

is supported by funds from a source other than the Corporation.

§ 1611.4 Authorized exceptions.

A person whose income exceeds the maximum income level established by a recipient may be provided legal assistance under the Act if;

(a) The person's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in § 1611.5(b); or

(b) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor; or

(c) The person would be eligible but for receipt of benefits from a governmental income maintenance program.

§ 1611.5 Determination of eligibility.

(a) The governing body of a recipient shall adopt guidelines, consistent with these regulations, for determining the eligibility of persons seeking legal assistance under the Act. At least once a year, guidelines shall be reviewed and appropriate adjustments made.

(b) In addition to income, a recipient shall consider other relevant factors before determining whether a person is eligible to receive legal assistance. Factors considered shall include:

(1) Current income prospects, taking into account seasonal variations in income;

(2) Liquid net assets;

(3) Fixed debts and obligations, including federal and local taxes, and medical expenses;

(4) Child care, transportation, and other expenses necessary for employment;

(5) Age or physical infirmity of resident family members;

(6) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;

(7) The consequences for the individual if legal assistance is denied; and

(8) Other factors related to financial inability to afford legal assistance.

(c) Evidence of a prior administrative or judicial determination that a person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment, shall disqualify the person from receiving legal assistance under the Act. This paragraph does not bar provision of legal assistance to an otherwise eligible person who seeks representation in order to challenge the prior determination.

(d) A recipient may provide legal assistance to a group, corporation, or association if it:

(1) Is primarily composed of persons eligible for legal assistance under the Act, or

(2) Has as its primary purpose furtherance of the interests of persons in the community unable to afford legal assistance, and

(3) Provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

§ 1611.6 Manner of determining eligibility.

(a) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. The form and procedure adopted shall be subject to approval by the Corporation, and the information obtained shall be preserved, in a manner that protects the identity of the client, for audit by the Corporation.

(b) If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiry to verify it, in a manner consistent with an attorney-client relationship.

(c) Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any person who is not employed by the recipient in a manner that permits identification of the client, without the express written consent of the client.

§ 1611.7 Change in circumstances.

If an eligible client becomes ineligible through a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficiently likely to continue for the client to afford private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibilities.

Effective date: December 23, 1976.

APPENDIX A

Table showing maximum income levels equal to 125% of the Office of Management and Budget 1976 revision of the official poverty line threshold figures.

ALL STATES EXCEPT ALASKA AND HAWAII	
Size of family unit:	Maximum income
1	\$3,500
2	4,625
3	5,750
4	6,874
5	8,000
6	9,125

For family units with more than 6 members, add \$1,125 for each additional member in a nonfarm family and \$950 for each additional member in a farm family.

ALASKA

Size of family unit:	Maximum income
1	\$4,400
2	5,800
3	7,200
4	8,600
5	10,000
6	11,400

For family units with more than 6 members, add \$1,400 for each additional member in a nonfarm family and \$1,188 for each additional member in a farm family.

HAWAII

Size of family unit:	Maximum income
1	\$4,050
2	5,338
3	6,625
4	7,913
5	9,200
6	10,488

For family units with more than 6 members, add \$1,288 for each additional member

in a nonfarm family and \$1,088 for each additional member in a farm family.

THOMAS EHRLICH,  
President,

Legal Services Corporation.

[FR Doc.76-34496 Filed 11-22-76;8:45 am]

PART 1617—CLASS ACTIONS

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996I ("the Act"). Section 1006(d)(5) of the Act, 42 U.S.C. 2996e(d)(5), requires class action litigation undertaken by a recipient to be approved by the project director in accordance with policies established by the governing board. Section 1007(a)(3), 42 U.S.C. 2996f(a)(3), requires the Corporation to insure that legal assistance is rendered in the most economical and effective manner, and Section 1007(a)(1), 42 U.S.C. 2996f(a)(1), requires the Corporation to protect against impairing the integrity of the adversary process.

