., Herbarium, University of Kentucky, Lexington, March, 1985.  
 Larson, F. 1940. The Role of the Bison in Maintaining the Shortgrass Plains. *Ecology* 21: 113-121.  
 Reynolds, H.W., R.D. Glaholt and A.W.L. Hawley. 1982. Bison. pp. 972-1007 In: J.A. Chapman and G.A. Feldhamer [eds.], *Wild Mammals of North America*. Baltimore: The Johns Hopkins University Press, 1147 pp.

**Author**

The primary author of this final rules is Judy Jacobs, Endangered Species Staff, U.S. Fish and Wildlife Service, 1825B Virginia Street, Annapolis, Maryland 21401 (301/269-6324 or FTS 922-4197).

**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 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 Fabaceae, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*  
 (h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family:						
<i>Trifolium stoloniferum</i>	Running buffalo clover	U.S.A. (IL, IN, KS, KY, MO, OH, WV)	E	270	NA	NA

Dated: May 27, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-12877 Filed 6-4-87; 8:45 am]

BILLING CODE 4310-55-M

## 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Determination of *Astragalus robbinsii* var. *jesupi* (Jesup's milk-vetch) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Service determines *Astragalus robbinsii* var. *jesupi* (Jesup's milk-vetch) to be an endangered species, and thereby provides the species needed protection under the authority contained in the Endangered Species Act of 1973, as amended. This species is known from one site in Vermont and two sites in New Hampshire. The total known range of the species is along approximately 16 miles (25 kilometers) of the Connecticut River, where the plants are associated with calcareous bedrock outcrops. Hydropower development and increased recreational activity along the river could threaten the species' continued existence. Critical habitat is not being designated.

**DATES:** The effective date of this rule is July 6, 1987.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Dyer at the above address (617/965-5100 or FTS 829-9316).

#### SUPPLEMENTARY INFORMATION:

##### Background

Jesup's milk-vetch is a plant of the pea family (Fabaceae) that is only known to occur at three sites on the banks of the Connecticut River in New Hampshire and Vermont. The total range of the species is restricted to approximately 16 miles (25 kilometers) along the river, where it occurs on calcareous schist outcrops. The perennial herbs grow from rhizomes in the silt-filled crevices of

outcrops or at the high water mark, where they are shaded by associated trees and shrubs. The one to several stems are 8-24 inches (2-6 decimeters) tall and are either smooth or sparsely covered by short appressed hairs. The leaves are pinnately compound. The 9-17 leaflets are 1/3-3/4 inches (1-2 centimeters) long, oblong to elliptic in shape, and may also have a few short hairs. The violet to bluish-purple flowers appear in late May or early June. The fruit is a flattened tapered pod; the form of the pod is important in differentiating among the three New England varieties of *Astragalus robbinsii* (Barneby 1964). Of these three known varieties, *A. robbinsii* var. *robbinsii* is now extinct, *A. robbinsii* var. *minor* is very rare in New England, and the third, *A. robbinsii* var. *jesupi*, is the subject of this rule.

*Astragalus robbinsii* (Oakes) Gray var. *jesupi* Eggleston and Sheldon has persisted at two of its three known locations since the late 1800's. The plant was first collected in 1877 at Sumner Falls in Plainfield, New Hampshire, by Professor Henry G. Jesup of Dartmouth College. This population now consists of only six plants. The Hartland, Vermont location was discovered on May 19, 1881, by Jesup and Perkins. Many early collections were made at the Hartland site, and fewer than 75 plants now occur there.

The most vigorous colony, of approximately 1,000 plants, was found in 1956 and occurs approximately sixteen miles downstream in Claremont, New Hampshire. This unique stretch of river not only provides the essential habitat requirements for the milk-vetch but is also the habitat for a variety of other rare plants and animals. Two other candidates for Federal listing, the dwarf wedge mussel (*Alasmidonta heterodon*) and the cobblestone tiger beetle (*Cicindela marginipennis*), are known to exist in the same area. Fifteen plant species considered by the New Hampshire Natural Heritage Inventory as being rare, threatened, or endangered in the State also occur along this stretch of river. Due to the diverse assemblage of plants and animals of State and Federal significance, the New Hampshire Natural Heritage Inventory, in a letter dated November 15, 1984, to the Federal Energy Regulatory Commission, has identified a portion of this habitat as "the most significant

natural area in the State of New Hampshire in need of conservation."

*Astragalus robbinsii* var. *jesupi* was first recommended for Federal listing as an endangered species by the Smithsonian Institution in its December 15, 1974, report to Congress, *Report on Endangered and Threatened Plant Species of the United States* (House Document No. 94-51). On July 1, 1975, the Service published a notice of review in the *Federal Register* (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) of the Endangered Species Act of 1973 (Act) (petition acceptance is now covered by section 4(b)(3) of the Act, as amended). Jesup's milk-vetch was one of approximately 1,700 plant species proposed for Federal listing on June 16, 1976 (41 FR 24523). On December 10, 1979 (44 FR 70796), the Service published notice of the withdrawal of that portion of the 1976 proposal that had not been made final, because of the provisions mandated in the Endangered Species Act Amendments of 1978 (Pub. L. 95-632). The withdrawal notice was required because of a deadline for making rules final and was not related to the conservation status of the proposed taxa.

The Service published a comprehensive *Federal Register* notice on December 15, 1980 (45 FR 82480), that was intended to reflect the Service's judgment of the probable status of all plant taxa that had been included in previous notices or proposals. Jesup's milk-vetch was recognized as a category 2 candidate in that notice. Category 2 candidates are taxa for which existing information indicates the possible appropriateness of proposing to list as endangered or threatened, but for which sufficient information is not presently available to biologically support a proposed rule. A subsequent notice of review, published on September 27, 1985 (50 FR 39526), recognized the species as a category 1 candidate, one for which the Service has substantial information to support the appropriateness of proposing to list it as endangered or threatened.

The Endangered Species Act Amendment of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The deadline for