

§ 17.41 Special rules—birds.

(a) Streaked horned lark (*Eremophila alpestris strigata*).

(1) *Which populations of the streaked horned lark are covered by this special rule?* The components of this special rule that apply to airport management and noxious weed control cover the rangewide distribution of this bird; the agricultural component applies only to the Willamette Valley in Oregon.

(2) *What activities are prohibited?* Except as noted in paragraphs (a)(3), (4), and (5) of this section, all prohibitions of § 17.31 apply to the streaked horned lark.

(3) *What activities are allowed on airports on non-Federal lands?* (i) Incidental take of the streaked horned lark will not be a violation of section 9 of the Act, if the incidental take results from routine management activities associated with airport operations to minimize hazardous wildlife, consistent with regulations at 14 CFR 139.337. (ii) Hazardous wildlife is defined by the Federal Aviation Administration as species of wildlife, including feral animals and domesticated animals not under control, that are associated with aircraft strike problems, are capable of causing structural damage to airport facilities, or act as attractants to other wildlife that pose a strike hazard. Routine management activities include, but are not limited to, the following:

(A) Routine management, repair, and maintenance of roads and runways (does not include upgrades or construction of new roads or runways);

(B) Control and management of vegetation (grass, weeds, shrubs, and trees) through mowing, discing, herbicide application, or burning;

(C) Hazing of hazardous wildlife; and

(D) Habitat modification and management of sources of forage, water, and shelter to reduce the attractiveness of the area around the airport for hazardous wildlife.

(iii) Incidental take of larks caused by accidental aircraft strikes at airports on non-Federal lands is also exempted from the prohibitions of section 9 of the Act.

(4) *What agricultural activities are allowed on non-Federal land in the Willamette Valley in Oregon?* Incidental take of streaked horned lark will not be a violation of section 9 of the Act, if the incidental take results from accepted agricultural (farming) practices implemented on farms consistent with State laws on non-Federal lands. (i) For the purposes of this special rule, farm means any facility, including land, buildings, watercourses and appurtenances, used in the commercial production of crops, nursery stock, livestock, poultry, livestock products, poultry products, vermiculture products, or the propagation and raising of nursery stock. (ii) For the purposes of this special rule, an agricultural (farming) practice means a mode of operation on a farm that:

(A) Is or may be used on a farm of a similar nature;

(B) Is a generally accepted, reasonable, and prudent method for the operation of the farm to obtain a profit in money;

(C) Is or may become a generally accepted, reasonable, and prudent method in conjunction with farm use;

(D) Complies with applicable State laws; and
(E) Is done in a reasonable and prudent manner.

(iii) Accepted agricultural (farming) practices include, but are not limited to, the following activities:

(A) Planting, harvesting, rotation, mowing, tilling, discing, burning, and herbicide application to crops;

(B) Normal transportation activities, and repair and maintenance of unimproved farm roads (this exemption does not include improvement or construction of new roads) and graveled margins of rural roads;

(C) Livestock grazing according to normally acceptable and established levels;

(D) Hazing of geese or predators; and

(E) Maintenance of irrigation and drainage systems.

(5) *What noxious weed control activities are allowed on non-Federal lands?* Incidental take of streaked horned lark will not be a violation of section 9 of the Act, if the incidental take results from routine removal or other management of noxious weeds. Routine removal or other management of noxious weeds are limited to the following, and must be conducted in such a way that impacts to non-target plants are avoided to the maximum extent practicable:

(i) Mowing;

(ii) Herbicide and fungicide application;

(iii) Fumigation; and

(iv) Burning.