On September 23, 1976 (41 FR 41722) a proposed regulation on class actions was published. Interested persons were given until October 26, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

COMMENT

Section 1006(d)(5) of the Act requires class action litigation undertaken by a recipient to be approved by the project director in accordance with policies established by the governing board. The legislative history of the section makes it clear that Congress did not intend to discourage use of class actions, but did want to insure that class action litigation would be undertaken according to standards established by persons accountable for the overall performance of the legal services program.

Neither the Act nor relevant American Bar Association Ethics Opinions permits a governing body to review class action litigation on a case-by-case basis. What is contemplated is the establishment by a governing body of broad policies that are consistent with its resource allocation priorities, and with the need to protect the rights of an individual client and similarly situated clients. The class action policy adopted by a governing body should not interfere with an attorney's independent judgment or duty to a client. See Sections 1006(a)(3); 1007(a)(1); ABA Committee on Ethics and Professional Responsibility, Formal Opinion 334.

Because a class action may be a useful way of avoiding duplicative and repetitive actions, the mandate of Section 1007(a)(3) that legal assistance be rendered in "the most economical and effective" manner, as well as the prohibition in Section 1007(a)(1) against impairing the integrity of the adversary process, preclude a recipient from adopting policies

that would prevent class actions in appropriate cases.

Part 1617 is added to read as follows.

- Sec.  
1617.1 Purpose.  
1617.2 Definition.  
1617.3 Approval Required.  
1617.4 Standards for Approval.

AUTHORITY: Secs. 1006(d)(5), 1007(a)(1), 1007(a)(3), 1008(e) (42 U.S.C. 2996e(d)(5), 2996f(a)(1), 2996(a)(3), 2996g(e)).

#### § 1617.1 Purpose.

This Part is intended to promote responsible, efficient, and effective use of Corporation resources. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

#### § 1617.2 Definition.

"Class action" means a class suit, class action appeal, or amicus curiae class action, as defined by statute or the rules of civil procedure of the court in which an action is filed.

#### § 1617.3 Approval required.

No class action may be undertaken by a staff attorney without the express approval of the director of the recipient, acting in accordance with policies established by the governing board.

#### § 1617.4 Standards for approval.

The governing body of a recipient shall adopt policies to guide the director of the recipient in determining whether to approve class action litigation. The policies adopted:

- Shall not prohibit class action litigation when appropriate to provide effective representation to a client or a group of similarly situated clients;
- Shall not require case-by-case approval of class action litigation by the governing body;
- Shall give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act or Corporation regulations; and
- Shall not interfere with the professional responsibilities of an attorney to a client.

Effective date: December 23, 1976.

THOMAS EHRLICH,  
President,  
Legal Services Corporation.

[FR Doc.76-34497 Filed 11-22-76; 8:45 am]

### PART 1618—ENFORCEMENT PROCEDURES

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("the Act"). Sections of the Act, including Sections 1006(b)(1), 1006(b)(5), and 1007(d), 42 U.S.C. 2996e(b)(1), 2996e(b)(5), 2996f(d), provide that the Corporation shall have the authority to enforce, and to monitor and evaluate programs to insure, compliance with the Act and Corporation rules, regulations,

and guidelines. Section 1006(b)(2), 42 U.S.C. 2996e(b)(2), requires recipients to insure compliance by their employees with the Act and Corporation rules, regulations, and guidelines.

On September 23, 1976 (41 FR 41723) a proposed regulation on enforcement procedures was published. Interested persons were given until October 26, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

#### COMMENT

Congress conferred upon the Corporation the dual responsibility of insuring compliance by recipients and their employees with the provisions of the Act and Corporation rules, regulations, and guidelines, and of insuring "the protection of the integrity of the adversary process from any impairment in furnishing legal assistance" to eligible clients. (Sections 1006(b)(1) and 1007(a)(1)). The enforcement procedure established by this Part attempts to satisfy both these goals.

