

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 114.517	Exemptions	11/17/04	4/11/05 [Insert FR page number where document begins].	
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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Parts 13 and 21**

**RIN 1018-AC57**

**Revisions to General Permit Procedures**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the U.S. Fish and Wildlife Service's permit application fee schedule for permits issued by the Divisions of Migratory Bird Management, Endangered Species, Law Enforcement, and Management Authority. The rule also clarifies several aspects of Service permit application procedures, and updates permit-related Service addresses. Additionally, the rule extends the tenure of two types of migratory bird permits.

**DATES:** This rule goes into effect on May 11, 2005.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours, in the office of the Division of Migratory Bird Management, U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; MBSP-4107; Arlington, Virginia 22203-1610.

**FOR FURTHER INFORMATION CONTACT:** Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703/358-1714.

**SUPPLEMENTARY INFORMATION:**

**Background**

In implementing its responsibilities under the Endangered Species Act of 1973, as amended (ESA), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle

Protection Act (BGEPA), and other wildlife laws, the U.S. Fish and Wildlife Service issues permits, licenses, and certificates that authorize the holders to engage in certain wildlife-related activities that are regulated by international treaty or laws of the United States. The Service charges user fees to offset the cost of processing applications for these permits, licenses, and certificates, as well as the cost of monitoring and maintaining active permit files.

The general statutory authority to charge fees for processing applications for permits and certificates is found in 31 U.S.C. 9701, which states that services provided by Federal agencies are to be "self-sustaining to the extent possible." The authority to charge fees is also found under various wildlife laws. Specifically, the ESA, 16 U.S.C. 1540(f), authorizes the Secretary to "charge reasonable fees for expenses to the Government connected with permits or certificates authorized by [the ESA] including processing applications." The Marine Mammal Protection Act (MMPA), 16 U.S.C. 1374(g), also provides that the "Secretary shall establish and charge a reasonable fee for permits" issued under the MMPA.

Federal user fee policy, as stated in Office of Management and Budget (OMB) Circular No. A-25, requires Federal agencies to recoup the costs of "special services" that provide benefits to identifiable recipients. Permits are special services, authorizing identifiable recipients to engage in activities not otherwise authorized for the general public. Some of the Service's programs that issue permits receive little or no designated budget appropriations specifically for permitting activities. Others receive some funding, but such funding is part of the overall program budget and is not enough to completely cover the permitting activity costs. Our ability to effectively provide these special services depends in large part on user fees. As a result, we have revised the standard permit application fee, designated under title 50 of the Code of

Federal Regulations (CFR) at § 13.11(d)(4), which has not been revised since 1982, in order to recoup more of the costs associated with providing permitting services. [For additional discussion of why the Service must raise the current application fees, please refer to the proposed rule (68 FR 51222, published on August 26, 2003).]

While the fee revisions promulgated by this rule will help the Service to recover a greater portion of the cost of administering permits, the increases are not sufficient to cover the total cost of our permit programs (much less defray other program costs). The new fee structure is a compromise between recouping the entire cost of providing these special services and the need to establish a fee schedule that will not unduly burden individual applicants.

**Summary of Comments and Recommendations**

During the comment period, which was open from August 26 through October 10, 2003, the Service received a total of 273 comments. Thirteen of these comments were in agreement with raising application fees and did not raise any specific concerns. Eighty-six comments were in general disagreement with raising fees, but also did not raise any specific concerns beyond objecting to the concept of raising fees. Two comments addressed issues that were outside the scope of the proposed rule and therefore will not be addressed here (these comments will be passed on to the relevant Service office for further consideration). The remaining issues raised by the commenters, and our responses to each, are summarized below.

*Issue 1:* We received three comments recommending that tribal entities and Native Americans be exempted from application fees. The proposed rule would have waived permit application fees only for Federal and State agencies and their agents, and for permits for Indian religious use. Generally, these commenters requested that the fee waiver be expanded to include all

activities conducted by Native Americans or by tribal governments. Another commenter questioned exempting tribal members from fees for applications involving religious activities. This commenter did not see such an exemption as being fair to other Americans who could not claim such an exemption.

*Response:* We agree that fees should be waived for tribal governments, and have revised the final rule at § 13.11(d)(3) to expand the fee waiver to tribal governments. However, the Service does not agree that exempting all tribal members from all application fees is justified. While we support, as indicated in the proposed rule, a fee exemption for tribal members who are engaged in religious activities, we do not believe that tribal members who request permits for secular or commercial activities should be exempt from paying the application fees. The basis for exempting tribal members from paying application fees for permits for religious use is the American Indian Religious Freedom Act of 1978 and the Service's Federal Trust responsibilities toward Native American tribes. Therefore, for example, we will not charge a fee for Native American religious eagle permits or Native American religious purposes—eagle transport permits. As we explained in the proposed rule, fees also may be waived on a case-by-case basis for extraordinary extenuating circumstances provided that the issuing permit office and a Regional or Assistant Director approve the waiver.

*Issue 2:* Twenty-five comments were received about the need to improve the permitting process as a way to reduce the cost of running the permitting programs and, thus, require lower fees from applicants.

*Response:* The Service agrees that we need to continue improving the permitting process to ensure that it is effective and responsive to user needs. All of the Divisions that issue permits are involved in such efforts. While it is true that making the permitting process more effective and efficient should reduce some costs of the programs, it will not eliminate the need for application fees. In addition, since it has been so long since the fees were raised, the increased fees are needed to give the Service critical resources that will help us to improve the efficiency of the programs. As stated in the proposed rule, the Service will periodically re-evaluate the application fees to determine if changes are warranted.

