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**Migratory Bird Permits; Changes in the
Regulations Governing Falconry; Final
Rule**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Parts 21 and 22**

[FWS-R9-MB-2008-0039] [91200-1231-9BPP]

RIN 1018-AG11

Migratory Bird Permits; Changes in the Regulations Governing Falconry**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, change the regulations governing falconry in the United States. We have reorganized the regulations and added or changed some provisions in them. In particular, we have eliminated the requirement for a Federal permit to practice falconry. The changes will make it easier to understand the requirements for the practice of falconry, including take of raptors from the wild, and the procedures for obtaining a falconry permit. This rule also adds a provision allowing us to approve falconry regulations that Indian Tribes or U.S. territories adopt. State, tribal, or territorial laws and regulations governing falconry must meet the standards in these regulations by January 1, 2014, at which time the Federal permit program will be discontinued.

DATES: These regulations are effective November 7, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, at 703-358-1825.

SUPPLEMENTARY INFORMATION:**I. Background**

The U.S. Fish and Wildlife Service is the Federal agency with the primary responsibility for managing migratory birds. Our authority is based on 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.

The taking and possession of raptors are strictly prohibited except as permitted under regulations implementing the MBTA. The regulations govern the issuance of permits for activities with migratory birds. They are in title 50, Code of Federal Regulations, parts 10, 13, 21, and 22. Raptors also may be protected by State, tribal, and territorial regulations.

Our authority also is based on the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d). The Eagle Act extends additional protections for bald eagles and golden eagles, and addresses some human activities that may affect these species. The Act specifies circumstances under which falconers may take golden eagles from the wild.

We proposed revisions to the regulations governing falconry on February 9, 2005 (70 FR 6978-6992). We did so to address changes in the practice of falconry and to respond to a request from the Association of Fish and Wildlife Agencies that we consider eliminating duplicative Federal/State falconry permitting. The rule was open for comment for 90 days.

Regulations for falconry schools are not covered under this rule. We have concluded that falconry schools are most appropriately addressed under regulations governing education with migratory birds, and these regulations are under development.

II. Changes in the Regulations Governing Falconry

We have rewritten the regulations in plain language and have changed or added some provisions. The following are notable substantive changes. In this **SUPPLEMENTARY INFORMATION** section, “States” refers to States, the District of Columbia, and territories under the jurisdiction of the United States.

1. After adoption of these regulations, a State, tribal, or territorial falconry permit will suffice for the practice of falconry. A dual State/Federal permitting system has been in place since implementation of Federal regulations governing falconry. Every State government except that of Hawaii has now implemented regulations governing falconry. The government of the District of Columbia has not implemented regulations governing falconry. To allow falconry, States, tribes, territories, and the District of Columbia must operate within the bounds of the Federal regulations. We have concluded that with State, tribal, and territorial permitting in place (if tribes or territories choose to do so), we

can reduce the paperwork burden on permittees and the Service, and can eliminate the cost of a Federal permit for falconry permittees. No tribe or territory has sought to establish falconry regulations, but this rule makes it clear that they can do so.

2. This rule implements electronic reporting of acquisition, transfer, or loss of raptors held for falconry. Electronic reporting will eliminate the need for permittees to send us paper reports for these actions, though some may still have to mail completed forms to their State or tribal governments if those entities require signed 3-186A forms. Implementing electronic reporting for transactions under the falconry regulations will reduce permittee expenses and the time it takes to report. We will maintain the 3-186A reporting system. The States, tribes, or territories will need to regularly update information on falconry permittees. We will not allow submission of paper 3-186A forms after these regulations are in effect in a State or territory or by a tribe. However, the States, tribes, or territories may choose to accept paper 3-186A forms. If a State, tribe, or territory chooses to do so, it will be responsible for entering the data into the electronic 3-186A system.

3. We will allow Apprentice Falconers to possess additional species of Falconiformes and Strigiformes taken from the wild.

4. Apprentice Falconers may possess non-imprinted captive-bred raptors of the species they are allowed to possess.

5. The regulations add requirements for capture and possession of golden eagles to use in falconry for Master Falconers with sufficient experience. Previously, they were covered in 50 CFR 22.24. We simplified the regulations in 50 CFR 22.24 to account for this change, which will facilitate permitting by the States, tribes, and territories. We will no longer require Federal permitting of falconers for possession of golden eagles.

6. The regulations allow Master Falconers to keep up to 5 wild raptors to use in falconry. Currently, Master Falconers are allowed to keep 3 raptors for falconry. Allowing the possession of 5 wild raptors does not change the allowed annual take of 2 raptors from the wild each year (§ 21.29 (e)(2)).

7. A Master Falconer may possess any number of captive-bred raptors if they are used in falconry. Allowing the possession of captive-bred raptors does not change the allowed annual take of 2 raptors from the wild or the level of care we require (§ 21.29 (e)(2)).

8. General Falconers may keep 3 raptors to use in falconry. Allowing the

possession of 3 raptors does not change the allowed annual take of 2 raptors from the wild.

9. Each State, tribe, or territory may develop and administer the required examination for Apprentice Falconers and new residents. Changes in the examination a State, tribe, or territory administers will require our approval (§ 21.29 (b)(4)(ii)).

10. A new resident of the United States can qualify for a falconry permit appropriate for his or her level of experience. The applicant must correctly answer at least 80 percent of the questions on the supervised examination for Apprentice Falconers. The State, tribe, or territory under which the applicant wishes to obtain a falconry permit administers the examination. If the applicant passes the test, the State, tribe, or territory may decide what level of falconry permit he or she may hold, consistent with the guidelines set forth in these regulations (§ 21.29 (c)(6)).

11. We rewrote and simplified the facilities and equipment requirements to make them easier to understand (§ 21.29 (c)). We do not intend to require rebuilding of existing facilities if a State has approved them.

12. Possession of facilities for housing raptors will not be a prerequisite for obtaining a permit. However, a permittee must have facilities that pass State, tribal, or territorial inspection before he or she may obtain a raptor for use in falconry. This change will allow former falconers who no longer can keep falconry raptors to get a falconry permit and assist Apprentice Falconers in learning about the practice of falconry (§ 21.29 (c)(5)(ii)).

13. We removed the 180-day-per-year limit on take of raptors from the wild. Raptors may be taken for falconry during periods specified by the States, tribes, or territories. The 180-day restriction unnecessarily limits the governance of take by States, tribes, or territories. We believe it is reasonable for them to be able to regulate take from the wild when different raptor species are present. The 180-day restriction limits the ability of a State, tribe, or territory to do so.

14. When flown for falconry, a hybrid raptor must have two attached radio transmitters that will allow the permittee to locate it. We prohibit intentional permanent release of hybrids to the wild (§ 21.29 (e)(8) and (e)(9)(iv)).

15. Falconers will be responsible for treatment and rehabilitation costs of falconry raptors injured in trapping efforts.

16. This rule requires banding or microchipping of all goshawks taken

from the wild. We eliminated the requirement to band golden eagles taken from the wild. Goshawk numbers in parts of the country and law enforcement concerns over take and transport of goshawks have led us to require banding of goshawks taken out of the wild. However, very few golden eagles are taken from the wild each year, and we deem banding them unnecessary at present (§ 21.29 (c)(7)(i)).

17. The rule allows temporary release of falconry raptors to the wild (“hacking”) for both wild-caught birds and captive-bred birds (§ 21.29 (f)(2)).

18. General and Master Falconers may use suitable raptors in raptor propagation if the propagator has a raptor propagation permit. The raptors do not need to be transferred from the falconer’s falconry permit if they are used temporarily in propagation.

19. A falconer may transfer most raptors captured from the wild under a falconry permit to a propagation permit only after they have been used in falconry for at least 2 years (§ 21.29 (f)(5)(i)). Previously, raptors taken for falconry could be transferred to another permit type immediately after capture. With this change, we are addressing State concerns over take under falconry permits and immediate transfer to propagation permits. This has been used to circumvent State review of take of raptors for the wild for use in propagation. The 2-year restriction and the limits on possession together will mean that falconers will be limited in their abilities to take birds from the wild for use in propagation.

20. General and Master Falconers may use suitable raptors they possess in conservation education programs without an additional permit (§ 21.29 (f)(8)(i)). An apprentice falconer may present conservation education programs and use a raptor he or she possesses if he or she is under the supervision of a General or Master Falconer when presenting the program (§ 21.29 (f)(8)(ii)). The raptors must be used in hunting; they may not be held under a falconry permit to be used primarily for conservation education purposes. Falconers can serve a role in educating the public about the roles raptors play in the environment and their legal protections. Any bird held primarily for education must be held under a Special Purpose education permit.

21. We lowered the age for Apprentice Falconers from 14 to 12 (§ 21.29 (c)(3)(i)(A)).

22. A visitor to the United States with a falconry permit from his or her country may practice falconry in the

United States if the State, tribe, or territory allows it (§ 21.29 (f)(14)).

23. We added a provision for immediate restoration of revoked permits. This change is to make it clear that restoration of an individual’s permit after the end of a revocation period is at the discretion of the State, tribe, or territory (§ 21.29 (i)).

24. We revised the definitions of the terms “falconry” and “raptor,” and added definitions of the terms “hacking,” “hybrid,” and “imprint.”

25. General and Master Falconers may assist Federal- and State-permitted migratory bird rehabilitators in conditioning of raptors for permanent release to the wild. A falconer may work with a rehabilitator without being a subpermittee of the rehabilitator (§ 21.31 (e)(3)).

Because it will take time for States to change their falconry regulations to comply with these regulations, the final compliance date for these regulations is January 1, 2014.

Each State, tribe, or territory that wishes to allow the practice of falconry must work with us to ensure correct operation of electronic reporting of take of raptors from the wild, and must then certify to the Director of the U.S. Fish and Wildlife Service that it is in compliance with the new regulations. Any State certified to allow falconry under the Federal falconry regulations in §§ 21.28, 21.29, and 22.24 of this part prior to the effective date may continue to allow falconry under those provisions until we approve that State’s recertification, or until January 1, 2014. Falconry shall not be permitted in a State or territory or by a Tribe after January 1, 2014, until that State, tribe, or territory develops a permitting program that the Director has certified to be in compliance with these regulations.

III. Changes from the Proposed Rule

We made many wording changes and small organizational changes from the proposed rule. Major changes from the proposed rule are limited.

1. We added territories to those entities that may promulgate falconry regulations.

2. We changed the possession limit for General Falconers from 2 raptors to 3.

3. We deferred to numerous comments about the provisions for review of State, tribal, or territorial permitting and suspension of permitting. We changed the language about the reviews to allow the States, tribes, and territories to work with us to correct permitting deficiencies, should they occur.

4. Many commenters suggested that the proposed change in the regulations that would require more experience to advance to General Falconer was not warranted. We agreed with the prevailing comments on this point, and revised the amount of experience required to advance to General Falconer.

5. We added a facilities inspection requirement for falconers who spend 120 days or more at another location with any of their falconry raptors.

6. Some commenters were opposed to the annual reporting each year on golden eagle trapping activities required in addition to 3-186A reports. We agreed with their argument, and deleted the requirement from these regulations. We will compile information on take of eagles through the electronic reporting system.

7. Some commenters felt that the language in 50 CFR 13 does not provide sufficient protection for falconry birds, and suggested that inspections be allowed only in the presence of the permittee. We added this language to these regulations.

8. Some commenters suggested that we allow implanting of microchips in lieu of required bands. We added the use of International Standardization Organization- compliant microchips to these regulations.

9. Many commenters asked for a provision allowing a falconry bird to feed on prey that the falconer did not intend to have the raptor hunt. We added a provision covering this issue to these regulations.

10. Some commenters suggested that the question and answer format in the proposed rule did not work well, or that issues were addressed in more than one section of the rule. We changed the wording of these sections whenever we received suggested changes, reorganized the regulations to address the concerns about regulations in multiple sections, and changed from the question/answer format.

11. We clarified language in this final rule about trapping raptors for falconry on public lands.

12. We added language to this final rule stating that take of birds under a depredation order can include take by falconry birds, unless the Depredation Order specifies methods of take that do not include falconry.

13. In a separate rule we have revised § 21.21 to simplify the regulations governing import and export of migratory birds. The proposed changes to § 21.21 are deleted from this rule.

IV. Comments on the Proposed Rule

We received 967 comments from individuals and organizations,

including 30 from States and 3 from other government entities, on the proposed rule published on February 9, 2005 (70 FR 6978-6992). We have reviewed the comments, and respond here to the most significant issues raised.

Issue. Authority over captive-bred birds. A number of commenters asserted that the U.S. Fish and Wildlife Service has no authority to regulate captive-bred raptors.

Response. The Migratory Bird Treaty Act does not distinguish between wild and captive-bred birds. In addition, case law has established that the MBTA does govern activities involving captive-bred raptors.

Issue. Elimination of the Federal falconry permit. This change was requested by the States through the Association of Fish and Wildlife Agencies on behalf of the States, and would simply eliminate the Federal permit. All States that are expected to allow falconry have now implemented regulations governing the practice, and all have approved falconry regulations in place. The majority of those who commented on this issue agreed with the proposal to have falconry permits administered by the States.