The Corporation's authority to enforce the Act is found in Sections 1006(b)(1) and 1007(d). The Act specifically mentions only termination of financial support to recipients as a means of general enforcement, but such a severe remedy probably would be unwarranted in most instances. It was necessary, therefore, to provide other methods of enforcement. Cf. Section 1006(b)(5), that does contemplate other remedies for violations of its provisions. The Congressional intention that the Corporation should have authority to create other remedies is specifically stated in the Conference Report:

The conferees intend that remedial measures short of termination be utilized prior to termination. S. Conf. Rep. 93-845, 93rd Cong., 2nd sess., 21 (1974).

To allow maximum latitude for informal resolution of violations, this Part does not specify what kind of remedial action, short of suspension or termination, should be taken when the Corporation finds a violation of the Act. It is anticipated that some initial violations may be due to uncertainty about the proper interpretation of the Act. In such instances, it should be sufficient to notify the recipient that its interpretation of the Act is erroneous. In other cases, the Corporation may instruct the recipient to remedy the matter according to its own procedures. It is expected that the Corporation will take formal action to remedy a violation only after other means have failed.

The procedure established by this Part is consistent with the Congressional intention that a recipient should have the initial responsibility for insuring that its employees comply with the Act. Section 1006(b)(2).

#### PRIMARY JURISDICTION

To insure uniform and consistent interpretation and application of the Act,

every alleged violation should be dealt with in the manner prescribed by this Part. Use of this procedure will also protect the integrity of the adversary process by insuring that questions of compliance with the Act will not become ancillary issues in cases undertaken by attorneys employed by recipients. The most common situation in which a question of compliance arises is when an opposing party in a lawsuit challenges a client's eligibility for representation by a legal services attorney. Several courts confronted with that issue have held that it is not a proper one for judicial determination. *Ingram v. Justice Court*, 69 Cal. 2d 832, 447 P. 2d 650 (1968); *Budget Finance Plan, Inc. v. Staley*, Civil No. GS 19245-65 (D.C. Ct. Gen. Sess., June 9, 1966); *Florida ex rel T.J.M. v. Carlton*, No. 75-245 (Fla. Dist. Ct. App., June, 1975) 9 Clearinghouse Rev. 209 (July, 1975); *Brednener v. Brednener*, (Penn. C.P. Luzerne Co., June 10, 1975) 9 Clearinghouse Rev. 277 (August, 1975). In both *Carlton* and *Brednener*, the courts specifically recognized the issue as being one for administrative resolution. In *Carlton*, the Court said:

No authorization, either state or federal, permits judicial inquiry into a client's eligibility for representation in a Florida Court by an attorney who is a member of the Florida Bar in good standing who has been designated by the client. Where the federal government makes legal services available under congressional authority, eligibility for rendering and receiving such legal services is a matter [to be resolved] by the federal agencies which make such services available. Slip Opinion at 2-3.

The approach taken by these courts is consistent with the one adopted here, which assumes that the Corporation has primary jurisdiction to enforce compliance with the Act. The primary jurisdiction doctrine requires a party to exhaust an available administrative procedure before seeking judicial resolution of a dispute subject to an agency's jurisdiction. The rationale for the doctrine supports its application to questions of compliance with the Legal Services Corporation Act. As explained by Professor Kenneth Davis, the doctrine is based on:

... recognition of the need for orderly and sensible coordination of the work of agencies and of courts. Whether the agency happens to be expert or not, a court should not act upon subject matter that is peculiarly within the agency's specialized field without taking into account what the agency has to offer, for otherwise parties who are subject to the agency's continuous regulation may become the victims of uncoordinated and conflicting requirements. 3 Davis Administrative Law § 1901, at 5 (Footnote omitted).

Where appropriate, the primary jurisdiction doctrine applies even in the absence of a specific statutory provision requiring it, as shown by the decision in *Andrew v. Louisville & Nashville R.R. Co.*, 406 U.S. 320 (1972). Commenting on *Andrews*, Professor Davis said:

... perhaps the case stands for the broad proposition that establishment of federal administrative machinery to take care of a class of controversies indicates legisla-

tive intent to require prior resort to that machinery, even though the legislative body said nothing about such prior resort. Davis Administrative Law, 1976 Supplement, § 19.03 at 428.