*Issue 3:* We received 18 comments regarding the financial difficulty migratory bird rehabilitators will face in

paying a fee for the permit necessary to carry out their work. There was a general agreement among these commenters that rehabilitators spend a large amount of their own financial resources to rehabilitate injured migratory birds and as such should not be required to pay an application fee.

*Response:* The Service recognizes that migratory bird rehabilitators provide care to injured and sick birds and help to increase public awareness about wildlife. Nevertheless, the Service incurs substantial costs when processing applications for these permits. As stated in the proposed rule, the \$50 application fee would be for permits that are valid for 5 years. This means that the annual cost for obtaining a migratory bird rehabilitation permit is only \$10/year. The Service does not consider such a fee to be a significant economic burden for permit applicants.

*Issue 4:* One commenter questioned the Service's commitment to scientific research, and raised concerns about application fees for scientific research and collection permits being too high and, as such, having an adverse effect on the ability of researchers to carry out their work. The commenter believes there is a disparity between the application fee for scientific collecting permits and the fee for other permitted activities, such as rehabilitation permits or scientific research import permits under the Wild Bird Conservation Act (WBCA). The same commenter noted that migratory bird scientific collecting permits are not always issued for the full 3-year tenure authorized by regulations at 50 CFR 21.23, which provide that "the term of the permit shall not exceed three (3) years." The commenter felt that the proposed fees would be more acceptable if the permit tenure was lengthened.

*Response:* The Service is committed to promoting scientific research and facilitating the authorization of such activities. The Service also understands that researchers, particularly graduate students, may be constrained by budgetary issues and that application fees are one issue they face. However, the Service does not agree that the proposed application fees are too high or that implementing such fees would result in less research being carried out. As stated in the proposed rule, the Service will strive to combine permitting authorization to eliminate the need to submit multiple applications to cover all aspects of a researcher's work. By combining the permitting authority, the applicant would need to submit only one application (and only one fee) to request the required authorization to carry out

their work. For instance, an applicant conducting research on eagles and migratory birds and importing or exporting specimens may obtain a single permit under the MBTA, BGEPA, and CITES. With regard to the apparent disparity between the cost of different applications, it is important to realize that the time and resources necessary to process different types of applications vary. As a rule, applications that involve take of healthy wildlife (as opposed to sick and injured wildlife) from the wild require more extensive review. The workload associated with the review is not necessarily less if the duration of the proposed project is less than 3 years. Rather, the processing workload is determined by the species, quantity, and status of the species. Given the different levels of review required for different types of applications and the varying issuance criteria under different laws, the application fees for different applications must vary.

As far as permit tenure for migratory bird scientific collecting permits, many of these permits are issued for less than 3 years, for a variety of reasons. First, if an applicant proposes a project lasting only 1 or 2 years, the permit may be issued for less than 3 years. Second, new permits (as opposed to renewals) often will be issued for less than 3 years because our policy has been to coordinate scientific collecting permits to expire on the same date in a given year. This facilitates our administration by enabling us to generate permit renewal notices and renewed permits in large batches. In January 2003, we shifted the expiration date for scientific collecting permits from December 31 to March 31 to create a smoother renewal process for permittees and us. The shift benefits permittees by enabling them to submit their renewal request with their annual report, which is due January 31 of the year following conduct of the activities. Further, it benefits the permittee by better ensuring that we will have received the permittee's renewal request 30 days before expiration of the permit, which enables the permittee to continue to conduct permitted activities if the permit expires before the Service acts on the renewal. However, as a result of this fixed expiration date, the tenure of new permits will rarely be for a full 3 years (unless the permit was issued on or around March 31). Finally, scientific collecting permits are occasionally issued for less than 3 years because of biological concerns or uncertainties regarding the species to be taken, but these instances are rare.

For projects that are not already limited to less than 3 years because of

the duration of the proposed scientific research project, and which are not limited by biological concerns, we will consider revising our procedures so that these permits can be valid for the full 3-year tenure authorized by regulation. We will also consider amending the scientific collecting permit regulation to extend the authorized permit tenure for collecting permits. However, since we did not propose extending the tenure of scientific collecting permits in our proposed rulemaking, we cannot amend the regulation by including it here in a final rulemaking. We intend to revise migratory bird scientific collecting regulations in the near future, and we will consider this option during the course of that rulemaking process.

*Issue 5:* Forty-six commenters expressed concern that the increase in fees, particularly application fees for CITES re-export certificates, was too high and would adversely impact small businesses. The primary concern expressed by these commenters was the slim profit margin under which their businesses operate, such that any increase in application fees could adversely affect their business.

*Response:* The Service is keenly aware that some businesses based on the utilization of wildlife may run on a very low profit margin. We recognize that if the overall cost of conducting business is significantly increased due to the application fee rising, there may be a negative impact on the business. This may be particularly true when requesting authorization to re-export a limited number of CITES listed species. For example, if a proposed re-export shipment of two snakes going to Japan is valued at only \$300, an application fee of \$75, one quarter of the shipment's value, may appear high. While the fee increase is not intended to restrict or eliminate the sustainable utilization of wildlife, it may have an economic effect on small shipments or transactions. However, as stated in the proposed rule, the Service must expend time and resources to review and process applications. In the case of businesses applying to conduct activities that are otherwise prohibited by law, the permits authorizing such activities are special use permits, and the burden for addressing such requests falls on the applicant and his/her customers, not the general public. It may be necessary for some businesses to readdress how they are conducting their activities to ensure that the most productive and efficient procedures are being used. While the Service understands that the increased fees may impact some businesses, we must raise the fees to ensure that we can

adequately address our responsibilities under the various regulations and laws.

