best, if not the sole, source of this information. Failure to provide the requested information may impair the Commission's ability to fashion appropriate grandfathering rights in the event LMAs are deemed attributable. We consequently require for every existing television LMA the licensee of the brokering station and/or the licensee of the brokered station to submit the information described above. In the event parties to an LMA seeking grandfathered status fail to provide this information they will be required to explain their failure to do so.

6. Parties should file an original and four copies of the requested information by July 8, 1997. These submissions should reference MM Docket Nos. 91–221, 87–8, 94–150, 92–51, and 87–154, and should be addressed to: Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition, we encourage, but do not require, parties to submit the requested information on diskette. Such diskette submissions would be in addition to, and not a substitute for the formal filing requirements described above. Those parties submitting diskettes should submit them to Alan Baughcum, Federal Communications Commission, Mass Media Bureau, Policy & Rules Division, 2000 M Street, Suite 531, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using WordPerfect for Windows or Wordperfect for DOS, versions 5.1 or higher. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labeled with the party's name, the words ''TV LMA,'' and the date of submission.

7. The submissions will be available for viewing and copying in the FCC's Public Reference Room, Room 239, 1919 M Street, NW., Washington, DC 20554. Copies may also be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800).

8. For additional information, please contact Alan Baughcum (202–418–2170) or Kim Matthews (202–418–2130) of the Policy & Rules Division, Mass Media Bureau.

FCC Notice to Individuals Required by the Paperwork Reduction Act

9. Public reporting burden for this collection of information is estimated to average 1 hour per filing, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Performance Evaluation & Record Management, AMD–PERM, Paperwork Reduction Project (3060–0778), Washington, DC 20554. FCC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law No. 104–13, October 1, 1995, 44 USC 3507.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–16253 Filed 6–20–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

[Docket No. FTA–97–2624]

RIN 2132–AA58

Charter Services Demonstration Program

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed rulemaking; request for comments and recommendations.

SUMMARY: Section 3040 of the Intermodal Surface Transportation Efficiency Act (ISTEA) directed the Federal Transit Administration (FTA) to issue regulations establishing a demonstration program that would permit transit operators to provide charter services for the purpose of meeting the transit needs of the government, civic, charitable, and other community activities which otherwise would not be served in a cost effective and efficient manner. Section 3040 required FTA to consult with a board representing public transit operators and privately owned charter services. Section 3040 also required FTA to submit a report to Congress evaluating the effectiveness of the charter demonstration program and providing recommendations for improving the current charter service regulations. Today's Notice of Proposed Rulemaking (NPRM) presents results and conclusions drawn from the charter demonstration program, and seeks comments and recommendations regarding improvements to the charter service regulations.

DATES: Comments must be received by August 22, 1997.

ADDRESSES: Comments should be submitted to U.S. Department of Transportation, Central Docket Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard or Regina Martin, Federal Transit Administration, 202/366–1936.

SUPPLEMENTARY INFORMATION:

I. Background

A. FTA's Charter Service Requirements

On April 13, 1987, the Federal Transit Administration (FTA), then the Urban Mass Transportation Administration (UMTA), revised its charter service regulation, 49 CFR Part 604. The principle behind this regulation is that federally funded equipment and facilities may not be used to compete unfairly with private charter operators, in keeping with 49 U.S.C. 5323(d) and 5302(a)(7) of the Federal transit laws. When the regulation went into effect on May 13, 1987, it was subject to five limited exceptions, set out in 49 CFR 604.9. Under these exceptions, a recipient of Federal funds may provide charter services if: (1) There are no willing and able private operators; (2) the private charter operator does not have the capacity needed for a particular charter trip; (3) the private charter operator is unable to provide equipment accessible to the elderly and persons with disabilities; (4) in non-urbanized areas, the charter service that would be provided would result in a hardship on users; or, (5) private charter operators are not capable of providing service for special events.

