

On or before September 17, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before September 3, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

*Assistant Secretary.*

August 6, 1980.

[FR Doc. 80-24397 Filed 8-12-80; 8:45 am]

BILLING CODE 8010-01-M

#### **Boston Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing**

August 6, 1980.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Atlantic City Electric, Common Stock, \$3 Par Value (File No. 7-57)  
Audiotronics Corp., Common Stock, \$1 Par Value (File No. 7-5712)  
C.H.B. Foods, Inc., Common Stock, \$1 Par Value (File No. 7-5713)  
C P National Corp., Common stock \$5 Par Value (File No. 7-5714)  
Earth Resources Co., Common Stock, No Par Value (File No. 7-5715)

Energy & Utility Shares, Inc., Common Stock, \$1 Par Value (File No. 7-5716)  
Gulf Resources & Chemical Corp., Common Stock, \$10 Par Value (File No. 7-5717)  
Juniper Petroleum Corporation, Common Stock, \$10 Par Value (File No. 7-5718)  
National Patent Development Corp., Common Stock, \$0.01 Par Value (File No. 7-5719)  
Pennsylvania Engineering Corp., Common Stock, \$10 Par Value (File No. 7-5720)  
Standard Metals Corp., Common Stock, \$0.03 Par Value (File No. 7-5721)  
Technical Tape, Inc., Common Stock, \$1 Par Value (File No. 7-5722)  
Thermo Electron Corp., Common Stock, \$1 Par Value (File No. 7-5723)<sup>1</sup>  
Unimax Group, Inc. (The) Common Stock, \$0.75 Par Value (File No. 7-5724)  
WTC, Inc., Common Stock, No Par Value (File No. 7-5725)  
Western Financial, Common Stock, \$1 Par Value (File No. 7-5726)  
Wilson Brothers, Common Stock, \$1 Par Value (File No. 7-5727)

These securities, subject to the exception noted above, are listed and registered on one or more other national securities exchanges and are reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 27, 1980 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

*Assistant Secretary.*

[FR Doc. 80-24398 Filed 8-12-80; 8:45 am]

BILLING CODE 8010-01-M

#### **Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing**

August 6, 1980.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder,

<sup>1</sup> A listing application regarding this security currently is pending before the New York Stock Exchange.

for unlisted trading privileges in the common stock of:

Staley (A.E.) Manufacturing Company,  
Common Stock, No Par Value (File No. 7-5728)

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 27, 1980 written data, views, and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley F. Hollis,

*Assistant Secretary.*

[FR Doc. 80-24399 Filed 8-12-80; 8:45 am]

BILLING CODE 8010-01-M

# Sunshine Act Meetings

Federal Register

Vol. 45, No. 158

Wednesday, August 13, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" Citation of Previous Announcement: S-1502-80.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 9:30 a.m. (Eastern time), Tuesday, August 12, 1980.

**CHANGE IN THE MEETING:** The following matter was added to the agenda for the closed portion of the meeting:

Proposed Decision in Charge No. TMR4-0557.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change:

Eleanor Holmes Norton, Chair.  
Daniel El Leach, Vice Chair.  
Ethel Bent Walsh, Commissioner.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Treva I. McCall, Acting Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued August 8, 1980.

S-1523-80 Filed 8-11-80: 9:37 am]

BILLING CODE 6560-06-M

2

### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

August 8, 1980.

**TIME AND DATE:** 10 a.m., Wednesday, August 13, 1980.

**PLACE:** Room 600, 1730 K Street NW., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. Missouri Gravel Company, Docket No. LAKE 80-83-M (Petition for Discretionary Review).

It was determined by a unanimous vote of Commissioners that the Commission business required that a meeting be held on this matter and no earlier announcement of the meeting was possible.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Jean Ellen, 202-653-5632.

[S-1526-80 Filed 8-11-80: 3:35 pm]

BILLING CODE 6820-12-M

3

### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

August 8, 1980.

**TIME AND DATE:** 10 a.m., Wednesday, August 20, 1980.

**PLACE:** Room 600, 1730 K Street NW., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. Ronald McCracken v. Valley Camp Coal Company, Docket No. WEVA 79-116-D (Petition for Discretionary Review).

#### CONTACT PERSON FOR MORE

**INFORMATION:** Jean Ellen, 202-653-5632.

S-1529-80 Filed 8-11-80: 3:35 pm]

BILLING CODE 6820-12-M

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### FEDERAL RESERVE SYSTEM.

**TIME AND DATE:** 10 a.m., Monday, August 18, 1980.

**PLACE:** 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

1. Proposed purchases, under competitive bidding, of computer equipment within the Federal Reserve System.

2. Proposed salary structure adjustments at Federal Reserve Banks.

3. Request by the Government Accounting Office for Board comment on a draft report concerning federal examinations of financial institutions.

4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

5. Any agenda items carried forward from a previously announced meeting.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-32-04.

Dated: August 8, 1980.

Theodore E. Allison,  
*Secretary of the Board.*

[S-1524-80 Filed 8-11-80: 9:59 am]

BILLING CODE 6210-01-M

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### NATIONAL LABOR RELATIONS BOARD.

**TIME AND DATE:** 10:30 a.m., Tuesday, August 12, 1980.

**PLACE:** Board conference room, sixth floor, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570.

**STATUS:** Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

**MATTERS TO BE CONSIDERED:** Personnel-related matters.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Robert Volger, Acting Executive Secretary, Washington, D.C. 20570; telephone: (202) 254-9430.

Dated, Washington, D.C., August 11, 1980.

By direction of the Board:

George A. Leet,

*Associate Executive Secretary, National Labor Relations Board.*

[S-1526-80 Filed 8-11-80: 12:30 pm]

BILLING CODE 7545-01-M

6

### POSTAL RATE COMMISSION.

**TIME AND DATE:** 11 a.m., Tuesday, August 19, 1980.

**PLACE:** Conference room, room 500, 2000 L Street NW., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Discussion of proposed rulemaking. (See FR, July 21, 1980.)

#### CONTACT PERSON FOR MORE

**INFORMATION:** Dennis Watson, Information Officer, Postal Rate Commission, Room 500, 2000 L Street

NW., Washington, D.C. 20268, telephone (202) 254-5614.

S-1525-80 Filed 8-11-80; 12:33 pm]

BILLING CODE 7715-01-M

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**SECURITIES AND EXCHANGE COMMISSION.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 45 FR 52549, August 7, 1980.

**STATUS:** Closed meeting/open meeting.

**PLACE:** Room 825, 500 North Capitol Street, Washington, D.C.

**DATE PREVIOUSLY ANNOUNCED:** Monday, August 4, 1980.

**CHANGES IN THE MEETING:** Rescheduling.

The following closed meeting scheduled for August 12, 1980, at 10 a.m. has been rescheduled for Monday, August 11, 1980, at 2 p.m.

The subject matter of the closed meeting scheduled for Monday, August 11, 1980, at 2 p.m., will be:

- Access to investigate files by Federal, State, or Self-Regulatory Authorities.
- Litigation matter.
- Freedom of Information Act appeal.
- Formal order of investigation.
- Subpoena enforcement action.
- Institution and settlement of administrative proceedings of an enforcement nature.
- Institution of administrative proceeding and injunctive action.
- Institution of injunctive actions.
- Institution of injunctive action and access to investigate files by Federal, State, or Self-Regulatory Authorities.
- Opinion.
- Administrative proceeding of an enforcement nature.
- Freedom of Information Act appeals and requests for Confidential treatment.
- Personnel security matter.
- Litigation matter.

The following open meeting scheduled for Wednesday, August 13, 1980, at 10 a.m. has been rescheduled for Thursday, August 21, 1980, at 10 a.m.

The subject matter of the open meeting scheduled for Thursday, August 21, 1980, at 10 a.m., will be:

1. Consideration of whether to grant the application of Joel L. Halpern to become associated with Donald Sheldon & Co., Inc., a registered broker-dealer, as a registered representative. For further information, please contact David P. Tennant at (202) 272-2945.
2. Consideration of whether to affirm action, taken by the Duty Officer, granting Professor Thomas K. McCraw, Graduate School of Business Administration, Harvard University, access to Commission minutes from 1933 to 1940 and correspondence of Commissioners Landis and Douglas. For further information, please contact Shirley Hollis at (202) 272-2600.
3. Consideration of whether to adopt amendments to Regulation S-K and

certain forms and rules under the Securities Act of 1933 and the Securities Exchange Act of 1934 relating to the filing of exhibits to certain frequently used forms. For further information, please contact Joseph G. Connally, Jr. at (202) 272-3097.

4. Consideration of whether to grant the request of Randolph Phillips, pursuant to the Government in the Sunshine Act, for a copy of an official Commission minute dated June 18, 1980. For further information, please contact Myrna Siegel at (202) 272-2430.
5. Consideration of whether to adopt a rule setting forth procedures for determining requests for confidential treatment under the Freedom of Information Act. For further information, please contact Harlan W. Penn at (202) 272-2454.
6. Consideration of whether to propose for public comment a rule under the Public Utility Holding Company Act of 1935 (the "Act") which, if adopted, would exempt certain non-utility subsidiaries of registered holding companies from the duties, obligations, and liabilities imposed under the 1935 Act on a subsidiary company, if no more than 50% of the voting securities or other voting interests of any such company are owned, directly or indirectly, by any one or more registered holding companies. For further information, please contact Grant G. Guthrie at (202) 523-5156.

The closed meeting scheduled for Wednesday, August 13, 1980, has been rescheduled for Thursday, August 21, 1980, following the 10 a.m. open meeting. The subject matter of the closed meeting will be:

Institution of injunctive actions.

Chairman Williams and Commissioners Evans and Friedman determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Wojtas at (202) 272-2178.

August 11, 1980.

[S-1527-80 Filed 8-11-80; 3:32 pm]

BILLING CODE 8010-01-M

# **federal register**

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Wednesday  
August 13, 1980

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**Part II**

**Federal Emergency  
Management Agency**

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Disaster Relief, Public Assistance

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY**
**44 CFR Part 205**
**[Docket No. FEMA-DR 205]**
**Disaster Assistance: Public Assistance  
(Subpart E)**
**AGENCY:** Federal Emergency Management Agency, disaster response and recovery.

**ACTION:** Final rule.

**SUMMARY:** The Federal Emergency Management Agency is in the process of revising its regulations which implement the Disaster Relief Act of 1974. This document revises the regulations concerning public assistance. The regulations provide policies and guidelines for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs of the Disaster Relief Act of 1974, Pub. L. 93-288, as amended. The existing rule is expanded to incorporate certain material published previously in the FEMA Eligibility Handbook, DRR-2. Portions of the material have been revised to clarify existing policy and procedures.

**EFFECTIVE DATE:** For declarations of major disasters or emergencies made after September 12, 1980.

**FOR FURTHER INFORMATION CONTACT:** Gene Morath, Office of Public Assistance, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472, Telephone: (202) 634-7835.

**SUPPLEMENTAL INFORMATION:** A notice issued in the Federal Register on May 2, 1979, establishing CFR Title and Chapter for FEMA regulations (Title 44, Chapter I, Federal Emergency Management Agency, with Subchapters A-E) indicated that Disaster Assistance would be Subchapter D, Parts 200-299. On September 28, 1979, FEMA published a Notice of Transfer and Redesignation that transferred the Federal Disaster Assistance Regulations from 24 CFR Parts 2200-2205 to 44 CFR Part 200 *et seq.* The regulations implementing the Disaster Relief Act of 1974, Pub. L. 93-288 (44 CFR Part 205), are in the process of reorganization and revision. On November 1, 1979, the then Acting Director for Disaster Response and Recovery published in the Federal Register (44 FR 63061) a proposed rule to revise and recodify the material concerning eligibility for public assistance in the existing 44 CFR 205 as a new Subpart E. The rule is expanded to incorporate material previously

published in the FEMA Eligibility Handbook, DRR-2. Portions of the material have been revised to clarify existing policy and procedures. Comments were invited to December 31, 1979. In addition, copies were sent to each State official responsible for disaster operations.

A total of 124 responses were received concerning the proposed Subpart E. The comments received can be summarized as those (1) editorial in nature; (2) suitable for incorporation in Handbooks but not regulations; (3) not relevant to Subpart E but which could be considered as another appropriate subpart of the regulations; (4) requesting changes to conform to OMB Circular 74-4; (5) proposing mandatory consultation by FEMA with applicants prior to taking any grant action; (6) questioning whether the Regional Director has mandatory or discretionary authority in withholding funding in no-action alternatives; (7) requesting clarification of the grant-in-lieu concept; (8) those challenging the eligibility aspects of the snow removal reimbursement policy (more specific comments concerning responses in each of these categories are discussed in the succeeding paragraphs); and (9) suggesting changes which have been incorporated in the final rule.

(1) Editorial Comments: Our editors who have final review of each draft rule for clarity of expression have reviewed each such comment and have incorporated those which, in our judgement, result in improvements when compared to the proposed rule.

(2) Handbooks: Some suggestions that examples or clarification be included in Subpart E can best be accommodated by appropriate coverage in FEMA Handbooks. Any suggestion requesting a change of mandatory policies or procedures has been considered as pertaining to 44 CFR Subpart E. Coverage in handbooks of such suggestions is not appropriate and none has been scheduled.

(3) Other FEMA Regulations: Suggestions pertaining to other subparts of 44 CFR 205, or other FEMA regulations, were referred to the responsible FEMA staff member for consideration in appropriate rulemaking.

(4) OMB Circular 74-4: Based on our review of the Eligibility of Cost section of the regulations and OMB Circular 74-4, we have modified Section 205.76 to conform to the circular, except for certain indirect costs identified as administrative expenses. We advised the Office of Management and Budget (OMB) by letter of March 27, 1980, that we would incorporate some changes at this time and consult with them, further,

concerning the treatment of certain indirect costs. FEMA and its predecessor agencies, the Federal Disaster Assistance Administration (FDAA) and the Office of Emergency Preparedness (OEP), have maintained the position that not allowing such indirect costs was consistent with the provision of the Disaster Relief Act of 1974. Public Law 93-288 provides that Federal disaster assistance be supplementary to the efforts of State and local governments and also provide that such governments commit a reasonable amount of their own funds towards alleviating the damage caused by the disaster. To avoid further delay, we are publishing Section 205.76 as a final rule at this time subject to future amendment as the results of our discussions with OMB.

(5) Mandatory Consultation: Suggestion was made that, prior to approval of any grant or loan, the FEMA Regional Director must consult with the applicant and with the Governor's Authorized Representative. The FEMA workload for individual projects of disaster assistance to local or State governments, or to other eligible grantees, varies depending upon occurrence of major disasters or emergencies, but ranges from 20,000 to 40,000 projects per year. A recent sampling of about 10,000 projects revealed that ninety-two percent were for under \$25,000 per project. Our present FEMA policies and procedures require that each Damage Survey Report (DSR) be prepared based on field surveys by Federal/State inspectors escorted by a local representative. These DSR's are reviewed by Federal engineers, FEMA program officers and by State program officers before each project application (P/A) is submitted. Each P/A is submitted by the applicant and approved by the Governor's Authorized Representative before the Regional Director approves the project application and obligates FEMA funding. At every point in these procedures, the State on behalf of the eligible grantee may appeal any decision or action taken. Considering the numerous projects comprising the FEMA workload and the opportunities for consultation already provided by the existing procedures, the FEMA Associate Director for Disaster Response and Recovery has determined that further mandatory consultations are not justified. Therefore, those suggestions have been rejected.

(6) No Action Alternative: Questions have been posed as to whether the Regional Director has mandatory or discretionary authority in withholding

FEMA funding requested by an eligible grantee through the State. Under Section 303(a)(4), Public Law 93-288, the Federal Coordinating Officer is responsible for assisting "local citizens and public officials in promptly obtaining assistance to which they are entitled." However, the Regional Director may approve a FEMA grant or loan only when he determines that such action is legal and proper under the Act and 44 CFR. He has no discretion to disapprove any grant or loan arbitrarily and capriciously, but he may not approve grants or loans which he is unable to justify.

(7) Grant-in-Lieu (GIL): Suggestions were made that the proposed rule be modified to support the position taken by claimants in a recent appeal on behalf of a private nonprofit hospital. The FEMA General Counsel has already made a legal review of the issues involved and has supported the language of the proposed rule. Therefore, no change is contemplated. However, further examples and explanations will be incorporated in the next revision of the FEMA Eligibility Handbook to avoid any misunderstanding of the correct interpretation of the GIL concept.

(8) Emergency Snow Removal: Ninety-four responses to this proposed rulemaking commented on principles in 44 CFR 205 Subpart E pertaining to emergency snow removal. These included 20 from State officials; 68 from local officials; five from members of Congress; and one from the Federal Highway Administration. Sixty-six of the sixty-eight local responses were from Illinois and most were very similar in phraseology and content to a sample letter sent to heads of local governments by the Illinois Director of Emergency Services. Considering these numerous comments and the fact that the 1979-1980 winter season has passed, the Associate Director decided to reserve the following paragraphs: 44 CFR 205.72(f); 44 CFR 205.74(c)(6); and 44 CFR 205.76(d)(4). After further review of the comments received on emergency snow removal assistance as the result of this proposed rulemaking, the Associate Director expects to consult with individuals representing local and State governments who have participated in past Federal programs of emergency snow removal assistance or who have raised many of the issues in these comments. A final rule for these reserved paragraphs is scheduled for publication prior to the next snow season.

(9) Suggestions Accepted and Reflected in the Final Rule: There were

numerous suggestions or changes in wording to clarify or to modify sections in the proposed rule which have been accepted with modifications in the final rule. Since these changes should satisfy the respondent and do not constitute major changes of policies or procedures, they are not discussed further in these paragraphs. In most cases they clarify or expand on concepts expressed in the proposed rulemaking.

A Finding of Inapplicability of section 102(2)(c) of the National Environmental Policy Act of 1969 has been made in accordance with "Procedures for Protection and Enhancement of Environmental Quality." Interested parties may obtain and inspect copies of this Finding of Inapplicability at the Office of the Rules Docket Clerk of the Federal Emergency Management Agency in Washington, D.C. 20472.

The regulation is in consonance with the provisions of the Executive Order dated November 16, 1979, and does not impose an unnecessary burden on the small business sector of the economy.

The regulation does not impact adversely on the central cities, suburban communities, or non-metropolitan communities.

As provided in Executive Order 12044 dated March 23, 1968, the regulation does not have any significant economic consequences on the general economy, individual industries, geographic regions, or levels of government.

Subpart "C" (Sections 205.75-205.79) entitled Disaster Preparedness Assistance has been replaced by Part 300 of this Chapter, added February 29, 1980, 45 FR 13464. Also, 205.100-205.104 were added December 11, 1979 at 44 FR 71793 and were designated Subpart G, Fire Suppression Assistance. Sections 205.75-205.79 should be removed and 205.100-205.104 remain in effect as current Subpart G.

Accordingly, 44 CFR Part 205 of the Federal Disaster Assistance Regulations is revised by deleting §§ 205.29-205.32, 205.33(b), 205.52-205.55, 205.57, and 205.75 through 205.79 (titled subpart G), and by adding a new Subpart E (Public Assistance), §§ 205.70 through 205.76, as follows:

#### Subpart E—Public Assistance

Sec.	
205.70	General.
205.71	Definitions.
205.72	Applicant eligibility.
205.73	General work eligibility.
205.74	Emergency work.
205.75	Permanent work.
205.76	Eligibility of costs.

**Authority:** Sec. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 163 (42 U.S.C. 5201); Executive Order 12148 (44 FR 43239); and Delegation of Authority.

#### Subpart E—Public Assistance

##### § 205.70 General.

This subpart provides policies and guidelines for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs of Pub. L. 93-288, as amended. It includes criteria for determining eligibility of assistance under Sections 305, 306, 402, 403, 415, 416, 418, and 419 of Pub. L. 93-288, as amended. Refer also to Subparts J, K, and M, and to 44 CFR Parts 9 and 10 of these regulations for additional guidance related to eligibility determinations.