• "... this decision because of the shift from national to local standards has the potentially [sic] to significantly affect raptor populations at a local and national level and therefore requires an Environmental Impact Statement under the provisions of the National Environmental Policy Act."

Response. This assertion is incorrect. The take of raptors from the wild by each permittee each year for use in falconry is not altered; falconers are still limited to take of no more than two raptors from the wild each year. Thus, the change to falconry permitting administered by the States has no environmental impact. Further, in our assessment of the effects of take from the wild for falconry and raptor propagation (U.S.F.W.S. 2007), we found that the take of wild raptors for falconry is very unlikely to have a significant detrimental effect on wild raptor populations. All States must still maintain regulations at least as restrictive as the Federal regulations. The revised regulations require the States to be diligent in regulating falconry for the sport to continue to be allowed. Further, Federal authority for enforcement of most aspects of the falconry regulations is not diminished by the regulations change.

Issue. Federal oversight.

• "... federal oversight of permitting brings a different level of expertise and enforcement level to the sport of

falconry. State fish and wildlife agencies do not necessarily have the staff, funding, expertise, or enforcement capabilities that FWS is able to provide. An effective permit program for falconry requires a strong federal presence and federal resources."

• "I strongly approve of eliminating the Federal permit OR changing it to a one time issued permit for life."

• "The U.S. Fish and Wildlife Service should transfer management of falconry programs to States that comply with federal falconry standards. We agree that, in the future, there should be no federal falconry permit. The mandates and obligations of the Service under the Migratory Bird Treaty Act (MBTA) require the Service to continue to regulate the sport of falconry. Therefore, the Service should work to correct all administrative issues that arise regarding States' compliance with the changes in the falconry regulations. It took 3 decades to develop the current system and no arbitrary change-over period should be imposed that could potentially leave any State behind. Any State that modifies its regulations to be in compliance with the new federal falconry regulations should be allowed to operate immediately under the new regulations." (State comment)

• "GADNR [Georgia Department of Natural Resources] supports the proposed change to the licensing procedures for falconry and the elimination of duplicative licensing. Once State regulations have been reviewed and addressed, we do not foresee any significant additional workload in managing these licensees." (State agency)

• "We agree that the current dual permitting system should be revised to shift falconry permit administration to the individual States. This will relieve staff of all agencies of an extra administrative step in the permitting process." (State agency)

• "The most substantive proposed change in the revised regulations is the elimination of the federal falconry permit once a State is certified to be in compliance with the federal regulations. The WDFW [Washington Department of Fish and Wildlife] has supported that action and the retention of a single State permit requirement." (State agency)

• "The proposed revisions appear to not only reduce permit process duplicative efforts - as USFWS suggests - but to relax Federal oversight of migratory bird take - an oversight that has been valued for almost thirty years. CDOW [Colorado Division of Wildlife] recognizes the benefit that Federal guidelines and regulations bring to the management of migratory birds, and the

MBTA's role in governing all harvest in order to prevent over-utilization. CDOW contends that relaxation of Federal oversight could result in undesired impacts to wildlife populations, due in part to an increased dependency on already insufficient State resources, and due additionally to the loss of a national perspective of the ecological and cultural values that guide management decisions. Like the USFWS, most States and tribes are continuing to "do more with less." In addition, concern has been raised that loosening of Federal oversight suggests a retreat from the hard won progress made toward managing wildlife and habitats on an ecosystem or biome level. While the USFWS proposed revisions continue to allow that States and Tribes enact more restrictive regulations, in practice, States commonly revert to the federal regulatory scheme - publics sometimes demand it. Management of such a highly valued wildlife resource may best be undertaken in a strong partnership." (State agency)

• "... federal oversight is necessary to ensure that regional impacts to raptor populations from the sport of falconry are identified and addressed in the permitting process. Only by tracking permits at the regional level can potential direct impacts to individual raptor species and raptor populations in general be adequately understood. It is critical that FWS track the number of permits issued and the number of each species taken in each region in order to prevent negative cumulative impacts as required under the Migratory Bird Treaty Act."

Response. Only the Federal falconry permit is eliminated - not Federal oversight of falconry or Federal databases. These regulations will simply transfer all falconry permitting to the States. States that certify to the Director that their regulations are in compliance with these regulations will receive prompt consideration, and will be able to operate under these revised regulations. All falconers must comply with these regulations, though the State or tribal regulations may be more restrictive. The Service will still have law enforcement authority over most aspects of the practice of falconry, and will compile and evaluate information on all reported take of raptors from the wild for use in falconry. Inspections of falconry records, facilities, and birds will be the responsibility of the States, tribes, or territories. Because we will collect the same information we have collected in the past and will retain enforcement authority, except the authority for inspections, we do not believe that the changes in these

regulations relax Federal oversight of falconry. Our 2007 NEPA analysis (U.S.F.W.S. 2007) confirmed the minimal impact of falconry on wild raptor populations.

We have implemented electronic reporting that will allow assessment of take of all raptor species taken from the wild for use in falconry. We will be able to assess take at the regional or State level. With this system, we will track the number of permits issued and the number of each species taken, and will evaluate the effects of take for falconry on raptor populations (see U.S.F.W.S. 2007). We expect that electronic reporting will facilitate summarizing and analyzing the effects of take of raptors for use in falconry.

Issue. National permit system.

• "... a national permitting system allows individuals who may have had their falconry permit [sic] revoked to be identified should they reapply. Moving to a state permitting system, creates the potential for an individual to move from State to State and reapplying without recognition of past problems in the event of a permit revocation."

Response. Each State, tribe, or territory will be able to access the national permittee database for information on an applicant from another State, so there is no new potential for problems such as the one suggested by the commenter. See § 21.29 (l) below for information about data the States, tribes, or territories must keep.

Issue. Federal standards.

• "... a federal permitting program ensures that there will be a standard baseline level of care and expertise required before an individual is allowed to remove protected wild raptors from the wild for the sport of falconry. Going to a State permitting system creates the potential for disparities in the rigor and substance of permit requirements administered by individual states."

Response. All permittees must comply with the Federal facilities and care requirements. A State, tribe, or territory-only permitting system does not alter this requirement. States, tribes, and territories have implemented, and will be able to implement, more restrictive regulations (§ 21.29 (b)(1)(iii)).

Issue. State workloads.

• "No reduction in paperwork will occur. The State of Iowa will continue to require paperwork and reporting requirements for licensed falconers. The U.S. Fish and Wildlife Service's proposed paperwork reduction appears to simply shift most, if not all, of the falconry program's administrative

burden to participating State agencies." (State agency)

• "This section [Unfunded Mandates Reform Act] states that "Though states may have to revise their falconry regulations to comply with the proposed revisions, nearly every State already has falconry regulations in place. Therefore, revisions of the State regulations should not be significant." If adopted these regulations will increase administrative enforcement burdens on State government." (State agency)

• "The department is concerned about the cost of operating this program and the apparent unfunded mandate being placed on states by the federal government. We suggest the Service consider ways to cost-share part of the state's programs and develop a co-management rather than the proposed federal oversight approach." (State agency)

• "The U.S. Fish and Wildlife Service is proposing a significant portion of falconry permitting, record keeping and banding shift to State agencies. This change will significantly impact our department's administrative resources including staff hours, material, and equipment costs." (State agency)

• "The proposal is of concern to Maine because it seeks to shift sole burden to the States... We recommend that the Service modify its current proposal to simply authorize the States to develop their own, individual regulations governing the practice of falconry without the requirement [and the burden and cost to the States] that they must operate under Federal requirements and Federal oversight." (State agency)

• "Given that the relatively small number of falconers in the U.S. (~4,000) are spread across the entire country and their movements and transactions routinely criss-cross State and international boundaries, it would certainly seem most appropriate and most efficient for the FWS to continue to fulfill its responsibility to administer a nationwide system capable of permitting, tracking and overseeing use of raptors by falconers - especially in light of the fact that the value of individual birds renders falconry susceptible to black market endeavors."

• "For the FWS to abdicate its current national role and require states and tribes to absorb new responsibilities to develop and administer new permitting procedures, develop additional expertise with issues related to falconry, develop new database and tracking systems, administer falconry tests and assume responsibility to monitor falconer activities and enforce falconry regulations feels like a major unfunded

mandate to us. The proposed rules would entail new operational expenses and would also exacerbate our workload problem... Finally, should these proposed rules be approved, there would be considerable cost to states to set up systems that could be considered duplicative of the systems currently maintained by the FWS. Both monetary and manpower costs of such an undertaking and the inefficiencies associated with interfacing 50+ individual falconry permitting/tracking systems come at a time when government budgets are being stretched to the limits. The proposed five-year time period intended to allow for an adequate transition time could be rendered moot by the lack of new funding to establish new State programs with internal as well as inter-jurisdictional capabilities." (State agency)

Response. State concerns on this point are surprising, because the proposal to eliminate the Federal permit was presented to us by the Association of Fish and Wildlife Agencies with support from every State. Though some States may have to change their regulations and their permitting procedures, there should be associated reductions in paperwork and coordination with our permits offices. We do not believe the regulation changes put a significant additional burden on the States. Therefore, we do not believe that this change is an unfunded mandate. One State agency went on to state, "The department agrees that there will be a benefit to falconers and a reduction in paperwork resulting from this regulatory change." We also intend to have sufficient flexibility in the database to allow States to eliminate duplicate work.

Issue. *Transfer of falconry birds when a permittee moves to another State may be restricted.*

• "Currently, Montana law does not allow possession of raptors without a Montana falconry permit or appropriate federal permit. For individuals moving to Montana, a resident permit may not be obtained until residency is established. Currently, birds may be kept under the existing federal permit until residency is established. Although interim licensing could be accomplished through recognition of permits issued by other jurisdictions, the absence of oversight currently provided by the FWS would reduce the level of confidence that one jurisdiction would have in permits issued by another." (State agency)

Response. We agree that this is an issue each State must resolve. Each State, tribe, or territory must decide how

to handle birds possessed by a falconer who moves into a new falconry jurisdiction. The database will help falconry permitting authorities to check and honor another State's, tribe's, or territory's permits. Further, all States, tribes, or territories must meet the standards in these regulations.

Issue. *Review of State permitting.*

• "Under the current falconry permitting process, all that is required for a state to have the authority to allow the use of raptors for falconry purposes is; 1) the Secretary's approval of the state permitting system, and 2) the addition of the state to the list. There are no penalties to non-compliance to the Federal Regulations, and to our knowledge, no state has had their [sic] authorities [sic] revoked. The states are the competent authority when it comes to all hunting sports, including falconry. This entire section of punitive measures against the states for non-compliance should be deleted." (State agency)

• "We recommend that the regulations simply state that the Service and the states will work to correct all administrative issues as they arise and do not include program revocation. Given the positive performance record of the states in administering the joint falconry program for over 30 years and the state's effective handling of complex migratory bird issues such as waterfowl hunting, it is difficult to imagine a complicated falconry problem that would require the Service to "suspend" a state's falconry program certification." (State agency)

• "Significant effort was spent to spell out the concise steps necessary for the Service to regulate the performance of the individual states' falconry programs, including revocation procedures. We believe that most of the Service's regulatory processes are unnecessary and could be simplified by stating that the Service and states will work cooperatively to address specific administrative issues." (State agency)

Response. We do not expect this to be an issue. Falconry and falconry permitting have not been significant resource issues for the Service. We will work with the States to correct issues that arise. Under the current regulations a failure by a permittee to comply with the regulations or permit conditions can result in loss of his or her Federal falconry permit, and loss of the privilege of practicing falconry. Without some assurance that permitting jurisdictions are maintaining the falconry standards, the Service may be viewed as failing to fulfill its obligations under the MBTA.**Issue.** *Suspension of a State's, tribe's, or territory's certification.*

"Please consider having the Service take

over the falconry program in a State that fails to meet the certification requirements. Releasing, transferring, or euthanizing falconry birds because a State fails some aspect of the Service's certification program seems overly harsh on the affected falconers. It is unrealistic to think that these actions would proceed under those circumstances." (State agency)

Response. The elimination of the Federal permit was considered at the request of the States. We cannot afford to support permitting positions just for States that fail in their permitting programs. This provision remains in place in these regulations (§ 21.29 (b)(12)).

Issue. *Federal authority under revised regulations.*

• "The proposed rule offers little clarification on how enforcement might operate in the future. With additional regulatory and permitting burdens being placed on the states, we assume that there is a potential for federal law enforcement to diminish. Even if the state-federal law enforcement of migratory bird regulations is envisioned to remain the same, the rule should state this in clear language." (State agency)

• "Does the FWS retain the authority to suspend or revoke falconry permits under 50 CFR. If not, this should be stated. Exactly what authority does the Service (LE) retain under the proposed regulations, i.e. with no Federal permit. This should be clarified and stated in the regulations."