*Issue 6:* Three commenters raised the point that local governments carry out similar activities as State and Federal agencies with regard to wildlife conservation and management. It was their opinion that the fee exemption should be extended to local government agencies as well.

*Response:* The Service agrees that local governments should also be exempt from the requirement to pay application fees for Service permits. Accordingly, we have revised the final rule at § 13.11(d)(3) to extend the fee waiver to local governments, as well as tribal governments, and individuals and institutions acting on behalf of a Federal, tribal, State, or local government agency.

*Issue 7:* Four commenters suggested that the application fees for migratory bird depredation permits not be raised. These commenters were concerned that the public would have to pay \$50 or \$100 to address the problem of property damage caused by migratory birds, and that it would be inappropriate to require homeowners and businesses to pay more than the current \$25 application fee to process requests for depredation permits, particularly given the amount of time it sometimes takes to obtain this type of permit.

*Response:* The final rule continues to require a \$50 application fee for homeowner depredation permits and a \$100 application fee for other depredation permits. We have not revised this fee from the proposed rule because these permits are among the most complex to process due to the extra level of scrutiny that we are required to undertake when issuing permits that would authorize taking birds—sometimes lethally—from the wild. Even though this fee is one of the lowest of all the permit application fees the Service will charge, the increased fees will help the Migratory Bird Program to more quickly and efficiently issue these and other types of permits.

*Issue 8:* One commenter stated that the application fee for ESA enhancement-of-survival permits for landowners entering into Safe Harbor Agreements (SHAs) and Candidate Conservation Agreements with Assurances (CCAAs) should not be raised to \$50. The commenter expressed an opinion that no fee should be charged since the landowners are entering into a voluntary agreement with the Service that helps “the Service achieve its objectives and legal responsibilities under the ESA.” As such, the commenter called for the application fee to be rescinded in order

to encourage more landowners to enter into CCAAs and SHAs.

*Response:* While we recognize and appreciate the important conservation work that private landowners perform on their land, we incur substantial cost when processing enhancement-of-survival permit applications for CCAAs and SHAs. These agreements provide important benefits to listed and unlisted species, while the participating non-Federal landowner benefits by receiving assurances and allowances for future take. The \$50 application fee applies to permits that are valid for differing lengths of time, from 10 years and up to 50 or more years in some cases. We do not believe this fee is a significant economic burden to permit applicants, especially when averaged over the lifetime of the permit, or that the fee will be a disincentive to landowners. Additionally, private landowners may enter into an “umbrella” or programmatic agreement where a nongovernment organization, State agency, or other entity applies for and holds the permit under which they enroll private landowners through a Certificate of Inclusion. In these cases, the private landowner would not incur any application fee.

*Issue 9:* A single commenter raised the point that, instead of raising the application fees for ESA permits, the Service should charge a fee for “Section 7 consultations conducted by the Service, or for subsequent permits that are issued to a developer or project proponent” who would be more economically able to bear the financial costs.

*Response:* This final rule increases the fees for ESA incidental take permits associated with Habitat Conservation Plans, as well as the fees for recovery permits. Section 7 consultations are conducted on those projects that are authorized, funded, or carried out by Federal agencies. Congress has not given the Service authority to collect fees from other Federal agencies or their applicants to conduct section 7 consultations.

*Issue 10:* A large number of commenters (97) commented on the cost of applying for falconry permits and how the program was being managed. A majority of these commenters specifically referred to an issue recently raised at an International Association of Fish and Wildlife Agencies (IAFWA) meeting. IAFWA called on the Service to transfer the Federal permitting responsibility of falconry to State agencies, thus consolidating the permitting requirements in one agency (the State), as opposed to two (State and Federal). Most of those commenting on

falconry permit application fees felt the proposed fee was too high, particularly given the current regulations requiring the renewal of a falconer's Federal permit at the same time State permits are renewed. Some States require renewal annually, while others require renewal every 2 or 3 years. The commenters pointed out that if the cost of a Federal falconry permit is \$100 each time it is renewed, in a 3-year period, falconers who need to renew annually would pay \$300, while others who have to renew only every 3 years would pay only \$100.

*Response:* We recognize that the Federal renewal process for falconers who live in States with regulations that require renewal of falconry permits every year or every 2 years may create an additional burden that other falconers may not face. However, in addition to creating more work and expense for the falconer, both the 1-year and 2-year renewal requirements result in increased workload and staffing demands for the Service. The Service's costs associated with processing these renewals do not decrease because the permit tenure is shorter—the workload entailed in processing these renewals remains the same regardless of how frequently we are required to undertake it because of a State's regulations. Therefore, we believe that a fee of \$100 for Federal falconry permits and renewals, no matter in which State the applicant/falconer resides, is both necessary and appropriate.

While the IAFWA proposal to consolidate falconry permitting may have merit, it exceeds the scope of the present rulemaking. We believe that this rule is not the appropriate venue for considering this option. To this end, a proposed rule addressing this specific issue was published on February 9, 2005 (70 FR 6978).

*Issue 11:* One commenter expressed confusion regarding the fee that would be charged for the importation of non-native threatened or endangered sport-hunted trophies. This commenter thought that the narrative did not clearly explain how this fee would be applied.

*Response:* The application fee for a permit to import a non-native threatened or endangered sport-hunted trophy will be \$100. No additional fees would be charged in relation to CITES requirements. If the permit needs to be renewed due to a delay in importing the specimen, we will charge a \$50 fee to reissue the permit.

*Issue 12:* One commenter questioned whether some of the policies addressed in the proposed rule, such as "Renewals and Amendments," merely codify

existing Service policies or if they are actually new policies that are being presented for the first time. The commenter requested that the Service clearly indicate which of these issues are clarifications and which are new policies.

