

section 5335 reports may only submit data for transit services that they directly operate and purchase under contract from public agencies and/or private carriers.

Separate and complete section 5335 reports must be submitted by or for each purchased transportation service provider that operates 100 or more revenue vehicles for the purchased service during the maximum service period. The reporting requirements include the following major segments, which are based on information assembled through the National Transit Database Uniform System of Accounts:

1. Capital report.
2. Revenue report.
3. Expense report.
4. Nonfinancial service and operating data reports.
5. Miscellaneous auxiliary questionnaires and subsidiary schedules.
6. Vehicle Fleet Data.
7. Data Declarations.

(2) The section 5335 Reporting System includes two data declarations.

(a) The Chief Executive Officer (CEO) Certification.

The CEO of each reporting agency is required to submit a certification with each annual section 5335 report. The certification must attest:

- To the accuracy of all data contained in the section 5335 report;
- That all data submitted in the section 5335 report are in accord with section 5335 definitions;
- If applicable, that the reporting agency's accounting system used to derive all data submitted in the section 5335 report is the system set forth in the National Transit Database Uniform System of Accounts and that a section 5335 report using this system was certified by an independent auditor in a previous report year;
- If applicable, the fact that the reporting agency's internal accounting system is other than the National Transit Database Uniform System of Accounts, and that its: (i) Accounting system uses the accrual basis of accounting, (ii) accounting system is directly translated, using a clear audit trail, to the accounting treatment and categories specified by the National Transit Database Uniform System of Accounts, and (iii) accounting system and direct translation to the National Transit Database Uniform System of Accounts are the same as those certified by an independent auditor in a previous reporting year; and
- That a 100% count of trips and passenger mile data for each mode/type of service meets FTA requirements.

(b) Auditor Statement on Section 5335 Financial Data Reporting Forms and Section 5307 or Section 5311 Data.

Reporting agencies must submit with their section 5335 report a statement signed by an independent public accountant or other responsible independent entity such as a state audit agency. This statement must express an opinion on whether the financial data reporting forms in the section 5335 report present fairly, in all material respects, the information required to be set forth therein in accordance with the National Transit Database Uniform System of

Accounts. The statement shall also indicate whether any of the reporting forms or data elements do not conform to the section 5335 requirements, and describe the discrepancies. The statement must consider both required and optional data entries.

Each agency is required to file an Auditor Statement unless it received a written waiver from FTA. The criteria in either Condition I or Condition II for granting a financial data waiver are:

*Condition I.* The reporting agency (1) has adopted the National Transit Database Uniform System of Accounts and (2) has previously submitted a section 5335 report that was compiled using the National Transit Database Uniform System of Accounts and was reviewed by an independent auditor; or

*Condition II.* The reporting agency (1) uses an internal accounting system other than the accounting system prescribed by the National Transit Database Uniform System of Accounts, (2) uses the accrual basis of accounting, (3) directly translates the system and accounting categories, using a clear audit trail, to the accounting treatment and categories specified by the National Transit Database Uniform System of Accounts, and (4) has previously submitted a section 5335 report that was compiled using the same internal accounting system and translation to the National Transit Database Uniform System of Accounts and was reviewed by an independent auditor.

For agencies that have received a waiver, the CEO annual Certification must verify that the financial data meet one of the above two conditions.

Additionally, all reporting agencies that are in or serve urbanized areas with populations of 200,000 or more and whose report covers 100 or more vehicles in annual maximum service across all modes and types of service must have an independent auditor review all section 5335 data used in the section 5307 formula allocation. The statement should discuss, by mode and type of service: Directional route miles, vehicle revenue miles, passenger miles, and operating cost, and include both directly operated and purchased service. The independent, certified public accountant shall perform the verification in accordance with the "Statements on Standards for Attestation Engagements" issued by the American Institute of Certified Public Accountants. The specific procedures to be reviewed are described in the most recent Section 5335 Reporting Manual.