Response. We do not believe that the regulation change affects law enforcement substantially, or that there are additional regulatory or permitting burdens placed on the States, tribes, or territories. With one exception, Service enforcement of the provisions of the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act (Eagle Act, 16 U.S.C. 668-668d) are not affected by the regulations change. The exception is that, because the Service will no longer issue falconry permits, Service law enforcement officers will not have the authority to conduct inspections of falconers' records and facilities, unless the Service officers also are delegated State law enforcement authority. The Service will not have authority to suspend or revoke permits issued by the States, tribes, or territories, but compliance with all provisions of these regulations remains under the purview of the Service, and falconry permittees are subject to Federal prosecution for failure to comply with the regulations.**Issue.** "When capturing a golden eagle for falconry purposes the USFWS draft regulation indicates that the landowner,

which would include a land management agency (BLM, USFS, BR, State Land Departments, etc.), must authorize the activity. Neither the States nor the Service should be authorizing land managers to regulate wildlife. They do not currently have that statutory authority. Please delete this line item in its entirety." (State agency)

Response. We simply intended to make it clear that these regulations do not authorize capture of a golden eagle for falconry if the capture is not allowed by the agency or if entry to private land is not allowed by the landowner. However, this does not mean that a land management agency must take special measures or otherwise authorize take of a golden eagle if the agency's regulations or other language already allow the take. In the interest of clarity, we changed the relevant language, which is now in § 21.29 (f)(16).

Issue. *Moving birds between falconry and breeding projects.*

- "Movement of wild-caught raptors between falconry and propagation permits is a troublesome arena for the department. With the high desire to obtain wild Peregrine Falcons and Gyrfalcons in Alaska, this has proved to be a challenge to track. Temporarily allowing the movement of a bird from a falconry permit to a breeding program will negate a desire to keep these programs separated rather than intertwined. This problem is further confused by the proposed regulatory language that states – "*Regardless of the number of State or tribal permits that you have, you may possess no more than five raptors.*" Taking [changes] 15, 16, and the limit on five raptors in total, we find the intent of the Service to be unclear and confusing." (State agency)

- "It should be permissible to use falconry raptors for propagation for less than 6 months out of the year, if a falconer has a raptor propagation permit." (State agency)

Response. We changed the relevant language where it occurred to make it clear that we mean regardless of how many State, tribal, or territorial *falconry* permits one may possess, he or she may have no more than one raptor if an Apprentice Falconer and 3 raptors if a General Falconer. A Master Falconer will be allowed to possess 5 wild birds (3 eagles). We appreciate the States' concern about separation of falconry and propagation programs. However, allowing the use of birds already held for falconry in propagation in the off season will not mean that permittees who hold birds are exempt from either documentation of the birds or from inspections.

Issue. *180-day trapping period.*

- "It is unclear what the impacts would be of changing the 180-day-per-year limit on removing raptors from the wild to allowing states to set their own removal limits. This should be more clearly explained and analyzed."

- "We disagree with the removal of the 180-day season for trapping, as it would increase disturbance to nesting raptors. We also disagree with the removal of the restriction for the number of raptors a falconer may have during a one-year period sequentially. By removing this regulation, a falconer could harvest an unlimited number of raptors. This seems especially inappropriate for Apprentices." (State agency)

- "We support removing the 180-day per year limit on take from the wild and agree that states will appropriately select their own trapping seasons." (State agency)

- "The 180-day take period, during which raptors can be trapped or acquired for falconry, should be eliminated." (State agency)

- "Colorado is not supportive of the potential year-round capture of raptors that could be permissible under this change. Take should be prohibited during biologically sensitive periods such as during courtship, incubation, etc." (State agency)

Response. We do not believe that removing the 180-day-per-year restriction on take will have any measurable effect on take of raptors from the wild. We did not change the 2-birds-per-year allowed take from the wild by removal of the 180-day take period, and removing the 180-day language from the regulation will allow each State to better regulate take as appropriate for the species found in the State and the times at which they are found there.

We do not understand the assertion that "a falconer could harvest an unlimited number of raptors." The rule allows a falconer to take no more than 2 raptors from the wild per year, as a falconer can now. Further, we do not believe that removing the 180-day take restriction will lead to increased disturbance of nesting raptors. The States have regulated take effectively within the 180-day restriction in place, and can continue to do so if the restriction is removed. Removing the restriction will allow a State, tribe, or territory to better regulate take of the species found there.

Issue. *Facilities and care of falconry raptors.* "The modified requirements for facilities and care of raptors held under a State issues [sic] falconry permit are insufficient. The level of detail regarding equipment and housing

contained in the existing regulations was not confusing and did not need to be "simplified." They simply ensured that falconers would have the minimum housing and equipment required to adequately provide for raptors in their care. These provisions should not be altered. The proposed changes are if anything more confusing for their lack of specificity."

Response. There were very few comments on this issue. We appreciate the concern for raptors held by falconers, but we believe that the revised regulations provide sufficient guidance for falconry permittees.

Issue. *Age to become an Apprentice Falconer.* Comments on the proposed reduction from age 14 to age 12 to become an Apprentice Falconer were about evenly divided. Some people suggested that there should be no lower age limit; others suggested that the age to become an Apprentice should be raised.

- "The proper maintenance of a raptor in hunting trim is a challenge to the capabilities of many adults. I don't believe that most 12 year olds wanting to practice the sport (or even 14 year olds for that matter) possess the maturity, judgment, or refined sense of responsibility necessary to do justice to the raptor. And they also lack basic capacity (i.e. ability to drive) for transport of their feathered charges from residence to hunting area, or to medical attention."

- "If the age for apprentice falconry was lowered to 12, a great and positive experience with wildlife could begin."

- "The age of young falconers should be lowered to 12 years. Lots of young lives can be steered toward conservation practices, respect for the habitat, and the concept of training a bird through positive rewards. What an idea for life in general!"

- "My personal feeling is that if you are not old enough to drive how can you practice falconry?"

- "I support lowering the minimum age for Apprentices to 12 years of age, and the provision to allow Apprentices to use Harris Hawks."

- "Those who argue that few 12-year-olds are mature enough to succeed at falconry are correct; however, they miss the point that established falconers will be under no obligation to sponsor 12-year-old applicants. The proposed change will be beneficial for those few youngsters (including children of falconers) who are sufficiently motivated and have the active support of a sponsor close by."

- "12 years of age is too young, and the current minimum age of 14 should remain in effect." (State agency)

• “We do not support lowering the age of apprentice falconers to 12 as suggested in 21.29 (b)(3)(i)(A). We are concerned that a child at the age of 12 or 13 is not adequately equipped to pass the examination and to properly care for a raptor. Thus, the minimum age should remain as is. We are also concerned that a child this young may be less focused and therefore unable to properly train their bird or provide significant hunting opportunities for their bird. This is particularly troublesome if the requirements of an apprentice are changed to allow for possession of Harris’s hawks and captive-bred raptors.” (State agency)

• “The GADNR disagrees with the proposal to reduce the qualifying age for apprentice falconry to 12 years. Generally we agree that some persons may be able to handle and care for a bird at age 12 but would suggest that a far greater percentage of 12 year-olds would lack both the mental focus and physical strength to properly hold and care for a bird.” (State agency)

• “Our department’s professional staff feel lowering the age to 12 would negatively impact the program. Most 12-year-old boys or girls have not developed the necessary respect and responsibility to trap a wild raptor and maintain the bird in a healthy environment. A person of this young age can become easily discouraged and frustrated with the challenges of feeding, flying and training a passage raptor. Unfortunately, falconry sponsors are often located miles away from their nondriving young apprentice and the lack of one-on-one training/mentoring can spell failure for many young falconers. Ultimately, our primary concern should be the welfare of the wild (raptor) resource.”

Response. We found merit in both arguments, but changing the minimum age to 12 (as in the proposed rule) leaves the decision for a younger person with his or her parents and with the sponsor, which we believe is appropriate. Further, any State, tribe, or territory may choose to limit apprenticeship to older individuals. This rule sets the minimum age to practice falconry at 12 years (§ 21.29 (c)(3)(i)(A)).

Issue. *If you are under 18 years of age, a parent or legal guardian must sign your application and is legally responsible for your activities.*

• “We do support the addition of parental signatures and responsibility for individuals less than 18 years of age as suggested in 21.29 (b)(3)(i)(B).” (State agency)

• “We disagree with the requirement for a parent or guardian to co-sign the application of the falconer under 18

years of age. We should not dictate the parent/child relationship or attempt to set federal standards for the state’s responsibilities (relating to liability claims).” (State agency)

• “Remove this section from the proposal. State authorities can handle legal issues locally.” (State agency)

• “We agree that a parent or legal guardian of a minor falconer should be required to document responsibility through affidavit.” (State agency)

Response. Permits language in 50 CFR 13.50 states that “Except as otherwise limited in the case of permits described in § 13.25(d), any person holding a permit under this subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit.” We believe that it is reasonable to make adults responsible for a minor aware that they could face legal liabilities associated with falconry. This requirement is left in the regulations.

Issue. *Possession of Harris’s hawks by Apprentice Falconers.* Some commenters opposed allowing Apprentice Falconers to possess Harris’s hawks.

• “The temperament [sic] of Harris Hawks makes them well-suited for learning falconry; in fact, one complaint I have occasionally encountered in discussion of this provision is that Harris hawks are too easy, so easy that they will spoil Apprentices for other species of raptors. Since when does it make sense to prevent beginners to a sport - any sport - from trying something because it was “too easy”? I have seen other, more valid objections, such as Apprentices possibly releasing Harris Hawks in areas well north of their natural range; I feel this is adequately addressed in the existing language detailing release of species in areas the species is not normally found.”

• “Although advocacy groups have no problem with this privilege, TPWD [Texas Parks and Wildlife Department] feels it is the best interest of the resource to disallow possession of wild-caught Harris’s hawks by the Apprentice Falconer. Their populations are not considered to be imperiled in Texas but Harris’s hawks are prone to feather plucking and other psychoses if improperly cared for. Additionally, it is felt that the gentle demeanor (e.g. ease of taming, or “manning down”) of this species compared to other apprentice raptors, such as red-tailed hawks, limits the apprentice’s broader learning environment and training.” (State agency)

• “WDFW supports apprentices being allowed to possess Harris hawks, but only as passage birds.” (State agency)

Response. We believe that this question is most appropriately addressed by the sponsor and the permitting agency. States in which Harris’s hawks occur adequately regulate take from the wild, so allowing Apprentices to have Harris’s hawks should not affect wild populations.

Issue. *Need for a facilities inspection before one can obtain a falconry permit.* We proposed allowing an experienced falconer who no longer has a facility to have a permit in order to sponsor Apprentice Falconers, while requiring a facilities inspection for an individual to house a raptor or raptors for falconry. Many commenters opposed allowing a person to get a permit without approved falconry facilities. Some individuals argued that facilities for housing a raptor or raptors must be a prerequisite for obtaining a falconry permit. Others agreed with the proposal.

• “The department is concerned that new falconers will not need to have an approved facility in order to obtain a permit. Constructing an appropriate facility should be a prerequisite for a new falconer prior to obtaining a permit. Your proposed regulation indicates that this facility requirement may pose a problem because a senior, experienced falconer who no longer has a facility or birds should be able to possess a permit so he/she can sponsor a new falconer. It seems that you are mixing two different issues through this apparent simplification. We suggest that an experienced falconer could maintain a permit with no birds and no facility, but an apprentice must have an approved facility to obtain a permit.” (State agency)

• “We do not support allowing permits to be issued to individuals who do not have housing facilities. Issuing a permit to an individual without a housing facility puts an additional enforcement burden on the state. If a permit were issued with the understanding that the individual did not have housing and would therefore not have a bird in their possession then in theory there would be no reason to conduct an inspection or follow up visits. Consequently, these individuals would be in the best position to illegally obtain and house a bird in an inappropriate manner.”

• “It is admirable for the Service to simplify falconry and equipment requirements. However, no person should be issued a falconry permit without first demonstrating that they possess proper facilities.” (State agency)

• “We currently require inspection of a facility prior to the issuance of a State falconry license and we would want to keep it that way. Issuing a license prior

to an inspection could be very problematic for new license holders - an apprentice or someone who has moved. The State should be allowed to require the inspection prior to the issuance of the permit. (State agency)

Response. We accede to State concerns on this issue. This final rule requires that a new falconer have his or her facilities inspected before he or she may be granted an Apprentice permit (§ 21.29 (d)(1)(ii)). However, an individual who can no longer fly raptors on his or her own and does not wish to obtain a falconry raptor should be able to get a permit without a facilities inspection. Every permittee must have his or her facilities inspected before he or she may get a bird, but only Apprentices will have to have their facilities inspected to get a permit.

Issue. Facilities inspections and commercial trade.

- “Some people without facilities who apply for a permit may be involved in the commercial trade of raptors. Allowing individuals without facilities to become licensed falconers would potentially add to the illegal trade in raptors.”

Response. We disagree. If an individual's facilities have not been inspected, then he or she is in violation of the regulations if he or she possesses a raptor.

Issue. Experience requirement to advance to General Falconer. Many commenters suggested that the proposed change in the regulations that would require more experience to advance to General Falconer was not warranted.

