

Full-Size Off-Highway Vehicle Registration Program

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Introduction

The Department of Natural Resources and the Iowa Department of Transportation, respectfully submit the following report to the General Assembly as required by Senate File 458, section 152, passed by the 2003 General Assembly and signed May 30, 2003.

Section 152 of SF 458 states:

Sec. 152. FULL-SIZE OFF-HIGHWAY VEHICLE REGISTRATION PROGRAM - PLAN. The department of natural resources and the state department of transportation, in consultation with the Iowa association of four wheel drive clubs, shall develop a plan for the establishment of a registration program for full-size off-highway vehicles for the purposes of regulating the recreational use of full-size off-highway vehicles and establishing a full-size off-highway vehicle recreation area in the state. The plan shall include an analysis of the number of full-size off-highway vehicles expected to be registered prior to the establishment of a full-size off-highway vehicle recreation area and the number of registrations expected after the establishment of such a facility. The plan shall also include optimum locations for a full-size off-highway vehicle recreation area, estimated costs, if any, for maintenance of the area, and any other issues the departments and the association deem to be of importance in the planning process. The plan, which shall include any proposed legislation for implementation of the plan, shall be submitted to the legislative services agency and the general assembly no later than January 1, 2004.

Background

The Four-Wheel Drive Association is interested in seeing Iowa develop and operate a park and program for use by full-size four-wheel drive motor vehicles. During the 2003 Legislative Session, Senate File 300 was introduced for the establishment of this program. This bill would require the Department of Natural Resources (DNR) to manage the program, much like the DNR currently manages programs for snowmobiles and all-terrain vehicles (ATVs), otherwise known as Off-Highway Vehicles (OHVs) in Iowa Code.

The DNR recommended against this legislation due to a lack of detailed information necessary to determine whether a program for four-wheel drive vehicles would financially support itself. Specific information requested was the number of registrations, the cost for registration, the location and purchase price of the park land, the land development needs and costs, cost of insurance coverage, law enforcement costs, and ongoing maintenance costs. Other issues of concern included safety of participants, law enforcement, liability to the state, and protection of wildlife and wildlife habitat.

The DOT recommended against this legislation because the bill generated a great deal of confusion as it related to existing motor vehicle law under Iowa Code Chapter 321.

Senate File 300 did not pass, and subsequently, language was added to SF458 to address the development of a plan for the establishment of a full-size off-highway vehicle program. (See Section 152 of SF 458 above)

Report Formulation

Following the directive contained in Section 152, three meetings were held, attended by Merle Howard, President, Iowa Association of Four-Wheel Drive Clubs (Association); Jim Obradovich, lobbyist for the Association; Kevin “Moab”, Des Moines Off-Road; David Downing, Kathleen Moench, Diane Ford-Shivvers, Iowa Department of Natural Resources; Elizabeth Baird and Steve Bowman, Iowa Department of Transportation; and John Pederson, Governor’s Office. The initial meeting was held on August 12 to discuss the process of putting together a plan. Several points were identified at this meeting.

- The Association, consisting of approximately 500 members, has developed off-road trails on private lands that allow members to operate full-size four-wheel drive motor vehicles off-road for recreational purposes.
- The Association is interested in identifying a larger area that its members can use for recreational purposes, under a program operated by the state based on fees charged to users.
- Most, but not all, of the vehicles owned and operated for off-road purposes are subject to registration under Code of Iowa chapter 321, and used on public streets and roads. Those that are not “street-legal” and registered under chapter 321 are/would be trailered to any proposed park site for use.

Two subsequent meetings were held on October 23rd and December 19th, attended by representatives from the DNR, DOT, the Association, and Governor’s Office resulted in discussions concerning the necessary requirements for a successful state program. Also discussed were the requirements for assessing federal funds for acquisition, development and maintenance of a full-size off-highway park, and options for a private park not associated with a state program. The following are some of the questions and answers from the DNR, DOT and Association at these two meetings for the necessary components of a plan.

