frequency of any one whistle shall differ from those of the others by at least 10Hz.

2. *Bell or gong.* (a) *Intensity of signal.*—A bell or gong, or other device having similar sound characteristics shall produce a sound pressure level of not less than 110 dB at 1 metre.

(b) *Construction.* Bells and gongs shall be made of corrosion-resistant material and designed to give a clear tone. The diameter of the mouth of the bell shall be not less than 300 mm for vessels of more than 20 metres in length, and shall be not less than 200 mm for vessels of 12 to 20 metres in length. Where practicable, a power-driven bell striker is recommended to ensure constant force but manual operation shall be possible. The mass of the striker shall be not less than 3 percent of the mass of the bell.

3. *Approval.* The construction of sound signal appliances, their performance and their installation on board the vessel shall be to the satisfaction of the appropriate authority of the State where the vessel is registered.

ANNEX IV

DISTRESS SIGNALS

1. The following signals, used or exhibited either together or separately, indicate distress and need of assistance:

(a) A gun or other explosive signal fired at intervals of about a minute;

(b) A continuous sounding with any fog-signalling apparatus;

(c) Rockets or shells, throwing red stars fired one at a time at short intervals;

(d) A signal made by radiotelegraphy or by any other signalling method consisting of the group ...———... (SOS) in the Morse Code;

(e) A signal sent by radiotelephony consisting of the spoken word "Mayday";

(f) The International Code Signal of distress indicated by N.C.;

(g) A signal consisting of a square flag having above or below it a ball or anything resembling a ball;

(h) Flames on the vessel (as from a burning tar barrel, oil barrel, etc.)

(i) A rocket parachute flare or a hand flare showing a red light;

(k) Slowly and repeatedly raising and lowering arms outstretched to each side;

(l) The radiotelegraph alarm signal;

(m) The radiotelephone alarm signal;

(n) Signals transmitted by emergency position-indicating radio beacons.

2. The use or exhibition of any of the foregoing signals except for the purpose of indicating distress and need of assistance and the use of other signals which may be confused with any of the above signals is prohibited.

3. Attention is drawn to the relevant sections of the International Code of Signals, the Merchant Ship Search and Rescue Manual and the following signals:

(a) A piece of orange-coloured canvas with either a black square and circle or other appropriate symbol (for identification from the air);

(b) A dye marker.

(Convention on the International Regulations for Preventing Collisions at Sea, 1972 (as rectified); E.O. 11964 (42 FR 4327); 49 CFR 1.46(b).)

Effective date: This amendment shall become effective on March 31, 1977.

NOTE.—The Coast Guard has determined that this document does not contain a major rule requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: March 29, 1977.

O. W. SILER,
Admiral, U.S. Coast Guard Commandant.

[FR Doc.77-9700 Filed 3-30-77;8:45 am]

[CGD 75-244]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Missouri River, Iowa

This amendment changes the regulations for the Sioux City highway and railroad bridge across the Missouri River, mile 732.3, to allow the draw to remain closed to the passage of vessels. This amendment was circulated as a public notice dated February 4, 1976, by the Commander, Second Coast Guard District, and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGD 75-244) on January 26, 1976 (41 FR 3745). Two replies were received which offered no objection to the proposed amendment.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.560(g) (8) to read as follows:

§ 117.560 Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(g) * * *

(8) Missouri River, highway bridge between Sioux City, Iowa and South Sioux City, Nebraska, mile 732.3. The draw need not open for the passage of vessels and paragraphs (b) through (e) of this section shall not apply to this bridge.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g) (2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g) (2); 49 CFR 1.46(c) (5), 33 CFR 1.05-1 (c) (4).)

Effective date: This revision shall become effective on April 30, 1977.

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: March 29, 1977.

O. W. SILER,
Admiral, U.S. Coast Guard, Commandant.

[FR Doc.77-9699 Filed 3-30-77;8:45 am]

[CGD 17-77-1R]

PART 127—SECURITY ZONES

Establishment of Security Zone; Port Valdez, Valdez, Alaska

This amendment to the Coast Guard's Security Zone Regulations, establishes certain waters of Port Valdez as a security zone. This security zone is established to protect the marine environment and vessels during tank vessel operations around the Trans-Alaska pipeline Valdez Terminal area.

This amendment is issued without publication of a notice of proposed rulemaking because this is an amendment to a current security zone and public procedures on this amendment are impractical due to impending vessel traffic.

In consideration of the foregoing, Part 127 of Title 33 of the Code of Federal Regulations is amended by changing § 127.1701 to read as follows:

§ 127.1701 Port Valdez, Valdez, Alaska.