##### § 205.71 Definitions.

(a) "Educational institution" means:

- (1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965;

- (2) Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or

- (3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

(b) "Predisaster condition" means the state of repair or serviceability of a facility immediately prior to the disaster, taking into consideration prior damages, age, deterioration, and any limitations upon its operation.

(c) "Predisaster design" means the size and capacity of a facility when the major disaster occurred, taking into account its major features, as originally placed in service but updated by any modernization or expansion of the facility, prior to the major disaster, to provide added capacity for public services.

(d) "Private nonprofit facility" means any private nonprofit educational, utility, emergency, medical, and custodial care facility, including those for the aged or disabled, and those on Indian reservations.

(1) "Educational facilities" means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include:

- (i) Buildings, structures and related items used primarily for athletic exhibitions, contests, games or other events for which admission is charged to the general public, such as athletic stadiums, gymnasiums, and swimming pools.

- (ii) Buildings, structures and related items used primarily for religious purposes or primarily in connection with any part of the program of a divinity school, or department of divinity, as

defined by Section 1201 of the Higher Education Act of 1965.

(2) "Utility" means buildings, structures, or systems of any power, energy, telephone, water supply, sewage collection and treatment, or other similar public service. An irrigation system is not a "utility".

(3) "Emergency facility" means those buildings, structures, or systems used primarily to provide emergency services, such as fire protection, ambulance, or rescue, to the general public.

(4) "Medical facility" means any hospital, outpatient facility, rehabilitation facility, or facility for long term care, as defined by the Associate Director, and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

(5) "Custodial care facility" means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for such persons as the aged and disabled; such persons do not require day-to-day care by doctors or by other professionals but do require close supervision and some physical constraints of their daily activities.

(e) "Private nonprofit organization" means any nongovernmental agency or entity that currently has:

(1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under section 501 (c), (d), or (e) of the Internal Revenue Code of 1954, or

(2) Satisfactory evidence from the State that the non-revenue producing organization or entity is a nonprofit one organized or doing business under State law.

(f) "Standards" as used in this subpart means codes, specifications, or standards.

#### § 205.72 Applicant eligibility.

(a) "Within the disaster area designated by the Associate Director, State or local governments, as defined in 44 CFR 205, Subpart A, are eligible applicants.

(b) Private nonprofit organizations or institutions, owning and operating educational, utility, emergency, medical or custodial care facilities, are eligible applicants.

(c) An Indian tribe (or authorized tribal organization or Alaskan village or organization, which exists for public service,) is also an eligible applicant. In those cases where the State is unable or unwilling to process a project application on its behalf, such applicant

may submit its project application directly to the Regional Director.

(d) A public entity is eligible for assistance when its requests are submitted by a State or a political subdivision of the State. Organizations which are formed for a public purpose and whose direction and funding are provided primarily by one or more political subdivisions of the State are normally considered to be public entities.

(e) Any rural community or unincorporated town or village may be eligible when an application for Federal assistance is made by a State or a political subdivision of the State on its behalf.

(f) [Reserved]

(g) Under Public Law 93-288 grants to eligible applicants are discretionary and are based on FEMA grant approval for proposed work and subject to any conditions upon which that grant approval was based.

#### § 205.73 General work eligibility.

(a) *General.* To be eligible for financial assistance, an item of work must:

(1) Be for a purpose set forth in the Act and these regulations.

(2) Be required as the result of the major disaster or emergency, and

(3) Be located within a disaster area designated by the Associate Director.

(b) *Work under other Federal agency programs.* Disaster assistance under the Act is not available for work which other Federal agencies may fund under their own statutory authorities, except under unusual circumstances approved by the Regional Director. When another Federal agency (OFA) has authority and the necessary funds available to restore facilities damaged or destroyed by a major disaster or emergency that OFA funding authority shall be used instead of FEMA funding.

(c) *Restoration of leased facilities.* (1) Applicant-owned facilities are eligible, except when leased and the lease places such responsibility on the lessee.

(2) Facilities owned by others but under lease to an applicant are eligible to the extent of the applicant's responsibility under the lease.

(d) *Assurances.* As a condition for any grant or loan under the Act, the State and the applicant shall provide the assurances required by the Regional Director and accompanying the project application or loan application. These assurances are legally binding when offered by the applicant and the State, and approved by the Regional Director.

(e) *Facilities serving a rural community or unincorporated town or village.* To be eligible, a facility or

system not owned by a State or local government must meet the following requirements:

(1) The facility is located in and/or serves an unincorporated community, town, or village; and

(2) Ownership is vested in a not-for-profit organization; and

(3) Proposed work on the facility satisfies eligibility requirements otherwise applicable to public facilities under Section 306 of the Act and must be necessary to restore essential public services on an emergency basis.

(f) *Grants-in-lieu.* A grant-in-lieu is a categorical grant, based on work eligible under section 306 or 402(e) of the Act, which the grantee may use to provide a larger, more elaborate or equivalent facility that as a minimum replaces the design or capacity of the public facility damaged or destroyed by the major disaster. The facility to which the grant-in-lieu is applied must be restored to its predisaster capacity and serve the same purpose or function as the damaged facility.

(g) *Time limitations.* Timely performance of eligible work is necessary to minimize costs of work and to avoid delays in restoration of public services. The Regional Director may approve reimbursement to an applicant for eligible work performed prior to the Federal damage survey, but within the time limitations and the disaster-affected area. When, due to circumstances not beyond its control, an applicant fails to comply with the approved time limitations, the Associate Director, or his/her designee may decline to approve an extension of time for starting or completing the approved work.

(h) *Maintenance.* Routine or regular maintenance is not eligible. To be eligible, repairs or replacements of damaged facilities which are of the types usually performed as maintenance, must:

(1) Be of disaster scope and magnitude, and

(2) Be essential to restore the disaster condition and design of the damaged or destroyed facilities, and

(3) Be performed on an expedited basis.

#### § 205.74 Emergency work.

(a) *General.* (1) Emergency work is eligible under section 305 or 306 of the Act to provide emergency protective measures to save lives, to protect public health and safety, and to protect property as the result of a declared major disaster or emergency; under section 306 or 403 for debris removal; under section 415 for Emergency

Communications; and under Section 416 for Emergency Public Transportation.

(2) When immediately necessary and no lesser emergency work is feasible, permanent restorative work on facilities damaged or destroyed by a major disaster or emergency may be expedited as emergency work under sections 305 or 306 of the Act. Eligibility of such emergency work shall be determined separately from any other permanent restorative work eligible under section 402 of the Act.

(3) In determining public interest for emergency work for which these regulations require such determination, the Regional Director shall determine whether the work is necessary to:

(i) Eliminate immediate threats to life, public health, and safety; or

(ii) Eliminate an immediate hazard which threatens substantial destruction of undamaged improved public or private property; or

(iii) Assure economic recovery of the affected community to the benefit of the community-at-large; or

(iv) Provide emergency facilities when necessary to resume essential public services.

(4) In determining whether such emergency work is in the public interest, the Regional Director may require certification by local, State, or Federal health officials, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat. Refer also to 44 CFR 205.70.

(b) *Debris removal.* No such work shall be performed unless the affected State or local government first provides to the Regional Director written assurances of rights of entry and indemnification required by FEMA. When approved in the public interest by the Regional Director the following types of emergency work are eligible:

(1) Clearance of debris and wreckage from publicly and privately owned land and waters.

(2) Demolition and removal of public and private buildings damaged beyond repair.

(3) Cleanout of reservoirs, debris catch basins, streams, and opening of drainage channels or facilities only under section 306 or 403 of the Act. Such clearance shall be limited to the removal of materials which are foreign to that facility and which were deposited by the disaster. It is not in the public interest to clean out debris catch basins at Federal expense that have a remaining capacity of storing debris that could be expected from a five-year storm. In determining public interest, past history of clean out of such facility shall be considered. Some removal of debris, deposited prior

to the Presidential declaration, may be required as a condition for Federal funding under this section.

(c) *Emergency protective measures.*

(1) The Regional Director may approve emergency protective measures under section 306(a)(4) of the Act which he/she determines are in the public interest. Such emergency work to protect property must be justified further by favorable benefits when compared to Federal costs involved and by providing widespread benefits to the community-at-large.

(2) Emergency protective work to prevent additional damage to improved property is eligible only when the effects of a declared major disaster or emergency have severely damaged or destroyed facilities and further destruction to improved property is threatened soon by subsequent similar disasters or emergencies. When approved, such emergency work is limited to the essential measures required to protect the community-at-large against similar disasters or emergencies that would be expected to occur not less frequently than every five years, or to restore protection as existed prior to the disaster, whichever is lesser.

(3) Removal of health and safety hazards. The following are examples of measures that may be eligible when approved in the public interest by the Regional Director: disposal of dead animals; drainage of water trapped as a result of a major disaster or emergency; pumping of basements only where there is flooding of numerous basements in the disaster-affected area; decontamination of private wells or pumping septic tanks only where pollution problem is widespread; vector control of insects involving a serious health hazard to humans.

(4) Landslides. To be eligible for FEMA reimbursement, emergency work shall be performed during the incidence period for the major disaster or emergency, except under unusual circumstances where the Regional Director determines that the proposed work is primarily disaster-related and in the public interest. Examples are debris removal, simple drainage measures, and emergency repairs to damaged public facilities. Permanent stabilization of a landslide is not attainable usually by such emergency measures.

(5) Emergency access. An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant or grantee for operation and maintenance may be eligible for emergency repairs or replacement provided:

(i) The Regional Director determines that emergency repair or replacement of

the facility is in the public interest, or economically eliminates needs for temporary housing, with no alternative access facilities immediately available within a reasonable distance, and

(ii) The necessary emergency work can be provided on a one-time basis and will in no way obligate the Federal Government to fund further emergency work or maintenance.

(6) [Reserved]

(7) Work that is immediately necessary as the result of a major disaster and directly related to permanent work eligible to be performed later under section 402 of the Act will normally be approved by the Regional Director in the public interest as emergency protective measures under section 306 of the Act.

(8) Water control facilities. Emergency work on water control facilities shall be limited to that required to insure the structural integrity of the damaged facilities or to restore disrupted public services when necessary to meet emergency needs of the community-at-large.

(9) Ice jams. FEMA assistance to remove ice jams is not eligible.

(10) Emergency protective facilities installed will be eligible for removal under the Act only when such facilities are directly affecting the operations of, or access to, public facilities required by the applicant in its normal day to day operation.

(d) *Emergency communications.* The Regional Director is authorized as the result of an emergency or major disaster to establish emergency communications and make them available to State and local government officials and other persons as he/she deems appropriate. Such emergency communications are ordinarily intended for use as necessary to carry out the disaster relief functions. Communications provided under this section are intended to supplement but not replace normal communications that remain operable after a major disaster. These emergency communications will be discontinued immediately when the essential emergency communications needs of FEMA and the community have been met.

(e) *Emergency public transportation.* The Regional Director may provide emergency public transportation in a disaster-affected area to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible. Any transportation provided under this section is intended to supplement but not replace predisaster transportation facilities that remain operable after a



major disaster. FEMA funding of such emergency transportation will be discontinued by the Regional Director as soon as the emergency needs have been met.

#### § 205.75 Permanent work.

(a) *General.* (1) *Applicability.* Permanent work is eligible under section 402 of the Act and these regulations and includes help to eligible applicants to repair, restore, reconstruct, or replace eligible facilities on the basis of the design of the facilities as they existed immediately prior to the disaster and in conformity with applicable standards. Criteria for determining eligibility of permanent work are the same for categorical, flexible funding, and small project grants.

(2) *Standards.* (i) To be applicable for Federal grant assistance under section 402 of the Act, standards for repairs, or for new construction, must be in writing, formally adopted, enforced, and in general use when the major disaster occurred, except:

(A) Those standards prescribed by the Associate Director

(B) Those standards authorized as deviations by the Associate Director.

(ii) In those cases where no standards are applicable, Federal grant assistance for permanent work under the Act shall be limited to restoring the facility to its predisaster condition and predisaster design to the extent practicable.

(iii) In restoring damaged or destroyed facilities by use of grant assistance for permanent work under the Act, the Regional Director may authorize minor disaster proofing not required by applicable codes, specifications or standards, when in the public interest. Refer also to 44 CFR 205.70.

(iv) Under section 406 of the Act, as implemented by 44 CFR 205.402(d), the Associate Director may prescribe standards which then are applicable only to Federally-assisted projects for permanent work.

(v) Under section 402 of the Act, when the Associate Director determines that conformity to existing applicable standards will jeopardize public health and safety, he/she may authorize appropriate standards as deviations after consultations with the Regional Director, the Governor's Authorized Representative, and the applicants. Prior to the authorization of such deviations, the State or local government having jurisdiction in the affected areas shall also adopt and enforce these new standards for all like projects. Refer also to 44 CFR 205.70.

(3) *Materials.* For all eligible repairs, replacements, rebuilding or other restorative work, the most economical

materials shall be used, taking into consideration the following: predisaster design and condition of the facility; current applicable standards, if any; and predisaster public services or usage of the facility. Consideration shall also be given to protection of the environment (44 CFR Part 10) and to floodplain management, if applicable, (44 CFR Part 9).

(4) *Public Interest.* Refer also to 44 CFR 205.70. In determining whether permanent work is in the public interest, the Regional Director shall determine that:

(i) The applicant and the work involved are eligible under the Act and these regulations.

(ii) The work is necessary for the benefit of the community-at-large.

(iii) The outlook for continued future public use of the restored facility and the ratio of benefits to costs of restoration are favorable.

(5) *Repairs.* (i) A facility is considered repairable when in terms of current applicable standards for repairs in effect at the time of the disaster:

(A) It is feasible to repair the facility so that it can perform the function for which it was designed as well as it did immediately prior to the disaster; and

(B) Such repairs can be made at a cost less than the estimated cost of replacing the damaged structure on the basis of its design immediately prior to the disaster; and

(C) Such permanent repairs are a practicable alternative under 44 CFR 205, Subpart M, 44 CFR Part 9 and 44 CFR Part 10 when applicable and are determined by the Regional Director to be in the public interest. If not, the Regional Director may authorize emergency repairs under Section 306, PL 93-288, to restore essential public service and shall then decline to approve any permanent restorative work in accordance with 44 CFR Part 9.

(ii) If the facility was in a damaged or unsafe condition prior to the major disaster, the applicant shall agree to pay the cost of correcting any such conditions as a prerequisite to Federal assistance.

(iii) Only those repairs will be approved which restore the portions of the structure damaged by the major disaster.

(6) *Replacement.* If a damaged facility is not repairable to predisaster condition as determined by the Regional Director, approved restorative work shall include replacement of the facility on the basis of its predisaster design, in conformity with applicable standards for new construction. Refer also to 44 CFR Parts 9 and 10 and to 44 CFR 205, Subpart M,

for additional guidance where applicable.

(7) *Relocation.* When the Regional Director determines that there is a practicable alternative to restoring a facility in a high hazard area he/she may approve relocation to the less hazardous site. In each such case an environmental assessment is required and the applicant shall provide the new site. Refer also to 44 CFR 205.76(e)(6).

(8) *Feasibility studies.* In those cases where the decision to repair or to replace the damaged facility depends upon the relationship between repair costs and replacement costs, and the project is of sufficient magnitude, a feasibility study may be undertaken.

(9) *Limited use facilities.* Facilities which were in limited use prior to the disaster, or were being used for other purposes than originally designed, may be eligible for assistance only to the extent necessary to restore immediate predisaster capacity for such use.

(10) *Inactive facilities.* Facilities that were not in active use at the time of occurrence of the major disaster are not eligible except in those instances, as determined by the Regional Director, where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget and was scheduled prior to the major disaster to begin within a reasonable time.

(11) *No action.* (i) The Regional Director may decline to approve Federal funding to restore facilities at the original site when such facilities were subject to frequent repetitive heavy damages or destruction.

(ii) The Regional Director shall decline to approve Federal funding when he/she determines in accordance with 44 CFR Part 9, 44 CFR Part 10, or 44 CFR Subpart M that FEMA funding is barred. For each such determination, there is no flexible funding option under Section 402(f) or in lieu contributions under Section 419 Pub. L. 93-288, as amended.

(12) *Nonessential features.* Although constructed and maintained by the applicant, non-functional features of a facility only of aesthetic value are not eligible.

(13) *Furnishings and equipment.* Comparable used or surplus furnishings and equipment will be approved as replacement items when available. Only those functional furnishings and equipment essential to the maintenance and operation of the facility are eligible.

(14) *Consumable supplies.* Consumable supplies damaged or lost in a disaster are eligible for replacement but limited to a 30-day requirement of each item replaced. However, the

Regional Director may approve additional requirements for certain items for which he determines that minimum economical stockage levels exceed 30 days.

(15) **Seeding.** Seeding shall normally be limited to broadcast seeding without mulching or fertilizer during the regular seasons when such work is performed locally. The Regional Director may approve broadcast seeding to retard erosion in disaster-affected areas and in areas disturbed by eligible work. The Regional Director may approve mulching, fertilizer, and watering only on highway slopes or where required to maintain the structural integrity of a facility, and in areas where sodding is eligible but seeding is substituted.

(16) **Sodding.** Sodding is not eligible except when the local practices of the applicant would require sodding as in golf greens and in certain grassy areas in parks or public places. Seeding shall be substituted whenever feasible.

(17) **Landslides.** Section 402 of the Act provides for restoration of damaged or destroyed facilities which are man-made features or improvements. The site is the owner's responsibility. Permanent stabilization of a landslide area can be quite costly and may not produce the desired results. When the Regional Director determines that no practicable alternative exists, he may decline to provide such grant assistance for restoration of facilities within the slide area. Permanent work to stabilize a landslide is not eligible.

(b) *[Reserved]*

(c) **Road and street facilities or systems.** (1) **Width standards.** The Associate Director has prescribed minimum bridge width standards which are applicable to bridge replacement (but not to repairs) involving FEMA funding. These standards appear in applicable handbooks and may be superseded by changes when approved by the Associate Director.

(2) **Approach roads.** If the approach roads were undamaged and a bridge can be replaced at the existing site without unacceptable traffic safety hazards, the Regional Director may approve eligible restoration costs to replace the bridge at that site in accordance with current applicable standards. If relocation of the bridge is approved to achieve a safer road alignment, any replacement of existing, undamaged approach roads and all other work on approach roads not resulting directly from major disaster damages are the responsibility of the applicant. Such relocated approach roads of any replacement bridge shall conform at least to the minimum American Association of State Highway and Transportation Officials

(AASHTO) standards outlined in Tables 1 thru 7, AASHTO Geometric Design Guide for Local Roads and Streets. Skewing of any replacement bridge to conform to a FEMA-approved safer alignment is eligible for Federal reimbursement. If an applicant decides not to provide at its own cost the approach roads, relocated and upgraded to minimum AASHTO standards, Federal assistance under the Act shall be limited to a replacement bridge at the original location with the same capacity as existed at the time of the disaster and with width not exceeding the minimum safe standards stated above.

(3) **Sidewalks.** Sidewalks on bridges are not eligible unless they existed on the damaged bridge prior to the disaster, or are required by current, applicable standards.

(4) **Waterway openings.** In the design of bridge and culvert waterway openings, consideration will be given to the drainage area involved above and below the bridge site. Federal regulations pertaining to the National Flood Insurance Program provide for prevention of "new encroachments" into 100-year floodway. However, the replacement of bridges under the Act which were damaged or destroyed is not "new encroachment" within the meaning of those regulations. Waterway openings for bridges and culverts shall be based on predisaster design and capacity in accordance with current applicable standards and additional guidance in 44 CFR 205, Subpart M, 44 CFR Part 9 or 44 CFR Part 10.

(5) **Floodway.** Work in floodway related to bridge restoration, including lining and straightening or bank protection such as rip-rap that did not exist prior to the major disaster, is not eligible unless such work will reduce overall project costs of new construction eligible for Federal funding.