Response. We accept the prevailing comments on this point, and this final rule is changed accordingly. To advance to General Falconer, an individual must be at least 16 years old with 2 years of experience as an Apprentice Falconer (§ 21.29 (c)(3)(ii)). This final rule lowers the minimum age to be a General Falconer from 18 to 16.

Issue. Increase in the possession limit for Master Falconers. We proposed to increase the possession limit for Master Falconers from 3 raptors to 5, though only 3 of them could come from the wild. Opinion was about evenly divided on this proposed change. Many commenters believed that no Master Falconer could capably handle more than 3 raptors. Others argued that this change is welcome because some people have sufficient time to care for, and hunt with, more than 3 raptors. Some individuals argued that there should be no possession limit.

- “I support the increase to 3 for generals and 5 for Master level falconers. The use of Harris Hawks in falconry makes this change especially

useful, as unlike any other species of hawk, the Harris can be used in multiple numbers like a dog pack. This is the Harris's natural style of hunting, and should be preserved in the practice of falconry. Likewise, someone with an infinite amount of time, game fields and money should be able to fly as many of the other species of raptors as can be biologically allowed. I do not support the restriction of the number of wild-caught birds allowed on a general or Master Falconer's permit unless it is biologically supported.”

- “CDOW opposes this proposed regulation. The subjective nature of this regulation states, “Many individuals have sufficient time available to care for and train five raptors for use in falconry”. However, recent law enforcement action by CDOW indicates that many falconers, in fact, do not properly exercise the one or two raptors they currently possess. Based on this observation, the Division opposes possession of five raptors by any one falconer.” (State agency)

- “In relation to 21.29 (b)(3)(iii)(c), we do not see the need to allow Master Falconers to possess more birds. However, we are not opposed to this change so long as the falconer can properly maintain the bird and the housing facility is adequate, and they are required to use all birds for hunting purposes or to show reason why a bird is not being hunted.” (State agency)

- “There is no reason to increase the possession limit to 5 raptors.” (State agency)

- “Our department's professional staff feel the increased possession from three to five falconry birds is unrealistic, and may compromise the birds health and well-being with inadequate attention.” (State agency)

- “Master Falconers should be held to possessing only three (3) raptors under permit. The public could perceive that we are unreasonably relaxing our protection of these species.” (State agency)

- “We strongly support maintaining the current three (3)-bird limit for falconry rather than increasing it to a five (5)-bird limit. We disagree with the comment under “Changes in Regulations Governing Falconry” #5 that states “many individuals have sufficient time available to care for and train 5 raptors for use in falconry.” It is extremely time consuming to care for, train, exercise, and hunt three raptors in one person's possession. Increasing the possession limit may result in individuals acquiring additional raptors for collection and novelty purposes, resulting in decreased care and attention to all raptors in that person's

possession. An increase in the possession limit could also facilitate illegal transfer of raptors and encourage violations of the possession limit of birds taken from the wild.” (State agency)

Response. Take from the wild and protection of the raptor populations are not significantly altered by this change. We find it implausible that individuals who cannot care for more raptors than allowed under the current regulations will get additional raptors just because they can do so. The regulations require that any bird held for falconry be well cared for and kept in good facilities. We do not believe that this possession limit change will do any more to facilitate illegal activities than does the current possession limit. This change is left in place in these regulations.

Issue. Increase in the possession limit for General Falconers. Some commenters requested that we increase the possession limit for General Falconers.

Response. Increasing the possession limit for General Falconers does not increase the allowed take from the wild, nor does it affect wild populations. We increased the possession limit for General Falconers from two to three raptors.

Issue. Possession limit and take from the wild.

- “Another major concern CDOW recognizes with this proposed regulation is that the statement “Allowing the possession of five raptors does not change the allowed take from the wild or the current limit on possession of birds taken from the wild” is misleading. Proposed Service Regulation 21.29 (d)(2)[6987, I] states, “A falconry bird is considered to be taken from the wild only by the person who originally captures it; the bird is not considered to be taken from the wild by any subsequent permittee to whom it is legally transferred.” This proposed regulation will allow a falconer to legally possess five wild birds, as long as the falconer is a secondary, or subsequent recipient of two of the wild-caught birds. CDOW contends that a wild-caught bird be determined as any bird caught in the wild, regardless of legal transfer of ownership. Using the numbers that the FWS provides in this document, this proposed Service Regulation increased by 2 the number of raptors that each falconer could take from the wild, resulting in a net take of as many as 8,000 raptors. This issue of transfer and possession of birds “considered to be taken from the wild” must be clarified by the FWS. If the “wild bird not being a wild bird” if transferred applies to both the take and

possession restrictions, as applied to the subsequent licensee, then we believe it will lead to additional take problems as we have outlined above. If it applies to the take restriction only, then it may not have as severe an impact. Regardless of the interpretation, the CDOW believes the transferred "wild" bird must still count against the 3 wild bird possession limit as applied to the subsequent licensee."

Response. The current regulations allow take of two raptors from the wild each year by each permittee, as do these regulations. They state that a bird taken from the wild is always considered a wild bird, so such a bird would count against the number of wild birds that a falconer can possess. The new regulations do not change the level of take that a falconer is allowed each year, but we recognize that, for a few years, they might lead to a slightly increased total of raptors taken from the wild. **Issue.** "The state's coordination with the USFWS will increase as the regulations call for monthly transfer of state's falconry data." (State agency)

Response. We disagree. These regulations require only that States submit information on new or changed falconry permits - the same information they have exchanged with our regional permits offices. We believe that providing updates on falconer information will require less work than do the current exchanges with our regional migratory bird permit offices. **Issue.** "Coordination regarding out-of-State falconers will become more complex as, instead of 7 Regional USFWS offices, there will be an unknown number of state/tribal licensing/administrative jurisdictions." (State agency)

Response. We disagree. The electronic permits system will be accessible by every entity that issues falconry permits. We believe that checking the credentials of out-of-State falconers will be easier.

Issue. *Temporary care of falconry raptors by other individuals.* Many commenters suggested that we should allow individuals other than the permittee or another falconer to care for falconry raptors temporarily. Doing so would allow family members to care for falconry raptors while the falconer is traveling, for example.

Response. We agree with the prevailing comments on this point, and added this provision to the final regulations at § 21.29 (d)(7).

Issue. *More time to submit 3-186A reports.* Some commenters suggested that more time be allowed for submitting 3-186A forms reporting take from the wild. They noted that because falconers often must travel to capture a

bird for falconry, the 5-day reporting requirement might not be practical, particularly in light of the requirement to report electronically.

Response. We understand this concern. This final rule changes the reporting time to 10 days. However, this change does not mean that one can, for example, capture a raptor from the wild, keep it for 9 days, release it on the tenth day, and never report acquisition of the bird. A falconer must report acquisition, loss, or transfer of a falconry bird at the first opportunity to do so.

Issue. *Use of falconry birds in education programs.* Most commenters who addressed this issue supported this addition to the regulations, but a few did not.

- "We strongly oppose allowing falconers to utilize wild raptors held under a falconry permit for educational activities without first obtaining a Special Purpose Possession/ Education (Live) Permit from FWS. Falconry and environmental education are different endeavors and the qualifications for possessing live birds for each of these purposes are measured by different standards. By including this provision in the new regulations, FWS is essentially making the falconry permit a dual purpose permit for both falconry and education and abdicating responsibility for both to the states. Doing so eliminates entirely the scrutiny with which FWS reviews live bird educational permit applications including review of the types of presentations for which the birds will be used. Furthermore, the criteria listed in the proposed falconry regulations for using falconry birds for education are different and less stringent than those issues under a Special Purpose Possession/ Education Permit. For example, the falconry regulations do not include provisions that bird presentations may only be given at public facilities, that presentations in private homes and businesses is not allowed, that a minimum of 12 programs per year must be presented and that any presentation must be accompanied by a sign indicating that possession and exhibition is by permission of FWS. If falconry birds are to be used in educational presentations, falconers should have to meet the requirements for a Special Purpose Possession/ Education Permit."

- "The State of Indiana currently requires an educational permit in addition to the falconry permit if a bird is possessed under a falconry permit and used in conservation education programs. The State should have the ability to require this due to additional provisions that are needed to provide

for the safety of the bird and the public, along with reporting requirements. We have several falconers who use their birds in conservation education programs." (State agency)

Response. Falconers have been allowed to give educational presentations using their falconry raptors for many years. The care of their birds is spelled out in these regulations. Falconers can provide a service by educating the public about the biology, ecological roles, and conservation needs of raptors and other migratory birds. Further, the regulations state clearly that the falconer must use the bird primarily for falconry. We do not see that the requirements for another permit type are relevant here, because we are only allowing a secondary beneficial activity with falconry birds. We see no need to change this provision.

Any State, tribe, or territory has the authority to require an additional permit to use falconry birds in education.

Issue. *Recouping presentation costs.*

- "We [I] oppose the provision that would allow falconers to charge for presentations using raptors held under a State issued falconry permit. It is one thing to allow professional environmental educators to charge for their services but entirely another to allow falconers who hold their raptors for an entirely different purpose to charge for these types of activities. FWS should limit the ability to charge for presentation to only those who have met the requirements of a Special Purpose - Possession/ Education (Live) Permit. This would include falconers who have chosen to meet this standard."

- "As stated in Section 21.29 (e)(8), we support allowing the use of falconry birds for conservation education programs but without a fee, so long as falconers are required to use the birds in hunting." (State agency)

- "Falconers should be allowed to conduct conservation education talks with raptors and charge a fee for this service. Restrictions on commercial ventures should apply." (State agency)

Response. Although we believe that falconers have generally not done so, we believe it is reasonable for them to be able to recoup costs associated with giving an educational presentation. Falconers are allowed to recoup costs for conservation education programs - not to engage in profit-making endeavors. This provision is left in place in these regulations (§ 21.29 (f)(8)(iv)).

Issue. *Money-making endeavors with falconry raptors.* Many commenters objected to the provisions in the proposed rule disallowing most commercial activities with falconry

raptors. However, most States supported the prohibition.

- “We support the prohibition of using birds for entertainment, advertisements, promotion/endorsement of products, merchandise, goods, services, meeting or fair, or as representation of any business, company, corporation, or other organization, for movies, commercials or commercial ventures.” (State agency)

Response. These regulations allow only commercial activities directly related to falconry. We may address the broader question of commercial use of migratory birds in the future.

Issue. Regulation of take of golden eagles for falconry. Some commenters discussed the classification of eagles. Others requested that we allow take of golden eagles for falconry in broader circumstances.

- “Golden eagles should be classified as raptors. The populations of golden eagles in western North America are large and stable. If there is no biological problem with the species, and there is no threat to human health or safety posed by trained golden eagles, they should be managed like every other species of raptor for which take or captive breeding is allowed under the falconry program. States should develop the administrative oversight for the take of wild golden eagles, not the Service nor land-management agencies.”

Response. These regulations change management of take of golden eagles, largely as suggested by the commenter; they change management of golden eagles and take of them from the wild to be largely the same as other falconry take. Take of golden eagles for falconry is limited by the provisions of the Eagle Act, and can only occur in depredation areas delineated by U.S.D.A. Wildlife Services or a State governor. **Issue.** “Will this encourage an increase in applications for depredation permits in order to allow more capture of golden eagles? More information on why this restriction has been generated is needed. If the purpose is to reduce take of golden eagles because of limited or declining numbers, or some other ecological factor, then this should be clearly stated.” (State agency)

Response. Under the Eagle Act, take of golden eagles for use in falconry can only occur in depredation areas (not with depredation permits). These areas are declared by the U.S. Department of Agriculture’s Wildlife Services program, or at the request of a State governor. We foresee no change in the number of depredation areas declared because of a change in these regulations. We will continue to monitor take of golden eagles for falconry and may take

appropriate action if we determine that take is not compatible with the preservation of the golden eagle.

Issue. Reporting take of golden eagle trapping activities. Some commenters were opposed to the annual reporting each year on golden eagle trapping activities required in addition to 3-186A reports.

Response. We agree with this argument. Information on take of eagles will be compiled through the electronic reporting system. This requirement is deleted from the final rule.

Issue. Eagle trapping notification. Some commenters disagreed with the requirement that the appropriate Service law enforcement office be notified before an individual tries to capture an eagle in a depredation area for use in falconry.

- “The draft allows the states to have more control over the use of golden eagles for falconry, however the proposed regulations present procedures for the falconer to take to advise the regional USFWS Law Enforcement Office, the U.S.D.A. Wildlife Services manager and receive a receipt of confirmation prior to capture, and then report on the number of birds captured, released, etc. We believe that this additional administrative oversight is excessive and needs to be deleted. Since the states are given the responsibility they should develop the administrative mechanisms of ensuring the activity is conducted in a legal manner and in the best interest of the resource.” (State agency)

Response. Under the final rule, an individual is simply required to notify the Service before trapping. Knowledge that a person will attempt to capture an eagle in a particular location could save a Special Agent considerable time and effort investigating a report of an individual attempting to capture an eagle. This notification requirement is left in place in this regulation, but the relevant language was rewritten to increase clarity.

Issue. Transport of falconry raptors to Canada and Mexico. Many individuals who responded to the proposed rule suggested that we should implement a “passport” system as has been considered for Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulations (50 CFR 23).