On December 22, 1987, the President signed the Department of Transportation and Related Agencies Appropriations Act, 1988 (Pub. L. 100–202, 101 Stat. 1329; hereinafter the ''FY 1988 Act''). In the Conference Report accompanying the FY 1988 Act, FTA was directed to amend its charter service regulation to ''permit non-profit social service agencies to seek bids for charter service from publicly funded operators.'' (Conf. Rept., Committee Print accompanying Department of Transportation and Related Agencies Act, 1988, 100th Cong., 1st Sess. 62). This report suggested that ''(t)hese non-profit agencies * * * be limited to government entities subject to sections 501(c) 1, 3, 3 (sic) and 19 of the Internal Revenue Code.'' The report recommended that ''(i)n such cases, the public operator * * * be required to

identify to the chartering organizations any private operator that has notified it of its willingness and ability to provide comparable charter service.''

Further to this congressional directive, FTA amended its charter regulation on December 30, 1988, to provide three additional exceptions to the general prohibition on the use of federally funded equipment and facilities for charter service (53 FR 53348).

The first exception allows the use of FTA-funded equipment and facilities for direct charter service with non-profit social service agencies that are governmental entities or organizations exempt from taxation under Internal Revenue Code 501(c) (1), (3), (4) and (19), provided that the agency is contracting for service for persons with disabilities; is a recipient of funds under certain U.S. Department of Health and Human Services (''USDHHS'') programs; or has been State-certified according to the procedure set forth in § 604.9(b)(5)(iii) of the Charter Service Regulation.

The second exception provides an additional exemption for non-urbanized areas by allowing FTA-funded equipment and facilities operated by recipients in such areas to be used incidentally in direct charter service for social services agencies that are governmental entities or organizations exempt under Internal Revenue Code 501(c) (1), (3), (4) and (19), provided that the agency is contracting for service for elderly persons.

The third exception allows FTA-funded equipment and facilities to be used on an incidental basis in any particular charter service for which the FTA recipient and the local private operators have reached an agreement as part of the willing and able determination allowing the recipient to provide such service.

B. Section 3040 of ISTEA

On December 18, 1991, the President signed the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Section 3040 of ISTEA directed FTA to issue regulations implementing a charter services demonstration program in not more than 4 states. Under this demonstration program, transit operators would be permitted to provide charter service for the purpose of meeting the transit needs of the government, civic, charitable, and other community activities which otherwise would not be served in a cost effective and efficient manner. Section 3040 provided that in developing such regulations, FTA should consult with a board equally represented by public transit operators and privately owned charter services. FTA was directed to transmit to Congress, not later than 3 years after the date of enactment of the Federal transit laws, a report containing an evaluation of the effectiveness of the demonstration program regulations established under this section and to issue recommendations for improving the current charter services regulation.

The Conference Report accompanying ISTEA, (H.R. Rep. No. 404, 102nd Cong., 1st Sess. 424 (1991)), explained that the demonstration program had been mandated in response to concerns expressed by local transit operators regarding the existing charter service regulation. The Report stated that the implementing regulations should be designed to enable public transit operators to provide charter services to government, civic, charitable and other community organizations that serve a public purpose and help address unmet transit needs. According to the Report, it was intended that these regulations would grant public transit operators additional flexibility that was not afforded under the existing charter regulations, without creating undue competition for privately owned charter operators. The Report indicated that the results of the demonstration program should provide Congress and FTA with data to determine the most effective method for providing charter services to local communities, and whether the current regulations are in need of modification. The Report recommended that FTA select the state of Michigan as a participant in the program.

II. The Charter Services Demonstration Program

Pursuant to the congressional directive, FTA established a Federal Advisory Committee (FAC), effective March 16, 1992, comprised of individuals equally representing public and private operators, to assist FTA in implementing regulations establishing the charter service demonstration. After consulting with the FAC, FTA issued a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 28, 1992, describing FTA's proposed charter demonstration program, including provisions to allow public transit operators in the selected demonstration sites additional flexibility in the development of a local charter policy to meet local circumstances.

A State Department of Transportation (DOT) or Metropolitan Planning Organization (MPO) in each of the selected demonstration sites was empowered to determine the charter services that the public operator actually provided during the demonstration. The State DOT or MPO appointed a local advisory panel, composed of four to six persons, equally represented by public transit operators or local business organizations and representatives of local private charter operators. The DOT or MPO adopted the local charter policy that was recommended by the local advisory board.

