

(2) Converts a wild free-roaming horse or burro to private use, without authority from the Chief, Forest Service, or;

(3) Maliciously causes the death or harassment of any wild free-roaming horse or burro, or;

(4) Processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro, or;

(5) Sells, directly or indirectly, a wild horse or burro allowed on private or leased land pursuant to Section 4 of the Act, or;

(6) Willfully violates a regulation issued pursuant to the Act shall be subject to a fine of not more than \$2,000 or imprisonment for not more than 1 year, or both. Any person so charged with such violation by the authorized officer may be tried and sentenced by a United States commissioner or magistrate, designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided in section 3401, Title 18, U.S.C.

(85 Stat. 649 (16 U.S.C. 1331-1340); Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); Sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); 74 Stat. 215 (16 U.S.C. 522-531))

ROBERT W. LONG,
Assistant Secretary for Conservation,
Research and Education.

AUGUST 6, 1973.

[FR Doc. 73-16912 Filed 8-14-73; 8:45 am]

Title 43—Public Lands: Interior
CHAPTER II—BUREAU OF LAND MANAGEMENT,
DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5354]

[Arizona 7131]

ARIZONA

Withdrawal for National Forest Recreation
Area and Administrative Site

Correction

In FR Doc. 73-15433 appearing on page 20081 in the issue of Friday, July 27, 1973, in the second line of the description of the Chevelon Ranger Station Administrative Site a comma should be inserted immediately after "NE¼, N½ SE¼".

[Public Land Order 5355]

[Colorado 17285]

COLORADO

Partial Revocation of Powersite Reserve
No. 133

Correction

In FR Doc. 73-15434 appearing on page 20081 in the issue of Friday, July 27, 1973, in the second line of the land description, insert "29" between "Sec." and "N½NE¼".

[Public Land Order 5362]

[Oregon 7878]

OREGON

Withdrawal for National Forest Reservoir
and Recreation Area

Correction

In FR Doc. 73-15650 appearing at page 20327 in the issue of Tuesday, July 31, 1973, in the description of the Balm Creek Dam, Reservoir, and Recreation Area, in the fifth line, the coordinates "NW¼SE¼, SW¼" should read "NW¼ SE¼SW¼"; and in the penultimate line the coordinates "SW¼ NW¼" should read "SW¼NW¼".

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular No. 2347]

WILD FREE-ROAMING HORSE AND
BURRO MANAGEMENT

Protection, Management, Control and
Reservation of Forage

On page 28073 of the FEDERAL REGISTER of December 20, 1972, there was published a notice and text of a proposed amendment to Parts 4110, 4120 and 4710 of Title 43, Code of Federal Regulations. The purpose of the amendment was to provide regulations to implement the Act of December 15, 1971 (16 U.S.C. 1331-1340), which requires the Secretary of the Interior to protect, manage, and control wild free-roaming horses and burros on public lands managed by the Bureau of Land Management.

The proposal would add a new Group 4700, Wild Free-Roaming Horse and Burro Management, to the regulations. It would also amend 43 CFR Subparts 4115 and 4121 to provide specifically for a reservation of forage required by wild free-roaming horses and burros on public lands.

Interested persons were given until February 5, 1973, to submit comments, suggestions or objections to the proposed amendment. Thirty-four comments were received.

The written comments and suggestions were all evaluated. The proposed rule-making and the matters raised were considered by the National Advisory Board on Wild Free-Roaming Horses and Burros in open meetings with public participation. Grazing district advisory boards also submitted views on the proposed rulemaking. Based upon the comments and suggestions received, numerous editorial changes and changes in wording have been made in Group 4700 for clarification and for strengthening the regulations in terms of protection of wild horses and burros. Principal dif-

ferences between the rules as proposed and as adopted include the following:

1. Section 4710.0-5 is amended by inserting a definition of "excess animals" and "problem animal" following paragraph (c) and redesignating the remaining paragraphs consecutively. The definition of "wild free-roaming horses and burros," paragraph (b), is amended to clarify that their progeny are included.

2. Section 4711.3 is amended to include "private citizens" as a proper party for cooperative agreements in furtherance of the purpose of the regulations.

3. Section 4712.1-2 is revised to clarify that herds may be managed either on a specifically designated range or as a component of public land use.

4. Section 4712.2-3 is amended to recognize herd management plans.

5. Section 4712.3 is revised to refer to "excess animals" rather than "surplus animals," with appropriate changes throughout Subpart 4712 to effectuate that change.

6. Section 4712.3-1 is revised to specify appropriate supervision during the capture of excess or problem animals.

7. Section 4712.3-2 is amended to recognize the existence of "problem animals."

8. Section 4712.3-4 is amended to delete language not pertaining to acts of mercy.

9. Section 4712.4-3 is amended to clarify requirements for the removal of animals from private lands in areas where the private landowner is not required by State statute to fence the private lands.

10. Subpart 4713 is revised to provide more specific guidelines concerning claims.

11. Subpart 4714 is amended to delete proposed sections on related prohibitions and penalties. These are extraneous to the regulations in Part 4700.

A notice of the availability of a final environmental statement on the proposed regulations for the management of wild free-roaming horses and burros on public lands administered by the Bureau of Land Management was published on page 18474 of the FEDERAL REGISTER of July 11, 1973.

Full consideration has been given to all relevant matters presented by interested parties. Accordingly, the proposed amendment is hereby adopted, as revised, and is set forth below in its entirety. This amendment shall become effective August 15, 1973.

The immediate effectiveness of these regulations will enable action to begin for removal of the claimed horses and burros from public lands without undue delay and under suitable weather conditions.

W. R. WILSON,
Acting Deputy Assistant
Secretary of the Interior.

AUGUST 13, 1973.

Subchapter D, Chapter II, of Title 43 of the Code of Federal Regulations is amended as follows:

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

1. The first sentence of paragraph (d) of § 4115.2-1 of Subpart 4115 is revised to read as follows:

§ 4115.2-1 License and permit procedures; requirements and conditions.

(d) Cancellation or reduction of licenses or permits; show cause; appeal to examiner. Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2-1(e), 4115.1-1(k)(4), 4114.4-4, 4115.2-5(a)(6), 4712.12-3, or 4712.1-4 of this chapter.

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS AND EXCLUSIVE OF ALASKA); GENERAL

2. Paragraph (a) of § 4121.2-1 of Subpart 4121 is revised to read as follows:

§ 4121.2-1 Minimum requirements, rating and classification of lease land.

(a) Land Resource Consideration. The authorized officer will determine the availability of public land for grazing leases and the amount of forage available for use by livestock in conjunction with considerations of forage reservations for watershed protection, wildlife, wild free-roaming horses and burros, and other multiple uses.

3. A new Group 4700 is added to Subchapter D to read as follows:

Group 4700—Wild Free-Roaming Horse and Burro Management

PART 4710—WILD FREE-ROAMING HORSE AND BURRO MANAGEMENT; GENERAL

Subpart 4710—Purpose; Objectives; Authority; Definitions; Policy

Sec.

- 4710.0-1 Purpose.
- 4710.0-2 Objectives.
- 4710.0-3 Authority.
- 4710.0-5 Definitions.
- 4710.0-8 Policy.

Subpart 4711—Management Coordination

- 4711.1 Recommendations from the joint national advisory board on wild free-roaming horses and burros.
- 4711.2 State agencies.
- 4711.3 Cooperative agreements.

Subpart 4712—Management Considerations

- 4712.1 Management; General.
- 4712.1-1 Planning.
- 4712.1-2 Intensity of management.
- 4712.1-3 Habitat reservation and allocation.
- 4712.1-4 Closures to livestock grazing.
- 4712.2 Establishment of specifically designated ranges or herd management areas.

Sec.

- 4712.2-1 Designation.
- 4712.2-2 Criteria for designation.
- 4712.2-3 Management plan.
- 4712.3 Removal and relocation or disposal of excess animals.
- 4712.3-1 Method of capture.
- 4712.3-2 Relocation of animals.
- 4712.3-3 Disposal.
- 4712.3-4 Acts of mercy.
- 4712.3-5 Disposal of carcasses.
- 4712.4 Animals on private lands.
- 4712.4-1 Allowing animals on private lands.
- 4712.4-2 Active maintenance of animals on private lands.
- 4712.4-3 Removal of animals from private lands.

Subpart 4713—Protection of Wild Free-Roaming Horses and Burros in the Identification and Removal of Claimed and Trespass Horses and Burros

- 4713.1 General.
- 4713.2 Action on claims.

Subpart 4714—Enforcement Provisions

- 4714.1 Arrest.
- 4714.2 Penalties.

Subpart 4710—Purpose; Objectives; Authority; Definitions; Policy

§ 4710.0-1 Purpose.

To implement the laws relating to wild free-roaming horses and burros on public lands.

§ 4710.0-2 Objectives.

The objective of these regulations is to provide criteria and procedures for protecting, managing, and controlling wild free-roaming horses and burros as a recognized component of the public land environment.

§ 4710.0-3 Authority.

The Act of December 15, 1971 (16 U.S.C. 1331-1340), and the Act of June 28, 1934 (43 U.S.C. 315-315r).

§ 4710.0-5 Definitions.

(a) "Authorized Officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described herein.

(b) "Wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros and their progeny that have used public lands on or after December 15, 1971, or that do use these lands as all or part of their habitat, including those animals given an identifying mark upon capture for live disposal by the authorized officer. Unbranded, claimed horses and burros where the claim is found to be erroneous are also considered as wild and free-roaming if they meet the criteria above. However, this definition shall not include any horse or burro which entered or was introduced onto public lands after December 15, 1971, by accident, negligence, or willful disregard of ownership.

(c) "Herd" means one or more stallions and their mares or jacks and their jennies.

(d) "Excess animals" means wild free-roaming horses or burros determined to be in excess of populations proper to maintain a thriving natural ecological balance and harmonious multiple-use re-

lationship in an area of the public lands.

(e) "Problem animal" means a wild free-roaming horse or burro whose demonstrated individual habits or traits pose an undue threat to the safety or welfare of persons, wildlife, livestock, or property; or a wild free-roaming horse or burro infected by a contagious disease or suspected of being diseased or seriously ill.

(f) "Public lands" means any lands administered by the Secretary of the Interior through the Bureau of Land Management.

(g) "Wild horse or burro range" means a specifically designated area of land needed to sustain a herd or herds of wild free-roaming horses or burros, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple use management of the public lands.

(h) "Management plan" means a written program of action designed to protect, manage, and control wild free-roaming horses and burros and maintain a natural ecological balance on the public lands.

(i) "Act" means the Act of December 15, 1971 (16 U.S.C. 1331-1340).

(j) "Advisory Board" means the joint advisory board established by the Secretary of the Interior and the Secretary of Agriculture pursuant to section 7 of the Act.

§ 4710.0-6 Policy.

(a) Wild free-roaming horses and burros are under the jurisdiction of the Secretary of the Interior and will be managed as an integral part of the natural systems of the public lands. They will be protected from unauthorized capture, branding, undue disturbance, and destruction. They and their habitat will be managed and controlled in a manner designed to achieve and maintain a thriving ecological balance on the public lands and a thriving population of sound, healthy individuals, all in accordance with the basic program policies for public land management set forth in Subpart 1725 of this chapter.

(b) Wild free-roaming horses and burros on the public lands will be managed by the authorized officer, with full public participation and such cooperative arrangements as he may find helpful. Management on public lands will not be assigned to any private individual or association through a grazing license, lease, or permit.

Subpart 4711—Management Coordination

§ 4711.1 Recommendations from the joint national advisory board on wild free-roaming horses and burros.

Policies and guidelines relative to proposals for establishment of ranges, proposed management plans, adjustments in number, relocation and disposal of animals, and other matters relating generally to the protection, management, and control of wild free-roaming horses and burros shall be presented to the Advisory Board for recommendations.

§ 4711.2 State agencies.

(a) All management activities including, but not limited to, establishment of ranges and adjustments in forage allocation shall be planned and executed in consultation with the appropriate State agency to further consider the needs of all wildlife, particularly endangered species.

(b) All actions taken in connection with private ownership claims to unbranded horses and burros shall be coordinated to the fullest extent possible with the appropriate State agency.

§ 4711.3 Cooperative agreements.

The authorized officer may enter into cooperative agreements with other landowners, private citizens, nonprofit organizations, and with Federal, State, and local governmental agencies as he deems necessary for purposes of protecting, managing and controlling wild free-roaming horses and burros. Where the grazing patterns of the animals require utilization of lands in other ownerships or administration, the authorized officer shall seek cooperative agreements to insure continuance of such use.

Subpart 4712—Management Considerations**§ 4712.1 Management; general.****§ 4712.1-1 Planning.**

In planning for management, protection, and control of wild free-roaming horses and burros, including the establishment of specifically designated ranges, determination of desirable numbers and other management provisions of these regulations, the authorized officer will utilize the Bureau's multiple-use planning system with its requirements for public participation by and coordination with others.

§ 4712.1-2 Intensity of management.

Wild free-roaming horse or burro herds may be managed either as one of the components of public land use on a specifically designated wild horse or burro range. Management practices shall be at the minimal feasible level and shall be consistent to the extent possible and practical with the maintenance of their free-roaming behavior. Management facilities should be designed and constructed to the extent possible to maintain the free-roaming behavior of the herds.

§ 4712.1-3 Habitat reservation and allocation.

The biological requirements of wild free-roaming horses and burros will be determined based upon appropriate studies or other available information. The needs for soil and watershed protection, domestic livestock, maintenance of environmental quality, wildlife, and other factors will be considered along with wild free-roaming horse and burro requirements. After determining the optimum number of such horses and burros to be maintained on an area, the authorized officer shall reserve adequate forage and satisfy other biological requirements of

such horses and burros and, when necessary, adjust or exclude domestic livestock use accordingly. See §§ 4115.2-1(d) and 4121.2-1(a) of this chapter.

§ 4712.1-4 Closures to livestock grazing.

The authorized officer may close public lands to use by all or a particular class of domestic livestock where he finds it necessary to allocate all available forage to, or to satisfy other biological requirements of, wild free-roaming horses or burros. Such closures may be made only after appropriate public notice and in accordance with the procedures for reduction or cancellation of grazing privileges provided for under the provisions of this subchapter. See §§ 4115.2-1(d) and 4121.2-1(a) of this chapter.

§ 4712.2 Establishment of specifically designated ranges or herd management areas.**§ 4712.2-1 Designation.**

The authorized officer may designate and maintain specifically designated ranges principally for the protection and preservation of wild free-roaming horses and burros.

§ 4712.2-2 Criteria for designation.

In designating specific ranges and herd management areas, the authorized officer, in addition to any other provisions of these regulations, shall:

(a) Consider only those areas utilized by wild free-roaming horses or burros as all or part of their habitat on December 15, 1971.

(b) Consider only those areas where self-sustaining herds can maintain themselves within their established utilization and migratory patterns.

(c) Consider only those areas which are capable of being managed as a unit to ensure a sustained yield of forage without jeopardy to the resources.

(d) Develop a wild free-roaming horse or burro management plan in accordance with § 4712.2-3.

§ 4712.2-3 Management plan.

The authorized officer shall, in connection with the designation of a specific range, develop a proposed wild free-roaming horse or burro management plan designed to protect, manage, and control wild free-roaming horses and burros on the area on a continuing basis. The authorized officer may also develop herd management plans as part of the multiple use management on areas outside of specifically designated wild horse or burro ranges. All management plans shall be developed in accordance with the Bureau's planning system and shall govern management of the area.

§ 4712.3 Removal and relocation or disposal of excess or problem animals.**§ 4712.3-1 Method of capture.**

Under the supervision of the authorized officer, wild free-roaming horses and burros may be captured, corralled and held under humane conditions pending disposal of excess or problem animals under the provisions of this Subpart.

§ 4712.3-2 Relocation of animals.

(a) The authorized officer may relocate wild free-roaming horses and burros on public lands when he determines such action is necessary to: (1) Relieve overgrazed areas, (2) locate animals removed from private lands in accordance with § 4712.4-3, (3) remove problem animals, or (4) achieve other purposes deemed to be in the interest of proper resource and herd management. Such animals relocated on public lands shall not be introduced onto areas of the public lands which were not used by wild free-roaming horses or burros as all or part of their habitat on December 15, 1971.

(b) The authorized officer may also place animals in the custody of private persons, organizations or other governmental agencies. Custodial arrangements shall be made through cooperative agreement which shall include provisions to maintain and protect the animals and ensure that the animals will not be used for commercial exploitation. The authorized officer may, in his discretion, mark animals placed in private custody for identification purpose.

§ 4712.3-3 Disposal.

Where the authorized officer finds it necessary to remove excess animals from areas of the public lands, and he determines that it is not practical to relocate them on public lands or capture and remove them for private maintenance under § 4712.3-2, he may destroy such animals in the most humane manner possible. No person, except the authorized officer or his authorized representative, shall destroy wild free-roaming horses and burros.

§ 4712.3-4 Acts of mercy.

Any severely injured or seriously sick animals will be destroyed in the most humane manner possible as an act of mercy.

§ 4712.3-5 Disposal of carcasses.

Carcasses shall be disposed of in any customary manner under State sanitary statutes. In no event shall carcasses, or any part thereof, including those in the authorized possession of private parties, be sold or processed into a commercial product.

§ 4712.4 Animals on private lands.**§ 4712.4-1 Allowing animals on private lands.**

Nothing in these regulations shall preclude a private landowner from allowing wild free-roaming horses and burros to remain on his private lands so long as the animals were not willfully removed, enticed, or retained by him or his agent from the public lands.

§ 4712.4-2 Active maintenance of animals on private lands.

Any individual who actively maintains wild free-roaming horses and burros on his private lands shall notify the authorized officer and supply him with a reasonable approximation of their number and location and, when required by the authorized officer, a description of the ani-

imals. Thereafter, he shall furnish an annual report updating the information during the month of January. An individual will be considered to be actively maintaining wild free-roaming horses or burros if he takes measures of any kind designed to protect or enhance the welfare of the animals. No person shall maintain such animals except under cooperative agreement between the private landowner and the authorized officer setting forth the management and maintenance requirements including provisions for regulating disposal of excess animals.

§ 4712.4-3 Removal of animals from private lands.

The authorized officer shall remove, as soon as he can make the necessary arrangements, wild free-roaming horses and burros, from private land at the request of the landowner where the private land is enclosed in a "legal fence." A "legal fence" for this purpose is one which complies with State standards and specifications. In "no fence districts" or other areas where the private landowner is not required by State statute to fence the private land to protect it from trespass by domestic livestock, the authorized officer shall, as soon as he can make the necessary arrangements, remove wild free-roaming horses or burros from such private land at the request of the landowner.

Subpart 4713 is revised. The full text of revised subpart 4713 follows:

Subpart 4713—Protection of Wild Free-Roaming Horses and Burros in the Identification and Removal of Claimed and Trespass Horses and Burros

§ 4713.1 General.