*Response:* Most of the issues raised in the proposed rule are merely clarifications of procedures currently used by the Service. Since some issues, such as when a request is for a renewal versus when a request is for a new permit, have not been codified, doing so in this rule was important to ensure that the Service is being consistent across programs and to provide the public with clear guidance.

*Issue 13:* One commenter was concerned about the proposed amendment to § 13.42, which states that a permit is specific to a particular activity and that permittees are subject to appropriate conditions placed on the permit. The commenter was particularly concerned that the proposed language for § 13.42 would give the Director the discretion to establish specific conditions for the issuance of permits, giving the Director the ability to treat different applicants disparately and inviting arbitrariness into the permit issuance system.

*Response:* The proposed language for § 13.42 is intended to clarify the existing regulatory language, not to change the criteria the Service uses to issue permits. The new language was proposed for § 13.42 to reiterate that a permittee may have specific conditions placed on the permit that affect when, how, where, and to what extent the permitted activity can be carried out. Such specific conditions are needed to allow the Service to tailor individual permit authorizations to the applicant's particular qualifications, and to ensure the continued conservation of the affected species. Without the ability to refine permit conditions, all permittees would have identical permit authorizations, no matter what experience, facilities, or other qualifications they possess, and without regard for the unique conservation needs of the affected species.

After further review of the proposed changes to § 13.42, we realized that the language was somewhat redundant to language already codified in § 13.21(e)(1). We have therefore taken the first two sentences of the proposed language for § 13.42 and amended § 13.21(e)(1) to contain this language. This administrative change was made to eliminate duplicating language and to make the regulations easier to understand.

The concept that permits are specifically issued for a particular activity is not a new idea, and the new language only clarifies the current section. This new language in no way alters or affects how the Service can issue or deny a permit request. The issuance of every permit must conform to the general issuance criteria for that permit type. These criteria are established in separate regulations addressing permit authorization for that type of activity (e.g., falconry or captive breeding for endangered species).

#### Revised Fee Language

After reviewing the comments we received, the Service believes that the majority of the proposed changes to § 13.11 are acceptable and should be implemented. However, as mentioned above in "Summary of Comments and Recommendations," we have made a few revisions to this final rule from what we proposed originally.

#### Changes in CITES Permits and the Corresponding Fee Changes

With the implementation of new CITES Resolutions and in an ongoing effort to improve the efficiency of the permitting process, the Division of Management Authority has implemented certain internal changes to the permit procedures. The Service announced some of these new procedures in a previous **Federal Register** proposed rule (65 FR 26664; May 8, 2000). Other procedural changes were outlined in the proposed rule to this final rule. The procedural changes that were previously addressed were presented in the proposed rule to this final rule for information purposes and to explain why some additional fees were required. They were not proposed for codification.

#### Combining Permit Authorizations

As stated in the proposed rule, when applicants need more than one type of permit to cover their proposed activities (e.g., for the export of a bird covered by both CITES and the MBTA, or the take from the wild of a bird covered by both the ESA and MBTA), the Service may issue a consolidated permit combining the multiple authorizations. We received no comments on this issue and will retain the language presented in the proposed rule.

#### Renewals and Amendments

To ensure consistency, the Service is taking this opportunity to clarify its position on permit renewals and amendments. As stated in the proposed rule, applications to renew a permit when the tenure of a permit is expiring

or has expired are effectively new permit applications. Therefore, all applicable fees will be assessed. For most permit types, the Service will assess a fee for amendments to a valid permit where the amendment reflects a substantive change within the scope of the permit. We will not charge permittees for administrative changes to valid permits, such as address and telephone number changes. The amount for an amendment is identified in the fee schedule. If there is no fee next to the permitted activity you wish to amend, this indicates either that your particular permit cannot be amended and a new application would need to be submitted or that no fee would be charged for amending the permit (you would need to contact the issuing office to determine which situation applies). For further discussion on this issue, please see the proposed rule at 68 FR 51222.

### Waivers

Currently, § 13.11(d)(3) provides for a waiver of permit fees for "any Federal, State or local government agency, [or] to any individual or institution under contract to such agency for the proposed activities." In the proposed rule, we suggested limiting the fee waiver for public institutions to Federal and State governmental agencies and to individuals or institutions under contract to such agencies. We also stated that fees could be waived on a case-by-case basis for extraordinary extenuating circumstances provided that the issuing permit office and a Regional or Assistant Director approves the waiver. However, after reviewing comments stating that we should waive fees for applications from both local and tribal governments, we agree that the fee waiver should include these entities. (See discussion under Issues 1 and 6, above.) In addition, we have altered the language to identify that individuals or institutions "acting on behalf of" any Federal, tribal, State, or local government agency would be exempt from application fees. We have amended the proposed language in § 13.11(d)(3) to reflect these changes.

### Additional Revisions

In the proposed rule, we proposed several administrative changes to § 13.3, "Scope of regulations"; § 13.11(b) regarding Service addresses; and § 13.11(c), regarding the time required to process some requests. We received no comments regarding these administrative changes, and because they will improve the permitting process, all of the proposed changes will be implemented as proposed.

In reviewing the proposed rule, we determined that the proposed addition of § 13.12(c) and the proposed revision of § 13.42 contained language that was somewhat redundant to language that had already been codified in §§ 13.12(a)(9) and 13.21(e)(1). To eliminate any redundancy in § 13.12, we will not finalize § 13.12(c) as proposed, but have instead revised § 13.12(a)(9) to include the new language. In addition, we have removed the first sentence of the proposed § 13.42, which contained the redundancy with § 13.21(e)(1), and combined it with § 13.21(e)(1). The remaining proposed language of § 13.42 will be implemented as proposed.