The NPRM solicited proposals from interested public transit agencies to participate in the demonstration. After consultation with the FAC, FTA selected the following public transit operators in four states encompassing large and medium sized cities, as well as rural areas:

- Monterey-Salinas Transit (MST), Monterey, California.
- Central Oklahoma Transportation and Parking Authority (COTPA), Oklahoma City, Oklahoma.
- Bi-State Development Agency (Bi-State), St. Louis, Missouri.
- Michigan Department of Transportation (MDOT), with four unnamed sites within the state.
- Yolo County Transit Authority (YCTA), Yolo, California.

MDOT subsequently selected the four sites for participation in demonstration in Michigan:

- Isabella County Transportation Commission (ICTC), Isabella County.
- Capital Area Transit Authority (CATA), Lansing.
- Marquette County Area Transportation Authority (MarqTran), Marquette.
- Muskegon Area Transit System (MATS), Muskegon.

The final rule, issued July 9, 1993, incorporated the provisions of the NPRM, identified the eight demonstration sites, and authorized the demonstration period from August 9, 1993, through August 9, 1994.

Few of the demonstration participants were able to implement the demonstration locally by August 1993. The process of informing the private operators, establishing and convening the local advisory committee, and reaching a consensus on the local charter policy spanned several months. As a result of the initial delays, FTA extended the charter demonstration through October 31, 1994 to allow for a full year of demonstration activity. However, many public operators continued to express concern that the length of the demonstration did not provide sufficient time to implement the local charter policy and accurately evaluate the effects of the demonstration. In response to the concerns, FTA extended the

demonstration through October 31, 1995.

Most of the local demonstrations were implemented in the fall of 1993. However, Marquette County did not initiate its demonstration until January 1995.

III. Demonstration Methodology

A. Structure of the Demonstration

The ISTEA mandate for the charter demonstration required the Secretary of Transportation to transmit to Congress a report containing an evaluation of the effectiveness of the demonstration program regulations and make recommendations to improve current charter service regulations. The objective of the evaluation was to assess the effectiveness of the demonstration program. The evaluation focused specifically on:

- The impact on the public operators
- The impact on customers
- The impact on private operators
- The effectiveness of local decisionmaking process

The evaluation addressed each of the eight demonstration sites individually and presented a summary of all sites. The evaluation was based on the charter information provided by the public operators for the demonstration and pre-demonstration periods, the results of the customer surveys, and discussions with the public and private operators. Because private operator data was not received from at least three private operators in any of the sites, except Yolo County, FTA only presented an analysis of the private operator data for Yolo County.

FTA analyzed the public operators' charter service in terms of quantity of service provided, the groups served, and the consistency of the service with the local charter policy. FTA analyzed the impact on the individual public operators' operations based on the quantity of service provided, the charter revenue generated, the change in level of service from the pre-demonstration, and comparison of charter service to overall operations.

Congress mandated the demonstration in response to public transit agencies' concerns about the unmet needs of specific types of organizations, including the government, civic, charitable, and community groups. The evaluation assessed the extent to which the public operators provided charter service to meet the needs of these groups during the demonstration. FTA classified the charters performed by the public operator into categories including private groups and individuals, community, government, subcontracts to private operators, convention, and university. FTA analyzed the impact on customers by the changes in the level of service provided to each group.

FTA analyzed the impact on private operators based on the total charter revenue hours and revenue earned by the public operator, changes in the level of service provided by the public operator, and changes in private operator service, where reported, results of the customer surveys, and comments provided by the private operators during the demonstration.

FTA assessed the effectiveness of the local decision-making process based upon the development of the local advisory committee, development of the local charter policy, communication among the committee members, and proper reporting of charter activities.

B. General Public Comments

On September 12, 1996, FTA held a charter bus demonstration review meeting to present the results of the charter demonstration. The meeting was also intended as a forum in which the public could make comments and suggestions regarding the draft final report of the evaluation of the charter bus demonstration. Many of those attending the meeting had been members of the FAC that assisted FTA in establishing the demonstration. FTA also received some written comments on the report. These comments and a transcript of the September 12, 1996, public meeting have been filed in the docket.