(a) All unauthorized and unbranded horses and burros on the public lands, except those which entered or were introduced onto the public lands after December 15, 1971, by accident, negligence, or willful disregard of ownership are presumed for the purpose of management to be wild free-roaming horses or burros.

(b) The gathering or rounding up of unbranded horses or burros on the public lands where any of such animals are not in fact authorized to be on the public lands pursuant to a grazing license, permit, lease, or other authorization, is prohibited without written authorization from the authorized officer. Also prohibited without written authorization from the authorized officer is the gathering or rounding up of unauthorized branded horses or burros where the branded animals are, or may become, intermingled with wild free-roaming horses or burros, or where the gathering or round up is likely to involve or affect wild free-roaming horses or burros.

§ 4713.2 Action on claims.

(a) Any person claiming ownership under state branding and estray laws of unbranded or branded horses or burros on public land where such animals are not authorized must present evidence of ownership to justify a roundup before permission will be granted to gather such

animals. Claims of ownership, with supporting evidence, shall be submitted within 90 days of the effective date of these regulations. All written authorizations to gather claimed animals shall be on a form approved by the Director. After such public notice as the authorized officer deems appropriate to inform interested parties, he may authorize the gathering or roundup. The authorized officer shall provide in the authorization that the gathering or roundup shall be consistent with the legislation which prohibits the use of aircraft or motor vehicles to capture unbranded horses or burros; shall establish in the authorization a reasonable period of time to allow the gathering of the claimed animals; and shall provide such other conditions in the authorization which he deems necessary to minimize stress on any associated wild free-roaming horses or burros and to protect other resources.

(b) After the animals have been gathered the authorized officer and the appropriate state or local official shall inspect each claimed animal in relation to the evidence of ownership previously presented by the claimant. The state or local official shall then make a written determination of ownership concerning each claimed animal pursuant to the state branding and estray laws and any agreement between the Bureau and the appropriate state or local authority. A copy of the written determination shall be provided to the authorized officer. No animal may be removed from the gathering place until the claim of ownership has been proven to the satisfaction of the authorized officer.

(c) Unauthorized horses or burros which have been claimed and have been determined to be privately owned in accordance with the provisions of this Section will be considered to have been in trespass and may not be released until a proper trespass charge has been determined by the authorized officer in accordance with the provisions of 43 CFR 9239.3.

Subpart 4714—Enforcement Provisions

§ 4714.1 Arrest.

The Director of the Bureau of Land Management may authorize such employees as he deems necessary to arrest without warrant, any person committing in the presence of the employee a violation of the Act or of these regulations and to take such person immediately for examination or trial before an officer or court of competent jurisdiction. Any employee so designated shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of the Act or these regulations.

§ 4714.2 Penalties.

In accordance with section 8 of the Act (16 U.S.C. 1338), any person who:

- (a) Willfully removes or attempts to remove a wild free-roaming horse or burro from the public lands, without authority from the authorized officer, or
- (b) Converts a wild free-roaming

horse or burro to private use, without authority from the authorized officer, or

(c) Maliciously causes the death or harassment of any wild free-roaming horse or burro, or

(d) Processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro, or

(e) Sells, directly or indirectly, a wild free-roaming horse or burro maintained on private or leased land pursuant to section 4 of the Act, or the remains thereof, or

(f) Willfully violates any provisions of the regulations under Group 4700, shall be subject to a fine of not more than \$2,000 or imprisonment for not more than 1 year, or both. Any person so charged with such violation by the authorized officer may be tried and sentenced by a U.S. commissioner or magistrate, designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided in section 3401, Title 18, U.S.C.

[FR Doc.73-17067 Filed 8-14-73; 8:45 am]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

FURNISHING OF ASSISTANCE; NEED AND AMOUNT OF ASSISTANCE

Methods for Determination of Eligibility

Notice of proposed regulations for the programs administered under titles I, IV-A, X, XIV, XVI, and XIX of the Social Security Act, relating to fair hearings, methods of determining eligibility for financial and medical assistance, and recoupment of overpayments was published in the FEDERAL REGISTER on April 20, 1973 (38 FR 7623). 9820

A total of 696 letters was received from State and local welfare agencies, members of Congress and State legislatures, other State officials, legal aid groups, recipients and recipient groups and other organizations and individuals.

Specific comments reflected the following substantive concerns:

1. *Local hearings.* Section 205.10(a) (1) and (6). This provision implements (and extends to title IV-A) section 407 of P.L. 92-603, under which local agencies "may put into effect immediately upon issuance its decision upon the matter considered at such hearing".

Opposition to the change was based on the belief that it may be impossible for hearing officers at the local level to issue unbiased decisions and that local agencies would use the procedure to reduce and terminate assistance wrongfully. State and local welfare agencies favoring local hearings believe such hearings will serve to discover errors in agency actions as quickly as possible, while eliminating unnecessary payments of assistance to ineligible. They also recommended that the due process requirements be spelled out.

The final regulation contains the provision specified in P.L. 92-603 which permits States to utilize local evidentiary hearings in all programs, but changes have been made to provide that evidentiary hearings may be used for questions of initial eligibility; to provide definitive due process procedural requirements regarding the conduct of the local hearing; to make sure the individual's rights are protected; to assure an objective hearing officer who was not involved in the decision at issue; to provide a complete record in case of appeal; and for the claimant to be fully informed of his appeal rights.

2. Ten-day advance notice. Section 205.10(a)(4)(i)(A). Opponents of the reduction of the advance notice period from 15 to 10 days expressed concern that a 10-day period was too short for a recipient to decide whether to appeal and to make adjustments to reduced assistance. Many stressed slow mail delivery. Proponents favored the change because it reduced the disproportionate number of overpayments to ineligible individuals, and 10 days is sufficient time for the recipient to assess the correctness of the agency action and request a hearing if he believes the action is erroneous. In the final regulation, the 10-day period is retained. If a State determines that a longer period is advisable, it may provide an extra ten days after the timely notice period during which a hearing may be requested and, where appropriate, assistance paid pending a hearing decision.

3. Exemptions from advance notice. Section 205.10(a)(4)(ii). Many commentators opposed these provisions as violating due process; not providing recipients time to adjust to changes in payment; providing no protection against agency error; and generally permitting abuse by local agencies. Recipient groups and other individuals were particularly opposed to the exemption in "likelihood of fraud" situations.

Those in favor spoke to reduction in unnecessary administrative cost and recommended that provision be made for the agency to confirm in writing the oral statements made by recipients.

All exemptions, except the one relating to "likelihood of fraud," are for situations where, as a matter of law, the change in payment results necessarily from the ascertained circumstances in the particular case. The chances of there being a factual dispute are minimal. States are required to mail adequate notice to the recipient not later than the date of action, so that in those unlikely instances of factual dispute, he can request a hearing and obtain reinstatement of aid pending such hearing. Because of questions raised regarding the exception where there is a likelihood of fraud, that provision has been rewritten and will be published as a proposed rule. The States will be requested to monitor their programs to determine the necessity for such a provision and to submit their comments to the Administrator, SRS. If such a provision appears to be necessary, the matter will be reconsidered.

4. Extension from 60 to 90 days for hearing decisions. Section 205.10(a)(16). Opponents stated that this extension would result in hardship for applicants and recipients who do not receive aid pending the decision, and enable States to further delay paying assistance to eligible individuals.

Those in favor considered 90 days a more realistic time frame.

In view of the difficult position facing States with substantially increased hearing caseloads, the 60-day period is considered insufficient for the orderly processing of cases. Ninety days for processing hearings is consistent (and in some aspect more stringent than) the period prescribed by Congress for the Federally-administered supplemental security income program enacted by P.L. 92-603.

5. Grievance procedures in lieu of hearings on questions of law or policy. Section 205.10(a)(5). Most of the comments in this area argued against this provision on the basis that the hearing procedure provides a viable mechanism for effecting changes in policy. Many legal aid groups pointed out that a recent court case cast doubt on the viability of distinguishing between fact or judgment and policy or law. Those in favor stressed reduction of administrative cost.

In response to these comments and the court case, the regulations have been modified. The States may provide for group hearings on questions of policy or law. They need not provide a hearing where either State or Federal law requires automatic grant adjustments for classes of recipients. On individual requests not resulting from such a change in State or Federal law, assistance must be continued pending a hearing decision unless the hearing officer determines at the hearing that the sole issue is one of State or Federal law or policy or a change in State or Federal law. The provision regarding a grievance system has been deleted since "expression of views" on program policy is part of legislative and rulemaking procedures.

6. Recoupment of continued assistance when the hearing decision supports agency action. Section 205.10(a)(6)(i).

Legal aid groups argue that not to continue eligibility until a decision is rendered after a hearing, and advising recipients that assistance paid pending a decision is subject to recoupment, discourages claimants requesting hearings.

Present practices in some States include notifying the recipient on the notice that any aid paid pending the decision may be subject to recoupment. Experience fails to indicate that such practice causes any reluctance on the part of a recipient who desires a hearing because he believes the agency made an error. To provide otherwise invites abuse of the hearing process by these utilizing it as a method of continuing aid for which they are not eligible.

State and local welfare agencies favored the provision as discouraging requests for hearings made without belief that the action is erroneous but solely to secure temporary continuation of

assistance. Accordingly, the provision is retained.

7. Signed application on agency form, § 206.10(a)(1)(ii); Revocation of simplified method, § 205.20; 45 days vs. 30 days for action on applications, § 206.10(a)(3). A number of comments opposed the requirement for a signed application on an agency form on the grounds it creates hardship on applicants with physical, language, and transportation barriers; discourages eligible persons from applying; adds to administrative costs; and results in denial of or delay in providing assistance.

Signed applications on agency forms are necessary to provide a legal document that clearly signifies the intent of the individual to apply, and the date; that advises the applicant of his rights and responsibilities; that puts him on notice that he may be liable for the truthfulness of the information he includes on the application; that provides a document that may be introduced as evidence in court where fraud has been committed; and that provides the agency with sufficient information to make an accurate determination of eligibility. The final regulations have been modified to permit a responsible person to apply on behalf of a person who is incapacitated or incompetent.

Because of the increased emphasis on verification to reduce the numbers of ineligible, unacceptable error rates at least partially attributable to the simplified method of determining eligibility, and the careful redeterminations of eligibility necessary in the forthcoming transfer of cases to the SSI program, a more complete method for determining eligibility is both appropriate and necessary.

Objections to the granting of 45 days for action on applications stressed that it would cause undue hardship and delay the granting of assistance; increase agency expenses and inefficiency and increase expenditures for general assistance and emergency assistance. State and local welfare agencies considered it a more realistic time frame.

The time extension is necessary in view of the quality control requirement that eligibility be verified. While it is expected that most applications can be completed in a much shorter time, it is recognized that some cases will require a longer period. Where hardship may result to an apparently eligible individual, many States provide for federally matched emergency assistance for up to 30 days, while the application for assistance is being processed. Moreover, there is no fiscal incentive to delay, since cases found eligible must be paid back to the 30th day after application.

8. Deletion of constraints on verification. Sections 205.20 and 206.10. Opponents to change considered that the deletions would lead to abusive State practices in violation of constitutional and legal rights, especially violations of dignity, right to privacy, and freedom from harassment. They also believe the deletions are an authorization by the Secretary to reestablish practices pro-

hibited in the past. Proponents commented that the changes are necessary to maintain accuracy and integrity in the welfare system and are long overdue.

State agencies are aware that individuals on welfare share equal rights with all other residents. We agree that it is important that the regulations specifically prohibit the States from violating constitutional and legal rights; we have therefore included a section which restates that constitutional rights are to be observed and protected. Courts have, of course, spelled out the constitutional and legal rights of individuals.

In order to perform a proper job of eligibility determination, and to avoid penalties for inaccuracy, agencies need to develop, within constitutional constraints, new methods of eligibility determination. Verifications are for the protection of the truly needy, and to restore faith in the welfare system. More funds may then be available to assist eligible individuals after eliminating inaccurate payments to those who are not eligible.

9. *Recoupment of overpayments.* Section 233.20(a) (12). Adverse comments in this area were that the provisions are a disincentive to good administration, and would result in undue hardship on recipients; that it is unfair to hold recipients responsible for agency error; and that the provision of "reasonable limits" on recovery is too vague. Many complained that there was no provision for correction of underpayments. Several State agencies requested that the provisions be made mandatory rather than discretionary.

In response to the comments several changes were made. Recovery of overpayments remains optional with the States. States also retain the option of recouping from available resources, from the assistance grant, or from both sources. An added provision limits to one year prior to the date of discovery, the recoupment of overpayments not resulting from the willful withholding of information. A provision has also been added to require the prompt correction of underpayments. Such payments are limited to one year prior to the date of discovery of the underpayment.

A number of other revisions have been made in the regulation in response to comments, and for technical, editorial and conforming purposes.

Chapter II, Title 45 of the Code of Federal Regulations is amended as set forth below.

PART 205 GENERAL ADMINISTRATION— PUBLIC ASSISTANCE PROGRAMS

1. Section 205.10 is revised to read as follows:

§ 205.10 Hearings.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, XVI or XIX of the Social Security Act shall provide for a system of hearings under which:

(1) The single State agency responsible for the program shall be respon-

sible for fulfillment of hearing provisions which shall provide for:

(i) A hearing before the State agency, or

(ii) An evidentiary hearing at the local level with a right of appeal to a State agency hearing. Where a State agency adopts a system of evidentiary hearings with an appeal to a State agency hearing, it may, in some political subdivisions, permit local evidentiary hearings, and in others, provide for a single hearing before the State agency. Under this requirement hearings shall meet the due process standards set forth in the U.S. Supreme Court decision in *Goldberg v. Kelly*, 397 U.S. 254 (1970) and the standards set forth in this section.

(2) Hearing procedures shall be issued and publicized by the State agency.

(3) Every applicant or recipient shall be informed in writing at the time of application and at the time of any action affecting his claim:

(i) Of his right to a hearing, as provided in paragraph (a) (5) of this section;

(ii) Of the method by which he may obtain a hearing;

(iii) That he may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or he may represent himself.

(4) In cases of intended action to discontinue, terminate, suspend or reduce assistance:

(i) The State or local agency shall give timely and adequate notice, except as provided for in paragraphs (a) (4) (ii) or (iii) of this section. Under this requirement:

(A) "Timely" means that the notice is mailed at least 10 days before the date of action, that is, the date upon which the recipient would normally receive his assistance check or, in the case of a medical recipient, 10 days before the intended change would be effective.

(B) "Adequate" means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing (if provided) and a State agency hearing, and the circumstances under which assistance is continued if a hearing is requested;

(ii) The agency may dispense with timely notice but shall send adequate notice not later than the date of action when:

(A) The agency has factual information confirming the death of a recipient or of the AFDC payee when there is no relative available to serve as new payee;

(B) The agency receives a clear written statement signed by a recipient that he no longer wishes assistance, or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that he understands that this must be the consequence of supplying such information;

(C) The recipient has been admitted or committed to an institution, and further payments to that individual do not qualify for Federal financial participation under the State plan;

(D) The recipient has been placed in skilled nursing care, intermediate care or long-term hospitalization;

(E) The claimant's whereabouts are unknown and agency mail directed to him has been returned by the post office indicating no known forwarding address. The claimant's check must, however, be made available to him if his whereabouts become known during the payment period covered by a returned check;

(F) A recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the jurisdiction previously providing assistance;

(G) An AFDC child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by his legal guardian;

(H) A change in level of medical care is prescribed by the recipient patient's physician;

(I) A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period;

(iii) When changes in either State or Federal law require automatic grant adjustments for classes of recipients, timely notice of such grant adjustments shall be given which shall be "adequate" if it includes a statement of the intended action, the reasons for such intended action, a statement of the specific change in law requiring such action and a statement of the circumstances under which a hearing may be obtained and assistance continued.

(5) An opportunity for a hearing shall be granted to any applicant who requests a hearing because his claim for financial or medical assistance is denied, or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by any agency action resulting in suspension, reduction, discontinuance or termination of assistance. A hearing need not be granted when either State or Federal law require automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation.

(i) A request for a hearing is defined as a clear expression by the claimant (or his authorized representative acting for him), to the effect that he wants the opportunity to present his case to higher authority. The State may require that such request be in written form in order to be effective;

(ii) The freedom to make such a request shall not be limited or interfered with in any way. The agency may assist the claimant to submit and process his request;

(iii) The claimant shall be provided reasonable time, not to exceed 90 days, in which to appeal an agency action;

(iv) Agencies may respond to a series of individual requests for hearing by

conducting a single group hearing. Agencies may consolidate only cases in which the sole issue involved is one of State or Federal law or policy or changes in State or Federal law. In all group hearings, the policies governing hearings must be followed. Thus, each individual claimant shall be permitted to present his own case or be represented by his authorized representative;

(v) The agency may deny or dismiss a request for a hearing where it has been withdrawn by the claimant in writing, where the sole issue is one of State or Federal law requiring automatic grant adjustments for classes of recipients or where it is abandoned. Abandonment may be deemed to have occurred if the claimant, without good cause therefor, fails to appear by himself or by authorized representative at the hearing scheduled for such claimant.

(6) If the recipient requests a hearing within the timely notice period:

(i) Assistance shall not be suspended, reduced, discontinued or terminated, (but is subject to recovery by the agency if its action is sustained), until a decision is rendered after a hearing, unless:

(A) A determination is made at the hearing that the sole issue is one of State or Federal law or policy, or change in State or Federal law and not one of incorrect grant computation, or

(B) a change affecting the recipient's grant occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change;

(ii) The agency shall promptly inform the claimant in writing if assistance is to be discontinued pending the hearing decision; and

(iii) In any case where the decision of an evidentiary hearing is adverse to the claimant, he shall be informed of and afforded the right to make a written request, within 15 days of the mailing of the notification of such adverse decision, for a State agency hearing and of his right to request a de novo hearing. Unless a de novo hearing is specifically requested by the appellant, the State agency hearing may consist of a review by the State agency hearing officer of the record of the evidentiary hearing to determine whether the decision of the evidentiary hearing officer was supported by substantial evidence in the record. Assistance shall not be continued after an adverse decision to the claimant at the evidentiary hearing.

(7) A State may provide that a hearing request made after the date of action (but during a period not in excess of 10 days following such date) shall result in reinstatement of assistance to be continued until the hearing decision, unless at the hearing it is determined that the sole issue is one of State or Federal law or policy. In any case where action was taken without timely notice, if the recipient requests a hearing within 10 days of the mailing of the notice of the action, and the agency determines that the action resulted from other than the application of State or Federal law or policy or a change in State or Federal law, as-

stance shall be reinstated and continued until a decision is rendered after the hearing.

(8) The hearing shall be conducted at a reasonable time, date, and place, and adequate preliminary written notice shall be given.

(9) Hearings shall be conducted by an impartial official (officials) or designee of the agency. Under this requirement, the hearing official (officials) or designee shall not have been directly involved in the initial determination of the action in question.