The legislative history of the Legal Services Corporation Act supports the view that Congress intended the Corporation to have primary jurisdiction to enforce compliance with the Act. The original legal services bill, S.1815, 93rd Cong. 1st Sess. (May 15, 1973) and H.R. 7824, Id., contained a provision that would have given private citizens the right to seek enforcement of the Act in federal court. The provision was deleted, and in the Senate debates it was specifically noted by Senator Nelson that "Any violation of the bill's restrictions [is] to be enforced by the Corporation." 120 Cong. Rec. 12923 (Daily Ed., July 18, 1974).

Support for application of the primary jurisdiction doctrine is found in the provisions of the Act itself. Section 1006(b) (1) gives the Corporation the authority, and Section 1007(d) gives it the obligation to enforce the Act. Moreover, the Act's restrictions are cast in terms that refer to the relation between the Corporation and a recipient: Section 1007(a) requires the Corporation to "insure" that certain restrictions are observed, and Section 1007(b) prohibits certain use of "funds made available by the Corporation." Both provisions support the view that an alleged violation of the Act is, at least in the first instance, a matter to be resolved by the Corporation.

Part 1618 is added to read as follows:

- Sec.
- 1618.1 Purpose.
- 1618.2 Definition.
- 1618.3 Complaints.
- 1618.4 Duties of Recipients.
- 1618.5 Duties of the Corporation.

**AUTHORITY:** Sections 1006(b) (1), 1006(b) (2), 1006(b) (5), 1007(d), 1008(e) (42 U.S.C. 2996e(b) (1), 2996e(b) (2), 2996e(b) (5), 2996f(d), 2996g(e)).

**§ 1618.1 Purpose.**

In order to insure uniform and consistent interpretation and application of the Act, and to prevent a question of whether the Act has been violated from becoming an ancillary issue in any case undertaken by a recipient, this Part establishes a systematic procedure for enforcing compliance with the Act.

**§ 1618.2 Definition.**

As used in this Part, "Act" means the Legal Services Corporation Act or the rules and regulations issued by the Corporation.

**§ 1618.3 Complaints.**

A complaint of a violation of the Act by a recipient or an employee may be made to the recipient, the State Advisory Council, or the Corporation.

**§ 1618.4 Duties of Recipients.**

A recipient shall:  
 (a) Advise its employees of their responsibilities under the Act; and  
 (b) Establish procedures, consistent with the notice and hearing require-

ments of Section 1011 of the Act, for determining whether an employee has violated a prohibition of the Act; and shall establish a policy for determining the appropriate sanction to be imposed for a violation, including:

- (1) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;
  - (2) Suspension and termination of employment; and
  - (3) Other sanctions appropriate for enforcement of the Act; but
- (c) Before suspending or terminating the employment of any person for violating a prohibition of the Act, a recipient shall consult the Corporation to insure that its interpretation of the Act is consistent with Corporation policy.

**§ 1618.5 Duties of the Corporation.**

(a) Whenever there is reason to believe that a recipient or an employee may have violated the Act, or failed to comply with a term of its Corporation grant or contract, the Corporation shall investigate the matter promptly and attempt to resolve it through informal consultation with the recipient.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the Act, or, after notice, has failed to take appropriate remedial or disciplinary action to insure compliance by its employees with the Act, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support of the recipient pursuant to the procedures set forth in Part 1612, or may take other action to enforce compliance with the Act.

Effective date: December 23, 1976.

THOMAS EHRLICH,  
 President,  
 Legal Services Corporation.

[FR Doc.76-34498 Filed 11-22-76; 8:45 am]

**PART 1620—PRIORITIES IN ALLOCATION OF RESOURCES**

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(a) (2) of the Act requires the Corporation to establish, *inter alia*, priorities to insure that persons least able to afford legal assistance are given preference in furnishing such assistance.