The waters within the following boundaries are a security zone: the area within 200 yards of any waterfront facility at the Trans-Alaska Pipeline Valdez Terminal complex or vessels moored or anchored at the Trans-Alaska Pipeline Valdez Terminal complex and the area within 200 yards of any tank vessel maneuvering to approach, moor, unmoor or depart the Trans-Alaska Pipeline Valdez Terminal complex.

(40 Stat. 220, as amended, 1, 63 Stat. 503, 6(b), 80 Stat. 937; 50 U.S.C. 191, 14 U.S.C. 91, 49 U.S.C. 1655(b); E.O. 10173, E.O. 10277, E.O. 10352, E.O. 11249; 3 CFR 1949-1953 Comp. 356, 778, 873, 3 CFR 1964-1965 Comp. 349, 33 CFR Part 6, 49 CFR 1.46(b).)

Effective date: This amendment is effective on April 1, 1977.

Dated: March 10, 1977.

J. B. HAYES,
Rear Admiral, United States Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc.77-9698 Filed 3-30-77;8:45 am]

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 207—NAVIGATION REGULATIONS

San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, and Connecting Waters, California

On 26 January 1977, the Department of the Army, acting through the Chief of Engineers, published proposed regulations to amend 33 CFR 207.640 which would make certain editorial changes to paragraphs (j) and (n). Interested parties were given the opportunity to submit comments or objections on or before 25 February 1977.

No comments have been received and accordingly the proposed amendment is hereby established without change and is set forth below effective April 30, 1977.

The Department of the Army has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107. (40 Stat. 266; 33 U.S.C. 1)

Dated: March 17, 1977.

CHARLES R. FORD,
Acting Assistant Secretary of the Army (Civil Works).

§ 207.640 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, and connecting waters, California.

* * * * *

(j) San Francisco Bay in vicinity of the NSC Fuel Department, Point Molate; restricted area.

(1) * * *

(2) *The regulations*. Vessels not operating under supervision of the local military or naval authority or public vessels of the United States shall not enter this area except by specific permission of the Commanding Officer, Naval Supply Center, Oakland.

* * * * *

(n) Suisun Bay at Naval Weapons Station, Concord; restricted area—

(1) *The area*. Beginning at a point on the shore and on the easterly side of the mouth of a small slough (known as Hastings Slough) bearing 189°, 2,412 yards from Tripon at Preston Point on Roe Island; thence 340°30′, 400 yards, to the shore line of the westerly of the two Seal Islands; thence 60°30′, 940 yards; thence 75°, 1,650 yards; thence 102°, 1,850 yards; thence 99°, 1,880 yards; thence 180°, 435 yards, to the shore line; thence following the high water shore line in a general westerly direction to the point of beginning.

(2) *The regulations*. Vessels and other craft not operating under the authority of the local military or naval authority shall not enter, lie to, anchor, or moor in this area except by specific permission of the Commanding Officer, Naval Weapons Stations, Concord.

* * * * *

(33 U.S.C. 1.)

[FR Doc.77-9539 Filed 3-30-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER E—SUPPLY AND PROCUREMENT

[FPMR Amdt. E-206]

PART 101-32—GOVERNMENT-WIDE AUTOMATED DATA MANAGEMENT SERVICES

Computer Software

This amendment revises §§ 101-32.403-1 and 101-32.403-2 to include software requirements contracts as a method of acquiring software.

1. Section 101-32.403-1 is revised to read as follows:

§ 101-32.403-1 Use of GSA requirements-type contracts.

Requirements-type contracts are established by GSA to simplify the procurement process. Such contracts are established to provide ADPE and software at a substantially lower cost. They must, however, be used in accordance with the provisions of § 1-4.1103.

2. Section 101-32.403-2 is revised to read as follows:

§ 101-32.403-2 Software.

Agencies shall make every effort to meet their ADP software requirements through existing Federal resources. The primary resource is the Federal Software Exchange Center, as discussed in Subpart 101-32.16, which makes software that is already in Government use available for further use by other agencies. If agencies are planning to acquire software performance monitoring packages, they must follow the criteria cited in Subpart 101-32.14. If these sources cannot meet agency requirements, the agency shall procure software in accordance with § 1-4.1103 recognizing, however, that GSA also makes selected software available through requirements-type contracts. Requirements-type contracts, if meeting agency requirements, take precedence over other commercial sources.

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c))

Effective date: This regulation is effective March 31, 1977.

NOTE: The General Services Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: March 23, 1977.

ROBERT T. GRIFFIN,
Acting Administrator.

[FR Doc.77-9538 Filed 3-30-77;8:45 am]

[FPMR Amdt. E-205]

PART 101-32—GOVERNMENT-WIDE AUTOMATED DATA MANAGEMENT SERVICES

Privacy and Data Security for ADP and Telecommunications Systems

Part 101-32 is amended to provide clarification concerning the recording of certain information on ADP or telecommunications solicitation documents which involve or are planned to involve a system of records as defined by the Privacy Act of 1974.