(6) **Traffic standards.** Determination of predisaster capacity for handling traffic of bridges damaged or destroyed as a result of a major disaster shall be based on the average daily traffic which the bridge carried immediately prior to the disaster.

(7) **New drainage structures.** Construction of new drainage structures in those cases where lack of drainage structures caused flooding damage is not eligible, except for disaster proofing. In accordance with 44 CFR Part 9 or Part 10 of these Regulations, the Regional Director may require that an applicant provide without reimbursement adequate drainage structures or erosion-resistant structures, as a condition for approval of Federal grant assistance for the placement of a fill, embankment, or other facility.

(8) **Culverts.** Culverts that are washed out and destroyed may be replaced by culverts of similar construction or by larger culverts if required by applicable standards. However, if a culvert is merely plugged, and no other damage has been sustained, cleaning of the culvert is routine maintenance and therefore is not eligible.

(d) **Water control facilities.** (1) Repairs or other restorative work will not exceed restoration in accordance with current applicable standards including appropriate hazard mitigation measures as practiced by the applicant throughout its system of other like facilities:

(i) Predisaster condition and design capacity.

(ii) Previously existing elevations, and

(iii) Cross sections

(2) In those cases where inadequate maintenance by the applicant prior to a major disaster significantly diminished the predisaster design or hydraulic capacity of a facility or system, the Regional Director shall require the applicant to correct the maintenance deficiencies of the entire facility or system as a condition for Federal grant approval. The approval will be limited to restoration of the design and condition of the facility or system as it existed immediately prior to the major disaster. The applicant shall submit a plan and schedule for the required maintenance work acceptable to the Regional Director before his/her approval of otherwise eligible costs. If these conditions are not satisfied, the Regional Director may decline to approve Federal assistance. Final payment of approved Federal assistance may not be made until the design capacity of the facility or system has been restored and all maintenance deficiencies have been corrected.

(e) **Public buildings and equipment.**

(1) **Repairs to buildings.** Where an eligible building receives extensive damage but remains structurally sound, the Federal contribution is limited to repairing the damage in accordance with applicable standards for repairs.

(2) **Replacement of buildings.** When a publicly-owned building is destroyed or damaged to the extent that the Regional Director determines that it would not be feasible to perform repairs, a replacement structure may be authorized, with its eligible capacity not to exceed the capacity of the original structure.

(3) **Office equipment.** When damage to office equipment is repairable, only repair is authorized. Comparable office equipment such as typewriters, desks and chairs, when available from Federal

and State surplus or commercially, shall be procured for replacement items.

(4) Service equipment. Police cars and motorcycles, fire trucks, public works construction and maintenance equipment, and other such equipment damaged as a direct result of the disaster, but not as the result of the disaster operations, are eligible for repair or replacement in accordance with the following criteria:

(i) Repairs. (A) Only those repairs necessary to return service equipment to its predisaster repair standards are eligible. The allowable repairs normally will not exceed the "Blue Book" retail value of the piece of equipment, less any salvage value and insurance recoveries.

(B) As a condition for Federal grant assistance for repairs, the applicant shall correct any predisaster deficiencies needed to restore the service equipment to safe operating condition without Federal assistance except for disaster-related eligible repairs.

(ii) Replacement. Non-repairable service equipment will normally be replaced with used equipment of approximately the same age and value to the extent such equipment is readily available within a reasonable time and distance. Any equipment eligible for replacement must have been in active use or temporarily out of service.

(5) Library books and publications. Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. When damage to books is repairable, only repair is authorized. Federal grant assistance shall be based on used replacements, when reasonably comparable and available. Discounts normally are available and must be considered. The Regional Director may authorize equivalent replacement, such as substituting microfilm copies of newspapers and periodicals, if they can be provided at no greater Federal cost than replacement of the damaged items in kind.

(f) *Public utilities.* (1) Repair of public utility distribution systems normally requires the same general type of materials as previously existed. If more economical and satisfactory alternate materials are available, they shall be used.

(2) Cleaning of storm and sanitary sewer lines damaged by the disaster is eligible only to the extent it is disaster-related and necessary to restore adequate functioning of the system under conditions expected each year.

(3) Repair or replacement of measuring devices such as meters is

eligible only if the responsibility is that of the applicant.

(4) The Federal contribution shall not provide a higher level of sewage treatment. If a higher level of treatment is required to meet State or Federal standards, the additional cost of such facilities is the responsibility of the applicant.

(g) *Facilities under construction.* (1) "Under construction" means that period of time from the initiation of construction by applicant forces to final completion of all eligible work or from the award of the prime contract to the applicant's final acceptance of the facility from the contractor. Although the applicant may have accepted certain features of the project for use, the project is considered to be under construction until it is finally accepted.

(2) Only those repairs or replacements are eligible that are necessary to restore facilities damaged or destroyed by a major disaster substantially to predisaster condition. Restoration of the site or natural setting for such facilities is the owner's responsibility and is therefore not eligible. Disaster proofing is not eligible.

(h) *Private nonprofit facilities.* (1) Eligibility criteria for restorative work on facilities owned by eligible private nonprofit organizations are the same as for like work on similar facilities owned by any eligible applicant.

(2) As a condition for Federal grant assistance, such facilities must have been operated at the time of the major disaster in a manner to carry out fully the purposes of the facilities and of the owning organization or entity, except those facilities under construction.

(3) As a condition for Federal grant assistance, the eligible owning organization shall provide all assurances normally required from any applicant in submitting a project application plus any additional assurances required by the Regional Director, including but not limited to the following: the grant recipient shall operate and maintain the restored facilities continuously after completion throughout their useful life.

(4) The eligible owning organization must provide the necessary permits and licenses to repair, restore, reconstruct or replace the facility in accordance with the project application and subsequently to maintain and operate the facility. Refer also to 44 CFR 205.76(a)(15) and (a)(16).

(5) Repair or replacement of any educational facility is not eligible for which disaster relief assistance would not be authorized if it were a public facility under the Act, under Pub. L. 81-

815, or Title VII of the Higher Education Act of 1965.

(6) Repair or replacement of any hospital or other medical care facility in any disaster-affected area is not eligible:

(i) For which disaster relief assistance would not be eligible under the Act if it were a publicly-owned facility, or

(ii) Where the Regional Director after consulting with the State hospital planning agency, determines that a significant surplus of such facilities exists, or

(iii) Where after consulting with the State hospital planning agency, he/she determines that a significant surplus of such facilities would be created by the proposed work, or

(iv) Unless the facility was in active use prior to the major disaster and providing significant medical services to the general public.

(i) *Publicly-owned parks and recreational facilities.* (1) Publicly-owned facilities which constitute physical installations in the area such as playgrounds, swimming pools, boat docks, bath houses, tennis courts, picnic tables, etc., are eligible for repair or replacement when damaged or destroyed as the result of a major disaster.

(2) Natural features of a publicly-owned park or recreational facility such as trees and shrubs may be restored to predisaster condition to the extent necessary to restore significant public services or use that the Regional Director determines to be reasonable and practicable and in the public interest.

(3) Repair or replacement of other damaged or destroyed natural areas is not eligible except to eliminate an immediate threat to public health and safety.

(j) *Removal of timber.* (1) When in the public interest, the Regional Director may approve grants to a State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster. Refer also to 44 CFR 205.76(e)(9).

(2) Approved Work Practices. Bent, twisted, downed timber of commercial value will be salvaged or cleared when approved under 44 CFR 205.75. This includes the construction of approved temporary access roads required for removal of the damaged timber.

(i) Slash created by approved timber removal may be disposed of by not more than one of the following practices when approved by the Regional Director:

(A) Prescribed burning.

(B) Drum chopping.

(C) Raking, windrowing, and burning.

(ii) Where such slash is to be burned, appropriate permits will be obtained

from the Forestry Commission and/or other appropriate agency(ies), and other precautions and notifications made as required by law.

(iii) No such slash should be placed where it will interfere with existing drainage facilities.

#### § 205.76 Eligibility of costs.

(a) *General.* (1) This section provides policies and guidelines for determining eligibility of costs of work eligible under the Act that may be paid to any eligible applicant or other recipient of this grant assistance. The subparagraphs which follow are generally applicable to eligibility of costs. Only reasonable costs of eligible work are reimbursable.

(2) Factors affecting eligibility of costs. To be eligible under a FEMA grant, costs must meet the following general criteria:

(i) Be necessary and reasonable for proper and efficient administration of the approved work, be allocable thereto under these regulations, and, except as specifically provided herein, not to be a general expense required to carry out the overall responsibilities of State or local governments.

(ii) Be authorized or not prohibited under State or local laws or regulations.

(iii) Conform to any limitations or exclusions set forth in these regulations, Federal laws, or other governing limitations as to types or amounts of cost items.

(iv) Be consistent with policies, regulations, and procedures that apply uniformly to both Federally assisted and other activities of the unit of government of which the grantee is a part.

(v) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(vi) Not be allocable to or included as a cost of any other Federally financed program.

(vii) Be net of all applicable credits.

(3) Funding to any applicant for costs that are reimbursable by another Federal agency under its own statutory authorities is not eligible under the Act.

(4) The amount of Federal reimbursement made to an applicant under categorical funding or under a small project grant is limited to the eligible cost of performing work approved by FEMA. This limitation is not intended to restrict the type and cost of work which the applicant may choose to undertake. If the applicant performs work in excess of the approved amount, Federal financial assistance is limited to the costs of eligible work approved by the Regional Director. Flexible funding under section 402(f) of the Act, is limited

to 90 percent of the estimated costs of eligible permanent restorative work.

(5) The applicant may use assistance under the Act to supplement funds available from the grant programs of other Federal agencies, or from other sources provided that:

(i) There is no duplication of benefits prohibited by section 315 of the Act, or

(ii) Such funding is not in violation of applicable laws and Federal regulations.

(6) Approval of Federal funding may be withdrawn for any project not started within approved time limitations, including extensions. Federal funding is not eligible for work performed after the approved termination date, including extensions. Refer also to 44 CFR 205, Subpart H.

(7) Administrative expenses. Administrative expenses attributable to requesting, obtaining, and administering FEMA grant or loan assistance are not eligible, including but not limited to the following:

(i) Preparation or processing of project applications, reports, appeals, inspection reports, audits, and claims for payment.

(ii) Performance of owners responsibilities.

(iii) Operation of Emergency Operations Center.

(iv) Salaries, wages, and expenses of State and local officials who are responsible for directing regular governmental activities.

(v) Salaries, wages, fees, and expenses of individuals or firms while engaged in the preparation and processing of damage assessments, of project applications, claims for payment and supporting documentation, including costs of damage estimates.

(vi) Office supplies and equipment.

(vii) Rent.

(viii) Telephone and telegraph expenses.

(8) Grant-in-lieu. (i) The amount for which a grant-in-lieu is approved is limited to the estimated costs of the eligible work.

(ii) Proportionate sharing of costs is not an acceptable method of determining eligible costs for a grant-in-lieu.

(iii) The only permissible basis for increasing or reducing the Federal funding under a grant-in-lieu is a substantial error or omission in defining the approved scope of eligible work or in the approved estimated reasonable costs of such work. In cases where the actual audited costs for completing the project are less than the approved grant-in-lieu, the final payment will not exceed the actual audited costs. In such cases the Regional Director or the Associate Director will make

appropriate reductions in the Federal payment based on his/her determination of costs of completed betterments.

(9) Equipment rental. Rental of privately-owned equipment to perform eligible disaster work is eligible. However, the rental rates must be comparable to going rates in the locality for similar types of equipment. If not, reasonable rates as determined by the Regional Director shall be substituted in approval of project applications, or of claims. When auditable records are available, the actual audited costs of equipment may be considered in processing appeals.

(10) Hand tools, materials, and supplies. (i) Eligible: (A) Reasonable costs for materials and supplies consumed in eligible disaster work, including those procured by direct purchase or taken from applicant's stock.

(B) Costs of hand tools (shovels, handsaws, hammers, etc.), personal equipment, and protective clothing reasonably lost, worn out or destroyed through disaster use in performing eligible work.

(ii) Not eligible: Costs for losses, damage or destruction while in disaster or emergency use of radios, weapons, and other items used regularly in field operations by police and other employees whose duties do not change because of the disaster.

(11) Salvage. Salvage value of any damaged or destroyed property must be deducted in all determinations of eligibility of work and from final reimbursement to any claimant.

(12) Stockpiled items. Costs of all stockpiled items purchased under the Contributions Program (Pub. L. 920, 81st Congress, as amended) for civil defense purposes which are lost, damaged, or destroyed by a major disaster while in storage are not eligible.

(13) Insurance. (i) Cost of insurance required for performance of grant or loan assistance is eligible.

(ii) Insurance purchased by the State, the applicant, or grantee for its protection from any liability arising from assurances made to the grantor, or arising directly or indirectly from use of the grant shall be at the insured's expense and is not eligible.

(iii) The Regional Director shall reduce the grant by the actual applicable amount of insurance proceeds received by the grantee or by any prior insurance commitment for Federal assistance that is delinquent. In the event insurance recovery is contingent upon the amount of reimbursement under the Act, reimbursement is limited to eligible

costs as determined by the Regional Director after deducting the maximum amount otherwise recoverable under and up to the limit of the policy.

(14) Acquisition of lands, easements, and rights-of-way. Such acquisitions are the responsibility of the applicant, or grant recipient upon whose behalf project application was made. These costs are usually covered by the assurances accompanying the project application and are not eligible for Federal reimbursement except when approved in the public interest by the Associate Director under unusual circumstances, requiring immediate action beyond State, applicant, or grantee's capabilities, or involving significant cost savings to the Federal Government.

(15) Licenses. The costs of Federal, State, or local licenses which are required for the grantee to operate and maintain completed facilities are not eligible. Meeting the requirements for licenses is the responsibility of the grantee.

(16) Permits. The costs of Federal, State, or local permits which are required to perform eligible work are eligible.

(17) Loss of revenue. Replacement of revenues lost as the result of a major disaster or emergency is not eligible for grant assistance.

(18) Excess utility costs. Any loss of revenue or added costs or charges for providing utility services is not eligible.

(19) National Guard. (i) Eligible: Actual projects paid by the State not otherwise federally funded for work undertaken by the National Guard on a project basis, including salaries of National Guardsmen directly engaged in project work or supervision, when such projects are approved in advance by the Regional Director.

(ii) Not eligible: Use of National Guard for public safety, or other security measures.

(20) Cooperative agreements. (i) Eligible: Costs for work performed under cooperative arrangements between State or local governments, but limited to those direct costs of the performing entity, which would be eligible if the applicant had performed the work.

(ii) Not eligible: Costs for work performed under arrangement between a State or political subdivision of a State and a Federal agency, except when approved in advance by the Regional Director.

(21) Work performed by service, fraternal, and other similar organizations which do not normally contract their service for disaster relief. (i) Eligible: Only out-of-pocket costs for equipment, materials, and supplies used

or consumed in the performance of eligible work.

(ii) Not eligible: Wages or salaries of member personnel engaged in disaster relief activities.

(22) Prison labor. (i) Eligible: Out-of-pocket costs to an eligible applicant of prison labor performing eligible disaster work, limited to the amount paid the prisoners in accordance with rates established prior to the disaster, and the cost of transportation.

(ii) Not eligible: Costs of food, lodging, and guards. Also, any costs for prison labor utilized by a contractor.

(23) Private nonprofit organizations. (i) Only categorical grants may be approved by the Regional Director for such eligible grantees. No payment will be made for any work which was not within the scope of responsibility of the eligible private nonprofit organization prior to the major disaster.

(ii) Such grants shall not: (A) Be used to pay any part of the cost of facilities, supplies, or equipment which are to be used primarily for sectarian purposes; or

(B) Be used to pay costs to repair or replace: any facility, equipment, or supplies used primarily:

(1) For religious worship,

(2) For religious instruction, or

(3) In connection with any part of the program of a school or department of divinity.

(24) Negligence. No Federal reimbursement shall be made to any applicant for damages caused by its own negligence, by the negligence of any interested public or private organization or entity that is a direct grant recipient, or by any contractor.

(25) Interest and other financial costs. Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith are not eligible.

(26) Governor's expenses. The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State of local government and are not eligible.

(27) Legislative expenses. Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are not eligible.

(28) Legal fees required in the administration of the grant are eligible. Legal services furnished by the Chief legal office of a State or local government of this staff solely for the purpose of discharging his general responsibilities as a legal officer are not eligible. Legal expenses for the

prosecution of claims against the Federal Government are not eligible.

(29) Other. Any costs not allowable under OMB Circular 74-4 are ineligible for FEMA reimbursement.

(30) Interest on Advances. Interest earned on advances of Federal funds shall be remitted to FEMA except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577) and advances made to tribal organizations pursuant to section 102, 103, or 104 of the Indian Self Determination Act (Pub. L. 93-638).

(b) *Work by applicant's own forces.*

(1) In addition to the provisions of 44 CFR 205.76(a), this section provides criteria for eligibility of costs specifically applicable to work by the applicant's own forces, hereinafter referred to as force account.

(2) Personnel. (i) Gross salaries or wages (including overtime) of extra employees of the applicant or grantee are eligible when the employees are engaged in the performance of eligible work, but not to exceed the going wages paid locally for such work.

(ii) Gross salaries or wages (including overtime) of regular employees of the applicant or grantee are eligible for reimbursement, but not to exceed the going wages paid locally for such work except the following types of ineligible costs:

(A) Regular salaries or wages of regularly employed policemen and firemen and of other regular employees whose duties do not change because of the disaster. Examples are levee patrollers, pumping plant operators, and building inspectors.

(B) Regular salaries of supervisory personnel other than working foremen engage primarily-and-continuously in field supervision of eligible work.

(C) All payroll costs above each employee's gross pay.

(3) Equipment. (i) The FEMA Schedule of Equipment Rates, or an alternative Schedule of Equipment Rates approved by the Associate Director, is applicable to all reimbursements for equipment that is publicly-owned or owned by other grantees.

(ii) For vehicles or equipment utilized by police, firemen, and other employees whose duties do not change because of the major disaster or emergency, only disaster-related actual costs in excess of average costs for the same period of time for the previous three years, based on auditable records are eligible.

(iii) For permanently installed fixed equipment, such as pumping stations, only disaster-related actual costs in excess of the average costs for this same

period of time for the previous three years, based on auditable records are eligible.

(c) *Contract work.* (1) Eligible: Reasonable costs for work performed by private contractors on eligible projects contracted for in accordance with State or local statutes.

(2) Not eligible: Costs incurred under the following types of contracts unless the Regional Director determines, on a case-by-case basis, that reimbursement of reasonable actual costs of eligible work is in the best interests of the government:

(i) Cost-plus-percentage-of-cost contracts.

(ii) Contracts containing a provision which makes payment for eligible work contingent upon reimbursement under the Act.

(iii) Contracts with any contractor included on any FEMA listing of debarred contractors.

(d) *Emergency work.* (1) General. In addition to provisions of 44 CFR 205.76, (a), (b) and (c), these specific criteria apply to emergency work under the Act.

(2) Engineering and design. For emergency work such services are usually not necessary and Federal reimbursement may not be justified. The provisions of 44 CFR 205.76(e)(2) are also applicable to any engineering or design services related to emergency work.

(3) Debris removal. No Federal reimbursement will be made to an applicant for its reimbursement of an individual or private organization for the cost of removing debris from his/her own property except those public entities and private nonprofit organizations eligible under section 402(b) of the Act.

(4) (Reserved.)

(5) Emergency pumping.

Reimbursement for emergency pumping shall terminate promptly after the river or stream has crested, except for removal of trapped water posing an immediate threat to public health and safety.

(6) Access to water control facilities. Emergency repairs to roadways along the top of a water control facility shall not exceed that required to provide access for emergency work or that which existed prior to this major disaster or emergency.

(7) Vector control. Only disaster-related actual costs in excess of the average cost for the same period of time

during the previous three years are eligible when vector control is approved in the public interest.

(e) *Permanent work.* (1) General. In addition to provisions of 44 CFR 205.76 (a), (b), and (c), these specific criteria apply to permanent work under Section 402 of the Act.