Response. A falconer can get a CITES passport (also called a “pet passport” for a falconry bird (see <http://www.fws.gov/le/ImpExp/faqs.htm>). There is no need to change the language in these regulations governing transport to Canada or Mexico.

Issue. Posting bond for permit or regulations violations. Many commenters suggested that we change the regulations to provide for posting of bond for alleged regulations or permit violations.

Response. We agree that bonding would be reasonable, but the MBTA does not allow posting bond in lieu of seizure. The relevant language in 16 U.S.C. 706 is “All birds, or parts, nests, or eggs thereof, captured, killed, taken, sold or offered for sale, bartered or offered for barter, purchased, shipped, transported, carried, imported, exported, or possessed contrary to the provisions of this subchapter or of any regulation prescribed thereunder shall, when found, be seized...” (italics added).

Issue. Interstate issues.

- “The areas of the falconry industry that need the most scrutiny are the interstate issues. Obviously, the FWS with its current permitting system is better equipped to regulate and enforce issues that encompass multiple states. In the absence of an overarching role by the FWS, enforcement activities related to falconry in the U.S. could be expected to become more piecemeal and time-consuming and ultimately less efficient and less effective.”

- “No State should be allowed to interfere with the interstate transport of raptors legally held for falconry by licensed falconers.” (State agency)

Response. Any State may implement restrictions on take of raptors that are more restrictive than the relevant Federal regulations. We encourage them not to be more restrictive on transport of raptors.

Issue. Transfer of falconry raptors to raptor propagation permits. Many commenters objected to the time restriction on transfer of birds taken under falconry permits to propagation permits. Some commenters were especially concerned about the restrictions on use of small raptors that this provision adds because small raptors may be useable in raptor propagation at age 1.

- “Wild caught raptors taken under a falconry permit and then transferred to a propagation permit for sale of their progeny is a substantial primary commercialization of falconry raptors and should be prohibited.” (State agency)

Response. We agree that take from the wild under one permit type and prompt transfer to another permit type should not occur. However, for two reasons we disagree with the assertion that transfer of falconry birds to propagation permits should be prohibited. First, we have determined that the take of raptors for

falconry (and for raptor propagation) has no significant impact on raptor populations. Second, limiting such transfers would preclude use of raptors taken from the wild in breeding projects when they cannot be flown in falconry for some reason. We left the transfer provision with time restrictions in place in this final rule.

The regulations need to ensure that birds taken from the wild for use in falconry are not immediately transferred to propagation. Even so, we understand the concerns about restrictions on use of small accipiters and falcons, and have changed the language in this paragraph to allow transfer of some species sooner than the 2-year restriction for most species (§ 21.29 (f)(5)(i)).

We will maintain a nationwide falconer database and a database on take of wild raptors. Every falconry permittee must operate within the bounds of these regulations and his or her State or tribal regulations. We also will retain the authority for law enforcement actions, so we expect no reduction in the effectiveness of the governance of falconry.

Issue. Facilities inspections. Many commenters objected to the added provision requiring that a person who allows a falconer to keep a mews on his or her property be made aware that the facilities can be inspected by law enforcement officers.

- “Does being a “permitted activity” exempt permittees from the general body of search law?”

- “Proposed section 21.29(c)(9) subjects falconry bird(s), facilities, equipment, and records to an unqualified right of inspection (referred to below as post-initial inspection) by government officers at any reasonable hour. The provision completely circumvents the protections of the United States Constitution against unreasonable search and seizure. But even outside of Constitutional considerations, a greater abuse of the citizenry by government is hard to imagine. This entire provision should therefore be eliminated along with the related provisions of section 21.29(c)(2)(iii).”

- “The most important change I would urge you to consider is that inspection of private property without the proper warrants is always unconstitutional.”

- “Without probable cause and securing a warrant, this violates the current search law.”

Response. Every falconry permittee agrees to inspection of his or her facilities, records, and raptors when he or she applies for a falconry permit. Because the permittee has done so, we disagree with these assertions.

Inspections provided for in this rule do not violate protections of the Constitution. The language about inspections was repeated in these regulations in part because of the added provision allowing falconry birds to be kept on property not owned by the falconry permittee. We have left it in place (§ 21.29 (d)(2)(ii)).

Issue. Some commenters felt that the language in 50 CFR 13 does not provide sufficient protection for falconry birds.

- “Most agents are inexperienced in the handling of raptors. The presence of the falconer [during an inspection] would prevent loss, injury or undue stress on the bird.”

Response. We have added language to these regulations stating that falconry facilities and raptor inspections may only be done in the presence of the permittee (§ 21.29 (d)(2)(ii)).

Issue. Use of microchips rather than, or in addition to, bands. Some commenters suggested that we allow implanting of microchips in lieu of required bands.

Response. We agree that this is a viable option, and we added the use of ISO (International Standardization Organization) - compliant microchips in lieu of, or in addition to, required bands (§ 21.29 (c)(7)(i), (ii)).

Issue. Banding of some raptor species taken from the wild. Many commenters opposed the additional requirement to band goshawks taken from the wild and, in fact, opposed any banding of birds taken from the wild. A few commenters (including State agencies) suggested that all birds taken from the wild for falconry should be banded.

- “The banding requirement is being pushed by people who think the sky is falling and that... raptors need to be protected from falconers. The sky is not falling, raptors do not need to be protected from us. There has never been a proven instance where bands have been removed and reused or birds have been trapped to replace one that has died. The banding process adds to the work load that many states complain about and should not be required at the federal level except for captive bred birds.”

- “I support the idea of banding any wild raptors the Service feels are “sensitive,” so as to better keep track of these birds. Banding birds is really not that much of a hardship.”

- “We would like to see the requirement that all birds used for falconry be banded.” (State agency).

- “[A]ll falconry, conservation education and propagation birds should be banded.” (State agency)

- “We support banding of all wild caught goshawks and would encourage

banding requirements for all species under Section 21.29 (b)(7)(i).” (State agency)

- “There may be some justification for tracking high-profile species, like gyrfalcons, peregrines and golden eagles, which are taken from the wild. However, there is no biological reason to band any wild raptor species known to have stable populations within the United States. The Service has a 30-year history of problems with the bands that it provides for identifying raptors. These bands become brittle and break over time. They fall off raptors and they are known to damage the tarsus of individual raptors, which necessitates the bands being removed. This presents a challenge to enforcement and puts falconers in legal jeopardy through no fault of their own. At best, this is an archaic system of bird identification. Superior alternatives would be: microchip implants (PIT tags) for larger raptors; digitized photos of foot-scale patterns (individualized finger prints); tattoos; and blood samples for DNA marking. Any of this information could be stored electronically, along with all of the other pertinent information that documents the raptors being held under a person’s falconry permit.”

Response. Banding has been required of only 4 species for which there are management or law enforcement concerns: Harris’s hawks, peregrine falcons, gyrfalcons, and golden eagles. This final rule requires banding of goshawks taken from the wild and removes the requirement for banding golden eagles. Very few golden eagles are taken from the wild by falconers, and that take is in very specific locations and circumstances. We do not believe there is any significant knowledge to be gained from requiring banding of these eagles.

We view banding of goshawks, Harris’s hawks, peregrine falcons, and gyrfalcons as a small burden for falconers, and the banding may be of help to law enforcement officers. Because take from the wild for falconry has no significant impact on raptor populations (U.S.F.W.S. 2007), we do not require banding of other species. A State, tribe, or territory may require banding of any species taken from the wild for use in falconry (§ 21.29 (c)(7)(i)).

Not all species are banded solely for biological reasons. Service law enforcement efforts may be aided by banding of some species. These regulations also have a provision for dealing with banding of species and individual birds for which the bands are a problem, and a band that is lost or broken is readily replaced. We agree

with the assertion that there are alternatives to bands available, and have added a provision for microchipping in lieu of, or in addition to, banding (§ 21.29 (d)(7)(i), (ii)).

Issue. *Let-it-lay provision.* Many commenters asked for a provision allowing a falconry bird to feed on prey that the falconer did not intend to have the raptor hunt.

Response. We recognize that unintended take of other species may occur, and have added a provision covering this issue to these regulations.

Issue. *Electronic reporting.* Many commenters asked that we allow paper reporting on 3-186A forms.

Response. We have added this provision. At the discretion of your State, tribe, or territory, you may submit completed paper 3-186A forms to your permitting authority. The State, tribe, or territory must then enter the information from the forms into the electronic reporting system. Your State, tribe, or territory may require that you submit 3-186A forms electronically or on paper.

Issue. *Electronic signatures on 3-186A forms.*

- “Electronic reports should have a provision indicating that information represented is true and correct, with some form of verifiable electronic signature. Electronic reports must have a narrative of the location of the capture or loss of a bird, not just GPS coordinates. By completing a form with a narrative of the take location, as well as UTM coordinates, and signing the document CDOW will have the ability to account for legal possession of birds and if necessary recourse for possible law enforcement investigations.” (State agency)

- “Electronic reporting by falconers brings up several questions. Are falconers responsible by law for false information reported? This is probably not true according to current Montana law. It is likely that assumption of current FWS responsibilities by states and tribes would require time-consuming and expensive legislative initiatives and administrative rule-making processes.” (State agency)

Response. The electronic reporting system merely implements an on-line version of the current 3-186A form. The same provisions for reporting on paper with the current 3-186A form will still apply. However, we recognize State concerns about signed forms. To avoid the expense and complication of electronic signatures on 3-186A forms, we will either add a signature box to the forms, and direct the permittee to print the completed form, sign it, and mail it to his or her permitting agency if the

agency requires a signed form; or we will add language to the 3-186A form telling the submitter that clicking on a submission button is the equivalent of signing the form.

Issue. *Restrictions on falconry activities in the vicinity of endangered species.* Many commenters disagreed with this addition to the regulations. Some argued that this provision would virtually eliminate falconry in much of the country.

- “The section on hacking birds in the “vicinity” of threatened or endangered wildlife should be omitted as it is so open to interpretation that it could lead to serious law enforcement issues and as written, would make falconry impossible to practice anywhere without risking breaking that rule.”

- “Another issue that concerns me is the proposed restriction on hawking and hacking in the vicinity of threatened or endangered [sic] species. This regulation creates yet another law enforcement gray area that could potentially make it impossible to fly a bird anywhere. Requiring a falconer to be aware of the presence of such threatened or endangered [sic] species before flying his or her bird is far from practical and is not required of any other regulated sportsmen. Along similar lines giving that good falconry requires controlling as many variables as possible the falconer cannot always make sure his or her bird pursues only the intended quarry.”

- “We acknowledge the practical limitations of monitoring such activities but would rather demonstrate our endorsement of scrupulous behavior by falconers by having such language in the regulations rather than risk an interpretation of implicit lack of such concern if the language were not here.” (State agency)

Response. We doubt that the need to exercise caution when conducting falconry activities or hacking falconry raptors will eliminate the practice of the sport. This requirement means only that you observe due caution when considering the practice of falconry - the same obligation faced by other citizens in their activities. It is left in place in these regulations (§ 21.29 (f)(17)).

Issue. *Apprentice examination development and administration.*

- “There is a need for uniform standards governing testing. The proposed rule would allow states to revise their falconry examinations without federal approval once the State is certified. No explanation is provided for this change. All falconers should have to meet a basic, standardized level of knowledge. Allowing states to modify falconry exams without federal review

creates a potential for disparities in the rigor and substance of individual State testing approaches. At bare minimum we would recommend that FWS create a standard examination to which State could add but not reduce.”

- “The exam should be standard, but administered by the States.”

- “We support removing the need to approve revisions of the examination.” (State agency)

Response. Inasmuch as all States, tribes, and territories that allow falconry must meet the standards in these regulations, we do not believe that they will test to a less rigorous level. Further, we believe that because the species present in different locations vary, there is merit in letting each permitting authority test on relevant and current information. However, the regulations require our approval of changes in a State’s, tribe’s, or territory’s falconry examination.

Issue. *Regulation of captive-bred birds.* Some commenters argued that the regulations were more extensive than necessary for birds that do not come from the wild.

- “I believe that captive raised raptors are not part of the wild resource and should not be regulated as such. I think that the seamless band and 3-186a form is proof enough that they weren’t wild taken and should be exempt from these regulations.”

- “For the most part, the effort to regulate captive bred raptors should be abandoned.”

- “I also believe that captive bred birds should be allowed to be held in any number by and by any permit level of falconer since the captive bred birds were never wild, and that only wild-caught bird numbers should be limited when biologically necessary.”

Response. We believe that regulation of captive-bred migratory birds is necessary for us to fulfill our mandate to protect migratory bird populations. However, we agree that possession of captive-bred falconry raptors has no impact on wild populations. Therefore, we will not limit the number of captive-bred birds a Master Falconer may use in falconry. However, we have not removed a falconer’s responsibility to maintain captive-bred raptors under the same humane and healthful conditions as raptors taken from the wild.