On June 11, 1976 (41 FR 23727) a proposed regulation on priorities was published as § 1611.8 of the proposed regulation on eligibility. Interested persons were given until July 12, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

COMMENT

Section 1007(a) (2) (C) of the Act requires the Corporation to "establish priorities to ensure that persons least able to afford legal assistance are given preference in the furnishing of such assistance." In one sense, it may be argued that the mandate of that Section would be fully satisfied by the Corporation's choice of a maximum income level close to the subsistence line, excluding those with higher incomes who also might be deemed "eligible clients" within the meaning of the statutory definition. But regardless of the maximum income level established, no legal services program will have sufficient resources to meet all the legal needs of the financially eligible population in the area it serves. Disciplinary Rule 7-106 of the ABA Code of Professional Responsibility prohibits lawyers from undertaking more cases than they can handle in a professional manner. Recognizing this, every program has found it necessary to control its caseload, but few have done so in a rational way that insures that the most urgent needs of clients are met. As long as the need to control caseload continues, it will be necessary for programs to establish priorities in the provision of legal assistance.

In Formal Opinion 334 (August 10, 1974), the ABA Committee on Ethics and Professional Responsibility said that

A governing board [of a legal services program] may legitimately exercise control by establishing priorities as to the categories or kinds of cases which the office will undertake \* \* \*. The subject matter priorities must be based on a consideration of the needs of the client community and the resources available to the program.

The procedure established by the proposed regulation follows the direction suggested by the ABA, and also harmonizes the statutory mandate to give preference to those least able to afford legal assistance with the provision immediately following, Section 1007(a) (3), that requires the Corporation to "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance." Section 1620.2 requires a recipient to enlist its clients, employees, and governing body in a focused inquiry designed to determine the community's most urgent legal needs, before establishing priorities. The approach is consistent with the one recommended to the Corporation by the Office of Management and Budget:

As in the case of medical treatment, the concept of *triage* must be applied—the relative need must be further defined in terms of resource availability and the distinction between emergency and deferrable legal matters. We believe it advisable for guidelines to be established which array the legal resources available and the worth (both social and economic) of the rights at issue. \* \* \* Only when resources are sufficient to meet all "needs" is the luxury of a policy which need not make such a distinction reasonable.

Among other factors that a recipient may deem relevant, the regulation requires that consideration be given to the

resources of the recipient, the size of the financially eligible population in the area served, the availability of another source of free or low-cost legal assistance in a particular category of cases or matters, the urgency of particular legal problems, and the general effect of the resolution of a particular category of cases or matters on persons least able to afford legal assistance in the community served. To the extent that the priorities chosen by a program give preference to the legal problems of the poor *qua* poor, they may promote more economical and effective legal services by directing resources to problems that are likely to be encountered by numerous members of the community, and may be capable of solution by a unified approach.

There are a variety of methods by which a program might choose to implement its priorities. It might determine to give no assistance at all in certain categories of cases, or to give advice and consultation without engaging in litigation, or to limit litigation to the trial level. It might establish different income eligibility standards for different categories of cases. For example, if a recipient determined that divorce representation could be obtained from the private Bar for a low fee, it might limit its representation in divorce cases to only the poorest clients. Another means of enforcing priorities is through educational efforts to inform the client community of the availability of a legal remedy in a particular category of problems. Priorities should not be enforced in a manner that would prevent the recipient from providing legal assistance in an emergency when the interest of justice so required, or providing appropriate legal assistance in response to unexpected or changed circumstances.

Part 1620 is added as follows.

Sec.  
1620.1 Purpose.  
1620.2 Procedure.

AUTHORITY: Sec. 1007(a)(2); 42 U.S.C. 2996 (a)(2).

§ 1620.1 Purpose.

This Part is designed to insure that a recipient will allocate its resources in an economical and effective manner.

§ 1620.2 Procedure.

(a) A recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedures adopted shall insure participation by clients and employees of the recipient, and shall provide opportunity for comment by interested members of the public. Priorities shall be reviewed periodically.