(10) When the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, a medical assessment other than that of the person or persons involved in making the original decision shall be obtained at agency expense and made part of the record if the hearing officer considers it necessary.

(11) In respect to title XIX, when the appeal has been taken on the basis of eligibility determination, the agency responsible for the determination of eligibility for medical assistance, if different from the single State agency administering the medical assistance plan, shall participate in the conduct of the hearing.

(12) The hearing shall include consideration of:

(i) An agency action, or failure to act with reasonable promptness, on a claim for financial or medical assistance, which includes undue delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance;

(ii) Agency decision regarding:

(A) Eligibility for financial or medical assistance in both initial and subsequent determinations,

(B) Amount of financial or medical assistance or change in payments,

(C) The manner or form of payment, including restricted or protective payments, even though no Federal financial participation is claimed.

(13) The claimant, or his representative, shall have adequate opportunity:

(i) To examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing;

(ii) At his option, to present his case himself or with the aid of an authorized representative;

(iii) To bring witnesses;

(iv) To establish all pertinent facts and circumstances;

(v) To advance any arguments without undue interference;

(vi) To question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

(14) Recommendations or decisions of the hearing officer or panel shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony and exhibits, or an official report containing

the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the recommendation or decision of the hearing officer or panel shall constitute the exclusive record and shall be available to the claimant at a place accessible to him or his representative at a reasonable time.

(15) Decisions by the hearing authority shall:

(i) In the event of an evidentiary hearing, consist of a memorandum decision summarizing the facts and identifying the regulations supporting the decision;

(ii) In the event of a State agency de novo hearing, specify the reasons for the decision and identify the supporting evidence and regulations.

Under this requirement no persons who participated in the local decision being appealed shall participate in a final administrative decision on such a case.

(16) Prompt, definitive, and final administrative action shall be taken within 90 days from the date of the request for a hearing.

(17) The claimant shall be notified of the decision in writing and, to the extent it is available to him, of his right to appeal to State agency hearing or judicial review.

(18) When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, the agency shall promptly make corrective payments retroactively to the date the incorrect action was taken.

(19) All State agency hearing decisions shall be accessible to the public (subject to provisions of safeguarding public assistance information).

(b) *Federal financial participation.* Federal financial participation is available for the following items:

(1) Payments of assistance continued pending a hearing decision;

(2) Payments of assistance made to carry out hearing decisions, or to take corrective action after an appeal but prior to hearing, or to extend the benefit of a hearing decision or court order to others in the same situation as those directly affected by the decision or order. Such payments may be retroactive in accordance with applicable Federal policies on corrective payments.

(3) Payments of assistance within the scope of Federally aided public assistance programs made in accordance with a court order.

(4) Administrative costs incurred by the agency for:

(i) Providing transportation for the claimant, his representative and witnesses to and from the place of the hearing;

(ii) Meeting other expenditures incurred by the claimant in connection with the hearing;

(iii) Carrying out the hearing procedures, including expenses of obtaining an additional medical assessment.

§ 205.20 [Revoked]

2. Section 205.20 is revoked.

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE, PUBLIC ASSISTANCE PROGRAM

3. Section 206.10 is revised to read as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV XVI, or XIX of the Social Security Act shall provide that:

(1) Each individual wishing to do so shall have the opportunity to apply for assistance under the plan without delay. Under this requirement:

(i) Each individual may apply under whichever of the State plans he chooses;

(ii) The agency shall require a written application, signed under penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitated, someone acting responsibly for him;

(iii) An applicant may be assisted, if he so desires, by an individual(s) of his choice (who need not be a lawyer) in the various aspects of the application process and the redetermination of eligibility and may be accompanied by such individual(s) in contacts with the agency and when so accompanied may also be represented by them; and

(iv) Individuals eligible for financial assistance are eligible for medical assistance without a separate application.

(2) Applicants will be informed about the eligibility requirements and their rights and obligations under the program. Under this requirement individuals are given information in written form, and orally as appropriate, about coverage, conditions of eligibility, scope of the program, and related services available, and the rights and responsibilities of applicants for and recipients of assistance. Specifically developed bulletins or pamphlets explaining the rules regarding eligibility and appeals in simple, understandable terms, are publicized and available in quantity.

(3) A decision shall be made promptly on applications, pursuant to reasonable State-established time standards not in excess of:

(i) 45 days for OAA, AFDC, AB, AABD (for aged and blind), and MA (for aged, blind, and families with children); and

(ii) 60 days for APTD, AABD (for disabled) and MA (for disabled). Under this requirement, the applicant is informed of the agency's time standard in acting on applications, which covers the time from date of application under the State plan to the date that the assistance check, or notification of denial of assistance or change of award, or the eligibility decision with respect to medical assistance, is mailed to the applicant or recipient. The State's time standards apply except in unusual circumstances (e.g., where the agency cannot reach a decision because of failure or delay on

the part of the applicant or an examining physician, or because of some administrative or other emergency that could not be controlled by the agency), in which instances the case record shows the cause for the delay. The agency's standards of promptness for acting on applications or redetermining eligibility shall not be used as a waiting period before granting aid, or as a basis for denial of an application or for terminating assistance.

(4) Adequate notice shall be sent to applicants and recipients to indicate that assistance has been authorized (including the amount of financial assistance) or that it has been denied or terminated. Under this requirement, adequate notice means a written notice that contains a statement of the action taken, and the reasons for and specific regulations supporting such action, and an explanation of the individual's right to request a hearing.

(5) Financial assistance and medical care and services included in the plan shall be furnished promptly to eligible individuals without any delay attributable to the agency's administrative process, and shall be continued regularly to all eligible individuals until they are found to be ineligible. Under this requirement there must be arrangements to assist applicants and recipients in obtaining medical care and services in emergency situations on a 24-hour basis, 7 days a week.

(6) Assistance shall begin as specified in the State plan, which:

(i) For financial assistance

(A) Must be no later than:

(1) The date of authorization of payment, or

(2) Thirty days in OAA, AFDC, AB, and AABD (as to the aged and blind), and 60 days in APTD and AABD (as to the disabled), from the date of receipt of a signed and completed application form, whichever is earlier: *Provided*, That the individuals then met all the eligibility conditions, and

(B) For purposes of Federal financial participation, may be as early as the first of the month in which an application has been received and the individual meets all the eligibility conditions; and

(ii) For medical assistance must be no later than the date of application for either financial or medical assistance, and may be as early as the third month prior to the month of application if the individual was eligible in that month.¹

(7) In cases of proposed action to terminate, discontinue, suspend or reduce assistance, the agency shall give timely and adequate notice. Such notice shall comply with the provisions of § 205.10 of this chapter.

(8) Each decision regarding eligibility or ineligibility will be supported by facts in the applicant's or recipient's case record. Under this requirement each application is disposed of by a finding of eligibility or ineligibility unless:

¹ For proposed revisions to this subdivision see Notice published on June 21, 1973 (38 FR 16310)

(1) The applicant voluntarily withdraws his application, and there is an entry in the case record that a notice has been sent to confirm the applicant's notification to the agency that he does not desire to pursue his application; or

(ii) There is an entry in the case record that the application has been disposed of because the applicant died or could not be located.

(9) Where an individual has been determined to be eligible, eligibility will be reconsidered or redetermined:

(i) When required on the basis of information the agency has obtained previously about anticipated changes in the individual's situation;

(ii) Promptly, within 30 days, after a report is obtained which indicates changes in the individual's circumstances that may affect the amount of assistance to which he is entitled or may make him ineligible; and

(iii) Periodically, within agency-established time standards, but not less frequently than every 6 months in AFDC, and every 12 months in the other categories, including medical assistance, on eligibility factors subject to change.

(10) Standards and methods for determination of eligibility shall be consistent with the objectives of the programs, and shall respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State laws.

(11) With respect to title XIX, policies and procedures shall assure that eligibility for medical assistance shall be determined in a manner consistent with simplicity of administration and the best interests of the applicant or recipient.

(12) The State agency shall establish and maintain methods by which it shall be kept currently informed about local agencies' adherence to the State plan provisions and to the State agency's procedural requirements for determining eligibility, and it shall take corrective action when necessary.

(b) *Definitions.* For purposes of this section:

(1) "Applicant" is a person who has, directly, or through his authorized representative, or where incompetent or incapacitated, through someone acting responsibly for him, made application for public assistance from the agency administering the program, and whose application has not been terminated.

(2) "Application" is the action by which an individual indicates in writing to the agency administering public assistance his desire to receive assistance. The relative with whom a child is living or will live ordinarily makes application for the child for AFDC. An application is distinguished from an inquiry, which is simply a request for information about eligibility requirements for public assistance.

Such inquiry may be followed by an application.

PART 233 COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

4. Section 233.20(a) is amended by deleting subdivision (D) from subparagraph (3) (ii) and redesignating subdivision (E) thereof as (D); and by adding a new subparagraph (12), as set forth below:

§ 233.20 Need and amount of assistance.

(a) Requirements for State plans. * * *

(12) *Recoupment of overpayments and correction of underpayments.* Specify uniform Statewide policies for:

(i) Recoupment of overpayments of assistance, including overpayments resulting from assistance paid pending a hearing decision; Under this requirement:

(A) The State may recoup any overpayment (election by the State not to recoup overpayments shall not waive the provisions of §§ 205.40, 205.41 or any other quality control requirement);

(B) Except where there is evidence which clearly establishes that a recipient willfully withheld information about his income and resources, recoupment shall be limited to overpayments made during the 12 months preceding the month in which the overpayment was discovered;

(C) The plan may provide for recoupment from available income and resources (including disregarded, set-aside or reserved items) or from current assistance payments or from both; and

(D) If the recoupments are made from current assistance payments, the State shall establish reasonable limits on the proportion of such payments that may be deducted, so as not to cause undue hardship on recipients.

(E) The plan may provide for recoupment in all situations or in specified circumstances and for waiver of the overpayment where the cost of collection would exceed the amount of the overpayment.

(ii) Prompt correction of underpayments to current recipients, resulting from administrative error where the State plan provides for recoupment of overpayments. Under this requirement:

(A) Retroactive corrective payment shall be made only for the 12 months preceding the month in which the underpayment is discovered;

(B) For purposes of determining continued eligibility and amount of assistance, such retroactive corrective payments shall not be considered as income or as a resource in the month paid nor in the next following month; and

(C) No retroactive payment need be made where the administrative cost would exceed the amount of the payment.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302)).

Effective Date: The regulations in this section shall be effective October 15, 1973, or earlier at the option of the State.

Dated: July 19, 1973.

JAMES S. DWIGHT, Jr.,
Administrator, Social and
Rehabilitation Service.

Approved: August 10, 1973.

CASPAR W. WEINBERGER,
Secretary.

[FR Doc. 73-16944 Filed 8-14-73; 8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19550 RM-1859 RM-2049;
FCC 73-842]

PART 73—RADIO BROADCAST SERVICES

Report and Order and Order To Show Cause

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Shorewood, Ottawa, Lockport and Crest Hill, Illinois).

1. On July 19, 1972, the Commission adopted a Notice of Proposed Rule Making in this proceeding (FCC 72-638, 37 Fed. Reg. 15171) in response to a petition of Joliet Radio Corporation, licensee of standard broadcast station WJRC, Joliet, Illinois. The Notice proposed the reassignment of Channel 252A from Ottawa, Illinois, to Shorewood, Illinois, and the replacement of Channel 252A at Ottawa with Channel 237A.

2. Interested parties, after extensions of time were granted, were afforded an opportunity to file comments on or before September 11, 1972, and (taking into account an intervening holiday) to reply to such comments on or before October 10, 1972. Timely comments and/or reply comments were filed by Joliet Radio Corporation (Joliet Radio); Van Schoick Enterprises, Inc. (Van Schoick Enterprises); and WFMT, Inc. (WFMT). Mr. Joseph Oswald filed three separate reply comments. One of these was timely and proper and has been given consideration in arriving at our decision herein. The other two were reply comments directed at reply comments of another party.¹ Section 1.415 of the rules does not contemplate the filing of such pleadings unless specifically requested or authorized by the Commission, which they were not in the instant case.

¹Mr. Wayne J. Hess, Receiver, WOLI Broadcasting Corp. (operating on Channel 252A at Ottawa, Illinois), participated in the early phase of this proceeding by filing an opposition to the petition for rule making. On December 22, 1971, the Commission granted BALH-1587, assigning the license of WOLI from Mr. Hess to Van Schoick Enterprises. Among other things, the comments filed by Van Schoick Enterprises adopt and incorporate by reference the aforesaid opposition filed by Mr. Hess.

²These two pleadings are "Reply to: Further Reply Comments of the Joliet Radio Corporation—Oct. 4, 1972" and "Reply to Opposition Comments to Oswald Counterproposals."

Because of this and because the contents of these two pleadings are not essential to our decision, they are not accepted for filing and are given no consideration herein. Additionally, Mr. Oswald filed a petition for rule making (RM-2049) which contained two counterproposals. This petition, filed prior to the date for filing initial comments in this proceeding, was considered as a comment (pursuant to our cut-off procedures announced in the Notice).

3. Although inviting comments on the proposed assignment of Channel 252A to Shorewood, the Notice also stated that it would be in the public interest to consider the needs and importance of other communities larger in size to which the channel might be assigned if deleted from Ottawa and not assigned to Shorewood. Examples of some such communities were listed and we indicated that we would entertain showings by interested parties as to the possible use of Channel 252A in such communities on the condition that any such counterproposals must be accompanied by an offer to reimburse the licensee of WOLI for reasonable expenses incurred for shifting its operation from Channel 252A to 237A at Ottawa, Illinois.

4. The only filing which did so was that of Mr. Oswald which sets out alternative counterproposals (RM-2049), i.e., the assignment of Channel 252A to either Lockport or Crest Hill, Illinois, rather than Shorewood, Illinois. With regard to the Lockport proposal, we observe that Channel 252A cannot meet our minimum mileage separation requirements to Class B Channels 250 and 254 assigned to Chicago, Illinois, and at the same time put the minimum signal required over the entire community of Lockport, i.e., a field strength of 70 dB above 1 uV/m. Approximately 4 percent of the area to Lockport would not receive the required signal strength if our minimum mileage requirements are adhered to. In view of this fact, our normally strict observance of our engineering rules, and the possibility of using the channel in full compliance with our rules at either Shorewood or Crest Hill, Illinois, we find that it would not be in the public interest to grant the requested waiver of our rules and attempt to make the assignment of Channel 252A to Lockport, Illinois. Hence, we now have pending before us in this proceeding the possible assignment of Channel 252A to Shorewood or Crest Hill, Illinois, and the replacement of Channel 252A at Ottawa, Illinois, with Channel 237A.

5. In view of the pleadings, we are required to make one further preliminary judgment. WFMT, operating on Class B FM Channel 254 in Chicago, Illinois, points out that it has a significant audience in the Joliet area of Illinois and indicates that it would be in the public interest to permit that audience to continue its enjoyment of WFMT. It further points out that a station at either Shorewood or Crest Hill operating on Channel

252A would impair WFMT's signal in and around those communities. We acknowledge this probability while observing that WFMT, as any other station in its power class (Class B), is only entitled to the standard protection of 40 miles separation between it and the proposed service on Channel 252A. In connection with the WFMT filing, we received approximately 100 letters from members of the public who reside in the Shorewood-Joliet-Crest Hill area of Illinois which strongly advocate the type of programming (apparently classical music and cultural) available on WFMT and express a concern about the probable loss of access to it by the interference which will be created to the WFMT signal in the Joliet area by a new service at either Shorewood or Crest Hill on Channel 252A. In this proceeding we bring these expressions of community interest and taste to the attention of any applicant for the use of Channel 252A in the Shorewood-Joliet-Crest Hill area of Illinois.

6. Will County, Illinois (population 249,498)* contains the two communities of Shorewood (population 1,749⁴) and Crest Hill (population 7,460). Neither community has either an FM assignment or a standard broadcast station. Shorewood is immediately west of Joliet while Crest Hill abuts Joliet on the north.

7. With regard to Shorewood, Joliet Radio states:

"Shorewood is an incorporated village, with a Village Council form of government. The village government provides police service within its boundaries, performs construction and maintenance of streets within the village, and performs other government functions, such as zoning. The village government is faced with policy decisions on zoning applications, demands for street improvements and for police protection and other municipal matters. The presence of these issues naturally gives rise to a need for a local outlet for self-expression by shorewood residents on these matters. In addition to the problems of the village government, there are other local activities which also create a need for local self-expression.

"Shorewood has one public school. It has a fire department (located in Shorewood) which provides protection for Shorewood and adjoining parts of Troy township. Shorewood also has the usual voluntary organizations created by its residents. It has churches (a Methodist Church and a Church of God), the Shorewood Lions Club, a Boy Scout Troop, and the Shorewood Homeowners Association.

"Shorewood also has its own commercial life. It is not a mere bedroom community for workers whose jobs are elsewhere. For instance, it has two major liquor wholesalers. One of them, United Liquor & Beverage Company, is a wholesale beer distributor. It has two motels—a Holiday Inn and a Howard Johnson's Motel. Two major industrial parks are now under development in Shorewood. Immediately outside of Shorewood, Mobile Oil Company is building a multi-million dollar refinery. In the same area are located the new stockyards which opened recently. Since the famed Chicago Stockyards closed, this facility now serves the entire midwest.

* All population figures cited are from the 1970 U.S. Census unless otherwise specified.

⁴ A special 1972 U.S. Census indicates that the population of Shorewood as of 1972 is 2,809.

In Shorewood itself there is a new shopping area, recently opened, which provides a wide range of retail services."

Mr. Oswald questions the veracity of a number of the above statements and in sum agrees with Van Schoick Enterprises that Shorewood is in essence too small to support an independent station and is in reality but a "bedroom" community for Joliet, Illinois. Mr. Oswald suggests that because of the smallness of Shorewood and its proximity to Joliet any FM station assigned to it and licensed to Joliet Radio would necessarily be simulcasting with WJRC much of the time.

8. In supporting the proposed assignment of Channel 252A to Shorewood, Joliet Radio shows that there are other channels available to most of the communities listed in the Notice, and submits that a station at Shorewood would provide a first and second FM service to substantial areas.

9. Concerning Crest Hill, Mr. Oswald provides the following information. Its 1970 population of 7,460 represents a 25 percent increase over its 1960 population which was 5,886. Its retail sales in 1967 (latest official figures) were \$14,700,000. It is a community with its own government (mayor, city council) and with more than 100 commercial establishments. It shares the same school system with nearby Lockport, it has resisted annexation by Joliet, and it strives to maintain its own identity. (Hence, he avers, its problems, needs, and interests must be dealt with separate from those of adjoining Joliet.) It has a strategic physical location as to expressways and canal commerce and has a favorable growth pattern. It not only is without local AM, FM, or TV stations, but it has no regular daily newspaper. Mr. Oswald states that if the channel is assigned to Crest Hill he will promptly file an application for its use and that he is willing to reimburse WOLI for reasonable expenses incurred for shifting its operation from Channel 252A to 237A.