Issue. *Captive-bred raptors for Apprentice Falconers.* We proposed to allow an Apprentice Falconer to possess a captive-bred, non-imprinted raptor. This issue also generated many comments. Most people who commented on this issue argued that we should require an Apprentice to trap a bird from the wild so that he or she

might be better able to trap a lost bird, and that the Apprentice should not be allowed to possess captive-bred raptors. Further, some commenters suggested that captive-bred raptors are inappropriate birds for Apprentices to handle and train. Some commenters opined that we should not regulate such possession. Others argued that Apprentices should be able to possess birds from any source.

- “I also support the provision allowing Apprentices to have captive-bred, non-imprinted birds of the allowed species. While captive-bred birds are not ideal for an Apprentice, they will make the sport more accessible and expand the options available to beginners. Falconers who do not wish their Apprentices to fly captive-bred birds can enforce their wishes simply by refusing to sponsor an Apprentice who does not obtain birds in the desired manner; they should not attempt to use regulation to force all other Apprentices to fly only birds trapped from the wild. Although I do not yet sponsor Apprentices, I would consider captive-bred birds to be a last resort, not the first.”

- “We disagree that Apprentice Falconers do not need to capture a raptor themselves [sic]. We understand the concern associated with the lack of trapping experience of an Apprentice Falconer, however, the proposed regulation is commonly known as party-hunting, and is illegal in most States. This action will also inhibit the sponsor-Apprentice training by eliminating an experience the Apprentice will need to become a knowledgeable falconer.” (State agency)

- “We do not support the change to allow Apprentice Falconers to possess captive-bred birds as listed in 21.29 (b)(3)(i)(H). Unskilled falconers are the most likely group to improperly train or lose their bird [sic]. If they possess a wild caught passage bird such as a Red-tailed Hawk loss of the bird will not have a negative impact on wild populations and the bird is well equipped for survival in the wild. Wild caught raptors are typically the most appropriate birds for falconry because they are well suited to hunting and capturing local game species. Allowing individuals to choose from a wide array of species complicates their training efforts and may even make it more difficult for them to successfully train and hunt with their falconry bird. We do not see a need to allow individuals to have captive-bred raptors at the apprentice level.” (State agency)

- “Apprentice Falconers should be required to trap wild hawks native to North America. That is to say, flighted

juvenile raptors independent of their parents. There is no logic in allowing an Apprentice to possess a captive-bred raptor when, under the proposed changes, they still cannot legally acquire a nestling raptor from the wild.” (State agency)

- “Apprentices should not possess captive bred raptors. They should continue to be restricted to capture of wild passage raptors. This is consistent with basic apprentice management whereby they possess wild caught raptors that are capable of surviving in the wild if/when they escape or are released.” (State agency)

Response. We understand the points made by those who were concerned about this change. However, captive-bred birds do not affect wild populations of raptors, so we believe it is reasonable to leave the decision on an appropriate bird for an Apprentice to the Apprentice and his or her sponsor. In addition, any State, tribe, or territory may further regulate possession of captive-bred raptors by Apprentices. We leave this provision in place in these regulations (§ 21.29 (c)(3)(i)(E)).

Issue. *Species for Apprentice Falconers.* Some commenters favored allowing Apprentices to possess any species that General Falconers may possess, arguing that the impact of take by Apprentices on wild populations would be extremely small.

- “We disagree that an Apprentice can possess any species of captive-bred Falconiformes. This would allow Apprentices to have peregrines, which are more difficult to train for falconry than red-tail hawks or American kestrels.” (State agency)

- “All species limitations applied through the apprentice/general/Master classification should be eliminated even with respect to wild-caught raptors. [T]he delineation of some species as acceptable for certain license levels and some not is arbitrary and capricious and should be eliminated.”

- “The framing of the recommended change is inconsistent with what the proposed regulations actually state and is not a representative statement of the change. The proposed change actually permits a substantial increase in the species which could be possessed by apprentices which is not reflected in this framing.” (State agency)

Response. Though Apprentices were allowed only one additional wild-caught species in the proposed rule, we proposed that they be allowed many species of captive-bred raptors. We changed the language in this final rule to clarify this point and added to the species Apprentice Falconers may possess. There are only a few hundred

Apprentice Falconers in the U.S. at any time. We believe that take of wild raptors by these individuals would be without discernible impact on any population, particularly since the abundant red-tailed hawk is considered by many falconers to be the best bird for an Apprentice to use in starting falconry. Having considered this issue, we have opened the list of species available to Apprentice Falconers to include all species except golden eagles and national species of conservation concern (§ 21.29 (c)(3)(i)(E)).

Issue. “We believe there needs to be a U.S. residency requirement for falconry permit applicants to harvest a wild raptor. Residency requirements are in place for hunting, trapping, and fishing licenses (i.e. permits) in all States. We believe that all new residents must first establish residency within the U.S. before they are issued a permit to harvest raptors for falconry purposes. If residency is not mandated, we encourage the development of an alternate permit for non-U. S. residents to harvest a wild raptor.”

Response. Take of raptors is well regulated by the States, and we see no need to invoke such a requirement.

Issue. *Hacking of raptors held for falconry.*

- “In accordance with long-standing Service regulations, it should be clearly stated that hacking is an approved method for falconers to condition raptors for falconry.” (State agency)

- “We do not support the practice of hacking falconry birds under Section 21.29 (e)(2). One of the primary concerns our Biologists have about the sport of falconry is the opportunity for a non-native bird to be released into the wild. Our agency is concerned that these birds may potentially introduce diseases to our wild raptors, may attempt to breed with local populations or may have a negative impact on wild raptors either through aggressive behavior or depletion of the existing prey base. For these reasons, we would be opposed to allowing a person to intentionally release their falconry bird into the wild for any period of time.” (State agency)

- “Good inclusion to specifically address ‘hacking’ since this has been missing in current regulations and is being increasingly used. WDFW recently did an analysis of this to permit in Washington.” (State agency)

- “Release of hybrids, including short-term hacking, should be illegal.” (State agency)

- “We ask for a clearer definition of the term ‘hacking.’ It’s [sic] use here apparently refers to a hunting/training mechanism for the raptors. Normally,

the term hacking does not normally refer to a “temporary” release of a raptor, but conditioning for a permanent release back into the wild.” (State agency)

Response. The commenters are correct. The term “hacking” has been used to mean both preparing birds for release to the wild, and (in falconry) temporary release of a falconry raptor to the wild to force it to learn to hunt on its own. In these regulations, we are concerned only about the latter definition. Wild-caught raptors used in falconry would be unlikely to need hacking, but some captive-bred raptors may benefit from it, and we doubt that it would have a significant impact on wildlife populations or the environment. We believe that the safeguards for release of hybrid raptors (two transmitters are required) are sufficient to protect wild populations. However, any State, tribe, or territory may restrict hacking or the release of hybrid raptors.

Issue. Non-native species. “[W]e request that the USFWS consider the potential detrimental impacts to Colorado raptors through the importation of non-native species and the resulting spread of disease, as well as the commercialization of raptors.”

Response. The regulations at 50 CFR 21.12 are regulations for import to, and export from, the United States. The import of raptors into a State may be further restricted by the State.**Issue.** “The CDOW perceives that the proposed Service regulations could result in some negative impacts to wild raptor, including golden eagle, populations. The outcome of the cumulative impact of the proposed changes is unknown, but is likely to increase take. (These proposed changes include, are not limited to: increase in the number of birds each falconer may hold, a decrease in the minimum age for Apprentice Falconers, and a proposed change in the “definition” of “bird taken from the wild,” in which this classification is dropped once the bird has been transferred). The USFWS does not describe any analysis suggesting what the increased take would be or that is increased take would have no negative impacts. Native raptors are highly valued by many of our constituents, and we would find it difficult to defend an increase in take without an analysis of its impact.” (State agency)

Response. We disagree. The definition of “wild” raptor is intended to clarify these regulations, and has no effect on the number of birds taken from the wild. Further, the term “wild” raptor is not “dropped once the bird has been

transferred (§ 21.29 (f)(1)).” This rule states that a raptor taken from the wild “is considered to be taken from the wild only by the person who actually captured it,” but that any raptor removed from the wild is always considered a “wild” bird. We believe that the changes in this rule will have very minimal impacts on raptor populations (see U.S.F.W.S. 2007, in which we determined that most take for falconry is a tiny fraction of what the populations could sustain). We also believe that the changes will be compatible with the preservation of the golden eagle.**Issue. Clarity of the regulation.** “For some regulations the question and answer format does not work well, for example “How may I take raptors from the wild for use in falconry?” The answers are embedded in the various responses (i.e. by someone with a permit, by someone without a permit but in the presence of another person with a permit, etc.). In many instances the regulations would be more direct and clearly stated in bullets or a different format. To further complicate issues, regulatory information is found in multiple sections (for example, possession of eagles for falconry).” (State agency)

Response. We agree with these comments, and we changed the wording of many parts of this rule to respond to suggested changes. We also reorganized the regulations to address the concerns about regulations in multiple sections.

Issue. Permission to trap golden eagles.

- “Persons wishing to trap golden eagles should have permission from the landowner or land management agency to trap ANY bird.” (State agency)

- “Landowner permission must not be a condition to trap a golden eagle or any other raptor. This gives wildlife management authority to land management agencies with no statutory wildlife authority. Private lands access is another issue and is regulated by State trespass laws.” (State agency)

- “When capturing a golden eagle for falconry purposes the USFWS draft regulation indicates that the landowner, which would include a land management agency (BLM, USFS, BR, State Land Departments, etc.), must authorize the activity. Neither the States nor the Service should be authorizing land managers to regulate wildlife. They do not currently have that statutory authority. Please delete this line item in its entirety.” (State agency)

Response. We believe that this issue was made clear in paragraph (e)(14) of the proposed rule for all falconry, and in paragraph (b)(3)(iv)(F)(3) for eagle trapping. We simply intended to make

it clear that these regulations do not authorize capture of a golden eagle for falconry if the capture is not allowed by the agency or if entry to private land is not allowed by the landowner.

However, the relevant language is further clarified in this final rule (§ 21.29 (f)(16)); the regulations state that a falconer does not need special or written permission to capture, fly, or release a falconry bird on public lands if the action is authorized there. A land management agency need not take special measures or otherwise authorize take of a golden eagle if the agency’s regulations or other language already allow the take.**Issue.** “The State wildlife agency should also be notified prior to trapping golden eagles.” (State agency)

Response. Any State or tribal agency can require this notification of permittees.**Issue.** “There needs to be a clear distinction who will be administering the propagation permits. As we understand it, the USFWS, not the states, will administer these permits.” (State agency)

Response. This rule does not change our administration of propagation permits; we will continue to issue them.**Issue. Capture requirements.** “[Paragraph] (d)(3)(vi)(A) [6987.3] Subsection (v) appears to be contradicted by (vi)(A) in that the disposition of the bird is at the discretion of the State Under (v) and appears to be specifically determined by the guidelines given under (vi)(A). One of these proposed changes needs to be changed to bring them into agreement.” (State agency)

Response. Paragraph (d)(3)(vi)(A) referred to initial capture of a raptor from the wild. Paragraph (v) referred to recapture of a lost falconry bird.**Issue.** “Individual clutch size varies between species & the requirement for leaving birds in the nest should be set at a per-species level for a biological basis.” (State agency)

Response. We believe that the commenter requests that we mandate how many young of any species must be left in a nest. Any State, territory, or tribe may further regulate take of nestlings. States have effectively restricted take conditions such as timing of take, locations of take, and leaving nestlings. We are not aware of any problems related to State regulation of take, but we will propose amendments to these regulations to address this concern if it becomes necessary to do so.

Issue. State or tribal restrictions.

- “The proposed regulations prohibit falconry raptors from being used for entertainment, promotion of any goods, etc., but allow charging a fee for presentations to conservation education programs. The regulation needs to defer

to State or tribal regulations which may further restrict falconry raptors use in these activities.” (State agency)

• The regulations “should explicitly state that State law may enact and enforce regulations and standards that are more restrictive than Service Regulations.” (State agency)

Response. We stated in paragraph (a)(4)(ii) of the proposed rule and in these regulations that “State, tribal, or territorial laws may be more restrictive than these Federal standards but may not be less restrictive (§ 21.29 (b)(1)(iii)).” **Issue.** “*With the new 10(j) designation pending statewide in Arizona and New Mexico, would this regulation require Apprentice Falconers to have a sponsor at all times and at all locations in these two states? We believe Apprentice Falconers should have a sponsor [sic] with them while trapping regardless of which county they are in.*” (State agency)

Response. No, the trapping restriction in aplomado falcon (*Falco femoralis*) habitats applies only to the counties listed in these regulations. In other circumstances, it is advisable for an Apprentice Falconer to have his or her sponsor present when trapping, but it is not required. **Issue.** *Capture of raptors in some counties in Texas; restrictions due to concerns about aplomado falcons.* “TPWD prefers to leave the number of counties as is. The same ethical requirements for cessation of trapping activities would apply regardless of the county listed. The counties listed are those within which northern aplomado falcons have been observed and this is the only basis we have for establishing their range within Texas.” (State agency)

Response. This comment seems to endorse our regulations proposal. This provision is unchanged. **Issue.** *Differing permit requirements.* “It is not consistent to have applicants for a General Falconry permit sign a letter: 1) certifying use of their raptors for falconry, 2) State their qualifications for the permit, and 3) for the states to conduct a review of raptors they possess, when this is not required of an applicant for a Master Falconry permit. It should be completed for both a General and Master applicant, or neither. We prefer neither.” (State agency)

Response. We believe it is appropriate to ask more about the qualifications of an Apprentice Falconer wishing to advance to General Falconer, than of a General Falconer wishing to advance. However, some of the certification requirements have been eliminated from this final rule.