Plan Components

- 1. Provide terminology to describe the vehicle type and an appropriate definition for “full-size off-highway vehicle”.**

The DNR, DOT and the Association, after discussing the terminology and definition, agreed to the following: Full-size four-wheel drive vehicle means a self-propelled motor vehicle designed to operate with four wheels in contact with the ground and capable of four-wheel drive operation. A full-size four-wheel

drive vehicle may include but is not limited to a motor vehicle that may be legally registered and operated on public streets and highways in accordance with chapter 321. A full-size four-wheel drive vehicle does not include a snowmobile, an all-terrain vehicle, or a military vehicle, as defined in the Code of Iowa.

(Discussion of the vehicles used by Association members indicates that virtually all of the vehicles are "street-legal" and registered under chapter 321. They are generally jeeps or SUV-type vehicles, although some have been modified. DNR questioned if wording needed to be included, such as weight ranges, to exclude four-wheel vehicles such as "gators" and "mules." Although the association noted they did not intend for these types of vehicles to be used in a four-wheel drive park, they chose to leave the definition without weight ranges at this point and the issue may be addressed later.)

2. What is the number of full-size off-highway vehicles expected to be registered prior to the establishment of a full-size off highway vehicle recreation area? How many vehicles will be registered after the establishment of a driving facility?

Association response: The Association estimates that approximately 500 vehicles will be registered prior to the establishment of a recreation area. The number of vehicles registered after the establishment of a recreation area would be expected to double, if not triple, as soon as the facility is opened and continue to grow after that.

Iowa DNR response: The Department agrees with the legislative letter that was issued by the Association in 2002, which estimated vehicle numbers at up to 600.

3. What is the total potential for program revenue?

Association response: We continue to believe that the program will easily pay for itself.

Iowa DNR response: Based on an annual registration fee of \$20 (as provided in SF300), multiplied by an estimated 600 vehicles, the program would generate gross revenue of approximately \$12,000 each year. At this rate, it would require 11,250 vehicles to pay the annual registration fee for a state-run program to be self-supporting in the 2nd and subsequent years. The Department estimates that an additional \$325,000 would be required in the first year to cover land acquisition and environmental study costs.

The Department believes the estimated gross revenue potential of the proposed program is not sufficient to start or maintain a full-size off-highway vehicle

program. (See the estimated cost of a full-size off-highway program, based on the Iowa ATV program, detailed at the end of this report.)

- 4. Liability insurance coverage for land owner/tenant, all participants and the State of Iowa is a program requirement. Provide a liability quote from an insurance company that includes coverage limits and approximate cost for a full-size off-highway vehicle recreation area. Insurance cost should be based on an off-highway facility of approximately 100 acres or more.**

Association response: (First response) Upon review of this request we have been notified that the State of Iowa is self-insured. As a result, we question the need for such a purchase.

During a December 19, 2003 meeting on the plan the Association provided the Department the name of an agent and insurance carrier (Scottsdale Insurance Company) that currently provides liability insurance for local club members who operate their off-highway vehicles on a private driving area

Iowa DNR response: The full-size off-highway program as proposed by the Association in SF300 was modeled after the Iowa Snowmobile and All-Terrain Vehicle Cost-Share Grant Program, which is created under Iowa Code Chapter 321G. The cornerstone of the snowmobile and all-terrain vehicle program is that the entire program is self-funded, including all liability insurance cost. Liability coverage is required to protect program participants, land owner/tenants and the state against liability claims.

The Department has contacted the insurance carrier (Scottsdale Insurance Company) to try and obtain a quote for a liability policy that would cover a public off-highway vehicle recreational area, including coverage for land owner/tenant, all participants (not just Association members) and the State of Iowa. As of the publication date for this plan, the insurance carrier has not responded to the Department request for a notice of underwriter approval and a price quote for the aforementioned coverage.

- 5. Provide a list of available locations for a full-size off-highway vehicle recreation area and estimated cost for purchase of property and annual maintenance costs, including fencing and staffing to enforce vehicle/owner riding.**

Association response: The Association has identified three potential areas for the development of a recreation facility. The areas are located in Mahaska County, Webster County and in the Des Moines metropolitan area. As we have emphasized in the past, we are greatly concerned by the request to spell out the exact location and costs of these areas. We all must keep in mind that we are discussing a real estate transaction. As with all commerce, demand brings higher prices. The association is willing to informally discuss the areas in greater detail with you at a time and place when confidentiality can be assured.