### Extension of Permit Tenure for Two Migratory Bird Permits

We received no comments on the proposal to extend the permit tenure for taxidermist permits (§ 21.24) and waterfowl sale and disposal permits (§ 21.25) from 3 years to 5 years, and we will implement the proposed changes through this final regulation.

### Endangered Species Act Consideration

Section 7(a)(1) of the ESA (16 U.S.C. 1531 *et seq.*) provides that "[t]he Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act." Furthermore, section 7(a)(2) of the Act requires all Federal agencies to "insure that any action authorized, funded, or carried out \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat." Our review of this rule pursuant to section 7 of the ESA concluded that this action will not affect listed or proposed species or critical habitat.

### Required Determinations

#### *Responsibilities of Federal Agencies To Protect Migratory Birds (E.O. 13186)*

This rule has been evaluated for impacts to migratory birds, with emphasis on species of management concern, and is in accordance with the guidance in Executive Order 13186.

#### *Regulatory Planning and Review (E.O. 12866)*

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB has made this determination of significance under Executive Order 12866.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or

other units of government. A cost-benefit and economic analysis is not required. The purpose of this rule is to more closely align the fee structure with the Federal cost of permit processing for permits issued by the Divisions of Migratory Bird Management, Law Enforcement, Endangered Species, and Management Authority. Fees charged for permits issued by the Fish and Wildlife Service have not increased since 1982. During that time period, Federal salaries have increased by 128 percent and since permit reviews are a labor-intensive activity, Service programs have had to absorb the additional cost of permit processing.

In total, the Service processes approximately 25,000 permits annually.

About half of these permits are issued to small entities, many of whom can pass on the economic effect of the fee increase (an average of \$50 per year per permit) to consumers, depending on the elasticity of demand. The maximum loss in consumer surplus, if all costs were passed along to consumers, would be \$1.25 million annually. However, for commercial permittees, the average \$50 cost increase of the permits will be spread over many products and result in negligible price increases to consumers. The Service believes that the permit fee for working with regulated plants and wildlife is a very small part of the cost of these activities and will result in a negligible economic impact to consumers and businesses.

The benefit of better aligning the permit application fees schedule to the cost of Federal processing is that this will shift more of the burden of payment for these services from taxpayers as a whole to those persons who are receiving the government services. User fee increases reflect a related shift in appropriations of taxes to government programs, allowing those tax dollars to be applied to other programs that benefit the general public.

The administrative costs involved in implementing this rule are minimal, since the Service permit programs are already established, and the mechanisms for collecting the permit application fees are already in place. Therefore, the net gain of reducing the costs on taxpayers greatly outweighs the costs of introducing the user fee increases.

b. This rule will not create serious inconsistencies or otherwise interfere with other agencies' actions. This rule pertains to a Federal permit application process that already exists, and the only purpose of this rule is to update the fee structure to recover Federal costs of processing the permit applications.

c. This rule will not negatively impact or affect entitlements, other grants, user fees, loan programs, or the rights and obligations of their recipients. This rule affects user fees charged for plant and wildlife permits by updating and better aligning the fees with the Federal cost of processing the permits. The average fee increase will be \$50 per year with a range of annual fee increases running from \$10 for a migratory bird rehabilitation permit to \$275 for a marine mammal public display permit. Multiplying the expected 25,000 permits issued annually by the average fee increase of \$50 yields a maximum of \$1.25 million, which is well below the threshold for a significant regulatory action.

d. This rule does not raise novel legal or policy issues. The current fee schedule for plant and wildlife related permits has been in place since July 15, 1982. No new permits are included in this rulemaking. The only purpose of this rulemaking is to update and better align the permit fee schedule with the actual Federal cost for processing the applications.

#### *Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act*

The Service has performed the threshold analysis required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), and the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 *et seq.* (SBREFA), and has determined that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

a. The increase in user fees for Federal permits will affect approximately 12,737 small entities, including importers and exporters of plants, wildlife, and animal products, wildlife propagators, museums, airports, animal exhibitors, migratory bird taxidermists, and migratory bird rehabilitators.

The total cost increase for small entities applying for permits will be approximately \$636,850 for the approximately 12,737 permits that are issued annually to small entities. Thus, the average user fee under this proposal will increase by approximately \$50 per year. This average includes annual increases ranging from \$10 for a migratory bird rehabilitation permit to \$275 for a marine mammal public display permit.

The economic effect on small entities of this rulemaking will be an increased cost of doing business. Depending on the elasticity of demand for the goods and services authorized by the permits,

much of the cost increase will be passed on to consumers. Thus, the Service does not anticipate that this rule will result in a significant economic burden to small businesses.

b. This rule does not introduce any new reporting, record keeping, or other compliance requirements, and does not introduce any new legal requirements that duplicate other Federal regulations. The average cost increase will be borne by all entities doing business involving wildlife.

c. This rule will not cause major increases in prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or have significant adverse impacts on competition, employment, investment, innovation, or the ability of U.S.-based enterprises to compete with foreign enterprises. A small cost increase to better reflect the cost of review of the permit application will not adversely affect competition in this industry since all entities will be required to pay the increased fees. Since the increase of the cost of the permits will be spread over many products, it will result in negligible price increases to consumers, and will not have a significant effect on the number of permit applications and the corresponding total number of permitted wildlife-related activities conducted.

#### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. The Service has determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State government or private entities. The rulemaking only affects the Federal review and issuance of permits under Federal laws. This rule does not apply to State regulations.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The process of wildlife permit application review and issuance is already in place, and this rulemaking is only updating the fee schedule to better align it with the actual cost of processing permits.

#### *Takings*

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. A takings implication assessment is not required.