Issue. *Certification language.* “[T]he certification example [should be] clarified to avoid the general terminology (i.e., “...the other applicable parts of subchapter B of chapter I of title 50...”) replacing it with the specific regulations to which the falconers are agreeing.”

Response. We disagree. This is the standard language in 50 CFR 13.12, which we do not change in this rule. Further, a change in the language could require that we change the falconry regulations if any change is made to the relevant regulations elsewhere. Therefore, we have not changed this language.

Issue. *Reinstatement of lapsed permits.*

• “The proposed changes clarify the requirements for reinstating permits that have lapsed. We support requiring the examination for permittees that do not renew for five years or more and requiring a facility inspection after 2 years or more as stated in 21.29 (b)(5)(ii), 21.29 (b)(5)(iii) and 21.29 (b)(5)(iv).” (State agency)

• “Five years is a sufficiently long period to allow for lapsing of a permit. Any longer than that and we feel that experiences and skills may be significantly diminished.” (State agency)

Response. We received conflicting opinions on this issue. These regulations will allow reinstatement of a lapsed permit for up to 5 years. An individual who has not had a permit for 5 years or more must have his or her facilities inspected before he or she may acquire a falconry raptor. Any State, tribe, or territory can invoke additional requirements for reinstatement of a lapsed permit (§ 21.29 (c)(5)).

Issue. *Housing requirements.* “In Section 21.29 (b)(5)(iii) the proposed changes preempt State housing requirements. We recommend that this section be reworded to read: If your permit has lapsed less than 2 years, you must provide written verification to your State, tribal, or territorial agency that regulates falconry stating that your falconry facilities meet the standards in paragraph (c)(1) of this section and meet the standards of the permitting State or tribal lands.”

Response. We disagree. These regulations require a statement about the individual’s falconry facilities, but any State may establish additional requirements. **Issue.** *Permittees with facilities in more than one location.* “Under Section 21.29 (c)(7) and Section 21.29 (c)(8) the issue of dual residency is addressed. Although we support allowing states to issue a permit it is not clear whether or not all states will be

issuing resident permits. We would suggest that a resident permit be issued by the State where the falconer maintains a legal residence. All other permits would be non-resident, and would be required to meet all the same requirements as a resident permittee if the State so chooses. Suggested wording for Section 21.29 (c)(7): The State or Tribe in which you are not a legal resident may require that you obtain a non-resident falconry permit if you reside there for at least 30 days per year. You must contact the State or tribal agency that regulates falconry to determine whether you need a permit.” (State agency)

• “We recommend that Section 21.29 (b)(2)(iii) be reworded to read:

If you have a residence in other states or on tribal lands other than the State or tribal lands in which you comply with legal residence requirements for more than 30 days a year, your falconry facilities at any other location must be inspected by the State or Tribe. The falconry housing facilities located in another State must meet the standards in paragraph (c) of this section, must meet the standards of the corresponding State or tribal lands and must be listed on your resident and nonresident falconry permits.” (State agency)

• “Suggested changes to Section 21.29 (c)(8) are similar to those in Section 21.29 (b)(2)(iii): If you live in a State or on tribal lands for more than 30 days a year other than the State or tribal lands in which you maintain your legal residence, your falconry facilities in the other states or tribal lands must be inspected by the State or Tribe. The facilities in all states and tribal lands must meet the standards in paragraph (c) of this section, must meet the standards of the corresponding State or tribal lands and must be listed on all resident and non-resident falconry permits.”

Response. These are good suggestions. We have changed the relevant language to state that facilities away from the permittee’s residence also must be inspected (§ 21.29 (d)(2)(i) and (ii)). **Issue.** *Taking banded raptors taken from the wild.* “We do not support taking a raptor banded with a Federal Bird Banding Laboratory aluminum band from the wild as listed in Section 21.29 (d)(3)(vi). Any bird that has been banded or marked for the purpose of research should be returned to the wild immediately after capture. We recommend that this requirement apply to all species and not just peregrine falcons.” (State agency)

Response. We discussed this issue with the Federal Bird Banding Laboratory prior to publication of the

proposed regulations. The laboratory endorsed the position we took. We did not change the requirements in this final rule.

Issue. Temporary possession of raptors while trapping.

- “The AGFC opposes the draft regulation which would allow a falconer to take a raptor and keep it as part of their [sic] possession limit. This activity as proposed is in violation of the Arkansas Game and Fish Commission Code of regulations which defines “take,” in part, “to trap, capture or reduce to possession.” If a raptor is “taken” it has been trapped and is in the falconer’s possession and must become and remain part of the falconer’s limit. We recommend the Service delete this section of the proposed regulations and allow the states to deal with it within their legal frameworks.” (State agency)

- “The draft regulations allow a falconer to take a raptor and hold it for several hours before they make the decision to keep it as part of their possession limit or not. This activity is in violation of the laws of most if not all states. If an animal is “taken” is has been reduced to possession and must remain part of the falconer’s limit. Recommend deleting this section and let the states deal with it within their legal frameworks.” (State agency)

- “Remove the proposal to allow a falconer to hold a captured raptor for several hours before reducing them to possession. If an animal is “taken” it has been reduced to possession and must remain part of the falconer’s limit.” (State agency)

- “We agree that no falconer should be allowed to “cull” raptors taken, by holding them longer than time that would allow for immediate release. States will develop appropriate regulations within legal frameworks.” (State agency)

Response. We recognize the difficulty that this change would create for the States. We have removed this language from this final rule.

Issue. Falconers assisting rehabilitators in conditioning raptors for release.

- “We also support the option for General and Master Class falconers to assist wildlife rehabilitators in training young raptors prior to their release as stated in Section 21.29(e)(9).”

- “Falconers should be allowed to assist with rehabilitation efforts. However, this begs the question >Why should a licensed falconer be permitted under an individual rehabilitator who likely knows less than they [sic] do about raptor health, behavior and management?” (State agency)

Response. Permitted migratory bird rehabilitators are knowledgeable about avian health and care, but may not be equipped to properly condition injured raptors for release. The rehabilitation regulations require that every individual working with a rehabilitator be a subpermittee, so we wrote the proposed falconry regulations to accommodate this requirement. However, we understand the issue raised by the State agency and other comments received. In this final rule we amend the rehabilitation regulations to exempt falconers from the subpermittee requirement (§ 21.31 (e)(3)).

Issue. Transfer of rehabilitated raptors.

- “We do not however support the option for rehabilitators to permanently place a healthy raptor with a falconer under Section 21.29 (d)(6). In the event that this activity is allowed the State, not the rehabilitator, should have sole discretion for allowing the transfer to occur. Allowing rehabilitators to transfer healthy birds to falconers for permanent use creates a number of concerns such as the appropriate circumstances that warrant the transfer, the time of year this would be authorized, at what age is the bird transferable and how does the State handle situations in which there appears to be abuse of this activity.”

- “The State must be able to restrict the acquisition of a bird for falconry purposes obtained from a licensed rehabilitator. This change to 21.31: Rehabilitation Permits, should not allow the transfer of the bird from a rehabilitator to a falconer without approval from the State!” (State agency)

Response. Any State, tribe, or territory may restrict such transfers.**Issue.** “Falconers should not be removing any bird from the wild that is listed as federally or locally threatened or endangered.” (State agency)

Response. Falconers can do so only with an appropriate permit or permits. This provision has long been in the falconry regulations, and we are not aware of issues with endangered or threatened species. This provision is left in place in this final rule.

Issue. Foreign visitors practicing falconry.

- “We support allowing visitors to the United States the opportunity to practice falconry as stated in 21.29 (e)(12). However, the State should have the option of issuing a non-resident permit or a temporary permit. In our State, we already have regulations allowing for a one year nonresident falconry permit.” (State agency)

- “This section did not address the case of foreign falconers who come to

the U.S. for 6 months out of the year or who possess green cards, work visas, etc. If these individuals can legally secure a State falconry license, they should be allowed to trap and train a wild raptor.” (State agency)

Response. These regulations do not prevent a State, tribe, or territory from providing such a permit, and address doing so with “temporary” permits. An individual who has resident status may, at the discretion of the permitting agency, obtain a falconry permit.**Issue. Abatement with falconry birds.** “You do not address the use of birds possessed under a falconry permit for the control of nuisance, non-protected birds, such as feral pigeons and European starlings. This use of falconry birds is becoming more common and is becoming a source of income for several falconers in Indiana. While the long-term effectiveness of this use of a falconry bird is not currently known, it is becoming more and more common. Currently the regulations do not prohibit this activity since the bird is “hunting” or “being trained” to hunt. This issue needs to be addressed. The State of Indiana will pursue additional restrictions in this area, but it would be helpful if the USFWS also addressed the legality of this.” (State agency)

Response. We have a guidance memorandum for the use of raptors in abatement and a new application form. See 72 FR 69705-69706 (December 10, 2007), and <http://migratorybirds.fws.gov>.

V. Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies’ actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

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 does 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 will 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 does not have a significant economic impact on a substantial number of small entities because the changes we are proposing are intended primarily to clarify the requirements for falconry and the procedures for obtaining a falconry permit.

This determination is based on the fact that we are proposing limited changes to the current requirements for falconry facilities (housing). To legally practice falconry in the United States, an applicant will be required to obtain a State, tribal, or territorial falconry permit. To do so, he or she must demonstrate knowledge of falconry and must have facilities for keeping falconry raptors that will protect them from weather extremes. The changes in the regulations will require minimal changes to the facilities of some falconers, but affect neither the information collected nor the fees required to obtain a permit. Consequently, we certify that because this rule does 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 the SBREFA (5 U.S.C. 804(2)). It does not have a significant impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of \$100 million or more. If all falconry permittees had to rebuild their falconry facilities to comply with the regulations, at an estimated \$2,000 each, the total cost to permittees would be \$8,000,000. This highest-cost estimate for compliance with this rule by permittees would be a one-time expenditure.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The practice of falconry does not significantly affect costs or prices in any sector of the economy.

c. This rule will 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. Falconry is an endeavor of private individuals. Neither regulation nor practice of falconry significantly affects business activities.

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 does not "significantly or uniquely" affect small governments. A small government agency plan is not required. Falconry is an endeavor of private individuals. Neither regulation nor practice of falconry affects small government activities in any significant way.

b. This rule does 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. Though States may have to revise their falconry regulations to comply with the revisions, nearly every State already has falconry regulations in place. Therefore, revisions of the State regulations should not be significant.

Takings

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

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under Executive Order 13132. It does not interfere with the States' ability to manage themselves or their funds. No significant economic impacts are expected to result from the regulation of falconry. However, this rule provides the opportunity for States to cooperate in management of falconry permits and to ease the permitting process for permit applicants.

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

We examined these regulations under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of the Migratory Bird Permits Program and assigned clearance number 1018-0022, which expires November 30, 2010. This regulation will eliminate the Federal falconry permit, and reduce the burden for both permittees and the migratory bird permit offices. It does not add to the approved information collection. Information from the collection is used to document take of raptors from the wild for use in falconry and to document transfers of raptors held for falconry between permittees. A Federal agency 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

This rule does not change the take of raptors from the wild allowed for each permittee each year, though it will allow a small increase in total take over a short term. The changes will delegate administration of falconry permitting and the practice of falconry to the States and tribes, and are otherwise largely to reorganize the regulations, make them clearer, and combine related sections. 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). We completed a Final Environmental Assessment (EA) in June 2007 (U.S.F.W.S. 2007, 72 FR 31268) to assess establishment of regulations governing the take of raptors for falconry and raptor propagation. Based on our analyses in the EA, we concluded that the take of raptors from the wild for these purposes is not a major Federal action significantly affecting the quality of the human environment. You can obtain a copy of the EA by contacting us at the address in the **ADDRESSES** section.

We further evaluated the environmental impacts of the significant changes to these regulations. Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, we determined that these regulations changes do not have a significant effect

on the human environment. Under the guidance in Appendix 1 of the Department of the Interior Manual at 516 DM 2, we conclude that the regulations changes are categorically excluded because they “have no or minor potential environmental impact” (516 DM 2, Appendix 1 A (1)). No more comprehensive NEPA analysis of the regulations change is required.

Environmental Consequences of this Action

The changes we propose are primarily in the combining, reorganizing, and rewriting of the regulations. The environmental impacts of this action are limited.

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

Raptor populations. This rule does not significantly alter the take of raptors for falconry in the United States. This rule will have little change on the effects of falconry on raptor populations. Each General or Master Falconer will still be allowed to take only 2 raptors from the wild per year for use in falconry.

Endangered and Threatened Species. The regulations have new provisions governing falconry in habitats important to those threatened or endangered species that may be impacted by falconry.