Generally, the comments indicated that public operators felt that public transit authorities should be allowed a great latitude in chartering buses directly with anyone having the need for a chartered bus within their service areas. In essence, the public operators objected to the requirement of being precluded from providing charter service if there is at least one local ''willing and able'' private operator. They expressed the view that many private operators determined ''willing and able'' under the current definition of the charter regulation were actually unwilling and unable to provide needed charter services in their communities.

On the other hand, private operators felt that the demonstration did not support the claims by the public operators of unmet transportation needs. Therefore, they supported minor, if any, changes to the current charter regulations. However, there was support among the private operators to establish a massive outreach program by FTA to better educate public operators on the current charter requirements. They also advocated promoting cooperative efforts between both the private and public operators in meeting local charter needs.

IV. Results of the Charter Demonstration Program

The data gathered as a result of the charter demonstration program did not support the public operators' claims of unmet needs for the groups for which the demonstration was primarily intended: government, civic, charitable and other community activities. Although the public operators in each area identified groups that would not be otherwise served in a cost effective manner, including those for which the demonstration was intended and those particular to each site, the charter service provided during the demonstration did not serve a significant number of these groups or significantly increase the level of service to these groups.

Based on these results, the demonstration did not indicate the need for FTA to significantly alter its current service regulations. However, the demonstration did indicate that there may be a need for some minor changes to the charter service regulations in order to improve the ability of public operators to utilize the existing exceptions to the charter regulations in providing needed charter service.

V. FTA'S Current Charter Service Exceptions

Pursuant to 49 CFR Part 604, recipients of Federal funds are prohibited from providing charter service using federally funded equipment or facilities except on an incidental basis if there is at least one private charter operator willing and able to provide the service. The charter regulations provide several exceptions under which a recipient of FTA funds may operate charter service. While these exceptions generally provide FTA recipients with sufficient flexibility in meeting charter needs that cannot be met by private operators, the results of the demonstration suggest that some minor modification is necessary to meet certain needs not addressed by the current exceptions.

The following are the types of charter service that FTA recipients may provide under the seven current exceptions to the charter service regulations:

1. *Direct service to customers when there are no willing and able private charter operators.*

A public operator may provide incidental charter service if it determines on an annual basis that there are no private charter operators willing and able to provide the service. The

public operator must conduct an annual public participation process. If at least one willing and able private charter operator exists, the public operator cannot provide charter service under this exception.

2. *Under contract to provide FTA-funded vehicles or service to a private operator to satisfy a capacity need or a need for accessible equipment.*

The public operator must enter into an agreement with the private charter operator for the service—not directly with the charter customer. The public operator may not have an exclusive arrangement with only one private operator; the public operator must respond equitably to requests from all private operators.

3. *In a non-urbanized area, direct service to customers when the service provided by a willing and able operator(s) creates a hardship on the customer due to minimum duration requirements or distance between the charter origin and operator location.*

The public operator must petition the FTA Regional Administrator for approval. The public operator must provide notice of its request for an exception to all willing and able private operators.

4. *Direct service to customers for special events where private operators are not capable of providing the service.*

A public operator may petition the FTA Regional Administrator to provide charter service directly to customers for special events, at least 90 days prior to the event. The petition must describe the event, explain how it is special, and specify the amount of charter service that the private operators cannot provide.

5. *Under contract to private, non-profit organization serving persons with disabilities or with a government entity that is a qualified social service agency receiving Federal funds, or receiving welfare assistance funds.*

A public operator may provide charter service directly to a government entity or private, non-profit organization if one of the following conditions apply: a significant number of disabled persons will be passengers on the trip; the organization is a qualified social service agency; or the entity is eligible to receive directly or indirectly from a state or local government body public welfare assistance funds for purposes that may require transportation.

6. *In a non-urbanized area, under contract to a government entity or a private, non-profit organization that certifies that more than 50 percent of the passengers will be elderly.*

7. *Direct service to customers through formal agreements with all private charter operators.*

A public operator may provide charter service directly to a customer, if an agreement has been reached with all willing and able private operators. The public operator must provide for an annual participation process to identify all ''willing and able'' private operators. The formal agreement must specify the type of charter service allowed under the agreement.