#### *Federalism*

In accordance with Executive Order 13132, and based on the discussions in Regulatory Planning and Review above, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration.

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *Paperwork Reduction Act*

This rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Information collection associated with this rule is covered by existing OMB approval Nos. 1018-0022 (expires 7/31/07), 1018-0094 (expires 9/30/2007), 1018-0093 (expires 6/30/2007), and 1018-0092 (expires 9/30/2007). For approvals that will expire soon, we are currently in the process of requesting 3-year renewals of OMB approval. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### *National Environmental Policy Act*

We have determined that this rule is categorically excluded under the Department’s NEPA procedures in 516 DM 2, Appendix 1.10.

#### *Government-to-Government Relationship With Tribes*

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and 512 DM 2, this rule will have no effect on Federally recognized Indian tribes.

*Energy Supply, Distribution or Use (E.O. 13211)*

On May 18, 2001, the President issued an Executive Order addressing regulations that affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is only updating the fee schedule for permit application review and issuance, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

**List of Subjects***50 CFR Part 13*

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

*50 CFR Part 21*

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons set forth in the preamble, title 50, chapter I, subchapter B of the Code of Federal Regulations is amended as follows:

**PART 13—[AMENDED]**

■ 1. The authority citation for part 13 is revised to read as follows:

**Authority:** 16 U.S.C. 668a, 704, 712, 742j-1, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901-4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

■ 2. Revise § 13.3 to read as follows:

**§ 13.3 Scope of regulations.**

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter and apply to all permits issued thereunder, including "Importation, Exportation and Transportation of Wildlife" (part 14), "Wild Bird Conservation Act" (part 15), "Injurious Wildlife" (part 16), "Endangered and Threatened Wildlife and Plants" (part 17), "Marine Mammals" (part 18), "Migratory Bird Permits" (part 21), "Eagle Permits" (part 22), and "Endangered Species Convention" (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) (part 23). As used in this part 13, the term "permit" will refer to a license, permit, certificate, letter of authorization, or other document as the context may require, and to all such documents issued by the Service or

other authorized U.S. or foreign government agencies.

■ 3. Revise § 13.11 to read as follows:

**§ 13.11 Application procedures.**

The Service may not issue a permit for any activity authorized by this subchapter B unless you have filed an application under the following procedures:

(a) *Forms.* Applications must be submitted in writing on a Federal Fish and Wildlife License/Permit Application (Form 3-200) or as otherwise specifically directed by the Service.

(b) *Forwarding Instructions.* Applications for permits in the following categories should be forwarded to the issuing office indicated below.

(1) You may obtain applications for migratory bird banding permits (50 CFR 21.22) by writing to: Bird Banding Laboratory, USGS Patuxent Wildlife Research Center, 12100 Beech Forest Road, Laurel, Maryland 20708-4037. Submit completed permit applications to the same address.

(2) You may obtain applications for designated port exception permits and import/export licenses (50 CFR 14) by writing to the Special Agent in Charge (SAC) of the Region in which you reside (see 50 CFR 2.2 or the Service Web site, <http://www.fws.gov>, for addresses and boundaries of the Regions). Submit completed permit applications to the same address.

(3) You may obtain applications for Wild Bird Conservation Act permits (50 CFR 15); injurious wildlife permits (50 CFR 16); captive-bred wildlife registrations (50 CFR 17); permits authorizing import, export, or foreign commerce of endangered and threatened species, and interstate commerce of non-native endangered or threatened species (50 CFR 17); marine mammal permits (50 CFR 18); and permits and certificates for import, export, and reexport of species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (50 CFR 23) from: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203-1610. Submit completed permit applications to the same address.

(4) You may obtain Endangered Species Act permit applications (50 CFR 17) for activities involving native endangered and threatened species, including incidental take, scientific purposes, enhancement of propagation or survival (i.e., recovery), and enhancement of survival by writing to the Regional Director (Attention:

Endangered Species Permits) of the Region where the activity is to take place (see 50 CFR 2.2 or the Service Web site, <http://www.fws.gov>, for addresses and boundaries of the Regions). Submit completed applications to the same address (the Regional office covering the area where the activity will take place). Permit applications for interstate commerce for native endangered and threatened species should be obtained by writing to the Regional Director (Attention: Endangered Species Permits) of the Region that has the lead for the particular species, rather than the Region where the activity will take place. You can obtain information on the lead Region via the Service's Endangered Species Program Web page (<http://endangered.fws.gov/wildlife.html>) by entering the common or scientific name of the listed species in the Regulatory Profile query box. Send interstate commerce permit applications for native listed species to the same Regional Office that has the lead for that species. Endangered Species Act permit applications for the import or export of native endangered and threatened species may be obtained from the Division of Management Authority in accordance with paragraph (b)(3) of this section.

(5) You may obtain applications for bald and golden eagle permits (50 CFR 22) and migratory bird permits (50 CFR 21), except for banding and marking permits, by writing to the Migratory Bird Permit Program Office in the Region in which you reside. For mailing addresses for the Migratory Bird Regional Permit Offices, see below, or go to: <http://permits.fws.gov/mbpermits/addresses.html>. Send completed applications to the same address. The mailing addresses for the Regional Migratory Bird Permit Offices are as follows:

Region 1 (CA, HI, ID, NV, OR, WA): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, 911 N.E. 11th Avenue, Portland, OR 97232-4181.

Region 2 (AZ, NM, OK, TX): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, P.O. Box 709, Albuquerque, NM 87103.

Region 3 (IA, IL, IN, MN, MO, MI, OH, WI): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, One Federal Drive, Fort Snelling, MN 55111.

Region 4 (AR, FL, GA, KY, LA, MS, NC, SC, TN, PR, VI): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, P.O. Box 49208, Atlanta, GA 30359.