(2) Engineering and design. Reimbursement for eligible engineering, planning, design, supervision, or inspection services is based upon actual direct costs but shall not exceed the amount approved on the project application, or on a supplemental project application. The Regional Director may approve special services, such as engineering, surveys, soil investigations, resident engineers, and additional construction inspection when justified.

(3) Feasibility studies. Feasibility studies may be reimbursable under the Act when approved in advance by the Regional Director. Costs for feasibility studies primarily concerning alternate facilities, betterments, or post-disaster programs or any project approved for flexible funding are not eligible for reimbursement under the provisions of the Act.

(4) Environmental review. Costs incurred by an applicant to perform an environmental review and assessment are not eligible without prior approval by the Regional Director. Refer also to 44 CFR Part 10.

(5) Disaster proofing. The eligible costs of disaster proofing are limited to minor measures to make the affected features of a facility or structure disaster-resistant. Eligible costs of disaster proofing shall not exceed a small percentage of otherwise eligible costs of restorative work being disaster proofed, unless approved by the Associate Director under unusual circumstances on a case-by-case basis.

(6) Relocations. When the Regional Director has approved replacement of a facility at a new location under section 402 of the Act, the costs of acquiring the site plus providing to the site road access, utilities, and communication lines are the owner's responsibility and are not eligible. The costs of replacing the facility at the new approved location, otherwise eligible under the Act, are reimbursable.

(7) Warranties. Additional costs to provide warranty or guarantee of any repaired or replacement items or facilities are not eligible for Federal

reimbursement. However, after applying for relief from the contractor, manufacturer, or supplier, the applicant or grantee may appeal to the Regional Director for any grant assistance that he can justify as disaster related.

(8) Projects under construction. (i) Only categorical grants may be approved for those facilities under construction when damaged or destroyed by a major disaster. Federal reimbursement shall not exceed the net eligible costs to the applicant, to a private nonprofit organization or entity, or to the contractors in restoring a facility to substantially the same condition as existed prior to the major disaster.

(ii) In addition to other provisions of 44 CFR 205.76, the following are not eligible:

(A) Repair or replacement of the site.

(B) Repair or replacement of mobile construction equipment.

(C) Project operation and maintenance.

(D) Idle construction equipment ownership expense or loss of revenue because of damages to construction equipment or for other reasons.

(E) Contractors' administrative or overhead costs not directly related to eligible work including computer costs.

(F) Costs covered by insurance settlements or salvage, including reimbursement which might be received from any other private, State or local government, or Federal agency.

(G) Contractor's profit in those instances where the contractor is the beneficiary of the Federal assistance.

(H) Losses resulting from delays in completion of the work such as contract penalties or loss of revenue.

(I) Costs of disaster proofing.

(9) Timber removal. (i) Eligible costs: (A) Reimbursement for eligible expenses actually incurred in the removal of damaged timber subject to verification by inspection and audit.

(B) Costs of repair or construction of temporary roads approved by the Regional Director as necessary for access to damaged timber for removal.

(ii) Ineligible costs: (A) Estimated salvage value of timber destroyed by burning or otherwise by the claimant in lieu of practicable salvage operations.

(B) Costs of timber removal for which the Regional Director determines salvage or insurance recoveries by the claimant are applicable.

(C) Debris removal other than

provided in approved work practices for primary purpose of timber removal.

(iii) Maximum Payment: Maximum payment for completed approved work practices will be based on the following:

(A) Construction of approved temporary access roads for salvage of damaged timber. 100% of eligible costs not to exceed \$60.00 per thousand linear feet.

(B) Drum chopping: 100% of eligible cost not to exceed \$100.00 per acre.

(C) Prescribed burning: 100% of eligible cost not to exceed \$5.00 per acre.

(D) Raking, windrowing and burning: 100% of eligible cost not to exceed \$140.00 per acre.

Any payment will be minus any residual salvage value, insurance recoveries or other cost-share payments related to timber removal.

Issued at Washington, D.C.

**William H. Wilcox,**

*Associate Director, Disaster Response and Recovery, Federal Emergency Management Agency.*

[FR Doc. 80-24434 Filed 8-12-80; 8:45 am]

**BILLING CODE 6718-02-M**

# **federal register**

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Wednesday  
August 13, 1980

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## **Part III**

### **Department of the Interior**

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**Fish and Wildlife Service**

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**Emergency Determination of Endangered  
Status and Designation of Critical Habitat  
for *Astragalus yoder-williamsii***



## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**Endangered and Threatened Wildlife and Plants; Emergency Determination of Endangered Status and Designation of Critical Habitat for *Astragalus yoder-williamsii***

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Emergency rule.

**SUMMARY:** The Service determines the Osgood Mountains milk-vetch (*Astragalus yoder-williamsii*) to be an Endangered species and an area on Bureau of Land Management land in Humboldt County, Nevada, to be its Critical Habitat. The species also is found in Owyhee County, Idaho. Mining development threatens the integrity of the species' habitat and hence poses a significant risk to the survival of the plant. This emergency rule will provide the Endangered Species Act's protection to this species for 240 days.

**DATES:** This emergency determination for the species and designation of its Critical Habitat will be effective on August 13, 1980, and remain in effect until April 15, 1981.

**ADDRESSES:** Interested persons or organizations can obtain information from the Area Director, U.S. Fish and Wildlife Service, Room E2730, Federal Building, 2800 Cottage Way, Sacramento, California 95825; telephone 916/484-4664.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240; telephone 703/235-2771.

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

*Astragalus yoder-williamsii* is known only from eastern Humboldt County in northern Nevada and from southeast of Black Butte in Owyhee County, southwestern Idaho. It was first collected in 1977 and was recognized as a new species from a second collection in 1979. It was formally named and described as a new species earlier this year (Barneby 1980). It is found on exposed ridge crests and flat plateaus of decomposed granite gravel or sandy soil derived from granodiorite parent material, at elevations of 1890-2230 meters. The Nevada population, in the northern Osgood Mountains, is estimated to number about 500

individual plants. The Idaho population was composed of less than ten plants in 1977. Searches undertaken in 1979 and 1980 for other populations of the species in both states have been unsuccessful.

At both locales where this species occurs there are recent mining claims, and assessment work on the claims in Nevada appears imminent. The Nevada population is on land managed by the Bureau of Land Management (BLM), while the Idaho population is mostly on BLM land and also on some private land. The BLM has requested that this emergency rule be enacted, in a letter to the Director dated July 1, 1980. The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Summary of factors affecting the species: Subsection 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) states that the Secretary of the Interior shall determine whether any species is an Endangered species due to one or more of the five factors described in that subsection. This authority has been delegated to the Director. These factors and their application to *Astragalus yoder-williamsii* Barneby are as follows:

1. *Present or threatened destruction, modification, or curtailment of its habitat or range.* This species appears to be restricted to a few granodiorite outcrops in north-central Nevada and southwestern Idaho. The larger population on about 20 acres of BLM land in eastern Humboldt County, Nevada, is located east of Soldier Cap and southwest of the Getchell Mine, in the northern Osgood Mountains. The population lies within mining claims of a private corporation, which were filed in 1974. This June, the majority of these claims were leased to a private company which indicates they will carry out assessment work this summer. The claims lie on deposits of a tungsten and gold ore. The ore deposits are immediately to the west and north of this population of the species. Considerable mining excavations occur within one mile of the population in all directions, a road passes through the population, and past mining assessment cuts have been made in the species' habitat (Yoder-Williams 1980). Considerable care will be necessary to avoid further damage to the species in assessment work and development of these mining claims.

The smaller population in southwestern Idaho is in Owyhee County, 4.5 km SSE of Black Butte and 14.5 km E of Triangle. It was discovered in June 1977, but plants could not be

found in the area this June. The population is on some private land but mostly on land managed by BLM; mining claims for the area were filed this April. Barneby (1980) indicates that there are morphological differences between plants at the two sites, but he places them in one species.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

3. *Disease or predation* (including grazing). Grazing has occurred on the species' habitat. This grazing does not appear to threaten the species.

4. *The inadequacy of existing regulatory mechanisms.* There currently exist no State or Federal laws protecting this species. The BLM has advised us that it intends to set aside the Nevada habitat for this species as an Area of Critical Environmental Concern, under the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579), section 102(a). The Endangered Species Act of 1973, as amended, offers additional possibilities for protection of *Astragalus yoder-williamsii*.

5. *Other natural or man-made factors affecting its continued existence.* Any human pressure on this species may exaggerate the possibility of small populations going extinct through natural population fluctuations.

**Critical Habitat**

The Act defines Critical Habitat to include (a) areas within the geographical area occupied by the species at the time that species is listed which are essential to the conservation of the species and which may require special management considerations or protection, and (b) specific areas outside the geographic area occupied by the species at the time, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Critical Habitat for *Astragalus yoder-williamsii* is as follows: Nevada, Humboldt County, the immediate ridge area on both sides of Burma Road at the summit, in the northern Osgood Mountains, excluding the existing roadways of Burma Road and the road to the Alpine Mine. The exact boundaries are the N $\frac{1}{2}$  of the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$ , and the SW $\frac{1}{4}$ , SE $\frac{1}{4}$ , and NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of section 6, T38N R42E, and the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of section 31, T39N R42E.

It is anticipated that these areas will provide the species with the necessary requirements for survival and conservation. The Idaho site of the species is not included in Critical Habitat because plants could not be relocated there in field work recently undertaken. Nevertheless, it is protected

through the jeopardy provision of Subsection 7(a)(2) of the Act should plants be found there.

Subsection 4(f)(4) of the Act requires, to the maximum extent practicable, that Critical Habitat designations be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or those Federal actions which may be impacted by such designation. Such activities are discussed below for this species. It should be emphasized that Critical Habitat designation may not affect each of the activities listed below, as Critical Habitat designation only affects Federal agency actions through section 7 of the Act.

Two activities are planned in the area of the designated Critical Habitat. The BLM intends to designate an Area of Critical Environmental Concern for the species, as discussed above under threat factor four, and it may fence this area. This action appears fully compatible with the Subsection 7(a)(1) responsibilities BLM will now have for this Endangered plant.

Second, Pinson Mining Company, working with Cordex Exploration Company, plans further assessment work on mining claims at the Nevada site this summer. In June of this year, the majority of these claims were leased to Cordex Exploration Company by Utah International, Inc., a division of the General Electric Corporation. Access to the ores on BLM land is regulated by the Mining Law of 1872. The effect of this species' listing and Critical Habitat designation on the mining activity is currently under review (cf. BLM, m.d.; Sheridan 1978). It is clear that future mining assessment work and development of the claims could cause severe decreases in available habitat for the species, as well as direct loss of individual plants. Cooperative efforts so as to avoid damage to the species and its habitat are certainly indicated.

**Effects of This Rule**

In addition to the effects discussed above, the effects of this emergency rule include, but are not necessarily limited, to those mentioned below.

Subsection 7(a)(2) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered. Provisions for Interagency Cooperation implementing this subsection are codified at 50 CFR Part 402. New regulations to accommodate amendments to Section 7 are in

preparation. This emergency rule requires Federal agencies to insure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of this species, or to result in destruction or adverse modification of its Critical Habitat. Since the BLM has requested this emergency rule, it appears it intends to readily comply with the effects of this subsection to the extent that it has discretionary powers to exercise.

The Act and implementing regulations published in the June 24, 1977, Federal Register (42 FR 32373-32381) set forth a series of general trade prohibitions and exceptions which apply to all Endangered plant species. The prohibitions are found at Section 17.61 of 50 CFR and are summarized below. With respect to *Astragalus yoder-williamsii*, all prohibitions of Subsection 9(a)(2) of the Act, as implemented by Section 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR Sections 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species, under certain circumstances. No such trade in this *Astragalus* is known. It is anticipated that no permits involving the species will be requested.

Subsection 4(f)(2)(C) of the Act provides the authority for this emergency rule, which is effective for 240 days. During that time period, the Service intends to carry out the regular proposed and any final rulemaking procedure for this species, as required by the Act, in order to replace this emergency rule with appropriate long-term legal protection for the species. The Governors of Nevada and Idaho have been notified of this emergency rule, in accord with Subsection 4(b)(1)(A) of the

Act and our regulations in the February 27, 1980, Federal Register (45 FR 13025), to be codified at 50 CFR Part 424, Section 424.19.

**National Environmental Policy Act**

An Environmental Assessment has been prepared in conjunction with this emergency rule. It is on file in the Service's Area Office, Room E2740, Federal Building, 2800 Cottage Way, Sacramento, California, and may be examined by appointment during regular business hours. A determination has been made that this emergency rule is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

This rule is published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; 87 Stat. 884, 92 Stat. 3751, 93 Stat. 1225). The primary author of the rule is Dr. Bruce MacBryde, Office of Endangered Species, Washington, D.C. 20240, (703-235-1975).

**References Cited**

Barneby, R.C. 1980. *Dragma Hippomanicum* VI: a new tragacanthoid *Astragalus* from Nevada and Idaho. *Brittonia*, Vol. 32, No. 1, pp. 30-32.  
 Bureau of Land Management. n.d. Draft Environmental Impact Statement. Surface Management of Public Lands under the U.S. Mining Laws 43 CFR 3809. BLM, Washington.  
 Sheridan, D. 1978. Mining the public wealth. *Sierra Club Bulletin*, Vol. 63, No. 3, pp. 10-13.  
 Yoder-Williams, M.P. 1980. Status report on *Astragalus yoder-williamsii* Barneby. Prepared by the Bureau of Land Management and submitted to U.S. Fish and Wildlife Service, January 8, 1980.

**Regulation Promulgation**

Accordingly, for 240 days amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. Amend § 17.12 by adding in alphabetical order the following to the list of plants:

**§ 17.12 Endangered and threatened plants.**

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Fabaceae—Pea family:						
<i>Astragalus yoder-williamsii</i> .....	Osgood Mountains milk-vetch.	U.S.A. (ID, NV).....	E	101	17.96(a)	NA

§ 17.96(a) [Amended]

2. Also, the Service amends § 17.96(a) by adding the Critical Habitat of *Astragalus yoder-williamsii* after that of *Astragalus perianus*, as follows:

**Fabaceae (*Astragalus yoder-williamsii*)**

*Osgood Mountains milk-vetch*. Nevada, Humboldt County: The immediate ridge area on both sides of Burma Road at the summit, in the northern Osgood Mountains, excluding the existing roadways of Burma Road and the road to the Alpine Mine. The exact boundaries are the N½ of the SW¼ of the NE¼, and the SW¼, SE¼, and NE¼ of the NW¼ of the NE¼ of Section 6, T38N R42E, and the SE¼ of the SW¼ of the SE¼ of Section 31, T39N R42E.

Dated: August 7, 1980.

**F. Eugene Hester,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 80-24447 Filed 8-12-80; 8:45 am]

BILLING CODE 4310-55-M

# **federal register**

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Wednesday  
August 13, 1980

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**Part IV**

## **Department of Energy**

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**Provisions Governing Acceptance of  
Gifts and Travel From Foreign  
Governments**

## DEPARTMENT OF ENERGY

## 10 CFR Part 1050

## Foreign Gifts and Decorations

AGENCY: Department of Energy.

ACTION: Final regulations.

**SUMMARY:** The Department of Energy is amending 10 CFR to establish a new Part 1050, to contain regulations implementing the Foreign Gifts and Decorations Act (5 U.S.C. 7342). The regulations are intended to implement for the Department of Energy that Act's provisions governing acceptance of gifts and travel from foreign governments.

EFFECTIVE DATE: August 13, 1980.

## FOR FURTHER INFORMATION CONTACT:

Tony C. Upchurch, AD-41, Deputy Director of Administrative Services, Office of Administration, U.S. Department of Energy, Washington, D.C. 20585 (202-252-5712).

Katherine B. Soffer, Attorney, Office of the Assistant General Counsel for Standards of Conduct, GC-45, U.S. Department of Energy, Washington, D.C. 20545 (301-353-4016).

**SUPPLEMENTARY INFORMATION:** In the Foreign Gifts and Decorations Act, 5 U.S.C. 7342 (hereafter the Act), the Congress consented to an exception to the general Constitutional rule prohibiting Federal employees from accepting gifts or decorations from foreign governments. The statute allows employees to accept gifts of minimal value tendered as souvenirs or as marks of courtesy; it permits acceptance of gifts such as medical or educational services; it allows acceptance, on behalf of the United States, of gifts of more than minimal value where refusal would adversely affect the foreign relations of the United States; it consents to acceptance by employees of gifts of travel and related expenses for travel taking place entirely outside of the United States; and it permits the acceptance of decorations in recognition of active field service in combat or other outstanding performance. The Act establishes reporting and enforcement provisions and identifies the Department of State as the lead Executive Branch agency in this area.

The regulations are consistent with State Department Guidelines issued on the subject and implement the substantive provisions of the Act in a straightforward manner. They identify the Directorate of Administration as the lead organization within the Department of Energy for purposes of administering the Act, and include draft forms for use in meeting reporting requirements.

Where appropriate, the General Counsel, the Inspector General, and the Assistant Secretary for International Affairs are given major responsibility for consultation. The Federal Energy Regulatory Commission has been included in coverage of the regulations.

## Comments

On March 18, 1980, the Department of Energy (DOE) published proposed regulations (45 FR 17560) with a 30 (thirty) day comment period to establish policies and procedures for DOE employees to follow concerning the acceptance of gifts and decorations from foreign Governments. No comments were received. Several non-substantive or editorial changes in the regulations have been made: the principal revisions are discussed below.

The first change in the regulations consists of deleting Appendix III, General Services Administration (GSA) Standard Form 120, Report of Excess Personal Property. The regulations at § 1050.302(d)(1) already provide that the Directorate of Administration is responsible for reporting and transmitting to GSA for disposal, pursuant to the Federal Property and Administrative Services Act of 1949 and the Federal Property Management Regulations at 41 CFR 101-49, gifts or decorations which are not retained for official use by DOE. The reports on Standard Form 120 are to be made by the Directorate of Administration and not by the employee who received the gift or decoration. Because the reporting responsibility is designated in the regulations, there is no need to attach Standard Form 120 as Appendix III and the reference to it has therefore been deleted from the final regulations.

The second change consists of clarifying the regulations at § 1050.101 to reflect the policy of the Department of Energy that compliance with the regulations will satisfy the requirements of DOE Conduct of Employees regulations. (10 CFR Part 1010).

Section 1050.202(d) of the regulations regarding gifts in the form of travel or travel expenses has been clarified to specify that advance written approval for acceptance by DOE employees of such gifts must be obtained. This revision makes the treatment of these gifts consistent with the approval requirements in the regulations for acceptance of travel by spouses or dependents of employees under § 1050.202(d) and for acceptance of travel from international energy-related organizations under § 1050.202(e).

The treatment in the regulations of gifts in the form of an educational scholarship or medical treatment has

been clarified. The regulations have been revised at § 1050.204(a) to specify that advance approval is required, where feasible, for the acceptance of a gift of more than minimal value in the form of an educational scholarship or in the form of medical treatment. In addition § 1050.202(c) and § 1050.301 have been changed to reflect that acceptance of these gifts must be reported on the DOE Form contained in Appendix I. This clarification was necessary to make the regulations reflect DOE policy that the treatment of these gifts should be consistent with the required treatment of gifts of more than minimal value accepted as a souvenir or mark of courtesy under § 1050.202(b).

The regulations have been changed at § 1050.303 to clarify the functions of the General Counsel. Section 1050.303(b) has been revised to specify that the General Counsel of DOE or of FERC, as appropriate, as well as the Inspector General, shall be notified of all suspected violations of the regulations. Section 1050.204(a) of the regulations (which has not been changed) also provides that the Director of Administration should consult with the Assistant Secretary for International Affairs and the appropriate General Counsel in connection with determining whether to grant advance approval for acceptance of gifts or decorations by DOE employees.