Iowa DNR response:

As a state agency the DNR must conduct all its business open to the public and does not purchase land in secret. The Department has a motorized land acquisition and revenue policy that requires a land appraisal, public hearing, environmental review, motorized task force review, approval from the Director and Natural Resource Commission, prior to any project funding. The process is designed to promote public participation. The Department has found that this process has little or no effect on the actual price of the land.

Department estimates prepared for the SF 300 fiscal note identified first year costs totaling \$550,000 and second year costs of \$225,000. This includes salaries for recreational safety officers, law enforcement, a program administrator, as well as the land acquisition costs. Costs comparisons for the fiscal note were obtained from actual program costs experienced with the Iowa Snowmobile and All-Terrain Vehicle Cost-Share Program, as modeled in SF 300. The fiscal note is attached.

Additional Issues and Concerns

- 1. Provided the IDNR has the supervisory responsibility over registration of full-size off-highway vehicles and is required to provide program administration, registration forms, certificates, stickers and serve as the depository to hold, store and in some cases reproduce registration certificates, the IDNR and the Association will need to determine the program cost and identify a revenue source.**

Association response: We agree.

Iowa DNR response: In order to determine the administrative costs for a full-size off-highway vehicle program, as outlined by the Association in SF 300, the Department completed a fiscal note using actual operational costs incurred from the current Snowmobile and ATV Program.

To allow for future program growth in participant numbers and increases in registration fees, revenue projections for the fiscal note were based on having 5,000 OHV registered vehicles paying a \$25 per vehicle annual registration fee. Expenditures include salaries for recreational safety officers and law enforcement and the cost for a program administrator (using current Snow/ATV costs) \$130,000. Administrative support for registration, record keeping, rule making, data input and decals is estimated at \$45,000 per year. Initial land acquisition and liability insurance are conservatively estimated at \$175,000. Environmental impact study \$200,000. This equals the estimated start-up cost of \$550,000.

Despite inflating the number of program participants from 600 to 5,000 and increasing the registration fees from \$20 to \$25, the Department found that the program was not capable of self-funding.

2. If registration revenue will not cover the cost of a full-size off-highway vehicle program, where will the additional revenue come from?

Association response: The language below from SF300, as passed by the Senate, specifically spells out that the program can only operate if sufficient revenues are received.

“The department of natural resources is not required to begin operation of the off-highway vehicle program until the Iowa association of four wheel drive clubs develops and presents for the department’s approval a revenue-neutral five-year-plan for operation of the program. The plan shall include an analysis of the number of off-highway vehicles expected to be registered prior to the establishment of an off-highway vehicle recreation area and the number of registrations expected after the establishment of such a facility. The plan shall also include optimum locations for an off-highway vehicle recreation area, estimated cost, if any, for maintenance of the area, and any other issues the department and the association deem to be of importance in the planning process. The plan shall be completed and available for approval by the department not later than January 1, 2004.

The department shall not begin registration of off-highway vehicles until a five-year plan has been developed and approved. Notwithstanding the provisions of chapter 321N, as enacted in this Act, fees collected by the department from the registration of off-highway vehicles, as required in this act shall be deposited in the off-highway vehicle fund created in section 321N.5 and allowed to accumulate without expenditure, other than for the department’s expenses for administration of the fund, until the department begins operation of the state’s off-highway vehicle program. When revenues in the fund are sufficient to cover operational cost of the off-highway vehicle program, the department shall begin operation of the program. For purposes of this section, “operation of the program” includes, but is not limited to, the purchasing of land for use by off-highway vehicles, initiating a safety certificate program, and employing part-time or full-time employees to administer the off-highway program.”

Iowa DNR response: The Department determined that the program would never be self-funding. When you multiply the number of program participants by the proposed registration fee, the program does not have the necessary revenue to start or operate a full-size off-highway program. Even if land acquisition costs were held to a minimum, the administrative and operational costs far exceed the

financial ability of the program to function, based on existing models. Cost comparisons for the fiscal note completed by the Department were obtained by examining actual program costs experienced with the Iowa Snowmobile and All-Terrain Vehicle Cost–Share Program, as modeled in SF300.

With regards to SF300, in particular section 321N.5, the Association has proposed allowing funds to accumulate without expenditure, based on the assumption that program participants are going to pay registration fees year-after-year without any immediate program needs or expectations. Experience with existing programs indicate this is unrealistic.