(b) The following factors shall be among those considered in establishing priorities:

- (1) The resources of the recipient;
- (2) The population of eligible clients in the geographic area served by the recipient;
- (3) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;
- (4) The urgency of particular legal

problems of the clients of the recipient; and

(5) The general effect of the resolution of a particular category of cases or matters on persons least able to afford legal assistance in the community served.

Effective date. December 23, 1976.

THOMAS EHRLICH,  
President,  
Legal Services Corporation.

[FR Doc. 76-34499 Filed 11-22-76; 8:45 am]

Title 47—Telecommunication

[FCC 76-1034]

CHAPTER I—FEDERAL  
COMMUNICATIONS COMMISSION

PART 0—COMMISSION ORGANIZATION

Order

Adopted: November 9, 1976.

Released: November 17, 1976.

By the Commission:

In the Matter of Amendment of § 0.465 Rules and Regulations.

1. A number of data bases are maintained on the Commission's computer. Copies of these data bases, and extracts therefrom, are available to the public in a variety of forms from the National Technical Information Service, Department of Commerce, and the Commission's duplicating contractor. Computer source programs and associated documentation produced by the Commission is available directly from the Data Automation Division, Office of Executive Director. It is appropriate for information concerning the availability of such data bases and where and how to obtain them to be set out in the Freedom of Information Rules. We are therefore amending those rules to provide this information.

2. Accordingly, it is ordered, effective November 29, 1976, that § 0.465 of the Rules and Regulations is amended as set out in the Appendix hereto. Authority for this amendment is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and in 5 U.S.C. 552. Because the amendment is purely informational in nature, compliance with the prior notice and effective date requirements of 5 U.S.C. 553 is unnecessary.

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

FEDERAL COMMUNICATIONS  
COMMISSION,  
VINCENT MULLINS,  
Secretary.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is revised as follows:

In § 0.465, paragraph (a) is revised and paragraph (d) is added to read as follows:

§ 0.465 Request for copies of materials which are available, for public inspection.

(a) The Commission annually awards a contract to a commercial firm to make copies of Commission records and offer

them for sale to the public. The contract is awarded on the basis of the lower cost to the public. The charges are 8.5 cents a page for 8½" x 11" pages and 9 cents a page for 8½" x 14" pages. Currently, the contractor is Downtown Copy Center, 1730 K Street N.W., Washington, D.C. 20006 (Tel: 202-452-1422). Except as provided in paragraphs (b), (c) and (d) of this section and in § 0.467, requests for copies of the records listed in §§ 0.453 and 0.455 and those made available for inspection under § 0.461, should be directed to the contractor.

(d) (1) Copies of computer maintained data bases produced by the Commission may be obtained from the National Technical Information Service (NTIS), Department of Commerce, in the form of computer tapes, cards and paper printouts, or as microfiche. Extracts from such data bases requiring a computer run may also be obtained from NTIS. These materials are not available directly from the Commission. Data bases produced by the Commission are listed in "Directory of Computerized Data Files, Software—and Related Technical Reports" (NTIS/SR-75-02), which may be obtained from NTIS. Extracts from this volume pertaining to the Commission are available, without charge, from the Commission's Consumer Assistance Office and the Public Information Officer. The materials describe the data base, state the fee for providing it, and specify ordering information.

(2) Copies of computer generated data stored as paper printouts or on microfiche may also be obtained from the Commission's duplicating contractor (see paragraph (a) of this section).

(3) Copies of computer source programs and associated documentation produced by the Commission may be obtained from the Data Automation Division, Office of the Executive Director. Requests shall be limited to computer source programs and associated documentation in existence when the request is submitted; requests which require the Commission to produce unique computer programs, data bases, and documentation, which are not part of its inventory at the time of the request, will not be honored. Likewise, periodic updates of these materials, as they occur, will not be furnished.

[FR Doc. 76-34572 Filed 11-22-76; 8:45 am]

[Docket No. 20895]

PART 73—RADIO BROADCAST SERVICES  
Report and Order (Proceeding Terminated)

Adopted: November 15, 1976.

Released: November 16, 1976.