Appendix I, DOE Form 3735.2, Statement Concerning Gifts Received from a Foreign Government, refers to a reporting requirement for receipt of gifts having an aggregate value of \$250 or more. This requirement has been clarified, and the regulations at § 1010.301(a) have been revised to specify the requirement.

Issued in Washington, D.C., July 9, 1980.

John C. Sawhill,  
Deputy Secretary of Energy.

In consideration of the foregoing, title 10, Code of Federal Regulations, is amended to add a new Part 1050 to read as set forth below.

## PART 1050—FOREIGN GIFTS AND DECORATIONS

## Subpart A—General

Sec.	
1050.101	Purpose and scope.
1050.102	Applicability.
1050.103	Definitions.
1050.104	Responsibilities and authorities.

## Subpart B—Guidelines for Acceptance of Foreign Gifts or Decorations

1050.201	Policy against accepting foreign gifts or decorations.
1050.202	Allowable acceptance of gifts.
1050.203	Acceptance of decorations.

## Sec.

1050.204 Advance approval for acceptance of gifts or decorations.

**Subpart C—Procedures and Enforcement**

1050.301 Reports.

1050.302 Use or disposal of gifts and decorations accepted on behalf of the United States.

1050.303 Enforcement.

**Subpart D—Gifts to Foreign Individuals**

1050.401 Prohibition against use of appropriated funds.

Appendix I—DOE Form 3735.2.

Appendix II—DOE Form 3735.3.

**Authority:** The Constitution of the United States, Article I, Section 9; 5 U.S.C. 7342; Pub. L. 95-91, sections 644 and 652, 91 Stat. 599 (42 U.S.C. 7254 and 7262).

**Subpart A—General****§ 1050.101 Purpose and scope.**

These regulations implement the provisions of the Foreign Gifts and Decorations Act (5 U.S.C. 7342), which establishes policies and procedures pertaining to the acceptance, use, and disposition of gifts or decorations from foreign governments. If an employee of Department of Energy (DOE) meets the requirements of these regulations, he or she is deemed to be in compliance with the DOE Conduct of Employees regulations, 10 CFR Part 1010.

**§ 1050.102 Applicability.**

These regulations apply to all DOE employees, including special Government employees, and civilian and military personnel of other Government agencies regularly detailed to DOE, and to spouses and dependents of such personnel. These regulations apply to all employees of the Federal Energy Regulatory Commission (FERC) to the extent the Commission by rule makes these regulations applicable to FERC employees. These regulations do not apply to gifts and bequests accepted by the Department as authorized by section 652 of the Department of Energy Organization Act (42 U.S.C. 7262), except as set forth in section 1050.202(d) of this Part. These regulations do not apply to assistance from a foreign government for participation by DOE employees in foreign cultural exchange programs pursuant to the Mutual Educational and Cultural Exchange Act (22 U.S.C. 2458a).

**§ 1050.103 Definitions.**

(a) "Employee" means—

(1) An employee of DOE or FERC as defined by 5 U.S.C. 2105 (employees of DOE contractors are specifically excluded);

(2) A special Government employee as defined in 18 U.S.C. 202(a), and an expert or consultant who is under

contract to the DOE pursuant to 5 U.S.C. 3109, including, in the case of an organization performing services under such section, any individual involved in the performance of such services;

(3) A member of a Uniformed Service or an employee of another Government agency assigned or detailed to the DOE or FERC;

(4) The spouse of an individual described in paragraphs (a)(1) through (a)(3) of this section (unless such individual and his or her spouse are legally separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1954) of such an individual, other than a spouse or dependent who is an employee under paragraphs (a)(1) through (a)(3).

(b) "Foreign government" means—

(1) Any unit of foreign governmental authority, including any foreign national, State, local, or municipal government;

(2) Any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (b)(1); and

(3) Any agent or representative of any such unit or such organization, while acting as such.

(c) "Gift" means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government.

(d) "Decoration" means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government.

(e) "Minimal value" means a retail value in the United States at the time of acceptance of \$100 or less.

(f) "The Act" means the Foreign Gifts and Decorations Act, 5 U.S.C. 7342.

(g) "Appropriate General Counsel" means either the DOE General Counsel when the employee involved is an employee of that portion of the DOE which excludes FERC, or the FERC General Counsel when the employee involved is an employee of FERC.

**§ 1050.104 Responsibilities and authorities.**

(a) The Director of Administration shall—

(1) Assure that all employees are given access to or a copy of the Act and these regulations;

(2) Maintain liaison with the Department of State and prepare Departmental reports to the Department of State consistent with the Act and these regulations;

(3) Provide advice and assistance on implementation of the act and these regulations, in coordination with the Assistant Secretary for International

Affairs (IA) and the appropriate General Counsel;

(4) Collect and maintain for public inspection all employee statements submitted pursuant to these regulations;

(5) Arrange for independent appraisal of the value of gifts or decorations, upon the request of the General Services Administration or the Inspector General (or other appropriate DOE official); and

(6) Accept and maintain custody and make all determinations regarding the use and disposition of all gifts and decorations accepted by employees on behalf of the United States, in coordination with IA, the appropriate General Counsel, and, for gifts to the Secretary, Deputy Secretary or Under Secretary, the appropriate official in the Office of the Secretary.

(b) The Assistant Secretary for International Affairs (IA) shall assist the Directorate of Administration, where appropriate, in making determinations concerning the effects of the proposed acceptance, use, or disposition of a foreign gift or decoration on the foreign relations of the United States.

(c) The appropriate General Counsel shall assist the Directorate of Administration in matters relating to the interpretation and application of the Act, and these and any related regulations, and shall provide counseling and interpretation regarding the Act, and these and any related regulations, to employees.

(d) The Inspector General shall investigate suspected violations of these regulations pursuant to section 1050.303 below.

**Subpart B—Guidelines for Acceptance of Foreign Gifts or Decorations****§ 1050.201 Policy against accepting foreign gifts or decorations.**

(a) The Constitution of the United States, Article I, section 9, clause 8, provides that " \* \* \* no Person holding any Office of Profit or Trust under \* \* \* [the United States], shall, without the consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any \* \* \* foreign State." In the Foreign Gifts and Decorations Act the Congress consented to the acceptance by Federal employees of gifts and decorations with certain constraints and under certain procedures. Acceptance of any gift or decoration not consistent with this Act, the Department of Energy Organization Act, or the regulations in this Part is prohibited.

(b) No employee shall request or otherwise encourage the tender of a gift or decoration from a foreign government. No employee shall accept a

gift or decoration from a foreign government except as provided in sections 1050.202 or 1050.203 of this Part and in accordance with the additional procedures set forth in sections 1050.204 and 1050.301 of this Part.

**§ 1050.202 Allowable acceptance of gifts.**

(a) An employee may accept and retain gifts from foreign governments where the gift is tendered or received as a souvenir or mark of courtesy, and is of minimal value. Initial responsibility for determining the value of a gift lies with the employee.

(b) Subject to the prior approval requirements described in § 1050.204(a) of this Part, an employee may accept gifts of more than minimal value, tendered as a souvenir or mark of courtesy, where it appears that refusal of the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. Otherwise, an employee, when offered a gift of more than minimal value from a foreign government, other than a gift designated in paragraph (c) of this section, should advise the donor that acceptance of such gifts by the employee is contrary to the policy of the United States. If a gift described in this paragraph is accepted by an employee and not immediately returned thereby, it shall be deemed to have been accepted on behalf of the United States. Upon acceptance it becomes the property of the United States. Within 60 days after acceptance by the employee, the gift shall be deposited with the Directorate of Administration for disposal or official Departmental use as determined by the Directorate of Administration, in accordance with § 1050.302 of this Part, and an appropriate statement shall be filed by the employee in accordance with § 1050.301(a) of this Part.

(c) Subject to the prior approval requirements described in § 1050.204(a) of this Part, an employee may accept and retain gifts of more than minimal value:

(1) Where the gift is in the nature of an educational scholarship.

(2) Where the gift is in the form of medical treatment.

An employee accepting a gift pursuant to this paragraph shall file an appropriate statement in accordance with § 1050.301(a) of this Part.

(d) An employee may accept gifts (whether or not of minimal value) of travel or expenses for travel (such as transportation, food, lodging, or entertainment) taking place entirely outside of the United States where the provision of such travel or expenses is in accordance with diplomatic custom or treaty and where the Head of the

employee's Office grants prior written approval. A spouse or dependent may accept gifts of travel or travel expenses when accompanying the employee, provided this is done with the prior written approval of the Head of the employee's Office. The Head of the employee's Office shall consult with the appropriate General Counsel in connection with granting approval under this paragraph. Travel or expenses for travel may not be accepted merely for the personal benefit, pleasure, enjoyment, or financial enrichment of the individual involved. An appropriate statement shall be filed in accordance with § 1050.301(b) of this Part. When *any portion* of the travel (such as the origination or termination of a flight) is within the United States, it may not be paid for by a foreign government, except as set forth in paragraph (e) of this section.

(e) Pursuant to section 652 of the DOE Organization Act, an employee may accept gifts from the International Atomic Energy Agency or other energy-related international organizations (e.g., the Nuclear Energy Agency and the International Energy Agency) covering transportation expenses to or from a foreign country in connection with scientific or technical assistance projects of such agencies for which the Department of Energy has lead U.S. Government agency responsibility. Such gifts may be accepted only with the prior written approval of the Head of the employee's Office, who is hereby delegated authority to accept such gifts in accordance with section 652.

**§ 1050.203 Acceptance of decorations.**

(a) An employee may accept, retain and wear a decoration tendered by a foreign government in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance.

(b) Acceptance of a decoration in accordance with paragraph (a) of this section shall be reviewed and approved by the Directorate of Administration in accordance with § 1050.204 of this Part. Otherwise, it will be deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited, within 60 days of acceptance, with the Directorate of Administration for disposal or official Departmental use as determined by the Directorate of Administration in accordance with § 1050.302 of this Part.

**§ 1050.204 Advance approval for acceptance of gifts or decorations.**

(a) If an employee is advised that a gift of more than minimal value as described in § 1050.202 (b) or (c) is to be tendered to him or her, the employee shall, if time permits, request the written advice of the Directorate of Administration regarding the appropriateness of accepting or refusing the gift. A request for approval shall be submitted to the Directorate of Administration in writing, stating the nature of the gift and the reasons for which it is being tendered. The Directorate of Administration shall consult with Assistant Secretary for International Affairs and the appropriate General Counsel in connection with advising the employee. If such advice cannot be obtained and refusal of the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, the gift may be accepted, but the Directorate of Administration shall be informed as soon as possible. In either event, the employee shall proceed as provided in §§ 1050.202 and 1050.301 of this Part.

(b) Where an employee is notified of the intent of a foreign government to award him a decoration for outstanding or unusually meritorious service, approval required under § 1050.203 should be obtained prior to acceptance of the award. A request for approval shall be submitted to the Directorate of Administration in writing, stating the nature of the decoration and the reasons for which it is being awarded. The Directorate of Administration shall consult with the Assistant Secretary for International Affairs and the appropriate General Counsel. If time does not permit the employee to obtain approval for the award of the decoration before its receipt, the employee may accept it, but shall seek such approval immediately thereafter.

**Subpart C—Procedures and Enforcement**

**§ 1050.301 Reports.**

(a) Within 60 days of accepting a gift of more than minimal value, other than gifts of travel or travel expenses, which are covered in paragraph (b) below, an employee shall, in addition to depositing a tangible gift (e.g. wearing apparel, liquor, etc.) with the Directorate of Administration in accordance with § 1050.202 of this Part, file with the Directorate of Administration a statement concerning the gift containing the information identified on the sample form set forth in Appendix I. The form set forth in Appendix I must also be

filed if the aggregate value of gifts accepted by the recipient from all sources over any period of one year exceeds \$250.

(b) Within 30 days after accepting travel or travel expenses in accordance with § 1050.202 of this Part, an employee shall file with the Directorate of Administration a statement concerning the travel containing the information identified on the sample form set forth in Appendix II. Such a statement need not be filed, however, if the travel is in accordance with specific travel arrangements made by the Department in cooperation with the foreign government.

(c) The Directorate of Administration shall:

(1) Maintain the statements filed pursuant to these regulations and make them available for public inspection and copying during regular business hours; and

(2) Not later than January 31 of each year compile and transmit to the Department of State for publication by the Department of State in the Federal Register a list of all statements filed pursuant to these regulations during the preceding calendar year.

**§ 1050.302 Use or disposal of gifts and decorations accepted on behalf of the United States.**

(a) The Directorate of Administration shall accept and maintain custody of all tangible gifts and decorations accepted by employees on behalf of the United States pending their final disposition.

(b) Whenever possible, the gift or decoration shall be returned to the original donor. The Directorate of Administration shall examine the circumstances surrounding its donation, and, in consultation with the Assistant Secretary for International Affairs, assess whether any adverse effect upon the United States foreign relations might result from return of the gift or decoration to the donor. The appropriate officials of the Department of State shall be consulted if the question of an adverse effect arises.

(c) The Directorate of Administration may determine that the gift or decoration may be retained for the official use of the Department, if it can be properly displayed in an area at Headquarters or at a field facility accessible to employees or members of the public or if it is otherwise usable in carrying out the mission of the Department. The Assistant Secretary for International Affairs shall be consulted to determine whether failure to accept the gift or decoration for the official use of the Department will have an adverse effect on the foreign relations of the

United States. In no case shall a gift or decoration be accepted for the official use of the Department when the enjoyment and beneficial use of the gift will accrue primarily to the benefit of the donee or any other individual employee. Gifts or decorations that are retained for the official use of the Department shall be handled in accordance with the provisions of paragraph (d) of this section when their official use is ended.

(d) If a gift or decoration is not retained for official use of the Department, or if its official use has ended, the Directorate of Administration shall, within 30 days after its deposit or after its official use has ended—

(1) Report the gift or decoration to the General Services Administration (GSA) for transfer, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949 and the Federal Property Management Regulations at 41 CFR 101-49, or

(2) If the gift or decoration is in cash, currency, or monies (except those with possible historic or numismatic value), or is a noncash monetary gift such as a check, money order, bonds, shares of stock, or other negotiable instrument, forward it to the Finance and Accounting Office for deposit with the Department of the Treasury.

(e) The Directorate of Administration shall retain custody of gifts and decorations not returned to the donor or retained for the official use of the Department until GSA directs it concerning their disposition. At the request of GSA, the Directorate of Administration shall arrange for appraisal of specific gifts and decorations.

**§ 1050.303 Enforcement.**

(a) An employee who violates the provisions of the Act or these regulations may be subject to disciplinary action or civil penalty action as set forth in paragraphs (c) and (d) of this section.

(b) Suspected violations of the Act or these regulations shall be reported promptly to the appropriate General Counsel and the Inspector General.

(c) The Inspector General will be responsible for taking the following actions:

(1) If the results of an investigation by the Inspector General do not provide any support for a determination that a violation of the Act or these regulations has occurred, then no further action shall be taken.

(2) If it is determined that the employee knowingly and through actions within his own control has done

any of the following, the matter shall be referred to the Attorney General for appropriate action: (i) solicited or accepted a gift from a foreign government in a manner inconsistent with the provisions of the Act and these regulations; (ii) as the approved recipient of travel expenses failed to follow the procedures set forth in the Act and these regulations; or (iii) failed to deposit or report a gift as required by the Act and these regulations.

(3) If it is determined that the employee failed to deposit a tangible gift with the Directorate of Administration within 60 days, or to account properly for acceptance of travel expenses, or to comply with the requirements of these regulations relating to the disposal of gifts and decorations retained for official use, but that the criteria of knowledge and control specified in paragraph (c)(2) of this section for referral to the Attorney General have not been met, then the matter shall be referred by the Inspector General to appropriate Departmental officials for administrative action.

(d) As set forth in section 7342(h) of title 5, United States Code, the Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by the Act, or who fails to deposit or report such gift as required by the Act. The court in which such action is brought may assess a civil penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus \$5,000.

**Subpart D—Gifts to Foreign Individuals**

**§ 1050.401 Prohibition against use of appropriated funds.**

No appropriated funds other than funds from the "Emergencies in the Diplomatic and Consular Service" account of the Department of State may be used to purchase any tangible gift of more than \$100 value for any foreign individual unless such gift has been approved by the Congress.

BILLING CODE 6450-01-M



## APPENDIX I

U.S. DEPARTMENT OF ENERGY  
FOREIGN GIFTS STATEMENT  
(Statement Concerning Gifts  
Received from a Foreign Government)

1. Name of Employee		2. Date
3. Division	4. Position	
5. Name of Recipient	6. Relationship to Employee	
7. Description of Gift		
8. Date of Acceptance	9. Value of Gift	
10. Circumstances Justifying Acceptance of the Gift		
11. Foreign Government Donor		
12a. Name of Individual Presenting Gift	12b. Position of Individual Presenting Gift	
13. Do you wish to participate in the sale of this item if it is sold by GSA? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Signature of Recipient		Date

Statement Concerning Gifts  
Received From a Foreign Government

- Item 1. This statement is to be filed pursuant to the provisions of the Foreign Gifts and Decorations Act (5 U.S.C. 7342, as amended by Pub. L. 95-105, August 17, 1977) and DOE implementing Regulations at 10 CFR Part 1050. These provisions apply to foreign gifts tendered to or accepted by Federal employees and their spouses and dependents. The name of the employee should always be indicated in item 1; if the employee is the recipient of the gift then items 5 and 6 should be marked N/A-not applicable; if the recipient is a spouse or dependent, then the appropriate information should be included in items 5 and 6.
- Item 2. Self explanatory.
- Items 3 and 4. The Office or Division and the position of the employee should be indicated here regardless of whether the recipient is the employee or a spouse or dependent.
- Items 5 and 6. See above, Item 1.
- Item 7. Self explanatory.
- Item 8. Self explanatory.
- Item 9. Indicate the retail value in the United States at the time of acceptance. If there is any uncertainty as to the value of the gift, it is the recipient's responsibility to make a reasonable effort to determine value. If the value is \$100 or under, and if the aggregate value of the gifts accepted by the recipient from all sources over any period of one year does not exceed \$250, then the gift may be retained by the recipient and this Statement need not be submitted.
- Item 10. Identify in this item whether or not approval to accept the gift was sought or given in advance in accordance with Section 1050.204 of the DOE regulations. Also identify those circumstances supporting a determination that refusal of the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States.
- Items 11 and 12. Self explanatory.
- Item 13. Though there is no assurance that the item will be sold or if it is sold that it will be feasible for the recipient to participate in the sale, GSA regulations provide for participation by the recipient where feasible.

## APPENDIX II

U.S. DEPARTMENT OF ENERGY  
FOREIGN TRAVEL STATEMENT

(Statement Concerning Acceptance of Travel or Travel Expenses from a Foreign Government)

1. Name of Employee		2. Date	
3. Division		4. Position	
5. Name of Recipient		6. Relationship to Employee	
7a. Description of Transportation Provided:		7b. Description of Other Travel Expenses Provided:	
Approximate Value \$ <input type="text"/>		Approximate Value \$ <input type="text"/>	
8. Date of Acceptance		9. Total Value of Transportation and Expenses Provided \$ <input type="text"/>	
10. Nature of Employee's Official Business Related to Travel:			
11. Circumstances Justifying Acceptance:			
12. Foreign Government Donor			
13a. Name of Individual Responsible for Payment of Travel or Travel Expenses		13b. Position of Individual Responsible	
Signature of Recipient		Date	

Statement Concerning Acceptance of Travel  
or Travel Expenses from a Foreign Government

- Item 1. This statement is to be filed pursuant to the provisions of the Foreign Gifts and Decorations Act (5 U.S.C. 7342, as amended by Pub. L. 95-105, August 17, 1977) and DOE implementing regulations at 10 CFR Part 1050. These provisions apply to travel or travel expenses for travel entirely outside of the United States\* tendered to or accepted by Federal employees and their spouses and dependents. The name of the employee should always be indicated in item 1; if the employee is the recipient of the travel or travel expenses, then items 5 and 6 should be marked N/A-not applicable; if the recipient is a spouse or dependent, then the appropriate information shall be included in items 5 and 6.
- Item 2. Self explanatory.
- Items 3 and 4. The Office or Division of the employee should be indicated here regardless of whether the recipient is the employee or a spouse or dependent.
- Items 5 and 6. See above item 1.
- Item 7a. Indicate the location and mode of transportation and approximate value in U.S. dollars, if possible. Attach itinerary if available.
- Item 7b. Indicate nature and location of travel expenses provided and approximate value in U.S. dollars, if possible. Attach itinerary if available.
- Item 8. Indicate dates of travel.
- Item 9. Self explanatory.
- Item 10. Travel and travel expenses may be accepted in accordance with DOE regulations where the travel is official agency business. Spouses and dependents may accept such travel and expenses only when accompanying the employee. Item 10 therefore should be completed to identify the employee's official business whether the recipient is an employee or a spouse or dependent.
- Item 11. Identify in this item any treaty or diplomatic custom that related to acceptance of the travel or expenses, and any circumstances indicating that acceptance would be consistent with the interests of the U.S. Also provide information regarding any prior approval of the acceptance.
- Items 12, 13a,  
and 13b. Self explanatory.