10. We have carefully considered the record in this proceeding. Joliet Radio and Mr. Oswald have each attempted to show that there is a need for a first local radio service in Shorewood and Crest Hill, the respective communities to which they seek assignment of the channel. Each has tried to show that the community it proposes is capable of supporting a local FM station. Each advert to a favorable growth pattern. Each has stated that the community it proposes has no AM, FM, or TV station, and no daily newspaper. Each makes statements to show that its chosen community, although an immediate neighbor of Joliet, seeks to preserve its separate identity as a community.⁵

⁵ In addition, Joliet Radio avers that if Channel 252A is assigned to Shorewood it would provide a first and second FM service to substantial areas. However, its coverage showing is based on existing facilities. If it were made on the basis of the Roanoke Rapids-Goldsboro criteria (9 FCC 2d 672 (1971)), a Shorewood station would not provide a first FM service to any portion of the service area, and would provide a second FM service to a very limited area.

11. We believe that Mr. Oswald has adequately demonstrated a need for a channel at Crest Hill (see para. 9 *supra*) and that the public interest would be served by the assignment of Channel 252A to that community and the substitution of Channel 237A for 252A at Ottawa. Although it appears from the record that Crest Hill could support a viable local FM service, a question has been raised as to whether Shorewood could do so or whether it is a mere bedroom community of Joliet. We do not find it necessary to decide this question because even if decided favorably to Shorewood, the proposed assignment to that community fails on other grounds. While there may be a need for an FM channel at Shorewood, there has been no showing that the need there is greater than the need at Crest Hill. Both communities are without local AM, FM, or TV stations; both have no daily newspaper; both are adjacent to Joliet and presumably receive broadcast services from that community; both apparently have local governments and local problems; and both have shown favorable growth patterns. As to the latter point, although the Shorewood population increased about 250 percent from 1960 to 1970 while that of Crest Hill increased only about 25 percent, as to actual population Shorewood increased by 1,250 persons and Crest Hill by 1,574 (Shorewood: 1960 pop. of 499 and 1970 pop. of 1,749; Crest Hill: 1960 pop. of 5,886 and 1970 pop. of 7,460).⁶ Therefore, at best it would appear that the need for a channel at Shorewood is equal to that at Crest Hill if one does not consider the population sizes of the two communities. However, in view of the fact that the population of Crest Hill is substantially larger than that of Shorewood, it appears that the mandate of section 307(b) of the Communications Act for a fair, efficient, and equitable distribution of radio service requires that the channel be assigned to Crest Hill if such an assignment would otherwise be in the public interest.

12. We note that Mr. Oswald has indicated his willingness, if ultimately granted a license for Channel 252A at Crest Hill, to reimburse the licensee of Station WOLI for reasonable costs for changing its operation from Channel 252A to 237A. We also note that this representation is made in the light of the costs set out by Van Schoick Enterprises with regard to such a channel change.

13. Authority for the actions taken herein is contained in sections 4(i), 303, 307(b) and 316 of the Communications Act of 1934, as amended.

14. Accordingly, it is ordered, That effective September 14, 1973, the

⁶ Joliet Radio submits the results of a special census taken as of June 19, 1972, showing the population of Shorewood at that time to be 2,809. In the absence of such a census for Crest Hill, we of course cannot compare the populations of the two communities as of that date; however, there is no reason to believe that the population of Crest Hill has not continued to increase since the 1970 Census was taken.

Table of Assignments in section 73.202 (b) of the Commission's rules IS AMENDED, insofar as the cities listed below are concerned, to read as follows:

City:	Channel No.
Crest Hill, Illinois.....	252A
Ottawa, Illinois.....	237A

15. It is further ordered, That Van Schoick Enterprises, Inc., licensee of WOLI at Ottawa, Illinois, shall show cause under the provisions of section 316 (a) of the Communications Act of 1934, as amended, why its outstanding license for the operation of WOLI on Channel 252A should not be modified to specify operation on Channel 237A and that it do so not later than September 14, 1973.

16. After the receipt of Van Schoick Enterprises, Inc.'s response to the above show cause order, it will be evaluated. In the event that it is determined to be in the public interest to modify the license of Van Schoick Enterprises for WOLI to specify operation on Channel 237A in lieu of Channel 252A, we shall issue appropriate orders including an order which will require that any successful applicant for the use of Channel 252A at Crest Hill, Illinois, reimburse the licensee of WOLI at Ottawa, Illinois, for all reasonable costs it incurs for shifting its operating frequency from Channel 252A to Channel 237A.

(Secs. 4, 303, 307, 48 Stat., as amended; 1066, 1082, 1083, Sec. 12, 66 Stat. 717; 47 U.S.C. 154, 303, 307, and 316.)

By the Commission.

Adopted: August 2, 1973.

Released: August 3, 1973.

FEDERAL COMMUNICATIONS
COMMISSION

[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-16907 Filed 8-14-73; 8:45 am]

[Docket No. 19688 RM-1924; FCC 78-841]

PART 73—RADIO BROADCAST SERVICES Report and Order

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Flint, Michigan)

1. On February 14, 1973, the Commission adopted a Notice of Proposed Rule Making (FCC 73-176; 38 Fed. Reg. 5193) looking towards the assignment of FM Channel 224A to Flint, Michigan. The Notice stemmed from a petition filed by Flint Family Radio, Inc. (Family) on February 16, 1972. Interested parties were requested to submit comments concerning the proposed change in the Table of Assignments on or before March 28, 1973, and to file reply comments on or before April 6, 1973. Comments in support of the proposal were received from the petitioner and from Sherwood Broadcasting, Inc. (Sherwood), a newly formed corporation that wishes to enter the broadcast field. No opposing statements were filed.

2. Flint, with a population of 193,317, is located in Genesee County (population

444,341).¹ It has been assigned three FM channels (two Class B's and one Class A) and all are currently occupied.² There are also six standard broadcast stations in Flint—four full-time and two daytime-only. One of the daytime-only AM stations operates in conjunction with an FM station operating on the Class A channel. The broadcast facilities in Flint are the only ones located in Genesee County. Both Family and Sherwood state in their supporting comments that if an additional FM channel is assigned to Flint, each will apply for the channel and, if granted a construction permit, build promptly.

3. As evidence that Flint can support an additional FM service, petitioner indicates that the average annual rate of growth of personal income from 1959 through 1968 was 7.73 percent and that retail sales for Genesee County totaled over \$728 million. Also, while primarily an automobile manufacturing city with approximately 342 manufacturing concerns, petitioner notes that Flint's retail area has a radius of 25 miles with a population of over 500,000. The information submitted by the petitioner is sufficient to enable us to conclude that Flint is a prosperous and growing community, able to support an additional FM service.

4. According to the population criteria for assignment of FM channels, communities with populations ranging from 100,000 to 250,000 are normally assigned four to six channels.³ However, Flint, with a population of nearly 200,000, presently has only three channels, one of which is used by a noncommercial educational station. It therefore appears that there is a need for the additional channel requested for the community. Although the assignment of Channel 224A to Flint intermixes classes of channels, we note the channels in Flint are already intermixed; moreover, demand for a Class A channel has been evidenced by two parties both of whom have indicated an interest in using the channel and both of whom have apparently made the business judgment that a Class A facility would be viable in Flint.

5. Channel 224A can be assigned to Flint without violating our mileage separation requirements and without making any other changes in the Table of Assignments. The preclusion study submitted by petitioner discloses that if Channel 224A is assigned to Flint, future assignments on Channels 223 and 224A would be prohibited. However, the preclusion on Channel 223 occurs in a limited region where the channel cannot be used

efficiently. On Channel 224A the zone of preclusion is limited to the Flint area where an assignment could be made to the adjoining community of Mount Morris, Michigan (population 3,778). The proximity of Mount Morris to Flint signifies that Channel 224A would be available to applicants of Mount Morris under § 73.203(b) of the Commission's Rules. Thus, the assignment of Channel 224A to Flint would result in a more efficient administration of the FM frequencies because it cannot be used at any other community in this area of the state.

6. Since Flint is within 250 miles of the U.S.-Canadian border, concurrence has been obtained from the Canadian Government for the assignment of Channel 224A to that community.

7. In view of the foregoing, we are of the opinion that the additional assignment would serve the public interest and should be made.

8. Authority for the amendment adopted herein is found in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

9. Accordingly, it is ordered, That, effective September 14, 1973, the Table of Assignments contained in section 73.202(b) of the Commission's rules and regulations is amended, insofar as the community named below is concerned, to read as follows:

City	Channel No.
Flint, Michigan	224A, 236, 288A, 300

10. It is further ordered, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended; 1066, 1082, 1083; 47 U.S.C. 154, 303, 307.)

By the Commission.

Adopted: August 2, 1973.

Released: August 7, 1973.

FEDERAL COMMUNICATIONS
COMMISSION

[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-16908 Filed 8-14-73; 8:45 am]

[Docket No. 19738 FM-1983; FCC 73-839]

PART 73—RADIO BROADCAST SERVICES Report and Order

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Oberlin, Kansas)

1. The Commission has before it a Notice of Proposed Rule Making adopted May 9, 1973 (FCC 73-492, 38 Fed. Reg. 13387), inviting comments on a petition filed by the Decatur County Area Chamber of Commerce, Inc. (petitioner), which requested the assignment of Channel 266 to Oberlin, Kansas. This channel could be assigned to Oberlin in conformity with the Commission's minimum mileage separation rule and without affecting any presently assigned channel in the FM Table of Assignments. There were no oppositions to the proposal. Supporting comments were filed by petitioner. Information in the rec-

¹ Population figures are from the 1970 U.S. Census.

² One of the Class B channels is occupied by noncommercial educational station WFBE, licensed to the Flint Board of Education.

³ See para. 4 of the Further Notice of Proposed Rule Making in Docket No. 14185, adopted July 25, 1962 (FCC 62-867), and incorporated by reference in para. 25 of the Third Report, Memorandum Opinion and Order (40 FCC 747, 758 (1968)).

ord indicates that petitioner is organized as a non-profit organization and that it has no charter provision for operating a business. It further indicates that a responsible group consisting of Chamber of Commerce members intends to incorporate and apply for the channel if it is assigned, and build and operate a station if authorized.

2. Oberlin, with a population of 2,291 persons, is the seat of Decatur County, which has a population of 4,988 persons,¹ and is located in the northwest portion of Kansas. Oberlin does not have a local aural broadcast station. Petitioner notes that there is no full-time AM radio service in the northwest Kansas-southwest Nebraska area and very limited FM service. It points out that Oberlin serves as a principal trading center for a wide area of northwest Kansas and southwest Nebraska, and has sufficient size and economic strength to support a Class C FM facility. Petitioner contends that a Class A station operating at Oberlin would serve so small an area and audience that it could not survive. Petitioner states that based on the reasonable facilities assumption, a Class C facility, operating with an ERP of 100 Kw and an antenna height of 500 feet at Oberlin, would serve a total population of 33,711 persons, with 20,048 people receiving a first FM service and 13,663 receiving a second FM service in an area of 1,648 and 2,138 square miles, respectively.

3. The preclusion study indicates that the proposed assignment would foreclose future assignments on six channels: Channel 264, 265A, 266, 267, 268 and 269A. The size of the precluded areas varies with the channel. However, in the sparsely populated areas of the northwestern part of Kansas and the southwestern part of Nebraska, a number of other FM channels are available which could be assigned to communities located in the precluded areas.

4. The Commission would ordinarily assign a Class A channel to a community the size of Oberlin, but under the above circumstances and the fact that this assignment will provide a first local FM service, we conclude that the public interest would be served by assigning Channel 266 to Oberlin, Kansas.

5. Authority for the amendment adopted herein is found in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

6. Accordingly, it is ordered, That, effective September 14, 1973, the Table of Assignments contained in § 73.202(b) of the Commission's rules and regulations is amended, insofar as the community named below is concerned to read as follows:

City	Channel No.
Oberlin, Kansas	266

7. It is further ordered, That this proceeding IS TERMINATED.

(Secs. 4, 303, 307, 48 Stat., as amended, 1086, 1082, 1083; 47 U.S.C. 154, 303, 307.)

¹ Population figures cited are from the 1970 U.S. Census.

By the Commission.

Adopted: August 2, 1973

Released: August 7, 1973

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc. 73-18906 Filed 8-14-73; 8:45 am]

[Doc No. 19545; FCC 73-819]

USE OF LAND MOBILE FREQUENCIES ABOARD AIRCRAFT

In the Matter of amendment of Parts 89, 91, and 93 of the Commission's rules concerning use of land mobile frequencies aboard aircraft.

1. On July 12, 1972, the Commission adopted a Notice of Proposed Rule Making (35 FCC 2d 797) in the above entitled proceeding to amend its rules to limit the licensing and operation of communication facilities on board aircraft in the land mobile radio services. Comments in response to the Notice were received from the parties listed in Appendix A and have been carefully considered.

2. The basic purpose of this proceeding is to restrict the potential for interference to land-base operations primarily from operation on land mobile frequencies aboard high-flying aircraft, particularly on aircraft operated by scheduled passenger airlines. Aircraft communications for airline radio operations are regularly authorized in Aviation Radio Services under Part 87 of the Commission's Rules. However, a few airlines have obtained additional authorizations in the Business Radio Service to transmit convenience-type messages from planes related to passenger activities. Favorable passenger response to this special service has apparently increased airline interest in expansion of operations of this nature. The Commission has found, however, that the transmission range and effect of radio operation on board planes at the heights and distances involved in passenger airline flights greatly increase the potential for widespread interference to regular land-based operations. The rule change would restrict these radio communications to provide protection from such interference to licensees operating within the normal framework and regulatory plan for land mobile systems.

3. There was no disagreement in the comments with respect to necessity for this rule to restrict airline radio operations on land mobile frequencies. Two parties, Continental Airlines, Inc. and Aeronautical Radio, Inc. (ARINC) asked that deletion of these operations not be put into effect until there were alternative frequencies for the airlines to use for passenger messages. Continental argues that it has been using the frequency 461.25 MHz in the Business Radio Service for air-to-ground radio traffic on behalf of passengers to coordinate cabin service activities, to arrange reservations and

connecting flights, for medical advisory consultations, and to obtain interpreter services.

It contends that these operations should be permitted to continue "on the basis of procedures established over a twelve (12) year period of operation, until such time as new allocations of the radio spectrum are provided for air/ground Business Radio purposes." More specifically, ARINC, which provides enroute radiocommunications for airlines related to the safety of aircraft, states that it believes the solution to meeting the requirement for passenger communications lies in the allocation of spectrum exclusively for "cabin requirements" from the band 806-960 MHz.

4. As indicated in our Notice, the Commission realizes that an accommodation for aircraft passenger service communications may be justifiable in a different structure where inherent interference problems are not involved. For example, ARINC's recommendation for accommodating this service on frequencies in the 806-947 MHz region will be given further consideration in our proceeding in Docket 18262. At this time, however, we find that, consistent with the purposes of this proceeding, the paramount public interest requirement is for deletion of this type of aircraft operation on the existing land mobile frequencies. Accordingly, our proposal to preclude operations of this nature in land mobile services is being adopted. With respect to presently authorized operations in these services, we believe that it would be reasonable to require the licensees to amortize their equipment investment within the current license terms. Consequently, these airline operations will be permitted to continue only for the duration of present license terms. At the same time, as we have noted, the Commission will look for reasonable alternatives for permitting this type of operation and we welcome suggestions in this regard.

5. A different category of aircraft operation also under consideration in our Notice involves the low-flying, short-range helicopters and fixed-wing planes that are extensively used in a variety of applications. Examples include such diverse functions as water-scanning by fisheries that have become dependent upon "spotting" capability of aircraft, pipe-line surveillance in the petroleum and natural gas industries, "flying-ambulances" for hospitals, and numerous local government activities. Generally, these aircraft fly at low altitudes from a few hundred to a few thousand feet, as opposed to passenger airline planes which regularly operate above 20,000 feet. The potential for extended-range interference from operations on board such aircraft, therefore, is much reduced. Further, the comments have indicated that in many situations such aircraft are an integral part of land based operations and in others practical communications alternatives are not readily available. For these reasons, the following rule specifically providing for regular licensing of these aircraft in land mobile services was proposed for inclusion in Parts 89, 91 and 93:

"Radio facilities authorized under this part may not be operated on board aircraft in flight except where the aircraft is an integral part of an operation in which land vehicles are primarily involved and where there is a requirement for direct communications between the aircraft and the land vehicles."

6. The comments generally supported the proposed rule change. There was some concern, however, that the specific rule is too limited in restricting communications to air-to-ground, and only when directed to land vehicles. These parties ask that the rule provide also for authorization of land mobile systems which incorporate air-to-air, air-to-base, or air-to-ship transmissions as an integral, or even sole, radio communication requirement.

7. It is not inconsistent with the underlying intent of our proposal that these aircraft radio operations, in addition to air-to-mobile operations, be included as permissible communications. At the same time, however, there must be practical limitations. Our analysis of the communication requirements for aircraft operating as part of land mobile radio systems shows that most aircraft can achieve a reasonable transmission range with a transmitter output power of 10 watts, below a one-mile ceiling.¹ Accordingly, we are incorporating these power and ceiling limitations as basic standards and will authorize exceptions only upon a showing of unusual operational requirements, and only where the potential for interference is not thereby increased. Even within these standards, however, in a given geographical area or for a particular utilization, some aircraft operations may manifest an unacceptable potential for interference. The reasonable solution appears to be case-by-case analysis of each proposed land mobile service aircraft operation, and attachment of conditions to licenses which will afford requisite protection to regular land-based operations. Conditions to be applied might include further restriction on transmitter power and ceilings for operations, a limitation on the geographic area which may be served, or other appropriate restriction. One general condition that will apply to all aircraft licensing of this nature is that the operations must be on a non-interference basis to regular land mobile systems.

8. Within this framework, the Commission is adopting rule changes for the land mobile services for regular authorization of aircraft operations. The specific proposed rule is being modified to expand the allowable points of communication, to provide power limits and flying ceilings for radio transmissions, and

¹ Ceiling in this instance being altitude above the earth's surface. Based upon line-of-sight propagation, the radio horizon from the aircraft approximates 100 miles. The limitation of ten watts transmitter output power at the frequencies involved, taking into account other system parameters, should normally provide adequate communications between the aircraft and associated base and mobile stations on the surface at distances up to 60 miles.

to reflect the conditional nature of these aircraft operations.