VI. FTA'S Recommended Action

The results of the demonstration program indicate that while no major overhaul of the charter regulations is required, some minor changes may be needed to provide public operators with additional flexibility in providing charter service to their communities. Therefore, FTA proposes the following actions, and seeks comments from interested parties.

A. Amendment of the Definition of ''Willing and Able'' Private Operators (49 CFR 604.5(p)) and FTA Review of the ''Willing and Able'' Determination Process (49 CFR 604.13(e))

Under 49 CFR 604.5, any private operator having one bus or one van and licensed to provide charter service may be determined ''willing and able'', thereby precluding an FTA recipient from providing charter service for at least one full calendar year. As a result, some FTA recipients have maintained that they are often unable to provide needed charter service to their communities when ''willing and able'' private operators do not have the desire or capability to provide certain trips. In response to this perception that ''willing and able'' is too broadly defined, FTA proposes to modify the definition to exclude operators who may in actual fact be incapable of providing service within a recipient's service area. FTA believes that as a general rule, only private operators located within a reasonable distance of a particular service area are likely to provide reliable and cost-effective service to users in that area. Therefore, FTA proposes to amend 49 CFR 604.5 to define a ''willing and able'' operator as having one bus or one van, possessing legal authority, including the necessary safety certifications, licenses and other legal prerequisites, to provide charter service, and located within a 125 mile radius of the recipients service area. FTA believes that this geographic limitation will narrow the definition of ''willing and able'' sufficiently to include only those private operators who are able to provide service within reasonable time limits and at a reasonable cost.

An organization representing private operators suggested that an FTA recipient could be permitted to look behind evidence that a private charter operator is ''willing and able'' to provide the requested service if it has valid reasons to believe that the operator is unable to effectively serve local charter needs. In these instances, the FTA recipient would be required to inform FTA of its basis for concluding that a private operator responding to its annual notification is unwilling or unable to provide the service specified. FTA could then make a determination based on the recipient's submittal and on information from the private operator in question. FTA believes that this proposed change may allow recipients additional flexibility in situations where a private operator technically meets the ''willing and able'' criteria, but is unlikely, either due to chronic lack of vehicle capacity or to an unwillingness to provide trips of a certain type or duration, to meet all local charter needs. FTA thus proposes to amend section 604.13(e) accordingly.

FTA seeks comments on its proposed amendment of 49 CFR 604.5(p) and 49 CFR 604.13(e)).

B. Extension of Non-urbanized Area Hardship Exception (49 CFR 604.9(b)(3))to Small Urbanized Areas (50,000 to 200,000 Population)

Under 49 CFR 604.9(b)(3), an FTA recipient may petition FTA for an exception to provide charter service directly to the customer in non-urbanized areas (population under 50,000) if the charter service provided by the ''willing and able'' private charter operator(s) would create a hardship on the customer due to state-imposed minimum duration requirements. Some public sector participants in the demonstration program suggested that this exception be extended to small urbanized areas, many of which also lack readily available and reasonably priced charter services. In response to these comments, FTA proposes to extend the non-urbanized hardship exception at 49 CFR 604.9(b)(3) to small urbanized areas having populations between 50,000 to 200,000. FTA believes that this amendment may provide recipients in small urbanized areas with additional flexibility in providing charter service to their communities.

FTA seeks comments on its proposed amendment of 49 CFR 604.9(b)(3).

C. Amendment of the Exception for Formal Agreements (49 CFR 604.9(b)(7) With All Private Charter Operators

Under 49 CFR 604.9(b)(7), if an FTA recipient obtains a formal agreement with all ''willing and able'' private operators, it can provide certain specified types of charter service directly to the customer. Section 604.9(b)(7) requires an FTA recipient to complete the ''willing and able'' determination process for all private operators responding to its charter notice, and to obtain written agreements from each of these operators. Some FTA recipients maintain that they are unable to make use of this exception because of the impracticability of obtaining agreements from all local private operators. They note that it is often impossible to obtain unanimous consenus from a large number of organizations having varying interests and divergent views. Thus, they state, while this exception is effective in theory in allowing recipients to meet certain charter needs, it is unworkable in actual fact.