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\*The Congress has consented in Pub. L. 95-105 only to acceptance of travel or travel expenses that is entirely outside of the United States. Travel, any portion of which (such as the origination or termination of a flight) is within the United States, may not be paid for by a foreign government. All such travel must be handled within applicable DOE Travel Regulations and Standards of Conduct Regulations.



# **federal register**

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Wednesday  
August 13, 1980

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**Part V**

**Department of the  
Interior**

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**Fish and Wildlife Service**

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**Proposed Framework for Late Season  
Migratory Bird Hunting Regulations**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 20

## Migratory Bird Hunting; Proposed Frameworks for Late Season Migratory Bird Hunting Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Supplemental proposed rule.

**SUMMARY:** This document supplements proposed rulemakings published in the Federal Register on February 29 and July 1, 1980, and proposes to establish frameworks, (i.e., the outer limits for dates and times when shooting may occur, hunting areas, and the number of birds which may be taken and possessed) for late season migratory bird hunting regulations for the 1980-81 season. These seasons commence on or after October 1, 1980, and include most of those for waterfowl. The Service annually prescribes hunting regulations frameworks to the States. The effects of this proposed rule are to facilitate the selection of hunting seasons by the States and to further the establishment of the late season migratory bird hunting regulations for the 1980-81 season.

In general, the frameworks for ducks are similar to those in effect last year. The Service proposes to stabilize these regulations as part of a cooperative program with Canada aimed at improving its understanding of factors other than annual hunting regulation changes on duck harvests and population dynamics. Other changes proposed include removal of hunting area closures for redheads, separating limits for canvasbacks and redheads under conventional regulations, zoning changes or additions in several Atlantic and Mississippi Flyway States, including mergansers in the regular duck limit in the Pacific Flyway, and local or regional changes for some goose hunting areas, limits, and seasons.

**DATES:** The comment period for these proposed late season frameworks will end on August 23, 1980.

**ADDRESS:** Comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received on the supplemental proposed late season frameworks will be available for public inspection during normal business hours in Room 525-B, Matomic Building, 1717 H Street, NW., Washington, D.C. Copies of the draft environmental assessment on proposed stabilization of hunting regulations are available from the Office

of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. The Service's biological opinions resulting from its consultation under Section 7, Endangered Species Act, are available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202-254-3207).

**SUPPLEMENTARY INFORMATION:** In the annual process of developing migratory game bird hunting regulations, a distinction is made between "early" and "late" season frameworks. Early seasons include those which may open before October 1, while late seasons may open no earlier than October 1. Regulations are developed independently for early and late seasons. The early season regulations include mourning doves, white-winged doves, band-tailed pigeons, rails, gallinules, an early duck season in Iowa, woodcock, common snipe, sea ducks in the Atlantic Flyway, teal in September in the Central and Mississippi Flyways, sandhill cranes in North Dakota and South Dakota, doves in the Virgin Islands and Hawaii, all migratory game birds in Puerto Rico and Alaska, and some special falconry seasons. Late seasons include the general waterfowl seasons; special seasons for scaup and goldeneyes; extra scaup and blue-winged teal in regular seasons; most sandhill crane seasons in the Central Flyway; coots, gallinules, and snipe in the Pacific Flyway; and special falconry seasons.

Certain general procedures are followed in developing regulations for both the early and the late seasons. Initial regulatory proposals are first announced in a Federal Register document published in late February and opened to public comment. Following termination of the comment period and a public hearing, the Service develops and publishes the proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory measures or options. Following another public comment period, and after consideration of additional comments, the Service publishes the final frameworks in the Federal Register. Using these frameworks, State conservation agencies then select hunting season dates and options. States

may select more restrictive seasons and options than those offered in the Service's frameworks. The final regulations, reflected in amendments to Subpart K of 50 CFR Part 20, then appear in the Federal Register, taking effect upon publication.

The regulations schedule for this year is as follows. On February 29, 1980, the Service published for public comment in the Federal Register (45 FR 13630) proposals to amend 50 CFR Part 20, with a comment period ending May 16, 1980. All comments received to date were considered. The proposal dealt with establishment of seasons, limits and shooting hours for migratory birds under §§ 20.101 through 20.107 of Subpart K. On June 20, 1980, a public hearing was held in Washington, D.C., to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged doves, and sandhill cranes. The meeting was announced in the Federal Register on February 29, 1980 (45 FR 13630). Proposed hunting season frameworks for these species were discussed plus those for common snipe; rails; gallinules; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; mourning doves in Hawaii; September teal seasons in the Mississippi and Central Flyways; an early duck season in Iowa; special sea duck seasons in the Atlantic Flyway; and falconry seasons. Statements or comments were invited.

On June 27, 1980, the Service published in the Federal Register (45 FR 43419) a second document in the series of proposed and final rulemaking documents dealing specifically with final frameworks for the 1980-81 season from which wildlife conservation agency officials in Alaska, Puerto Rico, and the Virgin Islands could select season dates for hunting certain migratory birds in their respective jurisdictions during the 1980-81 season.

On July 1, 1980, the Service published for public comment in the Federal Register (45 FR 44540) a third document in the series consisting of proposed frameworks for early season migratory bird hunting regulations and supplemental proposals for late season regulations arising from comments received or from new information. The comment period for proposed early season frameworks ended on July 12, 1980, and for late season proposals will end on August 23, 1980.

On July 22, 1980, the Service published for public comment in the Federal Register (45 FR 49061) a fourth document in the series dealing specifically with final frameworks for early season migratory game bird hunting regulations from which State wildlife agency officials selected season dates and daily

bag and possession limits for the 1980-81 season.

On August 4, 1980, the Service delivered to the Federal Register a fifth document in the series dealing specifically with amending Subpart K of 50 CFR 20 to set hunting seasons and areas, shooting and hawking hours, and bag and possession limits for species subject to early hunting regulations. These regulations will be published on or about August 15, 1980, and will take effect immediately.

On August 5, 1980, a public hearing was held in Washington, D.C., as announced in the Federal Register on February 29, 1980 (45 FR 13630) and July 1, 1980 (45 FR 44540) to review the status of waterfowl. Proposed population and harvest objectives and regulations frameworks were discussed, and statements and comments were solicited and received from the public.

This supplemental proposed rulemaking is the sixth document in the series and contains changes to the original framework proposals published on February 29, 1980, in the Federal Register, as supplemented on July 1, 1980. The present supplemental proposals are briefly described and discussed later.

#### Review of Public Comments and the Service's Response

##### *Comments Received at Public Hearing*

Six individuals presented statements at the Public Hearing on the proposed late season regulations. These comments are summarized below, and when appropriate, responded to by the Service. Some comments related to matters other than the proposed annual hunting frameworks, and thus were irrelevant.

Dr. James Timmerman, representing the Atlantic Flyway Council, emphasized the importance of cooperative efforts to manager North American waterfowl on a continental basis; endorsed the Service's proposed stabilization of duck hunting regulations frameworks; expressed concern about the growing populations of Canada geese, greater snow geese, and whistling swans in the Atlantic Flyway, and the need for hunting relaxations to stabilize or reduce certain populations; and reiterated the Council's interest in a special 11-day and 4 canvasback daily bag limit season oriented to harvest of drake canvasbacks in portions of the flyway.

Mr. John Newsom, representing The Wildlife Society, strongly supported the Service's proposal to stabilize duck hunting regulations for a five-year period, and recommended that the study

of stabilized regulations commence this year despite the anticipated reduced fall flight of ducks.

Mr. Toby Cooper, Defenders of Wildlife (Defenders) urged changes in the regulations process; expressed concern about the use of "average" population levels for defining population objectives; indicated that Defenders would comment later on the proposal to stabilize duck hunting regulations; opposed separate treatment of canvasback and redheads in the regulations because of problems in distinguishing the two species during early morning and late afternoon hunting periods; opposed the hunting of whistling swans in the Atlantic Flyway; and expressed support of the Service's proposal not to establish hunting seasons on brant in the Atlantic Flyway this year.

Mr. John Anderson, National Audubon Society, advocated the simplification of regulations and expressed support for the proposed stabilization of duck hunting regulations. He urged that necessary research be undertaken during the stabilization period so that the results of the study can be properly evaluated.

Dr. Laurence Jahn, Wildlife Management Institute, recommended completion of national waterfowl management plans now being developed in Canada and the United States; supported the idea of an international waterfowl management plan to be developed jointly by the U.S. Fish and Wildlife Service, Canadian Wildlife Service, and Mexican Direccion General de la Fauna Silvestre; urged that the issue of subsistence taking of waterfowl in northern areas be resolved and that such taking be recognized in the management plan; favored stabilization of duck hunting regulations at the 1979-80 level in principle but urged that population objectives be clarified; urged completion of a black duck management plan, and the development of plans leading to the rebuilding of mid-continent mallard populations; and expressed concern about the effects of drought on duck numbers, the unbalanced sex ratios of some waterfowl, and the establishment of conservative regulations for certain Arctic-nesting geese.

Mr. Dale Whitesell, speaking on behalf of Ducks Unlimited, Inc., endorsed the stabilization of duck hunting regulations, urged the Service to complete its national waterfowl management plan, offered views on the regulations setting process, and described his organization's program in Canada.

*Response:* In replying to comments on the proposed stabilization of duck hunting regulations, the Service notes that a draft environmental assessment on this subject is available for public review from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Despite the anticipated reduction in the fall flight of ducks, the Service believes it highly desirable to implement the program this year so that U.S. and Canadian cooperative studies would be underway simultaneously. The Service emphasizes that the stabilization of regulations is not expected to result in substantial changes in duck harvests nor adversely affect efforts to meet various population and harvest objectives. Rather, information gathered during the study is expected to provide valuable information on the role of hunting and other forms of mortality on the population dynamics of ducks, and thus contribute to the management of these migratory game birds.

The Service recognizes that populations of Canada geese and whistling swans have increased in the mid-Atlantic States in recent years. However, the most recent evaluation of greater snow goose numbers suggests that the population is stable. Cooperative management plans are being developed for these Canada geese and greater snow geese. The Service believes that regulatory relaxations should be deferred until these plans are completed. The Service has previously explained its position on the hunting of whistling swans in the Atlantic Flyway (see the Federal Register dated February 29, 1980, at 45 FR 13638; and July 1, 1980, at 45 FR 44546).

The Service supports, in principle, a special, limited canvasback hunting season directed primarily at the harvest of drakes to be conducted on a trial basis in designated areas of the Atlantic Flyway (see the Federal Register dated July 1, 1980, at 45 FR 44543). However, the hunt should be initiated in a year when population levels and production are favorable. Recently completed surveys show that although the number of breeding canvasbacks increased modestly this spring, habitat conditions were such that little production occurred. Consequently, the Service believes that implementation of the proposal should be temporarily delayed, pending a year of good production.

In regard to the difficulty of distinguishing between canvasbacks and redheads in early morning and late afternoon, the Service notes that an environmental assessment on shooting



hours was issued in 1977, and that the subject has been discussed several times in the *Federal Register* (see the *Federal Register* dated March 10, 1977, at 42 FR 13314; and February 29, 1980, at 45 FR 13634). The Service believes that the proposed change will have little effect on the welfare of either species.

#### *Written Comments Received*

In the *Federal Register* dated July 1, 1980, (at 45 FR 44542), the Service reported and responded to all public comments which had been received up to that time. These included communications on both the proposed early and late season frameworks. Eighty-nine written comments were received subsequent to that time, and through August 6, 1980. These are summarized and responded to below.

The comments originated from 79 individuals, 7 State conservation agencies, 3 conservation organizations, and 1 waterfowl flyway council. In some instances, the communications do not specifically mention the open comment period or regulatory proposals. However, because they were received or sent during the comment period and generally relate to migratory bird hunting regulations, they are treated as comments.

Sixty-nine of the comments requested that the Service approve a request by the Central Flyway Council that the length of the hunting season be increased by 16 days in the flyway. These letters originated from 68 individuals and 1 organization.

*Response.* In the *Federal Register* dated July 1, 1980, (at 45 FR 44545), it was stated that the proposal was aimed primarily at increased harvest of mallards. The Service noted that it did not favor any regulatory change which would increase or tend to increase hunting pressure on mallards in the mid-continent area of the United States at this time. This is judged to be inconsistent with present mallard population and harvest goals. The Service stated the view that a balanced program of reasonable harvest opportunity among the four flyways, as developed over the past few years, now exists and that further changes in hunting opportunity should be based on changes in the status of the populations involved. With a decline in the mallard breeding population, severely curtailed production, and prospects for a reduced fall flight in 1980, the Service reaffirms its previously expressed views.

Eighteen comments concerned stabilized duck regulations (season lengths and bag limits). Two States, 2 organizations, and 2 individuals expressed support and twelve

individuals, chiefly from the Low Plains area of the Central Flyway, expressed opposition to the proposal. Most of the latter were concerned that regulations stabilization would occur at the 1979 rather than the more liberal level proposed for the Low Plains by the Central Flyway Council.

As noted in the *Federal Register* dated July 1, 1980 (at 45 FR 44546), the Service proposes to implement stabilized duck hunting regulations at the 1979-80 level this season. The Service views stabilized hunting regulations as a means of providing an improved basis for evaluating and better understanding the relationships between hunting regulations, duck harvests, and duck populations. It is believed appropriate to take this action now in order to take advantage of those elements of stability that have already been introduced into the regulations in both Canada and the United States and because the program will be substantially improved if implemented jointly by the United States and Canada.

The Service does not anticipate that implementing the program in a year of below average waterfowl breeding conditions will affect overall duck populations or the ability to attain the population objectives to a significantly greater degree than would be the case with other, more restrictive alternatives.

The Service believes that the level at which it proposes to stabilize the regulations is reasonable in terms of current waterfowl conditions, the amount of hunting opportunity provided across the flyways, and a relatively modest impact on duck populations. The proposal is described in more detail in a draft environmental assessment that is available on request.

The remaining requests concerned a wide array of regulations, including local or regional changes in goose regulations, a variety of hunting proposals for Michigan, Sunday hunting in certain Atlantic Flyway States, and boundary changes in special management areas.

*Response.* Disposition of rejected proposals has been previously discussed. Accepted proposals are included in the accompanying frameworks.

#### **Public Comment Invited**

Based on the results of migratory game bird studies now underway and having due consideration for any data or views submitted by interested parties, the amendments resulting from these supplemental proposals will specify open seasons, hours, areas, and bag and possession limits for waterfowl, coots, and gallinules; sandhill cranes in

portions of the Central Flyway; and snipe in the Pacific Flyway.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and the unavailability before late July of specific, reliable data on year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 23, 1980, is contrary to the public interests.

#### **Comment Procedure**

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate in this rulemaking process by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 525-B in the Matomic Building, 1717 H Street, NW., Washington, D.C. 20240.

All relevant comments received on the late season proposals no later than August 23, 1980, will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

#### **NEPA Consideration**

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75-54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the *Federal Register* on June 13, 1975 (40 FR 25241). In addition, several

environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of these documents are available from the Service.

#### Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act," and "by taking such action necessary to insure that any action authorized, funded, or carried out

\*\*\* is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species \*\*\* which is determined to be critical."

Consequently, the Service reviewed all regulations frameworks being contemplated this year for outside dates, season lengths, hours, areas, and limits within which States may select regulations subject to early seasons. As a result of intra-Service Section 7 consultation, Acting Associate Director Harold J. O'Connor stated in a biological opinion dated July 14, 1980, "that your action, as proposed, is not likely to jeopardize the continued existence of the above listed species [Aleutian Canada goose, Everglade kite, bald eagle, American peregrine falcon, Arctic peregrine falcon, and whooping crane] and is not likely to result in the destruction or adverse modification of any designated Critical Habitat."

The proposed late season regulatory frameworks were likewise subjected to careful study to insure that they complied with Section 7 of the Endangered Species Act. Special attention was again given the Aleutian Canada goose (*Branta canadensis leucopareia*), Everglade kite (*Rostrhamus socialis plumbeus*), bald eagle (*Haliaeetus leucocephalus*), American peregrine falcon (*Falco peregrinus anatum*), Arctic peregrine falcon (*Falco peregrinus tundrius*), and whooping crane (*Grus americanus*) and designated Critical Habitat for the Everglade kite, American peregrine falcon, and whooping crane. As a result of intra-Service Section 7 consultation, Acting Associate Director Harold J. O'Connor stated in a biological opinion dated July 14, 1980, "that your action, as proposed, is not likely to jeopardize the continued existence of the above listed species and is not likely to result in the destruction or adverse modification of any Critical Habitat."

As in the past, hunting regulations this year are designed, among other things,

to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. Examples of such consideration include areas closed to dove and pigeon hunting for protection of the Puerto Rican plain pigeon and the Puerto Rican parrot, both of which are classified as endangered. Also, areas in Alaska and California are closed to Canada goose hunting for protection of the endangered Aleutian Canada goose.

The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for public inspection in the Office of Endangered Species and the Office of Migratory Bird Management, Department of the Interior.

#### Nontoxic Shot Regulations

On February 11, 1980, the Service published in the Federal Register (45 FR 9028) proposed rules describing nontoxic shot zones for waterfowl hunting seasons commencing in 1980. When eaten by waterfowl, spent lead pellets have a toxic effect. The nontoxic shot zones will reduce the number of deaths to waterfowl by reducing the availability of lead pellets in waterfowl feeding areas. The final regulations were published in the Federal Register on June 5, 1980 (45 FR 37847) under § 20.108 of 50 CFR and will also be summarized in waterfowl regulations leaflets to be published late this summer.

In 1980, shotshells loaded with toxic shot will not be permitted for waterfowl hunting in designated nontoxic shot zones (44 FR 2597). This regulation related only to 12-gauge shotshells in previous years but applies to all gauges of shotshells after August 31, 1980.

#### Authorship

The primary author of this proposed rule is Henry M. Reeves, Office of Migratory Bird Management, working under the direction of John P. Rogers, Chief.

#### Exemption from Executive Order 12044 and 43 CFR Part 14

As discussed in the Federal Register dated February 29, 1980 (45 FR 13630) the Assistant Secretary for Fish and Wildlife and Parks has concluded that the ever decreasing time frames in the regulatory process are mandated by the statutory requirements under Section 704 of the Migratory Bird Treaty Act and the Administrative Procedure Act. The regulatory process simply has no remaining flexibility in its timetable between the accumulation of critical summer survey data and the publication

of the revised sets of proposed rulemakings. Compliance with the procedures for the development of significant rules and the preparation of a regulatory analysis established under Executive Order 12044 would simply not be possible if the fall hunting season deadlines were to be achieved. Consequently, although the rules establishing the annual migratory bird hunting regulations are significant, the Assistant Secretary for Fish and Wildlife and Parks has approved the exemption of these regulations from the procedures of Executive Order 12044 and 43 CFR Part 14 which is provided for in § 14.3(f).