1. Section 101-32.1700 is revised to read as follows:

§ 101-32.1700 Scope of subpart.

The Privacy Act of 1974 (5 U.S.C. 552a) (Act) sets forth certain safeguards to protect personal privacy by requiring agencies to abide by the provisions of the Act. Keeping only an essential minimum of records is the most effective protection against further incursions into personal privacy and is a major goal of this Act. This subpart applies to interagency, intra-agency, and commercial ADP service arrangements. This subpart informs the agencies of rules and procedures concerning ADP and telecommunications to be followed by agencies in making use of, or providing, interagency ADP services involving or potentially involving a system of records, as defined by the Act. This subpart also sets forth the procedures to be followed by agencies in preparing solicitation documents and certifications for procuring ADP and telecommunications equipment, software, maintenance, and services which involve or are planned to involve a system of records, as defined by the Act.

NOTE.—Agencies shall also comply with § 1-1.327, Protection of the privacy of individuals, when procuring ADP equipment, software, maintenance, or services and/or telecommunications equipment, maintenance, or services.

2. Section 101-32.1706(a) is amended as follows:

§ 101-32.1706 Agency documentation responsibilities.

(a) Agencies authorized to procure ADP equipment, software, maintenance, or services in accordance with Part 101-32 or to procure telecommunications equipment or services in accordance with Part 101-35 shall include in the solicitation documents the following information when a system of records as defined by the Privacy Act of 1974 is involved or planned to be involved.

* * * * *

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date: This amendment is effective March 31, 1977.

NOTE.—The General Services Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: March 23, 1977.

ROBERT T. GRIFFIN,
Acting Administrator of General Services.

[FR Doc.77-9546 Filed 3-30-77;8:45 am]

Title 46—Shipping

CHAPTER IV—FEDERAL MARITIME COMMISSION

[General Order 16, Amdt. 18, Docket No. 76-61]

SUBCHAPTER A—GENERAL PROVISIONS

PART 502—RULES OF PRACTICE AND PROCEDURE

Miscellaneous Amendments

AGENCY: Federal Maritime Commission.

ACTION: Final Rules.

SUMMARY: Rules of Practice and Procedure are amended to authorize presiding officers to enter such order or rule as they deem proper when no answer to a complaint is filed within the time provided therefor, and to extend the time

for filing answers; to permit the filing on the following business day when the two-year statutory limit for filing complaints seeking reparation expires on a Saturday, Sunday, or legal holiday; and to authorize presiding officers to order a hearing as well as the submission of additional evidence in proceedings conducted under the shortened procedure.

EFFECTIVE DATE: March 31, 1977.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Acting Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, 202-523-5725.

SUPPLEMENTARY INFORMATION: The Commission instituted this proceeding by notice of proposed rulemaking published in the FEDERAL REGISTER on November 23, 1976 (41 FR 227) to amend §§ 502.64 (Rule 5(d)), 502.101 (Rule 7 (a)), 502.181 (Rule 11(a)), and 502.184 (Rule 11(d)) of its rules of practice and procedure, 46 CFR 502. The Maritime Administrative Bar Association (MABA) and Sea-Land Service, Inc. (Sea-Land) submitted comments which the Commission has carefully considered. A section-by-section discussion of the rules and comments follows.

1. Section 502.64 (Rule 5(d)). This section presently provides that only the Commission may enter an appropriate rule or order in the event that a respondent fails to file an answer to the complaint within the time provided. The rule further provides that only the Commission or the Chief Judge may permit the filing of an answer beyond the time permitted.

The amendment proposed would transfer this authority to presiding administrative law judges. MABA and Sea-Land support the changes. The need under the present rule to defer to the Commission or to the Chief Administrative Law Judge the issuance of necessary orders and rulings causes undue delays. The Commission recognizes the importance of expediting the hearing process so as to bring pending controversies to a prompt resolution. Any rule that acts to expedite such process while at the same time honoring the due process requirements is clearly in the public interest. The amendment to § 502.64 will accordingly be adopted.

2. Section 502.101 (Rule 7(a)). By deleting the reference to § 502.63 (Rule 5 (c)), in § 502.101, as proposed, the method of computing time provided in § 502.101 would be made applicable to the computation of the two-year period for filing complaints seeking reparation under section 22 of the Shipping Act, 1916, 46 U.S.C. 821. This would permit the filing of a complaint on the next business day when the last day of the limitation period ends on a Saturday, Sunday, or legal holiday.