9. In the Notice in this rule making matter, the Commission determined that pending its resolution of the issues in this proceeding, no action would be taken on new applications for licensing aircraft radio operations in land-mobile services. A number of these applications have been received, and they will be expeditiously handled in accordance with the rule changes being adopted herein. There are also a number of present authorizations for land mobile operations which include operations on board low-flying aircraft. Few of these operations conform to the standards being adopted, particularly with respect to authorized transmitter power. For the reasons already discussed, we find that these operations should not be permitted on an indefinite basis. Accordingly, we will permit only one renewal of current licenses for aircraft operations which do not meet the new standards. A longer period for temporary continued operation of these aircraft stations has been afforded than for the high-flying airline radio operations in consideration of lesser interference potential of the latter transmissions.

10. Pursuant to the foregoing, the Commission determines that the public interest, convenience, and necessity will be served by amendment of its rules, essentially as proposed, to restrict licensing of aircraft operations in the land-mobile radio services.

11. Accordingly, pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, *It is ordered*, That effective September 14, 1973, Parts 89, 91, and 93 of the Commission's Rules are amended as shown in the attached Appendix B. *It is further ordered* That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1065, 1082; 47 U.S.C. 154, 303)

By the Commission.

Adopted: August 2, 1973.

Released: August 8, 1973.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] VINCENT J. MULLINS,
Acting Secretary.

NOTE: Rules changes herein will be covered by T.S.V.(70)-10.

The following parties submitted timely comments and/or reply comments in response to the Notice of Proposed Rule Making in Docket 19545:

Aeronautical Radio, Inc.
Aerospace and Flight Test Radio Coordinating Council.
Air Logistics, Inc.
Air Marine, Inc.
Alert Identification Directive Service, Inc.
American Petroleum Institute.
Arizona Department of Public Safety.
Associated Public-Safety Communications Officers, Inc.
Boise Cascade Corporation.
California State Communications Division.
Continental Airlines.
Forest Industries Telecommunications.
General Electric Company.

International Association of Fire Chiefs.
International Municipal Signal Association.
State of Iowa.
Louisiana Menhaden Fisheries et al.
Louisiana Wild Life and Fisheries Commission.
Moyer Aero-Spray.
National Association of Business and Educational Radio, Inc.
National Association of Manufacturers.
Offshore Raydist, Inc.
Offshore Navigation, Inc.
Simpson Timber Company.
Special Industrial Radio Service Association, Inc.
Teledyne Hastings-Raydist.
Vir James Consulting Radio Engineers.

PART 89—PUBLIC SAFETY RADIO SERVICES

I. Part 89 of the Commission's Rules is amended by adding new rule Section 89 to read as follows:

§ 89.156 Operations on board aircraft.

(a) Except as provided in paragraph (b) and (c) of this section, mobile stations first authorized after September 14, 1973, under this part may be operated aboard aircraft for air-to-mobile, air-to-base, air-to-air, and air-to-ship communications subject to the following:

(1) Operations are limited to aircraft that are regularly flown at altitudes below one-mile above the earth's surface;

(2) Transmitters are to operate with an output power not to exceed ten watts;

(3) Operations are subject to non-interference to land-based systems by transmitters operated aboard aircraft;

(4) Such other conditions, including additional reductions of altitude and power limitations, as may be required to minimize the interference potential to land-based systems by transmitters operated aboard aircraft.

(b) Exceptions to the altitude and power limitations set forth in paragraph (a) of this section may be authorized upon a showing of unusual operational requirements which justify departure from those standards, provided that, the interference potential to regular land-based operations would not thereby be increased.

(c) Mobile stations operated aboard aircraft under this part under licenses in effect September 14, 1973, may be continued without regard to provisions of paragraph (a) of this section, as follows:

(1) Operations may be continued only for the balance of the term of such licenses if aircraft involved are regularly flown at altitudes above one mile above the earth's surface;

(2) Operations may be continued for one additional renewal license term if the aircraft involved are regularly flown at altitudes below one mile above the earth's surface.

II. Part 91 of the Commission's Rules is amended by adding new rule Section 91.162 to read as follows:

PART 91—INDUSTRIAL RADIO SERVICES

§ 91.162 Operations on board aircraft.

(a) Except as provided in paragraph (b) and (c) of this section, mobile sta-

tions first authorized after September 14, 1973, under this part may be operated aboard aircraft for air-to-mobile, air-to-base, air-to-air, and air-to-ship communications subject to the following:

- (1) Operations are limited to aircraft that are regularly flown at altitudes below one mile above the earth's surface;
- (2) Transmitters are to operate with an output power not to exceed ten watts;
- (3) Operations are subject to non-interference to land-based systems by transmitters operated aboard aircraft;
- (4) Such other conditions, including additional reductions of altitude and power limitations, as may be required to minimize the interference potential to land-based systems by transmitters operated aboard aircraft.

(b) Exceptions to the altitude and power limitations set forth in paragraph (a) of this section may be authorized upon a showing of unusual operational requirements which justify departure from those standards, provided that, the interference potential to regular land-based operations would not thereby be increased.

(c) Mobile stations operated aboard aircraft under this part under licenses in effect September 14, 1973, may be continued without regard to provisions of paragraph (a) of this section, as follows:

- (1) Operations may be continued only for the balance of the term of such licenses if aircraft involved are regularly flown at altitudes above one-mile above the earth's surface.
- (2) Operations may be continued for one additional renewal license term if the aircraft involved are regularly flown at altitudes below one-mile above the earth's surface.

III. Part 93 of the Commission's Rules is amended by adding new rule Section 93.164 to read as follows:

PART 93—LAND TRANSPORTATION RADIO SERVICES

§ 93.164 Operations on board aircraft.

(a) Except as provided in paragraph (b) and (c) of this section, mobile stations first authorized after September 14, 1973, under this part may be operated aboard aircraft for air-to-mobile, air-to-base, air-to-air, and air-to-ship communications subject to the following:

- (1) Operations are limited to aircraft that are regularly flown at altitudes below one mile above the earth's surface;
- (2) Transmitters are to operate with an output power not to exceed ten watts;
- (3) Operations are subject to non-interference to land-based systems by transmitters operated aboard aircraft;
- (4) Such other conditions, including additional reductions of altitude and power limitations, as may be required to minimize the interference potential to land-based systems by transmitters operated aboard aircraft.

(b) Exceptions to the altitude and power limitations set forth in paragraph (a) of this section may be authorized upon a showing of unusual operational requirements which justify departure from those standards, provided that, the

interference potential to regular land-based operations would not thereby be increased.

(c) Mobile stations operated aboard aircraft under this part under licenses in effect September 14, 1973, may be continued without regard to provisions of paragraph (a) of this section, as follows:

- (1) Operations may be continued only for the balance of the term of such licenses if aircraft involved are regularly flown at altitudes above one mile above the earth's surface;
- (2) Operations may be continued for one additional renewal license term if the aircraft involved are regularly flown at altitudes below one mile above the earth's surface.

[FR Doc. 73-16905 Filed 8-14-73; 8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—BUREAU OF SPORT FISHERIES AND WILDLIFE, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

MIGRATORY BIRD HUNTING

Miscellaneous Amendments

By notice of proposed rulemaking published in the FEDERAL REGISTER of April 25, 1973 (38 FR 10208), it was proposed to revise and restructure subchapter B of Chapter One of this title. Among other things, that Proposed Rulemaking advised that current "Part 10—Migratory Birds" would be redesignated "Part 20—Migratory Bird Hunting" and a new "Part 10—General Provisions" would be added along with conforming modifications to subchapter A, Part 1—Definitions.

It was proposed at that time to amend § 10.21(e) to allow shooting crippled migratory game birds from a craft under power and to delete § 10.21(f) which prohibited the use of livestock as a means of concealment. After consideration of comments received and other data presented, the enforcement problems expected, and the concern of many States, it is determined that only the latter of these two proposals should be adopted.

On July 13, 1973, a notice of proposed rulemaking was published in the FEDERAL REGISTER (38 FR 18670) which proposed further changes in proposed § 20.21(i) concerning the baiting regulation with respect to doves. After consideration of comments received and other data presented it is determined to adopt that proposal as a final rule.

In the FEDERAL REGISTER on July 5, 1973, (38 FR 17841) subchapter B of 50 CFR, Chapter I, was retitled and Part 20—Migratory Bird Hunting was added reserving subparts A—K and M, and publishing only subpart L—Administrative and Miscellaneous Provisions. Subpart K—Annual Season, Limit, and Shooting Hour Schedules was published in part in the FEDERAL REGISTER on August 1, 1973 (38 FR 20456). Since subpart K will be further modified in the near future it is not republished at this time, however, the remainder of Part 20

is herein adopted and subpart L is republished.

Since evaluation of comments, suggestions and objections to the Proposed Rulemaking of April 25, 1973 (subchapter B), is not complete, and the migratory game bird hunting season is approaching, it is determined to adopt the proposed changes in subchapter B in segments, rather than republish it in its entirety at this time. Parts 10—General Provisions and 20—Migratory Bird Hunting, along with conforming modifications to Part 1 of subchapter A of this title, are hereby adopted.

PART 1—DEFINITIONS

§§ 1.9, 1.10, and 1.11 [Deleted]

1. Accordingly, Part 1 of 50 CFR, Chapter I, is hereby amended by deleting §§ 1.9, 1.10, and 1.11.

2. Accordingly, Part 10 of 50 CFR, Chapter I is amended to read as follows:

PART 10—GENERAL PROVISIONS

SUBPART A—INTRODUCTION

- | | |
|------|-------------------------|
| Sec. | |
| 10.1 | Purpose of regulations. |
| 10.2 | Scope of regulations. |
| 10.3 | Other applicable laws. |
| 10.4 | When regulations apply. |

Subpart B—Definitions

- | | |
|-------|--------------------------|
| 10.11 | Scope of definitions. |
| 10.12 | Definitions. |
| 10.13 | List of migratory birds. |

Subpart C—Addresses

- | | |
|-------|----------------------------|
| 10.21 | Director. |
| 10.22 | Law enforcement districts. |

AUTHORITY.—Lacey Act, 62 Stat. 687, as amended, 63 Stat. 89, 74 Stat. 753, and 83 Stat. 281; Black Bass Act, sec. 5, 44 Stat. 576, as amended, 46 Stat. 846; Migratory Bird Treaty Act, sec. 3, 40 Stat. 755; Bald Eagle Protection Act, sec. 2, 54 Stat. 251; Tariff Classification Act of 1962, sec. 102, 76 Stat. 73-74, 19 U.S.C. 1202, Schedule 1, Part 15D, Headnote 2(d), "Tariff Schedules of the United States"; Endangered Species Conservation Act of 1969, sec. 4(e), 83 Stat. 278; Fish and Wildlife Act of 1956, sec. 13(d), 86 Stat. 905 amending 85 Stat. 480; Marine Mammal Protection Act of 1972, sec. 112(a), 86 Stat. 1042.

Subpart A—Introduction

§ 10.1 Purpose of regulations.

The regulations of this subchapter B are promulgated to implement the following statutes enforced by the Bureau of Sport Fisheries and Wildlife which regulate the taking, possession, transportation, sale, purchase, barter, exportation, and importation of wildlife:

Lacey Act, 18 U.S.C. 42-44.
Black Bass Act, 16 U.S.C. 851-856.
Migratory Bird Treaty Act, 16 U.S.C. 703-711.
Bald Eagle Protection Act, 16 U.S.C. 668-669d.
Tariff Classification Act of 1962, 19 U.S.C. 1202, (Schedule 1, Part 15D, Headnote 2, T.S.U.S.).
Endangered Species Conservation Act of 1969, 16 U.S.C. 668aa-668cc-6.
Fish and Wildlife Act of 1956, 16 U.S.C. 742a-1.
Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1384, 1401-1407.

§ 10.2 Scope of regulations.

The various parts of this subchapter B are interrelated, and particular note should be taken that the parts must be construed with reference to each other.

§ 10.3 Other applicable laws.

No statute or regulation of any State shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this subchapter B. In addition, nothing in this subchapter B, nor any permit issued under this subchapter B, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any State or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or other Bureau enforced statutes or regulations.

§ 10.4 When regulations apply.

The regulations of this subchapter B shall apply to all matters arising after the effective date of such regulations, with the following exceptions:

(a) *Civil Penalty Proceedings.*—Regardless of when the act or omission which is the basis of a civil penalty proceeding occurred, the regulations herein which are concerned with civil penalty procedures shall apply if a notice of a proposed assessment has not been sent prior to the effective date of these regulations.

(b) *Permits.*—The regulations in this subchapter B shall apply to any permit application received after the effective date of the appropriate regulations in this subchapter B and, insofar as appropriate, to any permit which is renewed after such effective date.

Subpart B—Definitions

§ 10.11 Scope of definitions.

In addition and subject to definitions contained in applicable statutes and subsequent parts or sections of this subchapter B, words or their variants shall have the meanings ascribed in this subpart. Throughout this subchapter B words in the singular form shall include the plural, words in the plural form shall include the singular, and words in the masculine form shall include the feminine.

§ 10.12 Definitions.

"Aircraft" means any contrivance used for flight in the air.

"Amphibians" means a member of the class, Amphibia, including, but not limited to, frogs, toads, and salamanders; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Animal" means an organism of the animal kingdom, as distinguished from the plant kingdom; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Birds" means a member of the class, Aves; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Bureau" means the Bureau of Sport Fisheries and Wildlife, United States Fish and Wildlife Service, Department of the Interior.

"Country of exportation" means the last country from which the animal was exported before importation into the United States.

"Country of origin" means the country where the animal was taken from the wild, or the country of natal origin of the animal.

"Crustacean" means a member of the class, Crustacea, including but not limited to, crayfish, lobsters, shrimps, crabs, barnacles, and some terrestrial forms; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Director" means the Director of the Bureau of Sport Fisheries and Wildlife, United States Fish and Wildlife Service, Department of the Interior, or his authorized representative.

"Endangered wildlife" means any wildlife listed in § 17.11 or § 17.12 of this chapter.

"Fish" means a member of any of the following classes: (1) Cyclostomata, including, but not limited to, hagfishes and lampreys; (2) Elasmobranchii, including but not limited to, sharks, skates, and rays; and (3) Pisces, including but not limited to, trout, perch, bass, minnows, and catfish; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Fish or wildlife" means any wild mammal, bird, fish, amphibian, reptile, mollusk, or crustacean, whether or not raised in captivity, and including any part, product, egg, or offspring thereof, or the dead body or parts thereof, whether or not included in a manufactured product or in a processed food product.

"Foreign commerce" includes, among other things, any transaction (1) between persons within one foreign country, or (2) between persons in two or more foreign countries, or (3) between a person within the United States and a person in one or more foreign countries, or (4) between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

"Fossil" means the remains of an animal of past geological ages which has been preserved in the earth's crust through mineralization of the object.

"Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

"Injurious Wildlife" means any wildlife for which a permit is required under subpart B of part 16 of this chapter before being imported into or shipped between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States.

"Mammal" means a member of the class, Mammalia; including any part, product, egg, or offspring, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Migratory birds" means all birds, whether or not raised in captivity, included in the terms of conventions between the United States and any foreign country for the protection of migratory birds and the Migratory Bird Treaty Act, 16 U.S.C. 703-711. (For reference purposes only a list of migratory birds by species appears in § 10.13.)

"Migratory game birds": See § 20.11 of this chapter.

"Mollusk" means a member of the phylum, Mollusca, including but not limited to, snails, mussels, clams, oysters, scallops, abalone, squid, and octopuses; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Permit" means any document so designated as a permit by the Bureau and signed by an authorized official of the Bureau.

"Person" means any individual, firm, corporation, association, partnership, club, or private body, any one or all, as the context requires.

"Possession" means the detention and control, or the manual or ideal custody of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Possession includes the act or state of possessing and that condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons. Possession includes constructive possession which means not actual but assumed to exist, where one claims to hold by virtue of some title, without having actual custody.

"Public" as used in referring to museums, zoological parks, and scientific or educational institutions, refers to such as are open to the general public and are either established, maintained, and operated as a governmental service or are privately endowed and organized but not operated for profit.

"Reptile" means a member of the class, Reptilia, including but not limited to, turtles, snakes, lizards, crocodiles, and alligators; including any part, product, egg, or offspring thereof, or the dead body or parts thereof, whether or not included in a manufactured product or in a processed food product.

"Secretary" means the Secretary of

the Interior or his authorized representative.

"Shellfish" means an aquatic invertebrate animal having a shell, including, but not limited to, (a) an oyster, clam, or other mollusk; and (b) a lobster or other crustacean; or any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

"Take" means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect. (With reference to marine mammals, see part 18 of this chapter.)

"Transportation" means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

"United States" means the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

"Whoever" means the same as person.

"Wildlife" means the same as fish or wildlife.

§ 10.13 List of migratory birds.

The following is a list of migratory birds by species, shown by the most widely used common name or names followed by the scientific name in italics. The birds are listed in two categories, "Game Birds" and "Nongame Birds". "Game Birds" are members of those families named in § 20.11, for which open seasons are prescribed. The species are listed alphabetically except for ducks, which are all grouped under the heading "Duck". Within the category "Nongame Birds" all members of those families named in § 21.28 which may be used for falconry are listed under "Raptor" and all species are in alphabetical order.

GAME BIRDS

Brant: *Branta bernicla*.
Black *Branta nigricans*.
Coot: American *Fulica americana*.
Crane:
Sandhill (Lesser or Little Brown subspecies) *Grus canadensis*.
Dove:
Ground *Columba passerina*.
Mourning *Zenaidura macroura*.
White-winged *Zenaidura asiatica*.
Zenaidura macroura.
Duck:
Black *Anas rubripes*.
Bufflehead *Bucephala albeola*.
Canvasback *Aythya valisineria*.
Eider:
Common (Northern, American, and Pacific) *Somateria mollissima*.
King *Somateria spectabilis*.
Spectacled *Somateria fischeri*.
Steller's *Polystictus stelleri*.
Gadwall *Anas strepera*.
Goldeneye:
Barrow's *Bucephala islandica*.
Common *Bucephala clangula*.
Harlequin *Histrionicus histrionicus*.