Region 5 (CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV):

U.S. Fish and Wildlife Service, Migratory Bird Permit Office, P.O. Box 779, Hadley, MA 01035-0779. Region 6 (CO, KS, MT, ND, NE, SD, UT, WY): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, P.O. Box 25486, DFC (60130), Denver, CO 80225-0486.

Region 7 (AK): U.S. Fish and Wildlife Service, Migratory Bird Permit Office (MS-201), 1011 E. Tudor Road, Anchorage, AK 99503.

(c) *Time notice.* The Service will process all applications as quickly as possible. However, we cannot guarantee final action within the time limit you request. You should ensure that applications for permits for marine mammals and/or endangered and threatened species are postmarked at least 90 calendar days prior to the requested effective date. The time we require for processing of endangered and threatened species incidental take permits will vary according to the project scope and significance of effects. Submit applications for all other permits to the issuing/reviewing office and ensure they are postmarked at least 60 calendar days prior to the requested effective date. Our processing time may be increased by the procedural requirements of the National Environmental Policy Act (NEPA), the requirement to publish a notice in the **Federal Register** requesting a 30-day public comment period when we

receive certain types of permit applications, and/or the time required for extensive consultation within the Service, with other Federal agencies, and/or State or foreign governments. When applicable, we may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy the procedural requirements of NEPA.

(d) *Fees.* (1) Unless otherwise exempted under this subsection, you must pay the required permit processing fee at the time that you apply for issuance or amendment of a permit. You must pay by check or money order made payable to the "U.S. Fish and Wildlife Service." The Service will not refund any application fee under any circumstances if we have processed the application. However, we may return the application fee if you withdraw the application before we have significantly processed it.

(2) If regulations in this subchapter require more than one type of permit for an activity and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing the activity in accordance with § 13.1. You may submit a single application in such cases, provided that the single application contains all the information required by the separate applications for each permitted activity. Where more than one permitted activity

is consolidated into one permit, the issuing office will charge the highest single fee for the activity permitted.

(3) Circumstances under which we will not charge a permit application fee are as follows:

(i) We will not charge a permit application fee to any Federal, tribal, State, or local government agency or to any individual or institution acting on behalf of such agency. Except as otherwise authorized or waived, if you fail to submit evidence of such status with your application, we will require the submission of all processing fees prior to the acceptance of the application for processing.

(ii) As noted in paragraph (d)(4) of this section.

(iii) We may waive the fee on a case-by-case basis for extraordinary extenuating circumstances provided that the issuing permit office and a Regional or Assistant Director approves the waiver.

(4) *User fees.* The following table identifies specific fees for each permit application or amendment to a current permit. If no fee is identified under the Amendment Fee column, this particular permit either cannot be amended and a new application, and application fee, would need to be submitted or no fee will be charged for amending the permit (please contact the issuing office for further information).

Type of permit	CFR citation	Fee	Amendment fee
<b>Migratory Bird Treaty Act</b>			
Migratory Bird Import/Export .....	50 CFR 21 .....	\$75 .....	.....
Migratory Bird Banding or Marking .....	50 CFR 21 .....	.....	.....
Migratory Bird Scientific Collecting .....	50 CFR 21 .....	100 .....	\$50 .....
Migratory Bird Taxidermy .....	50 CFR 21 .....	100 .....	.....
Waterfowl Sale and Disposal .....	50 CFR 21 .....	75 .....	.....
Special Canada Goose .....	50 CFR 21 .....	.....	.....
Migratory Bird Special Purpose/Education .....	50 CFR 21 .....	75 .....	.....
Migratory Bird Special Purpose/Salvage .....	50 CFR 21 .....	75 .....	.....
Migratory Bird Special Purpose/Game Bird Propagation .....	50 CFR 21 .....	75 .....	.....
Migratory Bird Special Purpose/Miscellaneous .....	50 CFR 21 .....	100 .....	.....
Falconry .....	50 CFR 21 .....	100 .....	.....
Raptor Propagation .....	50 CFR 21 .....	100 .....	.....
Migratory Bird Rehabilitation .....	50 CFR 21 .....	50 .....	.....
Migratory Bird Depredation .....	50 CFR 21 .....	100 .....	50 .....
Migratory Bird Depredation/Homeowner .....	50 CFR 21 .....	50 .....	.....
<b>Bald and Golden Eagle Protection Act</b>			
Eagle Scientific Collecting .....	50 CFR 22 .....	100 .....	50 .....
Eagle Exhibition .....	50 CFR 22 .....	75 .....	.....
Eagle Falconry .....	50 CFR 22 .....	100 .....	.....
Eagle—Native American Religion .....	50 CFR 22 .....	.....	.....
Eagle Depredation .....	50 CFR 22 .....	100 .....	50 .....
Golden Eagle Nest Take .....	50 CFR 22 .....	100 .....	50 .....
Eagle Transport—Scientific or Exhibition .....	50 CFR 22 .....	75 .....	.....
Eagle Transport—Native American Religious Purposes .....	50 CFR 22 .....	(1) .....	(1) .....