#### Proposed Regulations Frameworks for 1980-81 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl, coots, and gallinules; cranes in parts of New Mexico, Texas, Colorado, Oklahoma, Montana, and Wyoming; and common snipe in the Pacific Flyway. Frameworks are summarized below. States may be more restrictive in selecting season regulations, but may not exceed the framework provisions.

#### General

States in the Pacific, Central and Mississippi Flyways may split their season for ducks or geese into two segments of equal or unequal lengths. States in the Atlantic Flyway may, in lieu of zoning, split their season for ducks or geese into two or three segments of equal or unequal lengths. Exceptions are noted in appropriate sections.

Shooting hours in all States, on all species, and for all seasons are ½ hour before sunrise until sunset.

States in Mississippi and Central Flyways selecting neither a September teal season nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck season. These extra limits are in addition to the regular duck bag and possession limits.

States in the Atlantic Flyway not selecting the point system may select an extra teal limit for 9 consecutive days during the regular duck season of no more than 2 blue-winged teal or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession.

States in the Atlantic, Mississippi and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, and daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

1. The season must fall between October 1, 1980, and January 31, 1981, all dates inclusive.
2. The season must fall outside the open season for any other ducks except sea ducks.
3. The season must be limited to areas mutually agreed upon between the State and the Service prior to September 1, 1980.
4. These areas must be described and delineated in State hunting regulations.

or

As an alternative, states in the Atlantic, Mississippi, and central Flyways, except those selecting a point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions 3 and 4 listed above. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

Selection of the point system for any State entirely within a flyway must be on a statewide basis, *except* if New York selects that point system, conventional regulations may be retained for the Long Island Area. New York may not select the point system within the Upstate zoning option, and Maine, Massachusetts, Connecticut, Pennsylvania, West Virginia and North Carolina may not select the point system pending completion of zoning studies.

States that did not select their rail, woodcock, snipe, gallinule, and sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

#### Atlantic Flyway

Between October 1, 1980, and January 20, 1981, States in this Flyway may select open seasons on ducks, coots, and mergansers of: (a) 50 days, with basic daily bag and possession limits of 4 and 8 ducks, respectively, of which no more than 2 in the daily bag and 4 in possession may be black ducks; or (b) 50 days, with basic daily bag and possession limits of 5 and 10 ducks, respectively, of which no more than 1 in the daily bag and 2 in possession may be black ducks.

Except in closed areas, the limit on canvasbacks is 1 canvasback daily and 1 in possession. The limit on redheads throughout the flyway is 2 daily, except that in areas open to canvasback harvest the daily bag limit is 2 redheads, or 1 redhead and 1 canvasback. The possession limit on redheads is twice the daily bag limit under conventional regulations. The canvasback possession limit is equal to the daily bag limit. Under the point system, canvasback (except in closed areas) count 100 points each and redheads flywaywide count 70 points each. Areas closed to canvasback hunting are:

New York—Upper Niagara River between the Peace Bridge at Buffalo, New York, and the Niagara Falls. All waters of Lake Cayuga.

New Jersey—Those portions of Monmouth County and Ocean County lying east of the Garden State Parkway.

Maryland, Virginia and North Carolina—Those portions of each State lying east of U.S. Highway 1.

Under conventional and point system options, the daily bag and possession limits may not include more than 2 and 4 wood ducks, respectively, except that Virginia, North Carolina, South Carolina, Georgia and Florida may split their regular hunting season so that a hunting season not to exceed 9 consecutive days occurs between October 1 and October 15. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the flyway in 1980 shall apply to wood ducks. Under the point system, wood ducks shall be 25 points. For other ducks, daily bag and possession limits shall be the same as established for the flyway under conventional or point system regulations. For those States using conventional regulations, the 9 consecutive days extra teal option may be selected concurrent with the early wood duck season option. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

The daily bag limit on mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

The daily bag and possession limits of coots are 15 and 30, respectively.

The Lake Champlain Area of New York must follow the waterfowl seasons, daily bag and possession limits, and shooting hours selected by Vermont. This area includes that part of New York lying east and north of a

boundary running south from the Canadian border along U.S. Highway 9 to New York Route 22 south of Keeseville, along New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22, along New York Route 22 to U.S. Highway 4 at Whitehall, and along U.S. Highway 4 to the Vermont border.

In lieu of a special scaup season, Vermont may, for the Lake Champlain Area, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneyes or 3 in the aggregate and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to the special scaup season elsewhere.

New York may, for Long Island, select season dates and daily bag and possession limits which differ from those in the remainder of the State.

Upstate New York (excluding the Lake Champlain area) may be divided into three zones (West, North, South) on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. Option (a) or (b) for seasons and bag limits is applicable to the zones in the Upstate area within the Flyway framework; only conventional regulations may be selected. Each zone will be permitted the full number of days offered under option (a) or (b). In addition, a 2-segment split season without penalty may be selected in each zone. The basic daily bag limit on ducks in each zone and the restrictions applicable to option (a) and (b) of the regular season for the Flyway also apply. Teal and scaup bonus bird options shall be applicable to the Upstate zones, but the 16-day special scaup season will not be allowed.

The zones are defined as follows:

The West Zone is that portion of Upstate New York lying west of a line commencing at the north shore of the Salmon River and its junction with Lake Ontario and extending easterly along the north shore of the Salmon River to its intersection with Interstate Highway 81, then southerly along Interstate Highway 81 to the Pennsylvania border.

The North and South Zones are bordered on the west by the boundary described above and are separated from each other as follows:

Starting at the intersection of Interstate Highway 81 and New York Route 49 and extending easterly along Route 49 to its junction with Route 8 in Utica, then southerly along Route 8 to its intersection with U.S. Highway 20 in Bridgewater, then easterly along U.S. Highway 20 to the Massachusetts border.

Maine may implement its current zoned season program on an operational basis. Massachusetts, Connecticut, West Virginia, and North Carolina each may be divided into two zones on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. Pennsylvania and New Jersey each may be divided into three zones for the same purpose. Option (a) or (b) for seasons and bag limits is applicable to the zones within the Flyway framework; only conventional regulations may be selected in Maine, Massachusetts, Connecticut, West Virginia and North Carolina. New Jersey must select the point system. Each zone will be permitted the full number of days offered under option (a) or (b). In addition, a two-segment split season without penalty may be selected. The basic daily bag limit on ducks in each zone and the restrictions applicable to options (a) and (b) of the regular season for the Flyway also apply. Teal and scaup bonus bird options, and the 16-day special scaup season shall be allowed.

The zones are defined as follows:

#### *Maine*

North Zone—Game Management Zones 1, 2 and 3.

South Zone—Game Management Zones 4 through 8.

#### *Massachusetts*

Coastal Zone—Beginning at the New Hampshire-Massachusetts border, that portion of the State east and south of a boundary formed by Interstate 95, south to U.S. Route 1, south to Interstate 93, south to Route 3, south to U.S. Route 6, southwest to Route 28, northwest to Interstate 195, and west to the Rhode Island line.

Inland Zone—That portion of the State west and north of the above boundary.

#### *Connecticut*

North Zone—That portion of the State north of Interstate 95.

South Zone—That portion of the State south of Interstate 95.

#### *Pennsylvania*

Lake Erie Zone—The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle peninsula.

North Zone—That portion of the State north of I-80 from the New Jersey State line west to the junction of State Route 147, then north on State Route 147 to the junction of Route 220, then west and/or

south on Route 220 to the junction of I-80, then west on I-80 to its junction with the Allegheny River, and then north along the Allegheny River to the New York border. The Allegheny River is included in the North Zone.

South Zone—The remaining portion of the State.

#### *New Jersey*

North Zone—That portion of New Jersey west of the Garden State Parkway and north of a line starting at the Garden State Parkway and running west along Route 70 to the junction of Route 38, then west along Route 38 and Route 30.

South Zone—That portion of New Jersey west of the Garden State Parkway and south of a line starting at the Garden State Parkway and running west along Route 70 to the junction of Route 38, then west along Route 38 and Route 30.

Coastal Zone—That portion of New Jersey lying east of the Garden State Parkway from the New York State line to the Cape May Canal.

#### *West Virginia*

Allegheny Mountain Upland Zone (contained with the circumscribed boundaries below).

The north boundary is the State line adjacent to Pennsylvania and Maryland. The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Route 50, and follows U.S. Route 50 to the intersection with State Route 93. The boundary follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to Petersburg. At Petersburg, the boundary follows State Route 28 south to Huntersville, and then follows State Route 92 west to U.S. Route 219 and follows 219 south to the intersection of Interstate 64. The southern boundary follows I-64 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19. The western boundary follows Route 19 north to the intersection of I-79, and follows I-79 north to the Pennsylvania State line.

Remainder of the State—That portion outside the above boundaries.

#### *North Carolina*

East Zone—That portion of the State east of U.S. Highway 1.

West Zone—That portion of the State west of U.S. Highway 1.

As an alternative to conventional bag limits for ducks, a 50-day season with a point-system bag limit may be selected by States in the Atlantic Flyway during the framework dates prescribed. Point

values for species and sexes taken are as follows: in Florida only, the fulvous tree duck counts 100 points each; in all States the canvasback counts 100 points each (except in closed areas); the female mallard, black duck, mottled duck, wood duck (except in Virginia, North Carolina, South Carolina, Georgia and Florida during the early wood duck season option), redhead and hooded merganser count 70 points each; the blue-winged teal, green-winged teal, pintail, gadwall, wigeon, shoveler, scaup, sea ducks, and mergansers (except hooded) count 10 points each; the male mallard, the wood duck during the early wood duck season option in Virginia, North Carolina, South Carolina, Georgia and Florida, and all other species of ducks count 25 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in 2 days.

In any State in the Atlantic Flyway selecting both point-system regulations and a special sea duck season, sea ducks count 10 points each during the point-system season, but during any part of the regular sea duck season falling outside the point-system season, regular sea duck daily bag and possession limits of 7 and 14, respectively, apply.

Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Between October 1, 1980, and January 20, 1981, Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, West Virginia, Maryland, and Virginia (excluding those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17) may select 70-day seasons on Canada geese; the daily bag and possession limits are 3 and 6 geese, respectively. However, in the area comprised of New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Virginia, and that portion of Pennsylvania lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on U.S. Highway 22 to the New Jersey border, the Canada goose season length will be 90 days with the closing framework date extended to January 31, 1981. The daily bag limit within this area will be 4 birds with a possession limit of 8 birds. North Carolina and those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate

64 and U.S. Highway 17 in Virginia may select 50-day seasons on Canada geese within the October 1, 1980, to January 20, 1981, framework; the daily bag and possession limits are 2 and 4 Canada geese, respectively. South Carolina may select a 50-day season on Canada geese within the October 1, 1980, to January 20, 1981, framework; the daily bag and possession limits are 1 and 2 Canada geese, respectively.

The season is closed on Canada geese in Florida and Georgia.

Between October 1, 1980, and January 31, 1981, States in the Atlantic Flyway may select 70-day seasons on snow geese (including blue geese); the daily bag and possession limits are 4 and 8 geese, respectively.

The season is closed on Atlantic brant.

#### Mississippi Flyway

Between October 4, 1980, and January 20, 1981, States in this Flyway may select concurrent 50-day seasons on ducks, coots, and mergansers, except that in Iowa the framework opening date is September 20 and in Mississippi the framework closing date is January 31. The daily bag limit for ducks is 5, and may include no more than 3 mallards, no more than 2 of which may be female mallards, 1 black duck, and 2 wood ducks (except as noted below). The possession limit is 10, including no more than 6 mallards, no more than 4 of which may be female mallards, 2 black ducks, and 4 wood ducks (except as noted below).

Except in closed areas, the conventional limit on canvasbacks and redheads is 1 daily and 2 in possession for each species. Under the point system, canvasbacks count 100 points each (except in closed areas) and redheads count 70 points each. Areas closed to canvasback hunting are:

Mississippi River—Entire river, both sides, from Alton Dam upstream to Prescott, Wisconsin, at confluence of St. Croix River.

Alabama—Baldwin and Mobile Counties.

Louisiana—Caddo, St. Charles, and St. Mary Parishes; that portion of Ward 1 formerly designated as Ward 6 of St. Martin Parish; and Catahoula Lake in LaSalle and Rapides Parishes.

Michigan—Arenac, Bay, Huron, Macomb, Monroe, St. Clair, Tuscola, and Wayne Counties, and those adjacent waters of Saginaw Bay south of a line extending from Point au Gres in Sec. 6, T18N, R7E (Arenac County) to Sand Point in Sec. 11, T17N, R9E (Huron County), the St. Clair River, Lake St. Clair, the Detroit River and Lake Erie,

under jurisdiction of the State of Michigan.

Minnesota—Douglas, Mahanomen, Polk, Pope and Sibley Counties. Where the county line of any of the above counties crosses any portion of a lake, that entire lake is closed. In addition, all land in Sec. 13, T130N, R31W (i.e., land between Lake Christina and Pelican Lake) is closed.

Ohio—Land and water areas comprising Erie, Ottawa and Sandusky Counties.

Tennessee—Kentucky Lake lying north of Interstate Highway 40.

Wisconsin—In the Mississippi River Zone, all that part of Wisconsin west of the Burlington-Northern Railroad in Grant, Crawford, Vernon, LaCrosse, Trempealeau, Buffalo, Pepin and Pierce Counties. Also, the following lakes and waters, including a strip of land 100 yards wide adjacent to the shorelines thereof: Lake Poygan in Winnebago and Waushara Counties and Lakes Winneconne and Butte des Morts, including the connecting waters thereof, in Winnebago County.

The daily bag limit on mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

The daily bag and possession limits on coots are 15 and 30, respectively.

As an alternative to conventional bag limits for ducks, a 50-day season with point-system bag and possession limits may be selected by States in the Mississippi Flyway during the framework dates prescribed. Point values for species and sexes taken are as follows: except in closed areas, the canvasback counts 100 points; the redhead, female mallard, wood duck (except as noted below), black duck and hooded merganser count 70 points each; the pintail, blue-winged teal, cinnamon teal, wigeon, gadwall, shoveler, scaup, green-winged teal and mergansers (except hooded merganser) count 10 points each; the male mallard and all other species of ducks count 25 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in 2 days.

Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Kentucky, Arkansas, Tennessee, Louisiana, Mississippi and Alabama may split their regular duck hunting seasons in such a way that a hunting

season not to exceed 9 consecutive days may occur between October 4 and October 15. During this period, under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks, and under the point system, the point value for wood ducks shall be 25 points. For other species of ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations. In addition, the extra blue-winged teal option available to States in this Flyway that select conventional regulations and do not have a September teal season may be selected during this period. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

In that portion of Louisiana west of a boundary beginning at the Arkansas-Louisiana border on Louisiana Highway 3; then south along Louisiana Highway 3 to Shreveport; then east along Interstate 20 to Minden; then south along Louisiana Highway 7 to Ringgold; then east along Louisiana Highway 4 to Jonesboro; then south along U.S. Highway 167 to Lafayette; then southeast along U.S. Highway 90 to Houma; then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass—the season on ducks, coots and mergansers may extend 5 additional days, provided that the season opens on November 1, 1980. If the 5-day extension is selected, and if point-system regulations are selected for the State, point values will be the same as for the rest of the State.

The waterfowl seasons, limits, and shooting hours in the Pymatuning Reservoir area of Ohio will be the same as those selected by Pennsylvania. The area includes Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 known as Woodward Road, on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Michigan, Illinois, Indiana, Ohio, Missouri, Alabama and Tennessee may select hunting seasons on ducks, coots and mergansers by zones described as follows:

#### Michigan

North Zone—State Management Zones I and II.

South Zone—State Management Zone III.

Michigan may split its season in the South Zone into two segments.

*Illinois*

**North Zone**—That portion of the State north of a line running east from the Iowa border along U.S. Highway 34 to I-74, north along I-74 to I-80, then east along I-80 to the Indiana border.

**Central Zone**—That portion of the State between the North and South Zone boundaries.

**South Zone**—That portion of the State south of a line running east from the Missouri border along Illinois Highway 150 to Illinois Highway 4, north along Illinois Highway 4 to Illinois Highway 15, east along Illinois Highway 15 to I-57, north along I-57 to I-70, then east along I-70 to the Indiana border.

*Indiana*

**North Zone**—That portion of Indiana north of a line running east from the Illinois border along U.S. Highway 24 to U.S. Highway 41, north along U.S. Highway 41 to State Highway 16, east along State Highway 16 to State Highway 5, southeast along State Highway 5 to Huntington, then east along U.S. Highway 224 to the Ohio border.

**South Zone**—The remainder of Indiana.

*Ohio*

**North Zone**—The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13.

**South Zone**—The remainder of Ohio.

Ohio may split its season in each zone into two segments.

*Missouri*

**North Zone**—That portion of Missouri north of a line running east from the Kansas border along U.S. Highway 54 to U.S. Highway 65, south along U.S. Highway 65 to State Highway 32, east along State Highway 32 to State Highway 72, east along State Highway 72 to State Highway 34, then east along State Highway 34 to the Illinois border.

**South Zone**—The remainder of Missouri.

Missouri may split its season in each zone into two segments.

*Alabama*

**South Zone**—Mobile and Baldwin Counties.

**North Zone**—The remainder of Alabama.

*Tennessee*

**Reelfoot Zone**—Lake and Obion Counties, or a designated portion of that area.

**State Zone**—The remainder of Tennessee.

Within each State: (1) The same bag limit option must be selected for both zones; and (2) if a special scaup season is selected for a zone, it shall not begin until after the regular season closing date in that zone.

The waterfowl seasons, limits, and shooting hours in the lower St. Francis River area of Arkansas and Missouri shall be the same as those selected by Missouri. The area is defined as that part of the St. Francis River south of U.S. Highway 62 that is the boundary between Arkansas and Missouri and all sloughs and chutes (but not tributaries) connected to it.

Between October 4, 1980, and January 20, 1981, States in this Flyway, except Louisiana, may select 70-day seasons on geese (except as noted below for Michigan), with a daily bag limit of 5 geese, to include no more than 2 white-fronted geese. The possession limit is 10 geese, to include no more than 4 white-fronted geese. Regulations for Canada geese are shown below by State.

Between October 4, 1980, and February 14, 1981, Louisiana may select 70-day seasons on snow (including blue) and white-fronted geese by zones established for duck hunting seasons, with daily bag and possession limits as described in the above paragraph.

The season on Canada geese is closed in Arkansas and Louisiana.

In Minnesota, in the:

(a) Lac Qui Parle Zone (described in State regulations)—the season on Canada geese closes after 50 days or when 5,500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4 Canada geese.

(b) Southeastern Zone (described in State regulations)—the season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4 Canada geese.

(c) Remainder of the State—the season on Canada geese will be concurrent with the duck season. The daily bag limit is 2 Canada geese and the possession limit is 4 Canada geese.

In Iowa, the season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4 Canada geese.

In Missouri, in the:

(a) Swan Lake Zone (described in State regulations)—The season on Canada geese closes after 70 days or

when 20,000 birds have been harvested, whichever occurs first. Through November 23, the daily bag limit is 1 Canada goose and the possession limit is 2 Canada geese. After November 23, the daily bag limit is 2 Canada geese and the possession limit is 4 Canada geese.

(b) Southeastern Area (east of U.S. Highway 67 and south of Crystal City)—State may select a 50-day season on Canada geese between December 1, 1980, and January 20, 1981, with a daily bag limit of 2 Canada geese and a possession limit of 4 Canada geese.

(c) Remainder of the State—The season on Canada geese will be concurrent with the duck season in the respective duck hunting zones. The daily bag limit is 2 Canada geese, and the possession limit is 4 Canada geese.