Mallard *Anas platyrhynchos*.
Masked *Oxyura dominica*.
Merganser:
Common (American) *Mergus merganser*.
Hooded *Lophodytes cucullatus*.
Red-breasted *Mergus serrator*.
Mottled (Florida and Louisiana) *Anas fulvigula*.
Oldsquaw *Gallinula hyemalis*.
Pintail *Anas acuta*.
Redhead *Aythya americana*.
Ring-necked *Aythya collaris*.
Ruddy *Oxyura jamaicensis*.
Scaup:
Greater *Aythya marila*.
Lesser *Aythya affinis*.
Scoter:
Black (Common) *Oidemia nigra*.
Surf *Melanitta perspicillata*.
White-winged *Aythya deglandi*.
Shoveler: Northern *Anas clypeata*.
Teal:
Blue-winged *Anas discors*.
Cinnamon *Anas cyanoptera*.
Green-winged (American and Eurasian) *Anas crecca*.
Tree:
Black-bellied *Dendrocygna autumnalis*.
Fulvous *Dendrocygna bicolor*.
Wigeon:
American *Anas americana*.
European *Anas penelope*.
Wood *Atz sponsa*.
Gallinule:
Common *Gallinula chloropus*.
Purple *Porphyrio martinica*.
Goose:
Barnacle *Branta leucopsis*.
Canada (all subspecies except the Aleutian Canada goose) *Branta canadensis*.
Emperor *Phalacrocorax canalicus*.
Ross' *Chen rossii*.
Snow (Greater, Lesser, and Blue) *Chen caerulescens*.
White-fronted (Tule) *Anser albifrons*.
Pigeon:
Band-tailed *Columba fasciata*.
White-crowned *Columba leucocephala*.
Rall:
Black *Laterallus jamaicensis*.
Clapper *Rallus longirostris*.
King *Rallus elegans*.
Sora *Porzana carolina*.
Virginia *Rallus himicola*.
Yellow *Coturnicops noveboracensis*.
Snipe: Common (Wilson's) *Capella gallinago*.
Swan: Whistling *Olor columbianus*.
Woodcock:
American *Philohela minor*.
European *Scolopax rusticola*.

NONGAME BIRDS

Albatross:
Black-footed *Diomedea nigripes*.
Laysan *Diomedea immutabilis*.
Short-tailed *Diomedea albatrus*.
Anhinga *Anhinga anhinga*.
Ani:
Groove-billed *Crotophaga sulcirostris*.
Smooth-billed *Crotophaga ani*.
Auklet:
Cassin's *Ptychoramphus aleuticus*.
Crested *Aethia cristatella*.
Least *Aethia pusilla*.
Parakeet *Cyclorhynchus psittacula*.
Rhino *Cerorhinca monocerata*.
Whiskered *Aethia pygmaea*.
Avocet: American *Recurvirostra americana*.
Becard: Rose-throated *Platysaris aglaiae*.
Bittern:
American *Botaurus lentiginosus*.
Least *Ixobrychus exilis*.
Blackbird:
Brewer's *Euphagus cyanocephalus*.
Red-winged *Agelaius phoeniceus*.
Rusty *Euphagus carolinus*.
Tricolored *Agelaius tricolor*.
Yellow-headed *Xanthocephalus xanthocephalus*.

Bluebird:
Eastern *Sialia sialis*.
Mountain *Sialia currucoides*.
Western *Sialia mexicana*.
Bluetongue *Luscinia svecica*.
Bobolink: *Dolichonyx oryzivorus*.
Booby:
Blue-faced *Sula dactylatra*.
Blue-footed *Sula nebouxi*.
Brown *Sula leucogaster*.
Red-footed *Sula sula*.
Bunting:
Indigo *Passerina cyanea*.
Lark *Calamospiza melanocorys*.
Lazuli *Passerina amoena*.
McKay's *Plectrophenax hyperboreus*.
Painted *Passerina citra*.
Snow *Plectrophenax nivalis*.
Varied *Passerina versicolor*.
Bushtit: Common (Black-eared, California, Coast and other subspecies) *Psaltirparus minimus*.
Cardinal *Cardinalis cardinalis*.
Catbird: Grey *Dumetella carolinensis*.
Chat: Yellow-breasted *Icteria virens*.
Chickadee:
Black-capped *Parus atricapillus*.
Boreal (Hudsonian) *Parus hudsonicus*.
Carolina *Parus carolinensis*.
Chestnut-backed *Parus rufescens*.
Gray-headed (Alaska) *Parus cinctus*.
Mexican *Parus sclateri*.
Mountain *Parus gambeli*.
Chuck-will's-widow *Caprimulgus carolinensis*.
Condor: California *Gymnogyps californianus*.
Cormorant:
Brandt's *Phalacrocorax penicillatus*.
Double-crested *Phalacrocorax auritus*.
Great *Phalacrocorax carbo*.
Olivaceous *Phalacrocorax olivaceus*.
Pelagic *Phalacrocorax pelagicus*.
Red-faced *Phalacrocorax urile*.
Cowbird:
Bronzed (Red-eyed) *Tangarus aeneus*.
Brown-headed (Eastern, Nevada, California, and Dwarf) *Molothrus ater*.
Crane:
Sanhill (Florida and Greater subspecies) *Grus canadensis*.
Whooping *Grus americana*.
Creeper: Brown *Certhia familiaris*.
Crossbill:
Red (Bendire's and other subspecies) *Loxia curvirostra*.
White-winged *Loxia leucoptera*.
Crow:
Common *Corvus brachyrhynchos*.
Fish *Corvus ossifragus*.
Hawaiian *Corvus tropicalis*.
Northwestern *Corvus caurinus*.
Cuckoo:
Black-billed *Coccyzus erythrophthalmus*.
Mangrove (Maynard's) *Coccyzus minor*.
Yellow-billed *Coccyzus americanus*.
Curlew:
Bristle-thighed *Numenius tahitiensis*.
Eskimo *Numenius borealis*.
Long-billed *Numenius americanus*.
Dickcissel *Spiza americana*.
Dipper (Water Ouzel) *Cinclus mexicanus*.
Dotterel *Eudromias morinellus*.
Dove:
Inca *Scardafella inca*.
White-fronted *Leptotilia verreauxi*.
Dovekie *Alle alle*.
Dowitcher:
Long-billed *Limnodromus scolopaceus*.
Short-billed *Limnodromus griseus*.
Duck:
Hawaiian *Anas wyvilliana*.
Laysan (Laysan teal) *Anas laysanensis*.
Mexican (New Mexican) *Anas diazi*.
Dunlin (Red-backed Sandpiper) *Calidris alpina*.
Eagle:
Bald *Haliaeetus leucocephalus*.
Golden *Aquila chrysaetos*.

- Egret:**
 Cattle *Bubulcus ibis*.
 Great *Casmerodius albus*.
 Little *Egretta garzetta*.
 Reddish *Dichromas a rufescens*.
 Snowy *Egretta thula*.
Falcon (see Raptor)
- Finch:**
 Black Rosy *Leucosticte atrata*.
 Brown capped Rosy *Leucosticte australis*.
 Cassin's *Carpodacus cassinii*.
 Gray-crowned Rosy *Leucosticte tephrocotis*.
 House *Carpodacus mexicanus*.
 Purple *Carpodacus purpureus*.
Flamingo, American *Phoenicopterus ruber*.
Flicker: Common (Gilded, Red-shafted, and Yellow-shafted) *Colaptes auratus*.
Flycatcher:
 Acadian *Empidonax virens*.
 Alder *Empidonax aliorum*.
 Ash-throated *Myiarchus cinerascens*.
 Beardless *Camptostoma imberbe*.
 Buff-breasted *Empidonax fulvifrons*.
 Coues' *Contopus pertinax*.
 Dusky *Empidonax oberholseri*.
 Gray *Empidonax wrightii*.
 Great Crested (Northern and Southern) *Myiarchus cinerascens*.
 Hammond's *Empidonax hammondi*.
 Klaskadee (Derby) *Pitangus sulphuratus*.
 Least *Empidonax minimus*.
 Nutting's *Myiarchus nuttingi*.
 Olive-sided *Myiarchus tuberculifer*.
 Olive-sided *Nuttallornis borealis*.
 Scissor-tailed *Muscivora forficata*.
 Sulphur-bellied *Myiodynastes luteiventris*.
 Vermilion *Pyrocephalus rubinus*.
 Western *Empidonax difficilis*.
 Wied's Crested *Myiarchus tyrannulus*.
 Willow *Empidonax traillii*.
 Yellow-bellied *Empidonax flaviventris*.
Frigatebird:
 Great *Fregata minor*.
 Magnificent *Fregata magnificens*.
Fulmar: Northern *Fulmarus glacialis*.
 Gannet *Morus bassanus*.
Gnatcatcher:
 Black-capped *Polioptila nigriceps*.
 Black-tailed (Plumbeous and other subspecies) *Polioptila melanura*.
 Blue-gray *Polioptila caerulea*.
Godwit:
 Bar-tailed *Limosa lapponica*.
 Hudsonian *Limosa haemastica*.
 Marbled *Limosa fedoa*.
Goldfinch:
 American *Spinus tristis*.
 Lawrence's *Spinus lawrencei*.
 Lesser (Arkansas) *Spinus psaltria*.
Goose:
 Aleutian Canada *Branta canadensis*.
 Hawaiian (Nene) *Branta sandvicensis*.
Grackle:
 Boat-tailed *Cassidix major*.
 Common (Purple, Bronzed, and Florida) *Quiscalus quiscula*.
 Great-tailed *Cassidix mexicanus*.
Grebe:
 Eared *Podiceps nigricollis*.
 Horned *Podiceps auritus*.
 Least *Podiceps dominicus*.
 Pied-billed *Podilymbus podiceps*.
 Red-necked (Holboell's) *Podiceps grisegena*.
 Western *Aechmophorus occidentalis*.
Grosbeak:
 Black-headed *Phaeothicus melanocephalus*.
 Blue *Guiraca caerulea*.
 Evening *Hesperiphona vespertina*.
 Pine *Pinicola enucleator*.
 Rose-breasted *Phaeothicus ludovicianus*.
Ground-chat *Geothlypis poliocephala*.
Guillemot:
 Black *Cephus grylle*.
 Pigeon *Cephus columba*.
Gull:
 Bonaparte's *Larus philadelphia*.
 California *Larus californicus*.
 Franklin's *Larus pipitcan*.
 Glaucous *Larus hyperboreus*.
 Glaucous-winged *Larus glaucescens*.
 Great Black-backed *Larus marinus*.
 Heermann's *Larus heermanni*.
 Herring *Larus argentatus*.
 Iceland *Larus glaucoides*.
 Ivory *Pagophila eburnea*.
 Laughing *Larus atricilla*.
 Lesser Black-backed *Larus fuscus*.
 Little *Larus minutus*.
 Mew *Larus canus*.
 Ring-billed *Larus delawarensis*.
 Ross' *Rhodostethia rosea*.
 Sabine's *Xema sabini*.
 Slaty-backed *Larus schistisagus*.
 Thayer's *Larus thayeri*.
 Western *Larus occidentalis*.
Hawk (see Raptor)
- Heron:**
 Black-crowned Night *Nycticorax nycticorax*.
 Great Blue (Great White and other subspecies) *Ardea herodias*.
 Green *Butorides virescens*.
 Little Blue *Florida caerulea*.
 Louisiana *Hydranassa tricolor*.
 Yellow-crowned Night *Nyctanassa violacea*.
Hummingbird:
 Allen's *Selasphorus sasin*.
 Anna's *Calypte anna*.
 Black-chinned *Archilochus alexandri*.
 Blue-throated *Lampornis clemenciae*.
 Broad-billed *Cyananthus latirostris*.
 Broad-tailed *Selasphorus platycercus*.
 Buff-bellied *Amazilia yucatanensis*.
 Calliope *Stellula calliope*.
 Costa's *Calypte costae*.
 Heloise's *Atthis heloisa*.
 Lucifer *Calothorax lucifer*.
 Rivoli's *Eugenes fulgens*.
 Ruby-throated *Archilochus colubris*.
 Rufous *Selasphorus rufus*.
 Violet-crowned *Amazilia verticilla*.
 White-eared *Hylocharis leucotis*.
Ibis:
 Glossy *Plegadis falcinellus*.
 White *Eudocimus albus*.
 White-faced *Plegadis chihi*.
Jacana *Jacana spinosa*.
Jaeger:
 Long-tailed *Stercorarius longicaudus*.
 Parasitic *Stercorarius parasiticus*.
 Pomarine *Stercorarius pomarinus*.
Jay:
 Blue *Cyanocitta cristata*.
 Gray *Perisoreus canadensis*.
 Green *Cyanocorax yucas*.
 Mexican *Aphelocoma ultramarina*.
 Pinon *Gymnorhinus cyanocephalus*.
 San Blas *Cissilophus sanblasianus*.
 Scrub *Aphelocoma coerulescens*.
 Steller's *Cyanocitta stelleri*.
Junco:
 Dark eyed (Oregon, Slate-colored, White-winged and other subspecies) *Junco hyemalis*.
 Gray-headed *Junco caniceps*.
 Yellow-eyed (Mexican and other subspecies) *Junco phaeonotus*.
Killdeer *Charadrius vociferus*.
Kingbird:
 Cassin's *Tyrannus vociferans*.
 Eastern *Tyrannus tyrannus*.
 Gray *Tyrannus dominicensis*.
 Tropical (Couch's) *Tyrannus melancholicus*.
 Western (Arkansas) *Tyrannus verticalis*.
Kingfisher:
 Belted *Megasceryle alcyon*.
 Green *Chloroceryle americana*.
Kinglet:
 Golden-crowned *Regulus satrapa*.
 Ruby-crowned *Regulus calendula*.
Kite:
 Everglade *Rostrhamus sociabilis*.
 Mississippi *Ictinia mississippiensis*.
 Swallow-tailed *Elanoides forficatus*.
 White-tailed *Elanus leucurus*.
Kittiwake:
 Black-legged (Atlantic and Pacific) *Rissa tridactyla*.
 Red-legged *Rissa brevirostris*.
Knot: Red *Calidris canutus*.
Lark:
 Horned *Eremophila alpestris*.
Limpkin *Aramus guarauna*.
Longspur:
 Chestnut-collared *Calcarius ornatus*.
 Lapland *Calcarius lapponicus*.
 McCown's *Calcarius mecoenii*.
 Smith's *Calcarius pictus*.
Loon:
 Arctic (Pacific) *Gavia arctica*.
 Common *Gavia immer*.
 Red-throated *Gavia stellata*.
 Yellow-billed *Gavia adamsii*.
Magpie:
 Black-billed *Pica pica*.
 Yellow-billed *Pica nuttalli*.
Martin:
 Gray-breasted *Progne chalybea*.
 Purple *Progne subis*.
Meadowlark:
 Eastern *Sturnella magna*.
 Western *Sturnella neglecta*.
Millerbird *Acrocephalus familiaris*.
Mockingbird *Mimus polyglottos*.
Murre:
 Common (Atlantic and California) *Uria aalge*.
 Thick-billed (Brünnich's) *Uria lomvia*.
Murrelet:
 Ancient *Synthliboramphus antiquus*.
 Craveri's *Endomychura craveri*.
 Kittlitz's *Brachyramphus brevirostris*.
 Marbled *Brachyramphus marmoratus*.
 Xantus' *Endomychura hypoleuca*.
Nighthawk:
 Common (Eastern) *Chordeiles minor*.
 Lesser (Texas) *Chordeiles acutipennis*.
Nutcracker, Clark's *Nucifraga columbiana*.
Nuthatch:
 Brown-headed *Sitta pusilla*.
 Pigmy *Sitta pygmaea*.
 Red-breasted *Sitta canadensis*.
 White-breasted *Sitta carolinensis*.
Oriole:
 Black-headed (Audubon's) *Icterus graduacauda*.
 Fuertes' *Icterus fuertesi*.
 Hooded (Sennett's) *Icterus cucullatus*.
 Lichtenstein's (Altamira) *Icterus gularis*.
 Northern (Baltimore and Bullock's) *Icterus galbula*.
 Orchard *Icterus spurius*.
 Scott's *Icterus parisorum*.
Osprey *Pandion haliaetus*.
Ovenbird *Sciurus aurocapillus*.
Owl: (also see Raptors)
 Barn *Tyto alba*.
Oystercatcher:
 American *Haematopus palliatus*.
 Black *Haematopus bachmani*.
Pauraque *Nyctidromus albigollis*.
Petrel:
 Ashy Storm *Oceanodroma homochroa*.
 Black Storm *Oceanodroma melanota*.
 Bonin *Pterodroma hypoleuca*.
 Bulwer's *Bulweria bulwerii*.
 Dark-rumped *Pterodroma phaeopygia*.
 Fork-tailed Storm *Oceanodroma furcata*.
 Hartcourt's Storm (Hawaiian) *Oceanodroma castro*.
 Leach's Storm *Oceanodroma leucorhoa*.
 Least Storm *Halocpterna microsoma*.
 Scaled *Pterodroma inexpectata*.
 Sooty Storm *Oceanodroma markhami*.
 Wilson's Storm *Oceanites oceanicus*.
Pewee:
 Eastern Wood *Contopus virens*.
 Western Wood *Contopus sordidulus*.
Pelican:
 Brown *Pelecanus occidentalis*.
 White *Pelecanus erythrorhynchos*.
Phainopepla *Phainopepla nitens*.