Iowa DOT comment: Federal Recreational Trails Program funding is available for motorized recreational purposes. The Association would be eligible for the federal program for maintenance costs, etc. If the Association were to apply for the federal fund for acquisition of land, a public entity (such as a city or county) would need to assist the association by holding title to the property. The Association could enter into a long-term lease (20 years +) with the city or county to manage the park site.

- 3. How will the county recorder determine which vehicles are safe or capable to be used in an off-road setting? If the county recorders issue a tag to a vehicle that should not be in an off-road setting and an injury results, does the county or issuing agent share in the liability?**

Association response: We are a bit confused by your question. Does the county recorder do such determination on all other vehicle registrations?

Iowa DNR response: The county recorder would be the first point of contact for anyone registering a vehicle under the proposed program, thus they would be making a decision as to vehicle qualifications. Unless you have specific criteria for vehicles that belong in an off-highway vehicle recreation area, the county could end up registering a vehicle for off-road use that does not meet the necessary minimum safety standards. Anytime a government agency issues a permit or registration to participate in an activity there is often an assumption that oversight invites liability. The issue of liability is enhanced because the vehicles that would be registering to use an off-highway recreation area under the proposed program would most likely have been designed and manufactured primarily for highway use, and then a government agency registers the vehicle to participate in an activity that may be outside of the original manufacturer's intended use.

- 4. If the IDNR is required to establish and implement a safety instruction program, the cost for such a safety program must be determined. The funding for a safety program would have to come from the full-size program, as current law (Chapter 321G) prohibits using funds from either Snowmobile or ATV programs for any other program purposes. Will all registered owners be**

required to have taken an approved safety program, or just those born after a certain date, much like the hunter education program?

Association response: The Iowa Association of Four Wheel Drive Clubs believes in and emphasizes safety in all of its events. Please note that the following language was included in Senate File 300, as passed by the Senate:

“SAFETY CERTIFICATE – FEE.

1. A person shall not operate an off-highway vehicle on public land or land purchased with off-highway vehicle registration funds in this state without obtaining a valid safety certificate issued by the department and having the certificate in the person’s possession.

2. Upon application and payment of a fee of five dollars, a qualified applicant shall be issued a safety certificate which is valid until the certificate is suspended or revoked for a violation of a provision of this chapter or a rule of the commission or the director of transportation. The application shall be made on forms issued by the commission and shall contain information as the commission may reasonably require.

3. Any person who is required to have a safety certificate under this chapter and who has completed a course of instruction established under section 321N.2, subsection 5, including the successful passage of an examination which includes a written test relating to such course of instruction, shall be considered qualified to apply for a safety certificate. The commission may waive the requirement of completing such course of instruction if the person successfully passes a written test based on such course of instruction.

4. The permit fees collected under this section shall be credited to the special off-highway vehicle fund and shall be used for safety and educational programs. A valid off-highway vehicle safety certificate or license issued to a nonresident by a governmental authority of another state shall be considered a valid certificate or license in this state if the permit or license requirements of the governmental authority, excluding fees, are substantially the same as the requirements of this chapter as determined by the commission.

COURSE OF INSTRUCTION.

1. The commission shall provide, by rules adopted pursuant to section 321N.2, for the establishment of certified courses of instruction to be conducted throughout the state for the safe use and cooperation of off-highway vehicles. The curriculum shall include instruction in the lawful and safe use, cooperation, and equipping of off-highway vehicles consistent with this chapter and rules adopted by the commission and

director of transportation and other matters the commission deems pertinent for a qualified off-highway vehicle operator.

2. The commission shall certify any experienced, qualified operator who applies for certification to be an instructor of a class established under subsection 1. Each instructor shall be at least eighteen years of age.

3. Upon completion of the course of instruction, the commission shall provide for the administration of a written test to any student who wishes to qualify for a safety certificate.”

Iowa DNR response: The Department has estimated the initial cost for the development of a safety program at \$130,000. This is based on current program costs for the Snowmobile Safety Certification process (SF 300 is copied directly from the Snowmobile and ATV programs). Operational costs on an annual basis would be approximately \$25,000 (without recreational safety officers). This would cover the administrative cost for issuing, tracking and maintaining a safety certification program, and course materials.