One participant in the September 12, 1996 charter demonstration review meeting suggested that instead of requiring unanimity, the regulation should provide that only a ⅔ majority of all local private operators would be required for a formal charter agreement. FTA believes that providing for a majority rather than a unanimous vote on the formal agreement will facilitate the use of this exception by more FTA recipients, thereby allowing them to provide a wider range of needed services to their communities.

FTA seeks comments on its proposed amendment of 49 CFR 604.9(b)(7).

D. Implementation of an Outreach Program to Foster a Better Understanding of the Charter Regulations and Exceptions

The demonstration program revealed that many public and private operators have an incomplete understanding of FTA's charter requirements and how to use them effectively to serve the charter needs in their communities. Therefore, FTA proposes to implement an outreach program for public and private operators to provide them with a better understanding of how to better utilize the charter regulations and exceptions. The outreach program would include the distribution of brochures and literature to public and private operators describing the charter bus regulations and exceptions, and examples of how to best utilize the exception process. FTA also proposes to sponsor seminars and information sessions on the charter requirements at meetings and conferences sponsored by various industry groups. FTA believes that the establishment of an outreach program would not only minimize the ongoing misunderstanding between some of the public and private operators, but would also serve as a resource to other operators entering the charter business.

This proposed effort was supported by the majority of participants in the September 12, 1996, meeting as a useful tool in improving the understanding and utilization of the existing exceptions to the charter regulations. FTA seeks additional suggestions for implementing its education and outreach program.

VII. Regulatory Impacts

A. Regulatory Process Matters

The proposed rule is considered to be a nonsignificant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034. It is also a nonsignifant rule for the purposes of Executive Order 12866. The Department certifies, under the Regulatory Flexibility Act, that the NPRM, if adopted, would not have a significant economic effect on a substantial number of small enities. The NPRM would not impose any costs or burdens on regulated entities. The rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

B. Paperwork Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*

C. Unfunded Mandates Reform Act of 1995

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 604

Administrative practice and procedure, Buses, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

Proposed Amendment to 49 CFR Part 604

Accordingly, for the foregoing reasons, Title 49, Code of Federal Regulations, Part 604, Charter Service, is proposed to be amended as follows:

PART 604—CHARTER SERVICE

1. The authority citation for part 604 continues to read as follows:

Authority: 49 U.S.C. 5323(d); 23 U.S.C. 103(e)(4); 142(a); and 142(c); and 49 CFR 1.51.

2. Section 604.5 is proposed to be amended by revising paragraph (p) to read as follows:

§ 604.5 Definitions.

* * * * *

(p) *Willing and able* means having the desire, having the physical capability of providing the categories of revenue vehicles requested, including the necessary safety certifications, licenses, and other legal prerequisites, to provide charter service, and located within a 125-mile radius of the area in which it is proposed to be provided.

3. Section 604.9 is proposed to be amended by revising paragraphs (b)(3) and (b)(7) to read as follows:

§ 604.9 Charter service.

* * * * *

(b) * * *

(3) A recipient in a non-urbanized or small urbanized area may petition FTA for an exception to provide charter service directly to the customer if the charter service provided by the willing and able private charter operator or operators would create a hardship on the customer because:

(i) The willing and able private charter operator or operators impose minimum duration's pursuant to State regulation and the desired trip length is shorter than the mandatory trip length; or

(ii) The willing and able private operator or operators are located too far from the origin of the charter service.

* * * * *

(7) A recipient may provide charter service directly to the customer where a formal agreement has been executed between the recipient and a two-thirds (2/3) majority of all private charter operators it has determined to be willing and able in accordance with this part, provided that:

(i) The agreement specifically allows the recipient to provide the particular type of charter trip;

(ii) The recipient has provided for such an agreement in its annual charter notice published pursuant to this part before undertaking any charter service pursuant to this exception;

(iii) If a recipient has received several responses to its annual charter notice but ceased its review process after determining that one private operator was willing and able, it must, before concluding a formal charter agreement

under this section, complete the review process to ensure that a two-thirds (⅔) majority of the willing and able private operators are valid parties to the agreement.

* * * * *

4. Section 604.13 is proposed to be amended by revising paragraph (e) to read as follows:

§ 604.13 Reviewing evidence submitted by private charter operators.