- Phalarope:
Northern *Lobipes lobatus*.
Red Phalarope *Pelicanus*.
Wilson's *Steganopus tricolor*.
- Phoebe:
Black *Sayornis nigricans*.
Eastern *Sayornis phoebe*.
Say's *Sayornis saya*.
- Pigeon:
Red-billed *Columba flavirostris*.
- Pipit:
Sprague's *Anthus spragueii*.
Water (American) *Anthus spinoletta*.
- Plover:
American Golden (Atlantic and Pacific) *Pluvialis dominica*.
Black-bellied *Pluvialis squatarola*.
Mongolian *Charadrius mongolus*.
Mountain *Charadrius montana*.
Piping *Charadrius melodius*.
Semipalmated *Charadrius semipalmatus*.
Snowy *Charadrius alexandrinus*.
Wilson's *Charadrius wilsonia*.
- Poor-will *Phalaenoptilus nuttallii*.
- Puffin:
Common *Fratercula arctica*.
Horned *Fratercula corniculata*.
Tufted *Lunda cirrhata*.
- Pyrrhuloxia *Pyrrhuloxia sinuata*.
- Raptor:
Caracara *Caracara cheriway*.
- Falcon:
Aplomado *Falco femoralis*.
Peregrine *Falco peregrinus*.
Prairie *Falco mexicanus*.
- Goshawk *Accipiter gentilis*.
Gyr Falcon *Falco rusticolus*.
- Hawk:
Black *Buteo gallus anthracinus*.
Broad-winged *Buteo platypterus*.
Cooper's *Accipiter cooperii*.
Ferruginous *Buteo regalis*.
Gray *Buteo nitidus*.
Harris' *Parabuteo unicinctus*.
Hawaiian *Buteo solitarius*.
Marsh *Circus cyaneus*.
Red-shouldered *Buteo lineatus*.
Red-tailed (Harian's and other subspecies) *Buteo jamaicensis*.
Rough-legged *Buteo lagopus*.
Sharp-shinned *Accipiter striatus*.
Short-tailed *Buteo brachyurus*.
Swainson's *Buteo swainsoni*.
White-tailed *Buteo albicaudatus*.
Zone-tailed *Buteo albonotatus*.
- Kestrel: American *Falco sparverius*.
Merlin *Falco columbarius*.
- Owl:
Barred *Strix varia*.
Boreal *Aegolius funereus*.
Burrowing *Speotyto cunicularia*.
Elf *Micrathene whitneyi*.
Ferruginous *Glaucidium brasilianum*.
Flammulated *Otus flammeolus*.
Great Gray *Strix nebulosa*.
Great Horned *Bubo virginianus*.
Hawk *Surnia ulula*.
Long-eared *Asio otus*.
Pygmy *Glaucidium gnoma*.
Saw-whet *Aegolius acadicus*.
Screech *Otus asio*.
Short-eared *Asio flammeus*.
Snowy *Nyctea scandiaca*.
Spotted *Strix occidentalis*.
Whiskered *Otus trichopsis*.
- Raven:
Common *Corvus corax*.
White-necked *Corvus cryptoleucus*.
Razorbill *Alca torda*.
- Redpoll:
Common *Acanthis flammea*.
Hoary *Acanthis hornemanni*.
- Redstart:
American *Setophaga ruticilla*.
Painted *Setophaga picta*.
- Roadrunner *Geococcyx californianus*.
- Robin:
American *Turdus migratorius*.
Rufous-backed *Turdus rufo-pallatus*.
- Ruby-throat: Siberian *Luscinia calliope*.
Ruff *Philomachus pugnax*.
Sanderling *Calidris alba*.
- Sandpiper:
Baird's *Calidris bairdii*.
Buff-breasted *Tryngites subruficollis*.
Curlew *Calidris ferruginea*.
Least *Calidris minutilla*.
Pectoral *Calidris melanotos*.
Purple *Calidris maritima*.
Rook (Aleutian) *Calidris pilosicollis*.
Semipalmated *Calidris pusillus*.
Sharp-tailed *Calidris acuminata*.
Solitary *Tringa solitaria*.
Spotted *Actitis macularia*.
Stilt *Micropalama himantopus*.
Upland *Bartramia americana*.
Western *Calidris mauri*.
White-rumped *Calidris fuscicollis*.
- Sapsucker:
Williamson's *Sphyrapicus thyroideus*.
Yellow-bellied (Red-naped and Red-breasted) *Sphyrapicus varius*.
- Seedeater: White-collared *Sporophila torquata*.
- Shearwater:
Audubon's *Puffinus lherminieri*.
Christmas Island *Puffinus nativitatis*.
Cory's *Puffinus diomedea*.
Flesh-footed *Puffinus carneipes*.
Greater *Puffinus gravis*.
Manx *Puffinus puffinus*.
New Zealand *Puffinus bulleri*.
Pink-footed *Puffinus creatopus*.
Short-tailed *Puffinus tenuirostris*.
Sooty *Puffinus griseus*.
Wedge-tailed *Puffinus pacificus*.
- Shrike:
Loggerhead *Lanius ludovicianus*.
Northern *Lanius excubitor*.
- Siskin Pine *Spinus pinus*.
Skua *Catharacta skua*.
Skimmer: Black *Rynchops nigra*.
Solitaire: Townsend's *Myadestes townsendi*.
- Sparrow:
Bachman's *Atmophila aestivalis*.
Baird's *Ammodramus bairdii*.
Black-chinned *Spizella atrogularis*.
Black-throated *Amphispiza bilineata*.
Botteri's *Atmophila botteri*.
Brewer's *Spizella breweri*.
Cape Sable *Ammodramus mirabilis*.
Cassin's *Atmophila cassinii*.
Chipping *Spizella passerina*.
Clay-colored *Spizella pallida*.
Field *Spizella pusilla*.
Fox *Passerella iliaca*.
Golden-crowned *Zonotrichia atricapilla*.
Grasshopper *Ammodramus sarannarum*.
Harris *Zonotrichia querula*.
Henslow's *Ammodramus henslowii*.
Lark *Chondestes grammacus*.
Le Conte's *Ammodramus lecontei*.
Lincoln's *Melospiza lincolni*.
Olive (Texas) *Arremonops rufivirgata*.
Rufous-crowned *Ammodramus ruficeps*.
Rufous-winged *Atmophila carpalis*.
Sage (Bell's) *Amphispiza belli*.
Savannah (Belding's, Ipswich, Large-billed and other subspecies) *Passerculus sandwichensis*.
Seaside (Cape Sable, Dusky, and other subspecies) *Ammodramus maritima*.
Sharp-tailed *Ammodramus caudacula*.
Song *Melospiza melodia*.
Swamp *Melospiza georgiana*.
Tree *Spizella arborea*.
Vesper *Poocetes gramineus*.
White-crowned *Zonotrichia leucophrys*.
White-throated *Zonotrichia albicollis*.
Worthen's *Spizella wortheni*.
- Spoonbill: Roseate *Ajaia ajaja*.
Stilt: Black-necked *Himantopus mexicanus*.
Stork: Wood *Mycteria americana*.
Surfbird *Aphriza virgata*.
- Swallow:
Bahama *Callipepla cyanoviridis*.
Bank *Riparia riparia*.
Baru *Hirundo rustica*.
- Cave *Petrochelidon fulva*.
Cliff *Petrochelidon pyrrhonota*.
Rough-winged *Stelgidopteryx ruficollis*.
Tree *Iridoprocne bicolor*.
Violet-green *Tachycineta thalassina*.
- Swan:
Trumpeter *Olor buccinator*.
Whooper *Olor cygnus*.
- Swift:
Black *Cypseloides niger*.
Chimney *Chaetura pelagica*.
Vaux's *Chaetura vauzi*.
White-throated *Aeronautes saxatalis*.
- Tanager:
Hepatic *Piranga flava*.
Scarlet *Piranga olivacea*.
Summer *Piranga rubra*.
Western *Piranga ludoviciana*.
- Tattler:
Polynesian *Heteroscelus brevipes*.
Wandering *Heteroscelus incanus*.
- Tern:
Aleutian *Sterna aleutica*.
Arctic *Sterna paradisaea*.
Black *Chlidonias niger*.
Blue-gray Noddy *Procelsterna cerulea*.
Bridled (Gaviota Oscura) *Sterna an-aethetus*.
Caspian *Hydroprogne caspia*.
Common *Sterna hirundo*.
Elegant *Thalasseus elegans*.
Fairy (White) *Gygis alba*.
Forster's *Sterna forsteri*.
Gray-backed *Sterna lunata*.
Gull-billed *Gelochelidon nilotica*.
Least *Sterna albifrons*.
Noddy *Anous stolidus*.
Roseate *Sterna dougalli*.
Royal *Thalasseus maximus*.
Sandwich (Cabot's) *Thalasseus sandwicensis*.
Sooty *Sterna fuscata*.
White-capped Noddy (Hawaiian Tern) *Anous minutus*.
- Thrasher:
Bendire's *Rozostoma bendirei*.
Brown *Toxostoma rufum*.
California *Toxostoma redivivum*.
Crissal *Toxostoma dorsale*.
Curve-billed *Toxostoma curvirostre*.
Le Conte's *Toxostoma lecontei*.
Long-billed (Bennett's) *Toxostoma longirostre*.
Sage *Oreoscoptes montanus*.
- Thrush:
Gray-checked *Catharus minimus*.
Hawaiian *Phaenoria obscurus*.
Hermit *Catharus guttatus*.
Small Kauai *Phaenoria palmeri*.
Swainson's (Russet-backed and Olive-backed) *Catharus ustulatus*.
Varied *Ixoreus naevius*.
Wood *Hylocichla ustulata*.
- Titmouse:
Black-crested *Parus atricristatus*.
Bridled *Parus wollweberi*.
Plain *Parus inornatus*.
Tufted *Parus bicolor*.
- Towhee:
Abert's *Pipilo aberti*.
Brown *Pipilo fuscus*.
Green-tailed *Chlorura chlorura*.
Rufous-sided *Pipilo erythrophthalmus*.
- Trogon:
Coppery-tailed *Trogon elegans*.
- Tropicbird:
Red-billed *Phaethon aethereus*.
Red-tailed *Phaethon rubricauda*.
White-tailed *Phaethon lepturus*.
- Turnstone:
Black *Arenaria melanocephala*.
Ruddy *Arenaria interpres*.
- Veery *Catharus fuscescens*.
- Verdin *Auriparus flaviceps*.
- Vireo:
Bell's *Vireo bellii*.
Black-whiskered *Vireo altilloquus*.
Black-capped *Vireo atricapilla*.
Gray *Vireo vicinior*.

Hutton's Vireo *huttoni*.
 Philadelphia Vireo *philadelphicus*.
 Red-eyed Vireo *olivaceus*.
 Solitary (Blue-headed) Vireo *solitarius*.
 Warbling Vireo *gilvus*.
 White-eyed Vireo *griseus*.
 Yellow-throated Vireo *flavifrons*.
Vulture:
 Black Coragyps *atratus*.
 Turkey Cathartes *aura*.
Wagtail:
 White Motacilla *alba*.
 Yellow Motacilla *flava*.
Warbler:
 Arctic Phylloscopus *borealis*.
 Bachman's Vermivora *bachmani*.
 Bay-breasted Dendroica *castanea*.
 Black-and-white Mniotilta *varia*.
 Blackburnian Dendroica *fusca*.
 Blackpoll Dendroica *striata*.
 Black-throated Blue Dendroica *caerulea*.
 Black-throated Gray Dendroica *nigrescens*.
 Black-throated Green Dendroica *virens*.
 Blue-winged Vermivora *pinus*.
 Canada Wilsonia *canadensis*.
 Cape May Dendroica *tigrina*.
 Cerulean Dendroica *cerulea*.
 Chestnut-sided Dendroica *pennsylvanica*.
 Collared Vermivora *crissalis*.
 Connecticut Oporornis *agilis*.
 Golden-cheeked Dendroica *chrysoparia*.
 Golden-winged Vermivora *chrysoparia*.
 Grace's Dendroica *graciae*.
 Hermit Dendroica *occidentalis*.
 Hooded Wilsonia *citrina*.
 Kentucky Oporornis *formosus*.
 Kirtland's Dendroica *kirtlandii*.
 Lucy's Vermivora *luciae*.
 MacGillivray's Oporornis *tolmiei*.
 Magnolia Dendroica *magnolia*.
 Mourning Oporornis *philadelphia*.
 Nashville Vermivora *ruficapilla*.
 Northern Parula *parula americana*.
 Olive Peucedramus *taciturnus*.
 Orange-crowned Vermivora *celata*.
 Palm Dendroica *palmarum*.
 Pine Dendroica *pinus*.
 Prairie Dendroica *discolor*.
 Prothonotary Protonotaria *citrea*.
 Red-faced Cardellina *rubrifrons*.
 Swainson's Limnethlypis *swainsonii*.
 Tennessee Vermivora *peregrina*.
 Townsend's Dendroica *townsendi*.
 Tropical Parula (Olive-backed) *Parula pitaguri*.
 Virginia's Vermivora *virginiae*.
 Wilson's Wilsonia *pustilla*.
 Worm-eating Helminthos *vermivorus*.
 Yellow Dendroica *petechia*.
 Yellow-rumped (Audubon's and Myrtle) Dendroica *coronata*.
 Yellow-throated Dendroica *dominica*.
Waterthrush:
 Louisiana Seiurus *motacilla*.
 Northern (Grinnell's) Seiurus *noveboracensis*.
Waxwing:
 Bohemian Bombycilla *garrulus*.
 Cedar Bombycilla *cedrorum*.
 Wheatear Oenanthe *oenanthe*.
 Whimbrel (Hudsonian curlew) *Numenius phaeopus*.
 Whip-poor-will *Caprimulgus vociferus*.
 Willet *Catoptrophorus semipalmatus*.
Woodpecker:
 Actor (California and other subspecies) *Melanerpes formicivorus*.
 Arizona Dendrocopos *arizonae*.
 Black-backed Three-toed Picoides *arcticus*.
 Downy Dendrocopos *pubescens*.
 Gila Centurus *uropygialis*.
 Golden-fronted Centurus *aureifrons*.

Hairy Dendrocopos *villosus*.
 Ivory-billed Campephilus *principalis*.
 Ladder-backed (Texas, Cactus, and other subspecies) Dendrocopos *scalaris*.
 Lewis' Asyndesmus *lewis*.
 Northern Three-toed Picoides *tridactylus*.
 Nuttall's Dendrocopos *nuttalli*.
 Pileated Dryocopus *pileatus*.
 Red-bellied Centurus *carolinus*.
 Red-cockaded Dendrocopos *borealis*.
 Red-headed Melanerpes *erythrocephalus*.
 White-headed Dendrocopos *alboblatatus*.
Wren:
 Bewick's Thryomanes *bewickii*.
 Brown-throated Troglodytes *brunneicollis*.
 Cactus Campylorhynchus *brunneicapillus*.
 Canon Catherpes *mexicanus*.
 Carolina Thryothorus *ludovicianus*.
 House Troglodytes *aedon*.
 Long-billed Marsh Telmatodytes *palustris*.
 Rock Salpinctes *obsoletus*.
 Short-billed Marsh Cistothorus *platensis*.
 Winter Troglodytes *troglydites*.
 Wren Tit Chamaea *fasciata*.

Yellowlegs:
 Greater Tringa *melanoleneus*.
 Lesser Tringa *flavipes*.
 Yellowthroat: Common Geothlypis *trichas*.

Subpart C—Addresses

§ 10.21 Director.

Mail forwarded to the Director with reference to law enforcement or permits should be addressed:

Director (FSF/LE), Bureau of Sport Fisheries and Wildlife, U.S. Department of the Interior, Washington, D.C. 20240.

§ 10.22 Law enforcement districts.

Bureau law enforcement districts and their area of jurisdiction follow. Mail should be addressed:

Special Agent in Charge, Bureau of Sport Fisheries and Wildlife (appropriate address below).

Area of jurisdiction:	Address
Alabama	474 South Court St., Montgomery, Ala. 36104.
Alaska: Except that portion lying in election districts 1-6.	813 D St., Anchorage, Alaska 99501.
Alaska: Southeastern part of State which includes only election districts 1-6.	P.O. Box 1287, Juneau, Alaska 99801.
Arizona	2721 North Central Ave., Phoenix, Ariz. 95004.
Arkansas	311 Post Office and Courts Bldg., Little Rock, Ark. 72201.
California: That part of the State lying north of a line forming the southern boundaries of the counties of: Alpine, Calaveras, San Joaquin, Santa Clara, and Santa Cruz.	650 Capitol Mall, Sacramento, Calif. 95814.
California: That part of the State lying south of a line forming the southern boundaries of the counties of: Alpine, Calaveras, San Joaquin, Santa Clara and Santa Cruz, and north of a line forming the southern boundaries of the counties of Inyo, Kern, and San Luis Obispo.	1130 O St., Fresno, Calif. 93721.
California: That part of the State lying south of the southern boundaries of the counties of Inyo, Kern, and San Luis Obispo.	125 South Grand Ave., Pasadena, Calif. 91105.
Colorado	Building 45, Denver Federal Center, Denver, Colo. 80225.
Connecticut and Rhode Island	450 Main Street, Hartford, Conn. 06103.
Delaware	P.O. Box 692, Dover, Del. 19901.
Florida	P.O. Box 190, Tallahassee, Fla. 32302.
Georgia	17 Executive Park Dr. NE, Atlanta, Ga. 30329.
Hawaii	337 Uluniu St., Kailua, Oahu, Hawaii 96734.
Idaho	P.O. Box 831, Boise, Idaho 83702.
Illinois	600 East Monroe, Springfield, Ill. 62704.
Indiana	36 South Pennsylvania St., Indianapolis, Ind. 46204.
Iowa	627 New Federal Bldg., Des Moines, Iowa 50309.
Kansas	P.O. Box 10, Hutchinson, Kans. 67501.
Kentucky	P.O. Box 1003, Paducah, Ky. 42001.
Louisiana	P.O. Box 3473, Baton Rouge, La. 70821.
Maine	P.O. Box 800, Augusta, Maine 04364.
Maryland	1409 Forest Dr., Annapolis, Md. 21403.
Massachusetts, New Hampshire, and Vermont.	U.S. Post Office and Courthouse, Boston, Mass. 02109.
Michigan	106 Manly Miles Bldg., 1405 South Harrison Rd., East Lansing, Mich. 48823.
Minnesota	508 Federal Building and Courthouse, St. Paul, Minn. 55101.
Mississippi	P.O. Box 1104, Jackson, Miss. 39205.
Missouri	P.O. Box 815, Jefferson City, Mo. 65101.
Montana and Wyoming	711 Central Avenue, Billings, Mont. 59102.

Nebraska	P.O. Box 7, Lincoln, Nebr. 68505.
Nevada	300 Booth St., Reno, Nev. 89502.
New Jersey	P.O. Box 232, Trenton, N.J. 08602.
New Mexico	P.O. Box 14324, Albuquerque, N. Mex. 87111.
New York	P.O. Box 717, Albany, N.Y. 12201.
North Carolina	P.O. Box 506, Washington, N.C. 27889.
North Dakota	P.O. Box 1612, Bismarck, N. Dak. 58501.
Ohio	P.O. Box 15002, Columbus, Ohio 43215.
Oklahoma	200 Northwest Fourth St., Oklahoma City, Okla. 73102.
Oregon	1775 32d Place NE., Salem, Oreg. 97303.
Pennsylvania and West Virginia	P.O. Box 1154, Harrisburg, Pa. 17108.
The Commonwealth of Puerto Rico and all of the Virgin Islands of the United States.	G.P.O. 3708, San Juan, Puerto Rico 00936.
South Carolina	1100 Laurel St., Columbia, S.C. 29201.
South Dakota	P.O. Box 254, Pierre, S. Dak. 57501.
Tennessee	P.O. Box 1033, Nashville, Tenn. 37202.
Texas: That part of the State of Texas lying north of the northern boundaries of the counties of Winkler, Ector, Midland, Glasscock, Sterling, Coke, Runnels, Coleman, and Brown and lying east of the eastern boundaries of the counties of Brown, Mills, Lampasas, Burnet, Blanco, Comal, Guadalupe, Gonzales, DeWitt, Victoria, and Calhoun.	P.O. Box 61161, Houston, Tex. 77061.

PART 20—MIGRATORY BIRD HUNTING

Subpart A—Introduction

3. Accordingly, Part 20 of 50 CFR, Chapter I, is amended to read as follows:

- Sec.
20.1 Scope of regulations.
20.2 Relation to other provisions.

Subpart B—Definitions

- 20.11 Meaning of terms.

Subpart C—Taking

- Sec.
20.21 Hunting methods.
20.22 Closed seasons.
20.23 Shooting hours.
20.24 Daily limit.
20.25 Wanton waste of migratory game birds.

Subpart D—Possession

- 20.31 Prohibited if taken in violation of subpart C.
20.32 During closed season.
20.33 Possession limit.
20.34 Opening day of a season.
20.35 Field possession limit.
20.36 Tagging requirement.
20.37 Custody of birds of another.
20.38 Possession of live birds.
20.39 Termination of possession.

Subpart E—Transportation Within the United States

- 20.41 Prohibited if taken in violation of subpart C.
20.42 Transportation of birds of another.
20.43 Species identification requirement.
20.44 Marking package or container.