Issued in Washington, DC, this 20th day of March, 2007.

**James S. Simpson,**  
*Administrator.*

[FR Doc. E7-5417 Filed 3-23-07; 8:45 am]

**BILLING CODE 4910-57-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 21

RIN 1018-AV10

#### Migratory Bird Permits; Removal of Migratory Birds From Buildings

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, propose changes in the regulations governing migratory bird permitting. We propose to amend 50 CFR part 21 to allow removal of migratory birds (other than federally listed threatened or endangered species, bald eagles, and golden eagles) from buildings in which the birds may pose a threat to themselves, to public health and safety, or to commercial interests.

**DATES:** Send comments on this proposal by May 25, 2007.

**ADDRESSES:** For detailed instructions on submitting comments, please see "Public Participation" below.

**FOR FURTHER INFORMATION CONTACT:** George T. Allen, Wildlife Biologist, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703-358-1825.

#### SUPPLEMENTARY INFORMATION:

##### Background

The U.S. Fish and Wildlife Service is the Federal agency delegated the primary responsibility for managing migratory birds. The delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Raptors (birds of prey) are afforded Federal protection by the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Animals, February 7, 1936, United States-Mexico, as amended; the Convention between the United States and Japan for the Protection of Migratory Birds in Danger of Extinction and Their Environment, September 19, 1974; and the Convention Between the United States of America and the Union of Soviet Socialist Republics (Russia) Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976. A list of migratory bird species protected by the MBTA can be found at 50 CFR 10.13.

To simplify removal of migratory birds from buildings in which their presence may be a threat to the birds, to

public health and safety, or to commercial interests, we propose to allow the removal of any migratory bird, except a threatened or endangered species, a bald eagle, or a golden eagle, from any building in which a bird might be trapped, without requiring a migratory bird permit to do so. The bird must be captured using a humane method and promptly released to the wild. This regulation does not allow removal of birds or nests from the outside of buildings without a permit.

We believe that this regulatory addition will facilitate removal of birds from buildings—an action that would otherwise require a migratory bird permit. Our proposed changes are detailed below, in the Proposed Regulation Promulgation section of this document.

### Public Participation

You may submit comments, identified by RIN 1018-AV10, by any of the following methods:

- *E-mail address for comments:* [BirdsinBuildings@fws.gov](mailto:BirdsinBuildings@fws.gov). Include RIN number 1018-AV10 in the subject line of the message.
- *Fax:* 703-358-2217.
- *Mail:* Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP-4107, Arlington, VA 22203-1610.
- *Hand Delivery:* Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, VA 22203-1610.

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Following review and consideration of comments, we will issue a final rule on the proposed regulation changes.

*Instructions:* When submitting electronic comments, please include your name and return address in your message, and identify it as comments on RIN 1018-AV10 in the subject line of your message.

When submitting written comments, please include your name and return address in your letter and identify it as comments on RIN 1018-AV10. To facilitate compilation of the Administrative Record for this action, you must submit written comments on 8½-inch-by-11-inch paper.

All comments on the proposed rule, including any personal information received, will be available for public inspection during normal business hours at Room 4091 at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, Arlington, VA 22203-1610. The

complete file for this proposed rule is available, by appointment, during normal business hours at the same address. You may call 703-358-1825 to make an appointment to view the file.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. An individual respondent may request that we withhold his or her home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety. We will not consider anonymous comments.

### Required Determinations

#### *Clarity of This Regulation*

Executive Order (E.O.) 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example: "\$ 21.12-General exceptions to permit requirements.") (5) Does the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble help you to understand the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

### *Regulatory Planning and Review*

In accordance with the criteria in E.O. 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination of significance under E.O. 12866.

a. This proposed rule would not raise novel legal or policy issues. The proposed provision is in compliance with other laws, policies, and regulations.

b. This rule would not have an annual economic effect of \$100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis thus is not required. There are negligible costs associated with this rule.

c. This rule would not create inconsistencies with other agencies' actions. The rule deals solely with governance of migratory bird permitting in the United States. No other Federal agency has any role in regulating activities with migratory birds.

d. This rule would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are no entitlements, grants, user fees, or loan programs associated with the regulation of birds in buildings.

### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action would not have a significant economic impact on a substantial number of small entities, because the

changes we are proposing are intended primarily to simplify removal of birds from structures in which the birds may either pose a threat to public health and safety or commercial interests, or be at risk themselves.

The costs associated with this change to our regulations would be negligible or non-existent. Consequently, we certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It would not have a significant impact on a substantial number of small entities.

a. This rule would not have an annual effect on the economy of \$100 million or more.

b. This rule would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. This rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

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

a. This rule would not “significantly or uniquely” affect small governments. A small government agency plan is not required. Actions under the proposed regulation would not affect small government activities in any significant way.

b. This rule would 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.

#### *Takings*

In accordance with E.O. 12630, the rule would not have significant takings implications. A takings implication assessment is not required. This rule would not contain a provision for taking of private property.

#### *Federalism*

This rule would not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It would not interfere with the States’ ability to manage themselves or their funds. No significant economic impacts are expected to result from allowing individuals, businesses, or government offices to remove migratory birds from buildings.

#### *Civil Justice Reform*

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

#### *Paperwork Reduction Act*

We examined these regulations under the Paperwork Reduction Act of 1995. There would be no new information collection requirements associated with this change to our regulations. We may not collect or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

#### *National Environmental Policy Act*

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432–437(f), and Part 516 of the U.S. Department of the Interior Manual (516 DM). A change to our regulations allowing the removal of migratory birds from buildings would not have a significant environmental impact.

#### *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), E.O. 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that there are no potential effects. This rule would not interfere with the Tribes’ ability to manage themselves or their funds or to regulate migratory bird activities on tribal lands.

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

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule would affect only removal of birds from structures in limited circumstances, it is not a significant regulatory action under E.O. 12866, and would not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### *Environmental Consequences of the Proposed Action*

The change we propose is to allow people to remove birds protected under

the Migratory Bird Treaty Act from buildings. We do not believe that there are significant environmental impacts of this action.

*Socioeconomic.* We do not expect the proposed action to have discernible socioeconomic impacts.

*Migratory bird populations.* This rule would not alter the take of migratory birds from the wild. It would not change migratory bird populations.

*Endangered and Threatened Species.* The proposed regulation is for migratory birds other than threatened or endangered species. It would not affect threatened or endangered species or habitats important to them.

#### *Compliance With Endangered Species Act Requirements*

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that “The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter” (16 U.S.C. 1536(a)(1)). It further states that the Secretary must “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 (16 U.S.C. 1536 (a)(2)). The proposed change to our regulations would not affect listed species.

#### **Author**

The author of this rulemaking is Dr. George T. Allen, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610.

#### **List of Subjects in 50 CFR Part 21**

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

#### **Proposed Regulation Promulgation**

For the reasons stated in the preamble, we propose to amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows.

#### **PART 21—MIGRATORY BIRD PERMITS**

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

**Authority:** Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note following 16 U.S.C. 703.

2. Amend § 21.12 by:  
a. Revising the introductory paragraph and paragraph (a);

b. Redesignating paragraphs (b), (c), and (d) as paragraphs (b) (1), (b)(2), and (c) and adding a heading to new paragraph (b);

c. Adding a new heading to new paragraph (c); and

d. Adding a new paragraph (d), to read as set forth below.

#### § 21.12 General exceptions to permit requirements.

The following persons or entities under the following conditions are exempt from the permit requirements:

(a) *Employees of the Department of the Interior (DOI)*: DOI employees authorized to enforce the provisions of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703–711), may, without a permit, take or otherwise acquire, hold in custody, transport, and dispose of migratory birds or their parts, nests, or eggs as necessary in performing their official duties.