MABA and Sea-Land Service, Inc. oppose the amendment and maintain that the Commission lacks authority to adopt a rule which would result in an extension of time for filing granted by statute. Section 22 is silent on how the two-year period is to be computed. While MABA's and Sea-Land's argument may have some superficial appeal, it overlooks the fact that the present rule may in fact act to shorten the time within which reparation may be claimed, a result rejected by the court in *Kraft Foods* v. *F.M.C.* and *U.S.A.*, 538 F. 2d 445 (D.C. Cir. 1976). Because the Commission maintains no facilities for the filing of documents on days when its offices are closed the rejection of a filing on the next business day when the limitation period ends on a Saturday, Sunday, or legal holiday, would result in shortening by one or more days the time provided in section 22 of the Shipping Act, 1916.

MABA suggests the addition to § 502.101 of a warning of possible subsequent adverse judicial construction of this statutory requirement should the amendment be adopted. While there is always the possibility that a court might overturn the rule adopted here, this is unlikely in view of the fact that the method of time computation reflected in § 502.101 has been generally applied by the courts in their construction of periods of limitation found in other statutes. See e.g., *Sherwood Bros.* v. *District of Columbia*, 113 F. 2d 162 (D.C. Cir. 1940); *Union National Bank* v. *Lamb*, 337 U.S. 38 (1949); *District of Columbia* v. *General Federation of Women's Clubs*, 249 Fed. 503 (D.C. Cir. 1957); *Dayton Power and Light Co.* v. *Federal Power Commission*, 251 F. 2d 875 (D.C. Cir. 1958); *Wilson* v. *Southern Ry Co.*, 147 F. 2d 165 (5 Cir. 1949). In any event, we believe that the "caveat" suggested is inappropriate. The suggestion is therefore rejected and the amendment will be promulgated as proposed.

3. Sections 502.181 and 502.184. The amendment to § 502.181 authorizes presiding officers to order hearings in proceedings conducted under the shortened procedure. Under the current rule while the Commission may order a hearing, the presiding officer has no such authority. MABA opposes giving the presiding officer authority to order a hearing "when none of the parties want it."

The amendment to § 502.184 authorizes presiding officers to order the submission of additional evidence. MABA maintains that the amendment is unnecessary as the presiding officer may now advise the parties that he considers the record insufficient and give them an opportunity to submit additional evidence "if they so desire" and may also rule against the party who has the burden of proof.

We see little merit to MABA's comments. The two amendments are aimed at correcting certain inconsistencies in the rules by giving presiding officers in proceedings conducted under the shortened procedure the same authority they have under § 502.311 (Rule 20) in proceedings for the formal adjudication of small claims. There is no rational basis for the disparity in these rules both dealing with complaint proceedings. As stated in our notice of proposed rulemaking, the present limitation on the authority of presiding officers may cause unnecessary delay should the proceeding be remanded by the Commission for lack of sufficient evidence. The presiding officer should have the authority to conduct the proceeding in such a manner as will ensure a record adequate to support a decision in accordance with statutory requirements. We are therefore adopting the amendments of §§ 502.181 and 502.184 as proposed.

(Sec. 4 of the Administrative Procedure Act (5 U.S.C. 553) and sec. 43 of the Shipping Act, 1916 (46 U.S.C. 841a).)

Part 502 of Title 46, Code of Federal Regulations, is amended as set forth below.

§ 502.64 [Amended]

1. Section 502.64 is amended by deleting the word "Commission" in the final sentence and the words "Commission or Chief Judge" in the proviso clause at the end of the same sentence and substituting the words "presiding officer" in both places.

§ 502.101 [Amended]

2. Section 502.101 is amended by deleting the words "except Section 502.63 (Rule 5(c))" from the first sentence.

§ 502.181 [Amended]

3. (a) Section 502.181 is amended by revising the proviso clause appearing at the end of the section to read as follows:

Provided, That a hearing may be ordered by the presiding officer at the request of any party or in his discretion. (Rule 11(a).)

§ 502.184 [Amended]

4. Section 502.184 is amended by revising the last sentence to read as follows:

This will close the record for decision unless the presiding officer determines that the record is insufficient and orders the submission of additional evidentiary materials. (Rule 11(d).)

Effective Date: Inasmuch as the expeditious adoption of these rules is desirable and inasmuch as they are procedural in nature, they shall be effective March 30, 1977 and shall be applicable to all pending and future proceedings.

By the Commission.[1]

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-9658 Filed 3-30-77;8:45 am]

[1] Vice Chairman Morse dissenting.

I dissent in respect to deleting the words "except Section 502.63 (Rule 5(c))" from the first sentence of Section 502.101. See my dissent in *CSC International, Inc.* v. *Waterman Steamship Corp.*, Docket No. 75-31, Order on Remand, served October 15, 1976 (16 SRR 1510, 1512). Otherwise, I concur.