In Wisconsin, the harvest of Canada geese is limited to 30,000. In the Horicon Zone, during the first hunting period, the daily bag and possession limits are 1 Canada goose; thereafter, the daily bag and possession limits are 2 Canada geese. In the Central Zone, the daily bag and possession limits are 2 Canada geese. Elsewhere in Wisconsin, the daily bag limit is 1 Canada goose and the possession limit is 2 Canada geese. In the Horicon Zone and the Central Zone, Canada goose hunting is restricted to those persons holding valid Canada goose hunting permits issued by the State. The Horicon Zone is defined as those portions of the counties of Fond du Lac, Green Lake, Washington and Dodge enclosed by a line beginning at the intersection of State Highway 175 and State Highway 23 in Fond du Lac County, then southerly on State Highway 175 to its intersection with State Highway 33, then westerly on State Highway 33 to the city of Beaver Dam, then northerly on State Highway 33 to its intersection with County Highway A, then northerly on County Highway A to its intersection with County Highway S, then easterly on County Highway S and continuing easterly on County Highway AS to its intersection with County Highway E, then northerly on County Highway E to its intersection with State Highway 23, then easterly on State Highway 23 to the point of beginning.

The Central Zone is defined as those portions of Fond du Lac, Winnebago, Green Lake, Marquette, Columbia and Dodge Counties enclosed by a line beginning in Winnebago County at the intersection of State Highway 21 and U.S. Highway 45, then southerly on U.S. Highway 45 to its intersection with State Highway 175, then southerly on State Highway 175 to its intersection with State Highway 23, then westerly on

State Highway 23 to its intersection with County Highway E, then southerly on County Highway E to its intersection with County Highway AS, then westerly on County Highway AS and continuing westerly on County Highway S to its intersection with County Highway A, then southerly on County Highway A to its intersection with State Highway 33, then southeasterly on State Highway 33 to its intersection with U.S. Highway 151, then southwesterly on U.S. Highway 151 to its intersection with State Highway 73, then northerly on State Highway 73 to its intersection with State Highway 33, then westerly on State Highway 33 to its intersection with State Highway 22, then northerly on State Highway 22 to its intersection with State Highway 23, then northeasterly on State Highway 23 to its intersection with State Highway 49, then northerly on State Highway 49 to its intersection with State Highway 116, then easterly on State Highway 116 to State Highway 21, then easterly on State Highway 21 to the point of beginning.

In Illinois, 70-day seasons on geese may be selected by zones established for duck hunting seasons, except that in the South Zone the season will close December 31. The harvest of Canada geese is limited to 33,000, with 27,000 birds allocated to the Southern Illinois Zone (described in State regulations). The daily bag limit is 2 Canada geese and the possession is 4 Canada geese. The season on Canada geese in the Southern Illinois Zone will open November 3 and extend through December 31, 1980, or until the Zone's quota of 27,000 birds is reached, whichever occurs first.

In Michigan, in the:

(a) Counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee and Ontonagon—The daily bag limit is 2 Canada geese and the possession limit is 4 Canada geese.

(b) Southeastern Canada Goose Management Area (described in State regulations)—The Canada goose season may extend for 107 days within the flyway framework dates. Through November 14, the daily bag limit will be 1 Canada goose and the possession limit will be 2 Canada geese. From November 15 through November 30, the daily bag limit will be 2 Canada geese and the possession limit will be 4 Canada geese. For the remainder of the season, the daily bag limit will be 3 Canada geese and the possession limit will be 6 Canada geese.

(c) Remainder of the State—The daily bag limit is 1 Canada goose and the possession limit is 2 Canada geese.

In Ohio, the daily bag limit is 2 Canada geese and the possession limit is 4 Canada geese, except that in the counties of Ashtabula, Trumbull, Marion, Wyandot, Lucas, Ottawa, Erie, Sandusky, Mercer and Auglaize, the daily bag limit is 1 Canada goose and the possession limit is 2 Canada geese.

In Indiana, the daily bag limit is 2 Canada geese and the possession limit is 4 Canada geese.

In Kentucky, the daily bag limit is 2 Canada geese and the possession limit is 4 Canada geese.

In Tennessee, the daily bag limit is 1 Canada goose and the possession limit is 2 Canada geese, except in that portion of the State west of State Highway 13, where the daily bag limit is 2 Canada geese and the possession limit is 4 Canada geese. The season on Canada geese is closed in that portion of Tennessee bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45.

In Mississippi, in the Sardis Reservoir Area (that area encompassed by Interstate Highway 55 on the west, State Highway 7 on the east, State Highway 310 on the north and State Highway 6 on the south), the season on Canada geese will be November 15 through December 14, 1980. The daily bag limit is 1 Canada goose and the possession limit is 2 Canada geese. In the remainder of the State, the season on Canada geese is closed.

In Alabama, the season is closed on all geese in the counties of Henry, Russell and Barbour. Elsewhere in Alabama, the daily bag limit is 2 Canada geese and the possession limit is 4 Canada geese.

When it has been determined that the quota of Canada geese allotted to the Southern Illinois Zone and the Swan Lake Zone of Missouri will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing.

Geese taken in Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of the hunter taking the birds.

#### Central Flyway

Seasons on ducks (including mergansers) and coots may be selected between October 4, 1980, and January 18, 1981, inclusive, in Central Flyway States and portions of States.

The basic season may include no more than 60 days. Conventional limits on ducks (including mergansers), singly or in the aggregate, are 5 daily and 10 in possession. The aggregate daily bag limit on ducks (including mergansers) may include no more than 1 canvasback (note areas closed to canvasback hunting), 1 redhead, 1 female mallard, 1 hooded merganser, and 2 wood ducks. The possession limit may include no more than 1 canvasback (note areas closed to canvasback hunting), 2 redheads, 2 female mallards, 2 hooded mergansers, and 4 wood ducks. The daily bag and possession limits on coots are 15 and 30, respectively.

The areas closed to canvasback hunting are:

North Dakota—That portion lying east of State Highway 3, including all or portions of 27 counties.

South Dakota—All of Marshall County; that portion of Day County east of State Highway 25; that portion of Codington County south of State Highway 20 and west of U.S. Highway 81; that portion of Hamlin County west of U.S. Highway 81; and that portion of Kingsbury County east of State Highway 25 and north of U.S. Highway 14.

As an alternative to conventional bag and possession limits for ducks, point-system regulations may be selected for States and portions of States in this Flyway. The point system season length in the High Plains Mallard Management Unit is 83 days provided that the last 23 days of such season must begin on or after December 13, 1980. The High Plains Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, shall be described in State regulations. The season length for the Low Plains unit (those portions of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas not included in the High Plains Mallard Management Unit) may not exceed 60 days.

The point values for species and sexes taken in the Central Flyway are: canvasbacks count 100 points each (note areas closed to canvasback hunting); female mallards, Mexican-like ducks, wood ducks, redheads and hooded mergansers count 70 points each; blue-winged teal, green-winged teal, cinnamon teal, scaup, pintails, gadwalls, wigeon, shovelers, and mergansers (except the hooded merganser) count 10 points each; all other species and sexes of ducks count 20 points each. The daily bag limit is reached when the point value of the last bird taken, when added to the sum of the point values of other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number

of birds which legally could have been taken in 2 days.

Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Those portions of Colorado and Wyoming lying west of the Continental Divide, that portion of New Mexico lying west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation, and that portion of Montana which includes the counties of Hill, Chouteau, Cascade, Meagher, and Park and all counties west thereof, must select open seasons on waterfowl and coots in accordance with the framework for the Pacific Flyway.

States in the Central Flyway may select goose seasons between October 4, 1980, and January 18, 1981, inclusive.

Montana, Wyoming and Colorado may select, for the Central Flyway portions, seasons of 93 days, with daily bag and possession limits of 2 and 4 geese, respectively.

New Mexico (for the Central Flyway portion) and Texas (for that portion west of U.S. Highway 81) may select seasons of 93 days with a daily bag limit of 5 geese which may include no more than 2 dark (Canada and white-fronted) geese and a possession limit of 10 geese which may include no more than 4 dark geese.

North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas (for that portion east of U.S. Highway 81) may select seasons (which need not be concurrent) for light (Ross' and snow, including blue) geese of 86 days with limits of 5 daily, and dark (Canada and white-fronted) geese of 72 days with daily bag limits as follows (possession limits are described later):

In North Dakota, 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese.

In South Dakota, 1 Canada goose and 1 white-fronted goose.

In Nebraska, 1 Canada goose and 1 white-fronted goose, except in that portion of the State west of U.S. Highway 183, prior to November 24, the daily bag limit may include 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

In Kansas, 1 Canada and 1 white-fronted goose.

In the Oklahoma counties of Alfalfa, Bryan, Johnston, and Marshall, the State may select either:

(a) A season of 72 days with daily limits of 1 Canada goose and 1 white-fronted goose.

or

(b) A season of 53 days (within the 72-day period selected for the remainder of

the State) with limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose daily.

In the remainder of Oklahoma, the limits are 2 Canada geese or 1 Canada goose and 1 white-fronted goose daily.

In that portion of Texas east of U.S. Highway 81, the bag limit is 1 Canada goose or 1 white-fronted goose daily.

In all East Tier Central Flyway States, goose possession limits are twice the daily bag limits.

Colorado, Montana, New Mexico, Oklahoma, Texas, and Wyoming may select a sandhill crane season with daily bag and possession limits of 3 and 6, respectively, within an October 4, 1980-January 31, 1981, framework as follows:

(a) 37 consecutive days from October 4 through November 23, 1980, in the Central Flyway portion of Colorado except the San Luis Valley area, and in the Wyoming counties of Crook, Goshen, Laramie, Niobrara, Platte and Weston.

(b) 93 consecutive days between October 20, 1980, and January 31, 1981, in the New Mexico counties of Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt, and in that portion of Texas west of a boundary from the Oklahoma border along U.S. Highway 287 to U.S. Highway 87 at Dumas, along U.S. Highway 87 (and including all of Howard and Lynn Counties) to U.S. Highway 277 at San Angelo, and along U.S. Highway 277 to the International Toll Bridge in Del Rio.

(c) 58 consecutive days on or after November 22, 1980, in that portion of Oklahoma west of U.S. Highway 81, and in that portion of Texas east of a boundary from the Oklahoma border along U.S. Highway 287 to U.S. Highway 87 at Dumas, then along U.S. Highway 87 to San Angelo, and west of a line running north from San Angelo along U.S. Highway 277 to Abilene, along State Highway 351 to Albany, along U.S. Highway 283 to Vernon, and then along U.S. Highway 183 east to the Oklahoma border.

(d) 37 consecutive days, to open with the goose season, in all of the Central Flyway portion of Montana except Sheridan County and that area south and west of Interstate Highway 90 and the Big Horn River.

All persons hunting sandhill cranes in the above designated areas of the Central Flyway must obtain and possess valid Federal permits issued by the appropriate State conservation agency on an equitable basis without charge.

Emergency closures of hunting seasons will be considered whenever portions of either the Rocky Mountain or Wood Buffalo-Aransas flocks of whooping cranes are found in areas

where there is risk to their taking by hunters.

#### Pacific Flyway

Between October 4, 1980, and January 18, 1981, concurrent 93-day seasons on ducks (including mergansers), coots, and gallinules may be selected in Pacific Flyway States and portions of States, *except* as subsequently noted. Basic daily bag and possession limits on ducks (including mergansers) are 7 and 14, respectively.

No more than 2 redheads or 2 canvasbacks or 1 of each may be taken daily and no more than 4 singly or in the aggregate may be possessed.

The daily bag and possession limits on coots and gallinules are 25 singly or in the aggregate.

Waterfowl season dates for the Colorado River Zone of California must coincide with season dates selected by Arizona for waterfowl. Waterfowl season dates for the Northeastern Zone of California must coincide with season dates selected by Oregon for waterfowl, except that the season on geese may differ according to prescribed options described later. For the Southern Zone of California (as described in Title 14 California Fish and Game Code, Section 502), the State may designate season dates differing from those in the remainder of the State.

For Nevada, county of Clark, the State may designate season dates for waterfowl differing from those in the remainder of the State.

In the Idaho counties of Ada, Bannock, Benewah, Blaine, Bonner, Boundary, Camas, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Kootenai, Latah, Lewis, Lincoln, Minidoka, Nez Perce, Owyhee, Payette, Power, Shoshone, Twin Falls, Washington, and that portion of Bingham County lying outside the Blackfoot Reservoir drainage; the Oregon counties of Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, and Wasco; and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County (all formerly identified as the Columbia Basin Area for ducks), between October 4, 1980, and January 18, 1981, the season lengths for ducks (including mergansers), coots and gallinules may be 100 days with all seasons to run concurrently.

Between October 4, 1980, and January 18, 1981, 93-day seasons on geese may be selected in States or portions of States in this Flyway, *except* as subsequently noted. The basic daily bag and possession limits are 6, provided that the daily bag limit includes no more



than 3 white geese (snow, including blue, and Ross's geese) and 3 dark geese (Canada and white-fronted geese); the daily bag and possession limits are proportionately reduced in those areas where special restrictions apply to Canada geese. In Washington and Idaho, the daily bag and possession limits are 3 and 6 geese, respectively.

The season is closed on the Aleutian Canada goose.

Three areas in California, described as follows, are restricted to the hunting of dark geese (all subspecies of Canada and white-fronted geese) in order to protect the Aleutian Canada goose for which no hunting is allowed and to temporarily reduce harvests on white-fronted geese and cackling Canada geese:

(1) In the counties of Del Norte and Humboldt there will be no open season on dark geese during the 1980-81 waterfowl hunting season.

(2) In the Sacramento Valley in the area described as follows: beginning at Willos in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River; then southerly on the Sacramento River to the Tisdale Bypass; then easterly on the Tisdale Bypass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45-162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows, the hunting season for taking dark geese will not open until December 15, 1980, and will then continue to the end of the 1980-81 waterfowl hunting season.

(3) In the San Joaquin Valley in the area described as follows: beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate 5; then southerly on Interstate 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly to the point of beginning; the hunting season for

taking dark geese will close on November 23, 1980.

Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

In the Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla, and Yakima, and in the Oregon counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa, and Wasco, the goose season may be of 100 days duration and must run concurrently with the duck season; and the bag limits for geese are to be the same as in the general goose season in their respective States.

Oregon, for Lake and Klamath Counties, must select frameworks for season and limits from among the following listed Options 1, 2, 3 and 7; California, for the Northeastern Zone must select frameworks from among Options 1, 2, 3, 8 and 9; and California, for the Balance-of-the-State Zone, must select frameworks from among Options 4, 5, 6 and 8. The selected season for geese must occur within that selected for ducks.

*Option 1.* A season of not more than 79 days between November 1, 1980, and January 18, 1981, with a basic goose limit of 6 per day and 6 in possession of which not more than 3 dark and 3 white geese may be in the daily bag.

*Option 2.* A season of not more than 86 days between October 25, 1980, and January 18, 1981, with a basic goose limit of 4 per day and 4 in possession, of which not more than 2 dark and 2 white geese may be in the daily bag.

*Option 3.* A season of 93 days between October 4, 1980, and January 18, 1981, with a basic goose limit of 2 per day and 2 in possession of which not more than 1 dark and 1 white goose may be in the daily bag.

*Option 4.* A season of not more than 83 days between October 4 and December 25, 1980, with a basic goose limit of 6 per day and 6 in possession of which not more than 3 dark and 3 white geese may be in the daily bag.

*Option 5.* A season of not more than 90 days between October 4, 1980, and January 1, 1981, with a basic goose limit of 4 per day and 4 in possession of which not more than 2 dark and 2 white geese may be in the daily bag.

*Option 6.* A season of not more than 93 days between October 4, 1980 and January 18, 1981, with a basic goose limit of 2 per day and 2 in possession of which not more than 1 dark and 1 white goose may be in the daily bag.

*Option 7.* A season of not more than 93 days having daily bag limits of 1 dark and 1 white geese with possession limits twice the daily limit through October 31,

1980. Thereafter, limits may be increased to 3 dark and 3 white geese in the daily bag with any 6 geese in possession.

*Option 8.* A season of not more than 79 days opening not less than 2 weeks after the opening of the duck season, with limits of 2 dark geese and 2 white geese daily and 4 of any geese in possession.

*Option 9.* A season of not more than 93 days with a limit of 1 goose (either dark or white) in daily bag and possession for the first 14 days of the season. Thereafter, limits may be increased to 3 geese in daily bag and possession of which not more than 2 may be dark geese and not more than 2 may be white geese.

In that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater and Idaho Counties); in the Oregon counties of Baker and Malheur; and in that portion of Montana and Wyoming in the Pacific Flyway, the daily bag and possession limit is 2 Canada geese and the season on Canada geese may not extend beyond December 28, 1980.

In that portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border; in that portion of Colorado in the Pacific Flyway; in Utah except Washington County, the daily bag and possession limits are 2 Canada geese, and the season on Canada geese may be no more than 72 days and may not extend beyond December 21, 1980.

For Nevada, the State may experimentally designate season dates on geese in Clark County and on geese in Elko County and that portion of White Pine County within Ruby Lake National Wildlife Refuge differing from those in the remainder of the State. The daily bag and possession limits are 2 Canada geese throughout the State.

In Arizona, except in the counties of Mohave and Yuma; in that portion of New Mexico in the Pacific Flyway; in Clark County, Nevada; in Washington County, Utah; and in the Southern Zone, except that portion in California Department of Fish and Game District 22, of California, the season on Canada geese may be no more than 72 days. The daily bag and possession limit is 2

Canada geese and the season on Canada geese may not extend beyond January 18, 1981.

In California, the balance of California Fish and Game District 22 in the Southern Zone (that portion of District 22 lying outside the Colorado River Zone), the daily bag limit is 1 Canada goose with 2 in possession and the season on Canada geese may be no more than 72 days and may not extend beyond January 4, 1981.

In the Arizona counties of Mohave and Yuma and in the Colorado River Zone of California, the seasons on Canada geese may be no more than 72 days and may not extend beyond January 4, 1981. The daily bag and possession limits on Canada geese are 2 and 2, respectively, in these areas. The season on geese in the Colorado River Zone of California must be the same as that selected by Arizona.

In the Washington counties of Island, Skagit, Snohomish, and Whatcom, the seasons on snow geese may not extend beyond January 1, 1981; and the daily bag and possession limits on snow geese are 3 and 6, respectively.

Between October 25, 1980, and February 22, 1981, States in this Flyway may select an open season on black brant of 93 days with daily bag and possession limits of 4 and 8 brant, respectively.

In Utah, Nevada and Montana, an open season for taking a limited number of whistling swans may be selected subject to the following conditions: (a) The season must run concurrently with the duck season; (b) in Utah, no more than 2,500 permits may be issued, authorizing each permittee to take 1 whistling swan; (c) in Nevada, no more than 500 permits may be issued, authorizing each permittee to take 1 whistling swan in Churchill County; (d) in Montana, no more than 500 permits may be issued authorizing each permittee to take 1 whistling swan in Teton County; (e) permits and correspondingly numbered metal locking seals must be issued by the appropriate State conservation agency on an equitable basis without charge.

For all States entirely in the Pacific Flyway, open seasons on common snipe must coincide with the duck season. For other States partially within the Pacific Flyway seasons between September 1, 1980, and February 28, 1981, and not to exceed 93 days, may be selected. The daily bag and possession limits are 8 and 16, respectively. Any State may split its snipe season without penalty.

### Special Falconry Frameworks

Falconry is a permitted means of taking migratory game birds in any State.

Any State listed in 50 CFR 21.29(k) as meeting Federal Falconry Standards may select an extended season for taking migratory game birds in accordance with the following:

1. Seasons must fall within the regular season framework dates and, if offered, other special season framework dates for hunting.

2. Season lengths for all permitted methods of hunting within a given area may not exceed 107 days for any species.

3. Hunting hours shall not exceed ½ hour before sunrise to sunset.

4. Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

5. Each State selecting extended seasons shall report to the Service the results of the special falconry season by March 15, 1981.

6. Each State selecting the special season must inform the Service of the season dates and publish said regulations.

General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Notice: In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season, or falconry season) exceed 107 days for a species in any geographical area.

Dated: August 8, 1980.

**F. Eugene Hester,**  
*Acting Director, United States Fish and Wildlife Service.*

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