By the Chief, Broadcast Bureau:

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Douglas, Wyoming)

1. The Commission herein considers the Notice of Proposed Rule Making, 41 FR 36220, in the above-captioned proceeding which was instituted on the Commission's own motion. The Notice proposed the substitution of Channel 257A for Channel 221A at Douglas, Wyo-

ming, in order to eliminate a short-spacing situation. No oppositions were filed.

2. Douglas (pop. 2,677), seat of Converse County (pop. 5,938)<sup>1</sup>, is located approximately 113 kilometers (70 miles) east of Casper, Wyoming. Channel 221A, the only FM assignment in Douglas, is unoccupied, and no application for its use has been filed.

3. Recently the University of Wyoming was granted a construction permit to change the operation of its Station KUWR(FM), Laramie, Wyoming, from Channel 218 to Channel 220 and to increase its power. However, this created an 8 kilometer (5 miles) short-spacing between the proposed site of Station KUWR(FM) and Channel 221A at Douglas, Wyoming.

4. The Commission believes that the substitution of Channel 257A for Channel 221A at Douglas, Wyoming would serve the public interest by removing the short-spacing problem. No existing station would be affected by the substitution.

5. Authority for the adoption of the amendment contained herein appears in sections 4(i), 5(d)(1), 303 and 307(b) of the Communications Act of 1934, as amended, and in section 0.281 of the Commission's Rules and Regulations.

6. In view of the foregoing, *It is ordered*, That effective December 29, 1976, section 73.202(b) of the Commission's Rules, the FM Table of Assignments, is amended regarding the listed community to read as follows:

City  
Douglas, Wyoming----- Channel No.  
257A

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

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 47 U.S.C. 154, 155, 303.)

FEDERAL COMMUNICATIONS  
COMMISSION,  
WALLACE E. JOHNSON,  
Chief, Broadcast Bureau.

[FR Doc.76-34570 Filed 11-22-76;8:45 am]

Title 50—Wildlife and Fisheries

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

Subchapter B—Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

Subchapter C—Marine Mammals

PART 222—ENDANGERED FISH OR WILDLIFE

Hawaiian Monk Seal Final Regulations Final Regulations

The Director, National Marine Fisheries Service and the Director, U.S. Fish

<sup>1</sup> Populations are taken from the 1970 U.S. Census.

and Wildlife Service hereby issue a notice of final rulemaking listing the Hawaiian monk seal (*Monachus schauinslandi*) as an endangered species throughout its range, pursuant to section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (hereinafter the "Act"). This final rulemaking adds the Hawaiian monk seal to the List of Endangered and Threatened Wildlife found in 50 CFR 17.11 and references such listing in 50 CFR 222.23. This listing is based on a final determination by the Director, National Marine Fisheries Service (hereinafter the "Director" and the "NMFS," respectively), that the Hawaiian monk seal is an endangered species. The Hawaiian monk seal is found throughout the Hawaiian Archipelago, but is known to breed only on the islands of the Leeward Chain, including French Frigate Shoals, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Atoll.

BACKGROUND

Notice of the proposed determination to list this species as an "endangered" species was published on August 11, 1976, at 41 FR 33922-33924.

SUMMARY OF COMMENTS

The several comments received were unanimous in supporting the NMFS/FWS proposal to list the Hawaiian monk seal as an endangered species. The Governor of Hawaii indicated that the State had no objection to the proposal and conveyed their belief that "listing of the Hawaiian monk seal as an endangered species throughout its range in the Northwestern Hawaiian Islands will assure that its management will focus on perpetuating a viable population."

One organization commenting on the proposal is particularly concerned over the future of the Hawaiian Islands National Wildlife Refuge and the dependence of the Hawaiian monk seal on this area. Other commenting individuals urged that critical habitat of the seal be protected, although no new specific habitat information or requests were submitted. No requests for a public hearing were received.

MODIFICATION OF PROPOSED REGULATIONS

Since only support with no substantive changes (except one comment pertaining to harassment by dogs) was received on the proposal, the proposed regulations are being adopted as the final regulations without change. Subsequent to the publication of the proposed regulations, all dogs were removed from Kure Atoll.