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 21—MIGRATORY BIRD PERMITS

Revised Permit Requirements

On September 24, 1976, the Director, U.S. Fish and Wildlife Service, published notice (41 FR 41919) of proposed amendments to 50 CFR Part 21 to revise the permit requirement for controlling depredating birds and to include the Rusty blackbird in the depredation order of § 21.43. These amendments were proposed under authority of section 3 of the Migratory Bird Treaty Act, 40 Stat. 755, as amended at 49 Stat. 1556 and 53 Stat. 1433 (16 U.S.C. 704). Public comments were requested on these proposed rules, with all comments received no later than October 26, 1976, to be considered. The Service hereby promulgates final rules on these subjects.

SUMMARY OF COMMENTS

Of the three comments received, two were from state wildlife agencies who supported the changes as proposed. However, one of these comments urged the Service to make clear that § 21.43 authorizes only "responsible" control of depredating species and that the section does not authorize "needless, ineffective, unwise, or hysterical control methods or vendetta or thrill killing".

Although that comment goes beyond this rulemaking's immediate effect on § 21.43, which is simply to add the Rusty blackbird as a species subject to that control, the Service notes that it is aware that "[r]egulations worded too loosely may be subject to some abuse"; specifically, the definitions of the terms "depredations" and "about to commit" are subject to some interpretation. The Service believes that it is sufficient at this time to state that the authority to kill blackbirds, etc. "about to commit depredations" extends only to birds which are on the point of or on the verge of committing depredations. However, if it appears that § 21.43 as presently worded is being abused, the Service will take such action as may be required to revise § 21.43 to eliminate such abuse.

The second comment was from a falconers' association which recommended that the Service allow falconers to use golden eagles captured pursuant to depredation permits. The basic purpose of the amendment to § 21.41 is to permit the mere scaring of migratory birds without a permit, not to authorize the use of any birds, no less eagles, which have been removed from the wild. Indeed, the proposal was expressly made subject to the Bald and Golden Eagles Protection Act, 54 Stat. 250, as amended at 73 Stat. 143, 76 Stat. 1246 and 86 Stat. 1064 (16 U.S.C. 668–668d), which prohibits the capture or possession of golden eagles.

BACKGROUND, DESCRIPTION, AND EFFECT OF THE RULES

Under the Migratory Bird Treaty Act, the taking, possession, and transportation of migratory birds is prohibited except as permitted by regulations issued by the Secretary of the Interior. 40 Stat. 755, as amended at 49 Stat. 1556 and 83 Stat. 190 (16 U.S.C. 703); 50 CFR 21.11 (1975). Current Fish and Wildlife Service regulations allow the taking without a permit of depredating blackbirds, crows, purple gallinules, etc., 50 CFR 21.42–21.46 (1975), and allow the scaring, herding, and killing of other depredating migratory birds under a depredation permit, 50 CFR 21.41 (1975).

These amendments make the depredation permit available not only for the taking, but also for the possession and transportation of depredating birds. Extending the permit to all these activities allows, for example, the live capture and release in an unaffected area of depredating birds.

In addition, specification that the permit is available for "taking" and deletion of the words "scare, herd" make clear that no permit is needed for mere scaring, subject to the provisions of the Endangered Species Act of 1973, 87 Stat. 884 (16 U.S.C. 1531–1543), the Bald and Golden Eagles Protection Act, 54 Stat. 250, as amended at 73 Stat. 143, 76 Stat. 1246, and 86 Stat. 1064 (16 U.S.C. 668–668d), and the Fish and Wildlife Act of 1959, 70 Stat. 1119, as amended at 85 Stat. 480 and 86 Stat. 905 (16 U.S.C. 742j–1).

The amendments also include the Rusty blackbird in the depredation order of § 21.43. The Rusty blackbird causes the same serious depredation problems as the other named blackbirds, but was inadvertently omitted when § 21.43 was first issued.

VARIANCE OF THE FINAL RULE FROM THE PROPOSED RULE

In order to clarify further one of the effects of this rulemaking, the Director has added a sentence to the revised wording of § 21.41(a) to make it explicit that a permit will no longer be required merely to scare or herd migratory birds.

This rulemaking was prepared by Peter T. Tonnessen, Division of Law Enforcement.

These rules shall become effective March 31, 1977.

Dated: March 2, 1977.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

Accordingly, Part 20 of Chapter I, Title 50, Code of Federal Regulations, is amended as follows:

1. Amend paragraph (a) of § 21.41 to read as follows:

§ 21.41 Depredation permits.

(a) *Permit requirement.* Except as provided in §§ 21.42 through 21.46, a depredation permit is required before any person may take, possess, or transport migratory birds for depredation control purposes. No permit is required merely to scare or herd depredating migratory birds other than endangered or threatened species or bald or golden eagles.