The Department has learned through experience with the all-terrain vehicle parks that law enforcement plays a key role in program success, by enforcing registration and safety regulations and maintaining the support of adjacent landowners. Law enforcement costs associated with the snowmobile and all-terrain vehicle program are in excess of \$130,000 each year. While a single recreation area for full-size trucks would be less expensive, there still would be a significant cost for law enforcement services each year.

Figured on an annual registration fee of \$20 (as provided in SF300), multiplied by an estimated 600 vehicles, the program would generate gross revenue of approximately \$12,000 each year.

Based on the above rationale and the estimated number of participants, the Department believes the proposed full-size off-highway vehicle program will not generate enough revenue on an annual basis to cover needed safety and law enforcement expenses.

Iowa DOT response: With regards to the adoption of rules for the establishment of safety courses for such vehicles, the DOT and the "director of transportation" should not be involved in writing any such rules.

- 5. How do you separate the legal operator responsibilities that are found in Chapter 321 from operator actions that would occur in an off-highway situation? Because the majority of full-size off-highway vehicles are routinely driven on the highway and have an IDOT title, they would fall under the jurisdiction of Chapter 321. It is important to remember that any chapter that**

is irreconcilable with Chapter 321 may not be viewed as the controlling chapter. This would create a situation where any violations under a new full-size off-highway vehicle chapter may revert back to the operators' driving records under Chapter 321.

Association response: Multiple sections of Senate File 300 address the issues you raise in this series of questions.

Iowa DNR response: The Department and DOT would expect Chapter 321 to be the controlling chapter on many operational issues.

Iowa DOT response: Iowa law defines the rules and regulations applicable to the operation of motor vehicles (including those that are subject to registration under chapter 321). There is not a need to add "new" language to the Code for the specific purpose of regulating "full-size four wheel-drive vehicles," other than for the operation of such a vehicle within a state-owned "recreational park."

Various sections of last year's bill, SF 300, that attempt to define motor vehicle operating regulations for full-size four wheel drive vehicles only serve to confuse issues that are already addressed in Iowa law.

The Association has noted that any full-size four-wheel drive vehicles not registered with the DOT for use on public highways would be hauled to any site for off-road recreational use, not driven to the site on public highways.

Attaching an off-highway vehicle registration sticker to a motor vehicle license plate would be a concern to the DOT. A better alternative would be to attach such a sticker to a windshield or use a "pennant" attached to the radio antenna.

- 6. Who will pay for the cost for these accident reports that involve a full-size off-highway vehicle? These accidents could be on property under the jurisdiction of the IDNR, or property owned by the Association. There may also be a dual filing requirement under Chapter 321 for the IDOT and any new chapter for full-size off-highway vehicles. Is this a concern to the IDOT and insurance agents? The current Snowmobile and ATV programs pay for law enforcement services in the amount of \$130,000 annually. Will accidents in an off-highway setting be reported on driver license records or affect insurance coverage? Does the mandatory insurance coverage under Chapter 321 include use at an off-highway facility?**

Association response: Language addressing this issue was contained in Senate file 300. The wording is as follows:

“ACCIDENT REPORTS.

If an off-highway vehicle is involved in an accident resulting in injury or death to anyone or property damage amounting to one thousand dollars or

more, either the operator or someone acting for the operator shall immediately notify the county sheriff or another law enforcement agency in the state. If the accident occurred on public land under the jurisdiction of the commission, the operator shall file with the commission a report of the accident, within seventy-two hours, containing information as the commission may require. All other accidents shall be reported as required in section 321.266.”

We agree with you that the mandatory insurance requirements in chapter 321 should apply to off-highway vehicles in the recreation area.

Iowa DNR response: The language found in proposed SF300 and in Chapter 321 covering accident reporting requirements would necessitate a dual filing of accident reports. Double reporting of accidents would be expensive and end up on the IDOT driving record of the offender.

The administrative and law enforcement costs for filing accident reports would be charged to the program. Currently, DNR enforcement officers spend an average of 16 employee hours per accident investigation (based on Snowmobile and ATV accidents). Billed at an hourly rate of \$25 per hour, each accident investigation cost the Department \$400. These costs would be similar for a full-size off-highway vehicle accident.