Subpart F—Exportation

- 20.51 Prohibited if taken in violation of subpart C.
20.52 Species identification requirement.
20.53 Marking package or container.

Subpart G—Importations

- 20.61 Importation limits.
20.62 Importation of birds of another.
20.63 Species identification requirement.
20.64 Foreign export permits.
20.65 Processing requirement.
20.66 Marking of package or container.

Subpart H—Federal, State, and Foreign Law

- 20.71 Violation of Federal law.
20.72 Violation of State law.
20.73 Violation of foreign law.

Subpart I—Commercial Preservation Facilities

- 20.81 Tagging requirement.
20.82 Records required.
20.83 Inspection of premises.

Subpart J—Feathers or Skins

- 20.91 Commercial use of feathers.
20.92 Personal use of feathers or skins.

Subpart K—Annual Season, Limit, and Shooting Hour Schedules

Subpart L—Administrative and Miscellaneous Provisions

- 20.131 Extension of seasons.
20.132 Subsistence use in Alaska.
20.133 Hunting regulations for crows.

Subpart M—Wildlife Development Areas

- 20.141 Approval of area development program.
20.142 Revocation of program approval.
20.143 Notice and hearing.

AUTHORITY.—Migratory Bird Treaty Act, section 3, 40 Stat. 755.

Subpart A—Introduction

§ 20.1 Scope of regulations.

(a) *In general.*—The regulations contained in this part relate only to the hunting of migratory game birds, and crows.

(b) *Procedural and substantive requirements.*—Migratory game birds may be taken, possessed, transported, shipped, exported, or imported only in accordance with the restrictions, conditions, and requirements contained in this part. Crows may be taken, possessed, transported, exported, or imported only in accordance with subpart H of this part and the restrictions, conditions, and requirements prescribed in § 20.133.

§ 20.2 Relation to other provisions.

(a) *Migratory bird permits.*—The provisions of this part shall not be construed to alter the terms of any permit or other authorization issued pursuant to part 21 of this chapter.

(b) *Migratory bird hunting stamps.*—The provisions of this part are in addition to the provisions of the Migratory Bird Hunting Stamp Act of 1934 (48 Stat. 451, as amended; 16 U.S.C. 718a).

(c) *National wildlife refuges.*—The provisions of this part are in addition to, and are not in lieu of, any other provision of law respecting migratory game birds under the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927, as amended; 16 U.S.C. 668dd) or any regulation made pursuant thereto.

(d) *State laws for the protection of migratory birds.*—No statute or regulation of any State shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this part, however, nothing in this part shall be construed to prevent the several States from making and enforcing laws or regulations not inconsistent with these regulations and the conventions between the United States and any foreign country for the protection of migratory birds or with the Migratory Bird Treaty Act, or which shall give further protection to migratory game birds.

Subpart B—Definitions

§ 20.11 Meaning of terms.

For the purpose of this part, the following terms shall be construed, respectively, to mean and to include:

"*Migratory game birds*" means those migratory birds included in the terms of conventions between the United States and any foreign country for the protection of migratory birds, for which open seasons are prescribed in this part and belong to the following families:

- (1) Anatidae (wild ducks, geese, brant, and swans);
- (2) Columbidae (wild doves and pigeons);
- (3) Gruidae (little brown cranes);
- (4) Rallidae (ralls, coots, and gallinules); and
- (5) Scolopacidae (woodcock and snipe).

A list of migratory birds protected by the international conventions and the Migratory Bird Treaty Act appears in §10.13 of this chapter.

"*Open season*" means the days on which migratory game birds may lawfully be taken. Each period prescribed as an open season shall be construed to include the first and last days thereof.

"*Closed season*" means the days on which migratory game birds shall not be taken.

"*Daily bag limit*" means the maximum number of migratory game birds permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

"Aggregate daily bag limit" means the maximum number of migratory game birds permitted to be taken by one person in any one day during the open season when such person hunts in more than one specified geographic area for which a daily bag limit is prescribed. The aggregate daily bag limit is equal to, but shall not exceed, the largest daily bag limit prescribed for any one of the specified geographic areas in which taking occurs.

"Possession limit" means the maximum number of migratory game birds permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

"Aggregate possession limit" means the maximum number of migratory game birds taken in the United States, permitted to be possessed by any one person when taking and possession occurs in more than one specified geographic area. The aggregate possession limit is equal to, but shall not exceed, the largest possession limit prescribed for any one of the specified geographic areas in which taking and possession occurs.

"Personal abode" means one's principal or ordinary home or dwelling place, as distinguished from his temporary or transient place of abode or dwelling such as a hunting club, or any club house, cabin, tent, or trailer house used as a hunting club, or any hotel, motel, or rooming house used during a hunting, pleasure, or business trip.

"Commercial preservation facility" means any person, place, establishment, or cold-storage or locker plant that, for hire or other consideration, receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage, or shipment.

Subpart C—Taking

§ 20.21 Hunting methods.

Migratory birds on which open seasons are prescribed in this part may be taken by any method except those prohibited in this section. No person shall take migratory game birds:

(a) With a trap, snare, net, crossbow, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machinegun, fish hook, poison, drug, explosive, or stupefying substance;

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(c) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water;

(d) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind;

(e) From or by means of any motor-

boat or other craft having a motor attached, or any sailboat, unless the motor has ceased: *Provided*, That a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power except in the seaduck area as permitted in Subpart K of this part;

(f) By the use or aid of live birds as decoys; although not limited to, it shall be a violation of this paragraph for any person to take migratory waterfowl on an area where tame or captive live ducks or geese are present unless such birds are and have been for a period of 10 consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds;

(h) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory bird; or

(i) By the aid of baiting, or on or over any baited area. As used in this paragraph, "baiting" shall mean the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and "baited area" means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for 10 days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this paragraph shall prohibit:

(1) The taking of all migratory game birds, including waterfowl, on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; and

(2) The taking of all migratory game birds, except waterfowl, on or over any lands where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed has been distributed or scattered as the result of bona fide agricultural operations or procedures, or as a result of manipulation of a crop or other feed on the land where grown for wildlife management purposes: *Provided*, that manipulation for wildlife management purposes does not include the distributing or scattering of grain or other feed once it has been removed from or stored on the field where grown.

§ 20.22 Closed seasons.

No person shall take migratory game birds during the closed season.

§ 20.23 Shooting hours.

No person shall take in any 1 calendar day, more than the daily bag limit or aggregate daily bag limit, whichever applies.

§ 20.24 Daily limit.

No person shall take in any 1 day, more than the daily bag limit or aggregate daily bag limit, whichever applies.

§ 20.25 Wanton waste of migratory game birds.

No person shall kill or cripple any migratory game bird pursuant to this part without making a reasonable effort to retrieve the bird and include it in his daily bag limit.

Subpart D—Possession

§ 20.31 Prohibited if taken in violation of subpart C.

No person shall at any time, by any means, or in any manner, possess or have in custody any migratory game bird or part thereof, taken in violation of any provision of subpart C of this part.

§ 20.32 During closed season.

No person shall possess any freshly killed migratory game birds during the closed season.

§ 20.33 Possession limit.

No person shall possess more migratory game birds taken in the United States than the possession limit or the aggregate possession limit, whichever applies.

§ 20.34 Opening day of a season.

No person on the opening day of the season shall possess any freshly killed migratory game birds in excess of the daily bag limit, or aggregate daily bag limit, whichever applies.

§ 20.35 Field possession limit.

No person shall possess, have in custody, or transport more than the daily bag limit or aggregate daily bag limit, whichever applies, of migratory game birds, tagged or not tagged, at or between the place where taken and either (a) his automobile or principal means of land transportation; or (b) his personal abode or temporary or transient place of lodging; or (c) a commercial preservation facility; or (d) a post office; or (e) a common carrier facility.

§ 20.36 Tagging requirement.

No person shall put or leave any migratory game birds at any place (other than at his personal abode), or in the custody of another person for picking, cleaning, processing, shipping, transportation, or storage (including temporary storage), or for the purpose of having taxidermy services performed, unless such birds have a tag attached, signed by the hunter, stating his address, the total number and species of birds, and the date such birds were killed. Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

§ 20.37 Custody of birds of another.

No person shall receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by § 20.36.

§ 20.38 Possession of live birds.

Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become a part of the daily bag limit. No person shall at any time, or by any means, possess or transport live migratory game birds taken under authority of this part.

§ 20.39 Termination of possession.

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when such birds have been delivered by him to another person as a gift; or have been delivered by him to a post office, a common carrier, or a commercial preservation facility and consigned for transport by the Postal Service or a common carrier to some person other than the hunter.

Subpart E—Transportation Within the United States

§ 20.41 Prohibited if taken in violation of subpart C.

No person shall at any time, by any means, or in any manner, transport any migratory game bird or part thereof, taken in violation of any provision of subpart C of this part.

§ 20.42 Transportation of birds of another.

No person shall transport migratory game birds belonging to another person unless such birds are tagged as required by § 20.36.

§ 20.43 Species identification requirement.

No person shall transport within the United States any migratory game birds, except doves, unless the head or one fully feathered wing remains attached to each such bird at all times while being transported from the place where taken until they have arrived at the personal abode of the possessor or a commercial preservation facility.

§ 20.44 Marking package or container.

No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds therein contained clearly and conspicuously marked on the outside thereof.

Subpart F—Exportation

§ 20.51 Prohibited if taken in violation of subpart C.

No person shall at any time, by any means, or in any manner, export or cause to be exported any migratory game bird or part thereof, taken in violation

of any provision of subpart C of this part.

§ 20.52 Species identification requirement.

No person shall export migratory game birds unless one fully feathered wing remains attached to each such bird while being transported from the United States and/or any of its possessions to any foreign country.

§ 20.53 Marking package or container.

No person shall export migratory game birds via the Postal Service or a common carrier unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds therein contained clearly and conspicuously marked on the outside thereof.

Subpart G—Importations

§ 20.61 Importation limits.

No person shall import during any 1 calendar week beginning on Sunday migratory game birds in excess of the following importation limits:

(a) *Doves and pigeons.*—Not to exceed 25 doves, singly or in the aggregate of all species, and 10 pigeons, singly or in the aggregate of all species from any foreign country.

(b) *Waterfowl.*—(1) From any foreign country except Canada, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species.

(2) From Canada, not to exceed the maximum number permitted to be exported by Canadian authorities.

§ 20.62 Importation of birds of another.

No person shall import migratory game birds belonging to another person.

§ 20.63 Species identification requirement.

No person shall import migratory game birds unless each such bird has one fully feathered wing attached, and such wing must remain attached while being transported between the port of entry and the personal abode of the possessor or between the port of entry and a commercial preservation facility.

§ 20.64 Foreign export permits.

No person shall import, possess or transport, any migratory game birds killed in a foreign country unless such birds are accompanied by export permits, tags, or other documentation required by applicable foreign laws or regulations.

§ 20.65 Processing requirement.

No person shall import migratory game birds killed in any foreign country, except Canada, unless such birds are dressed (except as required in § 20.63), drawn, and the head and feet are removed: *Provided*, That this shall not prohibit the importation of legally taken, fully feathered migratory game birds consigned for mounting purposes to a taxidermist who holds a current taxidermist permit issued to him pursuant to § 21.24 of this chapter and who is

also licensed by the U.S. Department of Agriculture to decontaminate such birds.

§ 20.66 Marking of package or container.

No person shall import migratory game birds via the Postal Service or a common carrier unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds therein contained clearly and conspicuously marked on the outside thereof.

Subpart H—Federal, State, and Foreign Law

§ 20.71 Violation of Federal law.

No person shall at any time, by any means or in any manner, take, possess, transport, or export any migratory bird, or any part, nest, or egg of any such bird, in violation of any act of Congress or any regulation issued pursuant thereto.

§ 20.72 Violation of State law.

No person shall at any time, by any means or in any manner, take, possess, transport, or export any migratory bird, or any part, nest, or egg of any such bird, in violation of any applicable law or regulation of any State.

§ 20.73 Violation of foreign law.

No person shall at any time, by any means, or in any manner, import, possess, or transport, any migratory bird, or any part, nest, or egg of any such bird taken, bought, sold, transported, possessed, or exported contrary to any applicable law or regulation of any foreign country, or State or province thereof.

Subpart I—Commercial Preservation Facilities

§ 20.81 Tagging requirement.

No commercial preservation facility shall receive or have in custody any migratory game birds unless such birds are tagged as required by § 20.36.

§ 20.82 Records required.

No commercial preservation facility shall:

(a) Receive or have in custody any migratory game birds unless accurate records are maintained showing (1) the number of each species; (2) the date such birds were received; (3) the name and address of the person from whom such birds were received; (4) the date such birds were disposed of; and (5) the name and address of the person to whom such birds were delivered, or

(b) Destroy any records required to be maintained under this section for a period of 1 year following the last entry on the record.

§ 20.83 Inspection of premises.

No commercial preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried on.

Subpart J—Feathers or Skins

§ 20.91 Commercial use of feathers.

Any person may possess, purchase, sell, barter, or transport for the making of fishing flies, bed pillows, and mattresses, and for similar commercial uses the feathers of migratory waterfowl (wild ducks, geese, brant, and swans) killed by hunting pursuant to this part, or seized and condemned by Federal or State game authorities, except that:

(a) No person shall purchase, sell, barter, or offer to purchase, sell, or barter for millinery or ornamental use the feathers of migratory game birds taken under authority of this part; and

(b) No person shall purchase, sell, barter, or offer to purchase, sell, or barter mounted specimens of migratory game birds taken under authority of this part.

§ 20.92 Personal use of feathers or skins.

Any person for his own use may possess, transport, ship, import, and export without a permit the feathers and skins of lawfully taken migratory game birds.

Subpart K—Annual Season, Limit, and Shooting Hour Schedules

Subpart L—Administrative and Miscellaneous Provisions

§ 20.131 Extension of seasons.

Whenever the Secretary shall find that emergency State action to prevent forest fires in any extensive area has resulted in the shortening of the season during which the hunting of any species of migratory game bird is permitted and that compensatory extension or reopening the hunting season for such birds will not result in a diminution of the abundance of birds to any greater extent than that contemplated for the original hunting season, the hunting season for the birds so affected may, subject to all other provisions of this subchapter, be extended or reopened by the Secretary upon request of the chief officer of the agency of the State exercising administration over wildlife resources. The length of the extended or reopened season in no event shall exceed the number of days during which hunting has been so prohibited. The extended or reopened season will be publicly announced.

§ 20.132 Native use in Alaska.

(a) In Alaska, Eskimos and Indians may take, possess, and transport, in any manner and at any time, augs, auklets, gullmots, murre, and puffins and their eggs for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale.

(b) In Alaska, any person may, for subsistence purposes, take, possess, and transport, in any manner and at any time, snowy owls and cormorants and their eggs for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale.

§ 20.133 Hunting regulations for crows.

(a) Crows may be taken, possessed, transported, exported, or imported, only in accordance with such laws or regula-

tions as may be prescribed by a State pursuant to this section.

(b) Except in the State of Hawaii, where no crows shall be taken, States may by statute or regulation prescribe a hunting season for crows. Such State statutes or regulations may set forth the method of taking, the bag and possession limits, the dates and duration of the hunting season, and such other regulations as may be deemed appropriate, subject to the following limitations for each State:

(1) Crows shall not be hunted from aircraft;

(2) The hunting season or seasons on crows shall not exceed a total of 124 days during a calendar year;

(3) Hunting shall not be permitted during the peak crow nesting period within a State; and

(4) Crows may only be taken by firearms, bow and arrow, and falconry.

Subpart M—Wildlife Development Areas

§ 20.141 Approval of area development program.

With respect to any lands which have been or may hereafter be acquired by the United States for future use as a migratory bird sanctuary or other wildlife refuge, subject to an outstanding possessory estate, the owner of such outstanding estate may, in accordance with a program for the development of the area and the limitation of shooting during such development period, approved by the Secretary, take such measures as are calculated to maintain and increase the waterfowl population of the area in question, and engage in the shooting of migratory birds within the limitations set forth in the approved program.

§ 20.142 Revocation of program approval.

Approval of any such program may be revoked by the Secretary upon a finding that the terms of such program have been violated by the proponents thereof. Following such revocation, all rights and privileges derived from the existence of an approved area development program shall cease.

§ 20.143 Notice and hearing.

Prior to any determination by the Secretary that the terms of an approved area development program have been or are being violated by the proponent thereof, a notice shall be sent to said proponent specifying the character, time, and locality of the alleged violation and designating a representative of the Secretary with whom the proponent of the program may discuss any controverted issue of fact or interpretation in an effort to reach an amicable agreement of understanding. Thereupon, the said proponent shall cease and desist from the commission of acts specified in such notice for a period of 60 days, or if the case be finally determined during such 60-day period then only until such final determination. If, within 30 days after such notice has been received, no such agreement or understanding is reached then the Secretary may, after allowing

such further opportunity for hearing as he deems proper, make and promulgate a final order revoking approval of the development area program. Thereupon, the provisions of § 20.21 shall be fully applicable to the area in question.

These amendments conform to the public procedure requirements of 5 U.S.C. 553 with respect to substantive rules as set out in the preamble. The amendments make only conforming, clarifying and editorial changes, and it is therefore determined that notice and public procedure thereon are impracticable, unnecessary, and contrary to the public interest. Accordingly, these amendments will be effective as of August 15, 1973.

F. V. SCHMIDT,
Acting Director, Bureau of
Sport Fisheries and Wildlife.

AUGUST 10, 1973.

[FR Doc. 73-16914 Filed 8-14-73; 8:45 am]

PART 32—HUNTING

Agassiz National Wildlife Refuge, Minn.

The following special regulation is issued and is effective on August 15, 1973.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

MINNESOTA

AGASSIZ NATIONAL WILDLIFE REFUGE

Public hunting of moose on the Agassiz National Wildlife Refuge, Minnesota is permitted from sunrise to sunset September 22 to September 30, 1973, and from December 8 to December 16, 1973, all dates inclusive, on all areas except those designated by closed area signs. This open area comprises approximately 57,600 acres and is delineated on a map available at the refuge headquarters at Middle River, Minnesota, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Hunting shall be in accordance with all applicable State regulations subject to the following special conditions:

1. All parties hunting Agassiz National Wildlife Refuge are required to report to the Agassiz check station located 11 miles east of Holt, Minnesota, before they begin to hunt.
2. All moose killed on Agassiz Refuge must be registered at the Agassiz Refuge check station within 48 hours of the kill.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 19, 1973.

JOSEPH KOTOK,
Refuge Manager, Agassiz National Wildlife Refuge Middle River, Minnesota 56737

August 7, 1973

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

[Commissioner's Order No. 1879]

Regulations for the taking of Moose During 1973

JULY 11, 1973.

Pursuant to authority vested in me by law, I, Robert L. Herbst, Commissioner