* * * * *

2. Amend the introductory paragraph of § 21.43 to read as follows:

§ 21.43 Depredation order for blackbirds, cowbirds, grackles, crows, and magpies.

A Federal permit shall not be required to control yellow-headed red-winged, bi-colored red-winged, tri-colored red-winged, Rusty and Brewer's blackbirds, cowbirds, all grackles, crows, and magpies, when found committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance: *Provided:*

* * * * *

[FR Doc.77-9649 Filed 3-30-77;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7474]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Investment Credit for Movie and Television Films Placed in Service in a Taxable Year Beginning Before January 1, 1975, Which Are Subject to the Forty-Percent Election

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations providing rules for taxpayers to use in electing the forty-percent method of determining investment credit for movie and television films placed in service in a taxable year beginning before January 1, 1975. This election is provided for under section 804(c)(2) of the Tax Reform Act of 1976. These regulations affect all taxpayers desiring to make the forty-percent election and provide them with the guidance needed to make the election.

DATE: The election must be made not later than April 4, 1977.

FOR FURTHER INFORMATION CONTACT:

James W. Corbitt, Jr. of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (attention: CC:LR:T) (202-566-3458).

SUPPLEMENTARY INFORMATION: This document contains temporary regulations relating to election of the forty percent method of determining investment credit for movie and television films placed in service in a taxable year beginning before January 1, 1975. This election is provided for under section 804(c)(2) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1595).

Generally, under section 804(c)(2) of the Act, taxpayers who placed movie and television films (films and tapes) in service in taxable years beginning before

January 1, 1975, may elect to have their investment credit on such films and tapes determined using an amount equal to 40 percent of aggregate production costs (in lieu of the basis of such property). If the election is made, 100 percent is the applicable percentage used in determining qualified investment under section 46(c) of the Code. The election can be made only with respect to qualified films and tapes that are new section 38 property. Under section 48(k)(1)(A)(ii) of the Code, investment credit is allowed only to the extent that a taxpayer has an ownership interest in a film or tape.

The regulations make it clear that no investment credit is allowed on any film or tape that is not new section 38 property or that was produced and shown exclusively outside of the United States.

Qualified investment in films and tapes subject to the election is determined without regard to estimated useful life and any investment credit allowed is not subject to recapture because of an early disposition or predominant use outside the United States.

The election must be made not later than April 4, 1977. Under paragraph (b)(2) of § 7.48-2 the election must be made by filing amended returns and a statement. In the statement, a taxpayer must provide certain specified information and consent to join in judicial proceedings to determine the person entitled to, and the amount of, the investment credit allowable with respect to any film or tape covered by the election.

The election will be revoked by the Commissioner of Internal Revenue under paragraph (c)(2) of § 7.48-2 if a taxpayer fails to make all reasonable efforts necessary to join in or intervene in a judicial proceeding initiated by a rival claimant to the credit after receiving notice of such rival claim from the Commissioner or his delegate.

If a taxpayer does not make the forty-percent election for films placed in service during taxable years beginning before January 1, 1975, investment credit with respect to such films shall be determined under section 804(c)(1) of the Act (unless a taxpayer makes an election under section 804(c)(3) or (e)(2) of the Act). Under this provision investment credit is determined separately for each film or tape taking into account useful life, predominant foreign use, and dispositions after the film or tape was placed in service. Under section 804(e)(2) of the Act, a taxpayer may elect to have investment credit on films and tapes placed in service during taxable years beginning before January 1, 1975, which are property described in section 50(a) of the Code, determined under sections 48(k) and 47(a)(7) of the Code. Under section 804(c)(3) of the Act, a taxpayer who has filed an action in any court of competent jurisdiction before January 1, 1976, with respect to allowance of investment credit for any film or tape placed in service in any taxable year beginning before January 1, 1975, may elect to have investment credit on such films and tapes determined in litigation without regard to section 48(k) of the Code and sections 804 (c) (1) and (2), and (d) of the Act.

Drafting Information

The principal author of this regulation was James W. Corbitt, Jr. of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

In order to prescribe temporary income tax regulations (26 CFR Part 7) relating to election of the forty-percent method of determining investment credit for movie and television films placed in service in a taxable year beginning before January 1, 1975, under section 804(c)(2) of the Tax Reform Act of 1976 (Pub. L. 94-455), the following temporary regulations are hereby adopted:

§ 7.48-2 Election of forty-percent method of determining investment credit for movie and television films placed in service in a taxable year beginning before January 1, 1975.