(b) *Employees of certain public and private institutions*:

(1) \* \* \*

(2) \* \* \*

(c) *Licensed veterinarians*:

\* \* \* \* \*

(d) *General public*: Any person may remove a migratory bird from the interior of a building or structure under the following conditions. If you need advice on dealing with a trapped bird, you should contact your closest Fish and Wildlife Service office or your State wildlife agency.

(1) You may humanely remove a trapped migratory bird from the interior of a residence or a commercial or government building without a Federal permit if the migratory bird:

(i) Poses a health threat (for example, through damage to foodstuffs);

(ii) Is attacking humans, or poses a threat to human safety because of its activities (such as opening and closing automatic doors);

(iii) Poses a threat to commercial interests, such as through damage to products for sale; or

(iv) May injure itself because it is trapped.

(2) You must use a humane method to capture the bird or birds. You may not use adhesive traps to which birds may adhere (such as glue traps) or any other method of capture likely to harm the bird.

(3) After capture, you must promptly release the bird or birds to the wild in habitat suitable for the species.

(4) If a bird is injured or orphaned during the removal, the property owner is responsible for promptly transferring it to a federally permitted migratory bird rehabilitator.

(5) You may not lethally take a migratory bird for these purposes. If your actions to remove the trapped migratory bird are likely to result in its lethal take, you must possess a Federal Migratory Bird Permit. However, if a bird you are trying to remove dies, you must dispose of the carcass unless you have reason to believe that a museum or scientific institution might be able to use it. In that case, you should contact your nearest Fish and Wildlife Service office or your State wildlife agency about donating the carcass.

(6) For birds of species on the Federal List of Threatened or Endangered Wildlife, provided at 50 CFR 17.11(h), you may need a Federal threatened or endangered species permit before removing the birds (*see* 50 CFR 17.21 and 50 CFR 17.31).

(7) You will need a permit from your regional migratory bird permits office to remove a bald eagle or a golden eagle from a building (*see* 50 CFR Part 22).

(8) Your action must comply with State and local regulations and ordinances. You may need a State, tribal, or territorial permit before you can legally remove the bird or birds.

(9) If a nest, eggs, or nestlings are present, you must seek the assistance of a federally-permitted migratory bird rehabilitator in removing them. The rehabilitator is then responsible for handling them properly.

Dated: March 2, 2007.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E7–5120 Filed 3–23–07; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[I.D. 031407A]

RIN 0648–AU03

#### Fisheries of the Exclusive Economic Zone Off Alaska; Salmon Bycatch

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 84 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands

Management Area (FMP). If approved, Amendment 84 would exempt vessels participating in an inter-cooperative agreement (ICA) to reduce salmon bycatch from Chinook and chum salmon savings area closures, and exempt vessels participating in non-pollock trawl fisheries from the chum salmon savings area. This action is intended to promote the goals and objectives of the FMP and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is necessary to reduce salmon bycatch in the Bering Sea and Aleutian Islands management area (BSAI).

**DATES:** Comments on Amendment 84 must be received on or before May 25, 2007.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian, Records Officer.

Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;

- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;

- FAX to 907–586–7557;

- E-mail to [BSA84-A-NOA@noaa.gov](mailto:BSA84-A-NOA@noaa.gov) and include in the subject line of the E-mail comment the document identifier: Amendment 84. E-mail comments, with or without attachments, are limited to 5 megabytes; or

- Webform at the Federal eRulemaking Portal:

[www.regulations.gov](http://www.regulations.gov). Follow the instructions at that site for submitting comments.

Copies of Amendment 84 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the NMFS Alaska Region at the address above, from the Alaska Region website at <http://www.fakr.noaa.gov> or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at (907) 586–7228.

**FOR FURTHER INFORMATION CONTACT:** Jason Anderson, 907–586–7228, or [jason.anderson@noaa.gov](mailto:jason.anderson@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public