Type of permit	CFR citation	Fee	Amendment fee
<b>Endangered Species Act/CITES/Lacey Act</b>			
ESA Recovery	50 CFR 17	100	50
ESA Interstate Commerce	50 CFR 17	100	50
ESA Enhancement of Survival (Safe Harbor Agreement)	50 CFR 17	50	25
ESA Enhancement of Survival (Candidate Conservation Agreement with Assurances)	50 CFR 17	50	25
ESA Incidental Take (Habitat Conservation Plan)	50 CFR 17	100	50
ESA and CITES Import/Export and Foreign Commerce	50 CFR 17	100	50
ESA and CITES Museum Exchange	50 CFR 17	100	50
ESA Captive-bred Wildlife Registration	50 CFR 17	200	100
—Renewal of Captive-bred wildlife registration	50 CFR 17	100	
CITES Import (including trophies under ESA and MMPA)	50 CFR 17, 18, 23	100	50
CITES Export	50 CFR 23	100	50
CITES Pre-Convention	50 CFR 23	75	40
CITES Certificate of Origin	50 CFR 23	75	40
CITES Re-Export	50 CFR 23	75	40
CITES Personal Effects and Pet Export/Re-Export	50 CFR 23	50	
CITES Appendix II Export (native furbearers and alligators—excluding live animals)	50 CFR 23	100	50
CITES Master File (includes files for artificial propagation, biomedical, etc. and covers import, export, and re-export documents).	50 CFR 23	200	100
—Renewal of CITES Master File	50 CFR 23	100	
—Single-use permits issued on Master File	50 CFR 23	<sup>2</sup> 5	
CITES Annual Program File	50 CFR 23	50	
—Single-use permits issued under Annual Program	50 CFR 23	<sup>2</sup> 5	
CITES replacement documents (lost, stolen, or damaged documents)	50 CFR 23	50	50
CITES Passport for Traveling Exhibitions and Pets	50 CFR 23	<sup>3</sup> 75	
CITES/ESA Passport for Traveling Exhibitions	50 CFR 23	<sup>3</sup> 100	
Import/Export License	50 CFR 14	100	50
Designated Port Exception	50 CFR 14	100	50
Injurious Wildlife Permit	50 CFR 16	100	50
—Transport Authorization for Injurious Wildlife	50 CFR 16	25	
<b>Wild Bird Conservation Act (WBCA)</b>			
Personal Pet Import	50 CFR 15	50	
WBCA Scientific Research, Zoological Breeding or Display, Cooperative Breeding	50 CFR 15	100	50
WBCA Approval of Cooperative Breeding Programs	50 CFR 15	200	100
—Renewal of a WBCA Cooperative Breeding Program	50 CFR 15	50	
WBCA Approval of a Foreign Breeding Facility	50 CFR 15	<sup>4</sup> 250	
<b>Marine Mammal Protection Act</b>			
Marine Mammal Public Display	50 CFR 18	300	150
Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery	50 CFR 18	150	75
—Renewal of Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery.	50 CFR 18	75	

<sup>1</sup> No fee.  
<sup>2</sup> Each.  
<sup>3</sup> Per animal.  
<sup>4</sup> Per species.

(5) We will charge a fee for substantive amendments made to permits within the time period that the permit is still valid. The fee is generally half the original fee assessed at the time that the permit is processed; see paragraph (d)(4) of this section for the exact amount. Substantive amendments are those that pertain to the purpose and conditions of the permit and are not purely administrative. Administrative changes, such as updating name and address information, are required under 13.23(c), and we will not charge a fee for such amendments.

(6) Except as specifically noted in paragraph (d)(4) of this section, a permit renewal is an issuance of a new permit,

and applicants for permit renewal must pay the appropriate fee listed in paragraph (d)(4) of this section.

(e) *Abandoned or incomplete applications.* If we receive an incomplete or improperly executed application, or if you do not submit the proper fees, the issuing office will notify you of the deficiency. If you fail to supply the correct information to complete the application or to pay the required fees within 45 calendar days of the date of notification, we will consider the application abandoned. We will not refund any fees for an abandoned application.

■ 4. Amend § 13.12 by revising paragraph (a)(9) to read as follows:

**§ 13.12 General information requirements on applications for permits.**

(a) \* \* \*

(9) Such other information as the Director determines relevant to the processing of the application, including, but not limited to, information on the environmental effects of the activity consistent with 40 CFR 1506.5 and Departmental procedures at 516 DM 6, Appendix 1.3A.

\* \* \* \* \*

■ 5. Amend § 13.21 by revising paragraph (e)(1) to read as follows:

**§ 13.21 Issuance of permits.**

\* \* \* \* \*

(e)(1) *Conditions of issuance and acceptance.* Any permit automatically incorporates within its terms the conditions and requirements of subpart D of this part and of any part(s) or section(s) specifically authorizing or governing the activity for which the permit is issued, as well as any other conditions deemed appropriate and included on the face of the permit at the discretion of the Director.

\* \* \* \* \*

■ 6. Revise § 13.42 to read as follows:

**§ 13.42 Permits are specific.**

The authorizations on the face of a permit that set forth specific times, dates, places, methods of taking or carrying out the permitted activities, numbers and kinds of wildlife or plants, location of activity, and associated activities that must be carried out; describe certain circumscribed

transactions; or otherwise allow a specifically limited matter, are to be strictly interpreted and will not be interpreted to permit similar or related matters outside the scope of strict construction.

**PART 21—[AMENDED]**

■ 7. The authority citation for part 21 continues to read as follows:

**Authority:** Pub. L. 95-616; 92 Stat. 3112 (16 U.S.C. 712(2)); Pub L. 106-108.

■ 8. Amend § 21.24 by revising paragraph (e) to read as follows:

**§ 21.24 Taxidermist permits.**

\* \* \* \* \*

(e) *Term of permit.* A taxidermist permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit

will not exceed five (5) years from the date of issuance or renewal.

■ 9. Amend § 21.25 by revising paragraph (d) to read as follows:

**§ 21.25 Waterfowl sale and disposal permits.**

\* \* \* \* \*

(d) *Term of permit.* A waterfowl sale and disposal permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit will not exceed five (5) years from the date of issuance or renewal.

Dated: January 26, 2005.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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