(a) *General rule.*—Under section 804(c)(2) of the Tax Reform Act of 1976 (90 Stat. 1595), taxpayers who placed movie or television films (hereinafter referred to as films and tapes) in service during taxable years beginning before January 1, 1975, may elect to have their investment credit on all such films and tapes determined under section 46(c) of the Code using an amount equal to 40 percent of aggregate production costs in lieu of the basis of such property. If the election is made, 100 percent is the applicable percentage used in determining qualified investment under section 46(c) of the Code regardless of actual useful life. The election can be made only with respect to qualified films and tapes that are new section 38 property and the investment credit is allowed only to the extent that a taxpayer has an ownership interest in the film or tape. No investment credit is allowed under section 804(c)(2) of the Act on any film or tape that is not section 38 property or that was produced and shown exclusively outside of the United States. Thus, no election may be made under this section with respect to a film or tape which is suspension period property to which section 48(h) applies or to a film or tape which is termination period property to which section 49(a) applies. Any investment credit taken on any film or tape subject to the election is not subject to recapture because of an early disposition or because a film or tape otherwise ceases to be section 38 property under section 47(a) of the Code. Thus, there will be no recapture because a film or tape is used outside the United States under section 48(a)(2) of the Code or section 804(c)(1)(C) of the Act, or because of any disposition under section 47(a)(7)(B) of the Code.

(b) *Time and manner of making an election*—(1) *Time for making the election.* The election under section 804(c)(2) of the Act must be made not later than April 4, 1977.

(2) *Manner of making the election.* An election under this section must be made by filing amended income tax returns for each taxable year beginning before January 1, 1975, in which films and tapes subject to the election were placed in service, together with a statement signed by the taxpayer containing the information described below. The amended returns and the statement must be filed with the district director having audit jurisdiction over the last return filed to which the election relates. Each amended return shall contain a schedule listing by name all films and tapes placed in service during the year to which the amended return relates and setting forth all computations necessary to determine the aggregate production costs of each such film or tape listed and the ownership interest of the taxpayer in each film or tape listed. In the case of a taxpayer which is a partner, shareholder of an electing small business corporation, or beneficiary of a trust or estate, such computations must be adequate to determine the ownership interest of the partnership, electing small business corporation, or trust or estate in each such film or tape. (A taxpayer which is a partner, shareholder, or beneficiary may satisfy the requirements of the preceding sentence by attaching to his amended return a copy of an amended return, if one is filed, of the partnership, electing small business corporation, or trust or estate which sets forth computations necessary to determine the ownerhip interest of the entity in each such film or tape.) No amended return need be filed for a taxable year if application of the election to films and tapes placed in service during that year would not affect tax liability for any taxable year.

The statement shall contain the following information:

(i) The taxpayer's name and taxpayer identification number (under section 6109 of the Code).

(ii) A statement that the taxpayer is making the election under section 804(c)(2) of the Act.

(iii) A statement that the taxpayer agrees that the period for assessment and collection under section 6501 of the Code will remain open until December 31, 1978, solely with respect to adjustments of tax liability attributable to investment credit allowed on films and tapes placed in service in each year covered by the election. Unless the district director notifies the taxpayer within 7 days of receipt of the statement that such extension is denied, it will be presumed that the district director consents to such extension. Of course, the period covered by this statement may be extended beyond December 31, 1978 by mutual agreement. This statement does not shorten the regular statutory period for any year or take precedence over a previous or subsequent agreement with the Internal Revenue Service extending the statutory period for any year.

(iv) A list of the addresses used by the taxpayer on each return filed during each taxable year subject to the election.

(v) A statement that the taxpayer consents to join in judicial proceedings to determine the investment credit allowable and entitlement to investment credit on any film or tape subject to the election, which meets all of the requirements set forth in paragraph (b)(3) of this section.

(vi) A statement as to whether an election has been made by the taxpayer under section 804(e)(2) of the Act for films and tapes which are property described in section 50(a) of the Code which were placed in service in taxable years beginning before January 1, 1975.

(vii) A list by name of all films or tapes placed in service during the years to which the election relates.

(viii) With respect to each film or tape listed in paragraph (b)(2)(vii) of this section, a list of all producers, distributors, and persons with a participation interest (with addresses where available).

(ix) In the case of an election made by a partner, shareholder of an electing small business corporation (as defined in section 1371 (b) of the Code), or beneficiary, a statement indicating the name, taxpayer identification number, and address for tax return purposes of the respective partnership, electing small business corporation, or trust or estate.

(3) *Consent to join in judicial proceedings.* No election may be made by any taxpayer unless the statement made under paragraph (b)(2)(v) of this section provides that the taxpayer shall:

(i) Treat the determination of the investment credit allowable on each film or tape subject to an election as a separate cause of action;

(ii) Make all reasonable efforts necessary to join in or intervene in any judicial proceeding in any court for determining the person entitled to, and the amount of, the investment credit allowable with respect to any film or tape covered by the election after receiving notice from the Commissioner of Internal Revenue or his delegate indicating that a conflicting claim to the investment credit for such film or tape is being asserted in such court by another person; and

(iii) Consent to revocation of the election by the Commissioner of Internal Revenue or his delegate with respect to all films and tapes placed in service in taxable years for which the election applies, if the taxpayer fails to make all reasonable efforts necessary to join in or intervene in any judicial proceeding under paragraph (b)(3)(ii) of this section.