* * * * *

(e) A recipient may look behind the evidence submitted by a private charter operator only if the recipient has reasonable cause to believe:

(1) That some or all of the evidence has been falsified; or

(2) That the private operator may not be capable of providing certain specified types of charter service.

(i) A recipient believing that it has reasonable cause to determine that a private operator or operators is/are not willing and able pursuant to this paragraph (e)(2), may petition the FTA Regional Administrator for a determination. The recipient must send a copy of its petition to the private operator or operators in question. The private operator or operators may submit evidence opposing the petition to the FTA Regional Administrator within 30 days of receipt of a copy of the recipient's petition.

(ii) The FTA Regional Administrator will rule on the recipient's petition within 60 days of receipt.

* * * * *

Issued on: June 16, 1997.

Gordon J. Linton,

Administrator.

[FR Doc. 97–16126 Filed 6–20–97; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Notice of Availability of Draft Recovery Plan for the Marsh Sandwort (Arenaria paludicola) and Gambel's Watercress (Rorippa gambelii) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for two wetland plants, the marsh sandwort (*Arenaria paludicola*) and Gambel's watercress (*Rorippa gambelii*). Only one marsh sandwort population, with fewer than 10 individuals, is known to exist; it occurs in San Luis Obispo County, California. Four populations of Gambel's watercress are currently known, one with about 500 individuals near the marsh sandwort population, two others with about 300 individuals each, also in San Luis Obispo County, and a fourth population of approximately 100 plants on Vandenberg Air Force Base in Santa Barbara County. Both species are threatened by encroaching native and alien vegetation associated with lowered water tables, agricultural and residential development, and off-road vehicle use. In addition, the very low numbers of individuals and populations put these species at great risk of extinction due to stochastic events. The Service solicits review and comment from the public on this plan.

DATES: Comments on the draft recovery plan must be received on or before August 22, 1997 to receive consideration by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, 2140 Eastman Avenue, Suite 100, Ventura, California 93003 (phone: 805/644–1766); and the San Luis Obispo Public Library, 995 Palm St., San Luis Obispo, California 93401. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, at the above Ventura address.

FOR FURTHER INFORMATION CONTACT: Constance Rutherford, Botanist, at the above Ventura address, (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species. They establish criteria for the recovery levels necessary for downlisting or delisting the species. They also provide an estimation of time and cost of implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (U.S.C. 1531 *et seq.*) (Act) requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice, to provide an opportunity for public review and comment, be given during plan development. The Service will consider all significant information presented during a public comment period, prior to the approval of each new or revised Recovery Plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

Marsh sandwort, a member of the pink family (*Caryophyllaceae*), historically had a large range along the Pacific coast, extending from southern California north to Washington. It occurred in San Bernardino, San Luis Obispo, Santa Cruz, and San Francisco counties in California, as well as in Pierce County, Washington. Recent searches of sites where the species was previously reported in Washington have resulted in negative findings. Of the seven historical populations in California, only a single known extant population occurs today, in Black Lake Canyon on the Nipomo Mesa in southern San Luis Obispo County.

Gambel's watercress was reported in the early 1900s from several wetland locations in southern California, ranging from Los Angeles and San Bernardino counties south to a disjunct population in the Valley of Mexico near Mexico City. Three small populations of this species have been reported in the 1980s, from Black Lake Canyon, Oso Flaco Lake, and Little Oso Flaco Lake in San Luis Obispo County. These areas are located within 6.4 kilometers (4 miles) of each other. The Black Lake Canyon population, numbering about 500 individuals, is located approximately 200 meters (656 feet) downstream of the marsh sandwort plants.

Both the marsh sandwort and Gambel's watercress are found in freshwater marshes, from sea level to about 450 meters (1,476 feet). Wetland habitats have been disappearing from the Pacific Coast of North America at a rapid rate since the early part of the century. The conversion of wetland habitat to agriculture, ranching activities, and increased urbanization, and the use of off-road vehicles for recreation, have eliminated or degraded habitat. Additionally, the groundwater table in the lower canyon has been dropping steadily in the past few years, possibly due to water drawdown from well-drilling, water uptake and transpiration from the many introduced eucalyptus trees in the area, and the