Since no new information was submitted on specific habitat and since no requests were made to designate specific habitat, no critical habitat designations for the Hawaiian monk seal are being proposed at this time.

EFFECT OF FINAL REGULATIONS

The general prohibitions of section 9(a) of the Act apply to all endangered species of fish and wildlife. Therefore, with respect to any Hawaiian monk seal (including any part or product thereof),

it is unlawful for any person subject to the jurisdiction of the United States to:

(1) Import any such species into, or export any such species from, the United States;

(2) Take any such species within the United States or the territorial sea of the United States;

(3) Take any such species upon the high seas;

(4) Possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of (2) and (3) above;

(5) Deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(6) Sell or offer for sale in interstate or foreign commerce any such species; or

(7) Violate any regulation pertaining to such species and promulgated by the Secretary pursuant to authority provided by the Act.

The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

There are certain limited exceptions to these general prohibitions including a grandfather clause for species held in captivity or a controlled environment on December 28, 1973, and not for commercial purposes (section 9(b) of the Act); a one-year limited exemption to minimize undue economic hardship tied to a previous contract commitment (section 10(b) of the Act); and permits for scientific purposes or enhancement of propagation or survival of the species (section 10(a) of the Act).

In addition, NMFS regulations published in Parts 217-222 and Part 225 of Title 50 of the Code of Federal Regulations, set forth rules and procedures which apply to all endangered species under the jurisdiction of the Secretary of Commerce. These regulations provide for general provisions, civil procedures, seizure and forfeiture procedures, importation and exportation at designated ports, general and specific permit provisions, and Federal/State cooperation and financial assistance. These regulations are now applicable, of course, to the Hawaiian monk seal.

INTERAGENCY COOPERATION

This listing also makes available the protection afforded by section 7 of the Act. That section reads as follows:

"Section 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall in consultation with and with the assist-

ance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical."

While no "critical habitat" has yet been designated by NMFS for the Hawaiian monk seal, the other provisions of section 7 are applicable.

These regulations are effective on December 23, 1976.

This notice of final rulemaking is issued under the authority of the Endan-

gered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: November 15, 1976.

JACK W. GEHRINGER,  
Deputy Director, National  
Marine Fisheries Service.

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

#### PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is amended by adding to § 17.11(i) under the class entitled "Mammals" and immediately before "Seal, Mediterranean Monk" the following:

#### § 17.11 Endangered and threatened wildlife.

Species			Range				
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered	Status	When listed	Special rules
Seal, Hawaiian monk.	<i>Monachus schauinslandi</i> .	NA	Hawaiian Archipelago.	Entire.....	E	16	NA

17-41 FR 51612; November 23, 1976.

#### PART 222—ENDANGERED FISH OR WILDLIFE

##### § 222.23 [Amended]

In addition, § 222.23(a) of Subpart C, Part 222 of Chapter II, Title 50 of the Code of Federal Regulations is amended by adding "Hawaiian monk seal (*Monachus schauinslandi*)" immediately before "Mediterranean monk seal (*Monachus monachus*)" in the second sentence.

[FR Doc.76-34590 Filed 11-22-76;8:45 am]

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

#### PART 20—MIGRATORY BIRD HUNTING

Open Seasons, Bag Limits, and Possession of Certain Migratory Game Birds in the United States; Correction

In FR Doc. 76-27463 appearing at page 43163 in the FEDERAL REGISTER of Sep-

tember 30, 1976, the following correction is made in order to reflect the State of Oregon's intent and to bring Federal and State regulations into agreement:

##### § 209.105(f) [Amended]

In section 20.105(f), in the table on page 43174, under Oregon, in Baker and Malheur Counties, the season dates on the same line as "Ducks" are corrected to read "October 9-January 16." The remainder of the table remains unchanged.

Dated: November 18, 1976.

JAMES W. PULLIAM, JR.,  
Acting Director,  
U.S. Fish and Wildlife Service.

[FR Doc.76-34552 Filed 11-22-76;8:45 am]