(4) *Who makes the election.* The election must be made separately by each person who has an ownership interest. However, where a film or tape is owned by a partnership, electing small business corporation (as defined in section 1371 (b) of the Code), or trust or estate, the election must be made separately by each partner, shareholder or beneficiary. The election is not to be made by a partnership or electing small business corporation, and is to be made by a trust or estate only if the trust or estate in determining its tax liability would be allowed investment credit on a film or tape subject to the election. The election of any partner, shareholder, beneficiary or trust or estate shall be effective regardless of whether any related partner, shareholder, beneficiary, or trust or estate makes the election.

(5) *Additional time to perfect election.* A taxpayer that by April 4, 1977, files a statement containing the information described in paragraph (b)(2) (i) through (v) of this section shall be deemed to have made a timely election under paragraph (b)(2) of this section if by July 5, 1977, the taxpayer has complied with all of the requirements of paragraph (b)(2) of this section. If a taxpayer demonstrates to the satisfaction of the district director that it is unable to meet the July 5, 1977, date even though it has made a good faith effort to do so, the district director may at his discretion extend that date to no later than October 4, 1977, for that taxpayer. Requests for extensions of the July 5, 1977, date should be addressed to the district director with whom the statement was filed.

(c) *Revocation of election.*—(1) *Revocation by taxpayer*—(i) Except as provided in paragraph (c)(1)(ii) of this section, an election made under section 804(c)(2) of the Act may not be revoked by a taxpayer unless consent to revoke the election is obtained from the Commissioner of Internal Revenue or his delegate. Application for consent to revoke the election will be accepted only if permanent regulations are issued which contain rules which may not reasonably have been anticipated by taxpayers at the time the election was made. Any permanent regulations will provide a reasonable period of time within which taxpayers will be permitted to apply for consent to revoke the election and will allow revocation (where revocation is not barred by the limitations on credit or refund inspection 6511 of the Code) in the event of a determination by the Commissioner of Internal Revenue or his delegate that such permanent regulations contain provisions that may not reasonably have been anticipated by taxpayers at the time of making such election.

(ii) An election properly made under section 804(e)(2) of the Act, to have sections 48(k) and 47(a)(7) of the Code apply to films and tapes which are property described in section 50(a) of the Code and which were placed in service in taxable years beginning before January 1, 1975, shall automatically revoke any election under section 804(c)(2) of the Act with respect to such films and tapes. Such revocation does not require the consent of the Commissioner of Internal Revenue or his delegate.

(2) *Revocation by Commissioner.* The Commissioner of Internal Revenue or his delegate shall revoke an election made under section 804(c)(2) of the Act if a taxpayer fails to make all reasonable efforts necessary to join in or intervene, in a judicial proceeding for determination of the person entitled to, and the amount of, the investment credit allowable with respect to any film or tape covered by the election after receiving notice from the Commissioner or his delegate which indicates that a conflicting claim to the investment credit for such film or tape is being asserted in court by another person.

(d) *Furnishing of supplementary information required.* If these regulations are revised to require the furnishing of information in addition to that which was furnished with the amended returns and statement of election filed pursuant to paragraph (b) (2) and (3) of this section, the taxpayer must furnish such additional information in a statement addressed to the district director with whom the amended return and statement of election were filed.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7804) and section 804(c)(2) (C) and (D) of the Tax Reform Act of 1976 (90 Stat. 1595).)

WILLIAM E. WILLIAMS,
Acting Commissioner of Internal Revenue.

Approved: March 26, 1977.

LAURENCE N. WOODWORTH,
Assistant Secretary of the Treasury.

[FR Doc.77-9773 Filed 3-29-77;5:15 am]

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 7473]

PART 404—TEMPORARY REGULATIONS ON PROCEDURE AND ADMINISTRATION UNDER THE TAX REFORM ACT OF 1976

Temporary Regulations Relating to Certain Requirements for Income Tax Return Preparers

PREAMBLE

This document contains amendments to the temporary regulations on procedure and administration (26 CFR Part 404) under sections 6107(b) and 6109(a) (4) of the Internal Revenue Code of 1954 as added or amended by section 1203 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1688) in order to modify certain requirements for income tax return preparers with respect to the preparation of returns of tax and claims for refund of tax under subtitle A of the Code.

The amendments to the temporary regulations require certain income tax return preparers to retain a record with respect to each return or claim for refund prepared of the name of the individual preparer who is required to sign