Iowa DOT response: Iowa law (Code section 321.266) requires any accident involving a motor vehicle that results in a fatality, injury, or property damage of \$1000 or more be reported to the Iowa DOT. Iowa law (Code section 321G.10) also requires accident reports be made to the DNR if an ATV or snowmobile is involved in an accident involving a fatality, injury, or property damage of \$200 or more.

Iowa DOT's motor vehicle division has reviewed the reporting requirements and would support eliminating Code section 321G.10 and making reports of all motor vehicle accidents reportable only to the DOT in accordance with section 321.266. This concept is applicable to the reporting of accidents involving full-size four-wheel drive vehicles in an off-highway situation.

7. What is the age requirement to operate a full-size off-highway vehicle?

Association response: We believe the minimum age requirement for an operator of a full-size off-highway vehicle should be the same as for any motor vehicle.

Iowa DNR response: The DNR would recommend a minimum driving age of 18. Operator experience and the ability to enter into contracts (waiver) would be important due to liability and safety concerns.

8. What is the anticipated cost for law enforcement and emergency services that would be needed for each proposed full-size off-highway vehicle facility? How do you plan to pay for these services?

Association response: There should not be any cost incurred to the program for law enforcement and emergency services. Upon review of this issue at several ATV facilities, local law enforcement and emergency medical services officials are called upon to provide such services.

Iowa DNR response: The current Snowmobile and ATV programs pay more than \$100,000 annually for law enforcement and safety related services.

The Department has learned through experience with the all-terrain vehicle parks that law enforcement plays a key role in program success, by enforcing registration and safety regulations, controlling illegal operation and maintaining support of adjacent landowners.

Conclusions

Association response: The Association did not submit a response for “Conclusions.”

Iowa DNR response: The Association, DNR and DOT did not complete an establishment plan for a full-size off-highway program due to the following:

- The Department believes the estimated gross revenue potential of the proposed program is not sufficient to start or maintain a full-size off-highway vehicle program. Program start-up costs are estimated at \$550,000, far exceeding gross program revenue projections of \$12,000 per year (600 participants multiplied by a \$20 annual registration fee).
- The lack of adequate liability insurance coverage to protect land owner/tenants, all participants and the State of Iowa.
- Liability concerns for state and county governments. Anytime a government agency issues a permit or registration to participate in an activity there is often an assumption that oversight invites liability. The issue of liability is enhanced because the vehicles that would be registering to use an off-highway recreation area under the proposed program would most likely have been designed and manufactured primarily for highway use, and then a government agency registers the vehicle to participate in an activity that may be outside of the original manufacturer’s intended use.
- Because the majority of the vehicles that would be driven in a full-size off-highway program are “street legal” vehicles that have been modified for off-highway use, the Department is concerned about a lack of minimum safety standards for equipment and operator safety training. Further, the Department does not have the staff or expertise to develop a safety program that would cover safety certification or vehicle inspections.

Based the estimated number of participants, the Department believes the proposed full-size off-highway vehicle program will not generate enough revenue on an annual basis to cover needed safety and law enforcement expenses.

Iowa DOT response: Although the study did not produce agreement on the key issues of program costs, liability and revenue, the discussion did help clarify both the specific interest of the Association and many technical issues.

The DOT also did not see evidence that the program would generate adequate revenue to be self-supporting, meaning an annual state appropriation would be required to “fill the gap” between costs and revenues generated by the program’s annual registration fees.

Alternatively, the Four-Wheel Drive Association could pursue another model for such a park:

- Development of a private park and program, involving state staff in an advisory capacity, would mitigate the barriers to a state-operated program and maximize the advantage of sharing DNR experience and technical knowledge.
- Working with a local government to develop a recreational facility would be similar to the private/public partnerships used to develop the state’s recreational trails. Many local governments act as government partners to acquire funding to develop linear recreational trails. A key benefit to this approach would be the ability to access federal funding to assist with land acquisition costs.
- Exploring successful models used in other states for the private development of recreational areas for full-size four-wheel drive vehicles may eliminate some of the costly elements that would be involved in a state-operated program. _

Attachments:

- SF 300 (as passed and amended by the Senate)

<http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=billinfo&Service=Bills&frm=1&hbill=pSF300&chamber=Senate>

- Fiscal Note for SF 300 (as passed and amended by the Senate)

http://www3.legis.state.ia.us/fiscalnotes/data/80_2548SSv1_FN.pdf