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, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that this rule does not interfere with the tribes’ ability to manage themselves or their funds or to regulate falconry on tribal lands. *Energy Supply, Distribution, or Use (Executive Order 13211)*

On May 18, 2001, the President issued Executive Order 13211 addressing regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects the practice of falconry in the United States, it is not a significant regulatory action under Executive Order 12866, and does 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.

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 Division of Threatened and Endangered Species concurred with our finding that the revised regulations will not affect listed species.

VI. Literature Cited

U.S. Fish and Wildlife Service. 2002. Birds of Conservation Concern, 2002. Division of Migratory Bird Management, Arlington, Virginia.

U.S. Fish and Wildlife Service. 2007. Final Environmental Assessment: take of raptors from the wild under the falconry and the raptor propagation regulations. Division of Migratory Bird Management, Arlington, Virginia.

List of Subjects in 50 CFR Part 21

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

List of Subjects in 50 CFR Part 22

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

■ For the reasons stated in the preamble, we amend parts 21 and 22 of subpart C, subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows.

PART 21—MIGRATORY BIRD PERMITS

■ 1. Revise the authority citation for part 21 to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

■ 2. Amend § 21.2 paragraph (b) by removing the words “Federal” and “standards.”

■ 3. Amend § 21.3 by revising the definitions of “falconry” and “raptor” and adding definitions of “hacking,” “hybrid,” “imprint,” and “livestock depredation area,” in alphabetical order, to read as follows:

§ 21.3 Definitions.

* * * * *

Falconry is caring for and training raptors for pursuit of wild game, and hunting wild game with raptors. Falconry includes the taking of raptors from the wild to use in the sport; and caring for, training, and transporting raptors held for falconry.

Hacking is the temporary release of a raptor held for falconry to the wild so that it must survive on its own.

Hybrid means offspring of birds listed as two or more distinct species in § 10.13 of subchapter B of this chapter, or offspring of birds recognized by ornithological authorities as two or more distinct species listed in § 10.13 of subchapter B of this chapter.

Imprint, for the purposes of falconry, means a bird that is hand-raised in isolation from the sight of other raptors from 2 weeks of age until it has fledged. An imprinted bird is considered to be so for its entire lifetime.

Livestock depredation area means a specific geographic location in which depredation by golden eagles has been recognized. The boundaries and duration of a livestock depredation area are declared by U.S.D.A. Wildlife Services or by a State governor.

* * * * *

Raptor means a migratory bird of the Order Falconiformes or the Order Strigiformes listed in § 10.13 of this chapter, including the bald eagle (*Haliaeetus leucocephalus*) and the golden eagle (*Aquila chrysaetos*).

* * * * *

§ 21.28 [Removed and Reserved]

■ 4. Remove and reserve § 21.28.

■ 5. Revise § 21.29 to read as follows:

§ 21.29 Falconry standards and falconry permitting.

(a) *Background.*

(1) *The legal basis for regulating falconry.* The Migratory Bird Treaty Act prohibits any person from taking, possessing, purchasing, bartering, selling, or offering to purchase, barter, or sell, among other things, raptors (birds of prey) listed in § 10.13 of this subchapter unless the activities are allowed by Federal permit issued under this part and part 13 of this chapter, or as permitted by regulations in this part.

(i) This section covers all Falconiformes (vultures, kites, eagles, hawks, caracaras, and falcons) and all Strigiformes (owls) listed in § 10.13 of this subchapter (“native” raptors), and applies to any person who possesses one or more wild-caught, captive-bred, or hybrid raptors protected under the MBTA to use in falconry.

(ii) The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, 54

Stat. 250) provides for the taking of golden eagles from the wild to use in falconry. It specifies that the only golden eagles that may be used for falconry are those that would be taken because of depredations on livestock or wildlife (16 U.S.C. 668a).

(2) *“Possession” and short-term handling of a falconry raptor.* We do not consider short-term handling, such as letting any other person hold or practice flying a raptor you possess under your permit, to be possession for the purposes of this section if you are present and the person is under your supervision.

(3) *Regulatory year for governing falconry.* For determining possession and take of raptors for falconry, a year is any 12-month period for take defined by the State, tribe, or territory.

(b) *Federal approval of State, tribal, and territorial falconry programs.*

(1) *General.*

(i) A State (including the District of Columbia), tribe, or territory under the jurisdiction of the United States that wishes to allow falconry must establish laws and regulations (hereafter referred to as laws) that meet the standards established in this section. To allow the practice of falconry on tribal lands by tribal members or residents, a tribe may either certify that it has adopted Service-approved State laws if those laws are fully enforceable on tribal lands, or issue its own laws and request our approval.

(ii) The U.S. Fish and Wildlife Service (Service) Director must determine that a State, tribal, or territorial falconry permitting program meets the requirements and standards of this section. The Director must certify no later than January 1, 2014, that a State, tribe, and territory willing to allow falconry meets the federal standards. At that time, all Federal falconry permits and the Federal permitting program will end. Falconry will not be permitted in a State or territory or by a tribe after this date until that State, tribe, or territory develops a permitting program the Director certifies to be in compliance with these regulations. Also see paragraph (b)(12) of this section.

(iii) State, tribal, or territorial laws may be more restrictive than these Federal standards but may not be less restrictive. For instance, a State, tribe, or territory may choose not to allow possession of some species of raptors otherwise allowed in this section. State, tribal, and territorial laws must be consistent with the terms contained in any convention between the United States and any foreign country for the protection of raptors and the Migratory Bird Treaty Act.

(2) *State, tribal, or territorial submission for approval.* A State, tribe, or territory that wishes to allow falconry must submit to the Director:

(i) The data required by paragraph (b)(1) of this section;

(ii) A copy of the State's, tribe's, or territory's Apprentice Falconer examination, which must at a minimum cover laws and regulations, raptor biology and raptor identification, trapping methods, facilities requirements, care of raptors held for falconry, and diseases and health problems of raptors, and training methods; and

(iii) Copies of the laws and regulations governing falconry of the State, tribe, or territory, and certification that the laws and regulations meet the requirements of this section.

(3) *Electronic reporting.* The State, tribe, or territory must work with us to ensure that the electronic 3-186A reporting system (<http://permits.fws.gov/186A>) for reporting take, transfers, and loss of falconry birds is fully operational for residents of that jurisdiction.

(4) *Federal approval and terms.* If we concur that the regulations and the examination meet the requirements of this section, we will publish a rule in the **Federal Register** adding the State, tribe, or territory to the list of those approved for allowing the practice of falconry. We will terminate Federal falconry permitting in any State certified under these regulations on January 1st of the calendar year following publication of the rule.

(i) An approved State, tribe, or territory must notify the Service Director of any substantive revisions of their laws governing falconry and certify that they meet the requirements of this section.

(ii) We must approve the falconry examination any time it is revised.

(5) *Review of a State, tribal, or territorial falconry program.* We may review the administration of an approved State's, tribe's, or territory's falconry program if complaints from the public or law enforcement investigations that indicate the need for a review, or revisions to the State's, tribe's, or territory's laws or falconry examination. The review may involve, but is not limited to:

(i) Inspecting falconers' facilities to ensure that facilities standards in this section are met;

(ii) Processing time of applications;

(iii) Reviewing approved applications for completeness;

(iv) Determining that permits issued are appropriate for the experience of the applicants;

(v) Determining the adequacy of the State's, tribe's, or territory's recordkeeping for the needs of State, tribal, or territorial and Federal law enforcement;

(vi) Reviewing laws to determine if they meet the requirements of this section; and

(vii) Reviewing a revised falconry examination to determine if it meets the requirements of this section.

(6) *Suspension of a State's, tribe's, or territory's certification.*

(i) We may propose to suspend, and may suspend the approval of a State, tribal, or territorial falconry program in accordance with the procedures in paragraph (b)(6)(ii) of this section if we determine that the State, tribe, or territory has deficiencies in one or more items in paragraph (b)(5) of this section.

(ii) When we propose to suspend approval of a State, tribal, or territorial falconry program, we will first provide written notice to the State, tribe, or territory. Any such notice will include the basis for our determination that suspension is warranted. We will identify the actions that would, if implemented by the State, tribe, or territory, allow us to cancel the proposed suspension of approval.

(iii) The State, tribe, or territory will have 2 years from the date of our notification to correct the deficiencies. The State, tribe, or territory must respond in writing within that time to the proposed suspension, specifying the reasons why the certification should not be suspended. We will give due consideration to any objections and evidence raised by the State, tribe, or territory.

(iv) If we continue to believe that suspension is warranted, we will provide written notice of suspension, including the rationale for suspension, and respond to any objections to the suspension.

(A) The suspension of approval of the State's, tribe's, or territory's falconry program will be effective 180 days from the date of the Service's final notification of suspension.

(B) The State, tribe, or territory must then inform all falconry applicants and permittees of the impending cancellation of permitting.

(v) We will honor all falconry permits in that jurisdiction for 2 years from the date of our final notification of suspension of certification. At the end of the 2 years, you must transfer all raptors (including captive-bred raptors) held under permits from the State, tribal, or territorial falconry program to other falconry permittees in other States or territories, or to Federal raptor propagation or education permittees,

institutions exempt from the Federal permit requirements, or permanently released to the wild (if it is allowed by the State, tribe, or territory and by this section), or euthanized. However, you may not permanently release hybrid raptors to the wild.

(7) *Appeal of a decision to suspend State, tribal, or territorial certification.* The State, tribe, or territory may appeal a decision to suspend certification to the Director within 180 days of the date of the Director's decision. The Director will then respond to the State, tribe, or

territory within 180 days of receipt of the appeal. The State, tribe, or territory certification will remain effective until the Director makes a final decision on the appeal.

(8) *Recertification of compliance with this section if a State's, tribe's, or territory's falconry permitting authority has been suspended.* If a State, tribe, or territory has had its falconry permitting authority suspended but has corrected its problems, it must submit a request for approval of its permitting activities. We will then either recertify the

program, or report in writing why we do not believe that earlier permitting problems have been rectified.

(9) *Authority to suspend or revoke a falconry permit issued by a State, tribe, or territory.* Suspension or revocation of a falconry permit is the responsibility of the State, tribe, or territory. However, compliance with all provisions of these regulations remains under the purview of the Fish and Wildlife Service.

(10) *Standards in effect in your place of residence.*

If your legal residence is in	you may
(i) [- States, tribes, and territories in compliance with these revised regulations -],	practice falconry as permitted in these regulations if you have a permit from your State, tribe, or territory.
(ii) Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, or Wyoming,	practice falconry under the Federal regulations in effect on November 7, 2008 (if falconry was allowed in your State at that time) until your State has certified that it meets the requirements in these regulations or until January 1, 2014.

(11) *Compliance date for the regulations in this section.* A State with existing Federally-approved falconry regulations wishing to continue to allow falconry after January 1, 2014 must certify to the Director of the Fish and Wildlife Service that it is in compliance with this section. This section will be applicable for a State upon publication in the **Federal Register** of our notice of approval of the State's certification. Any State certified to allow falconry under the Federal falconry regulations contained in §§ 21.28 and § 21.29 in

effect prior to November 7, 2008 may continue to allow falconry under those provisions until:

- (i) We publish a notice of our approval of the State's certification in the **Federal Register**; or
- (ii) January 1, 2014.

(12) *What will happen if a State with falconry regulations certified under earlier regulations does not come into compliance with this section by January 1, 2014?* If a State does not come into compliance with this section by the compliance date, we will require that all

raptors held for falconry in that State or (including captive-bred raptors) be transferred to falconers in other jurisdictions, transferred to captive propagation programs, permanently released to the wild (if that is allowed by the State and by this section), or euthanized. However, you may not permanently release hybrid raptors to the wild.

(c) *Practicing falconry.*

(1) *Practicing falconry where you reside.*

If your legal residence is in	you may	because your place of residence
(i) the District of Columbia, Hawaii, on any tribal land, or in any U.S. territory,	not practice falconry	has not met the Federal falconry standards or does not allow the practice of falconry.
(ii) any State other than Hawaii, in the District of Columbia, on any tribal land, or in any U.S. territory,	practice falconry after you receive your State, tribal, or territorial falconry permit, if your State, tribe, or territory is in compliance with these regulations	has met the Federal standards and allows the practice of falconry.

(2) *Permits and inspections to practice falconry.* You must have a valid falconry permit from the State, tribe, or territory in which you reside (or the tribe on whose land you wish to practice falconry if you reside on tribal land or are a tribal member), to take, possess, or transport raptors for falconry, or to hunt with them. Depending on the game you hunt as a falconer and where you hunt, you also may need a Federal Migratory Bird Hunting and Conservation Stamp (a "Duck Stamp"), and State, tribal, or

territorial hunting permits or stamps to hunt with a raptor.

(i) Some State, tribal, territorial, or local governments may require you to have additional permits or licenses to practice falconry or to take a raptor from the wild.

(ii) You must comply with all regulations governing migratory bird permitting.

(iii) If you reside for more than 120 consecutive days in a State or territory or on tribal lands other than the location of your primary residence, your falconry

facilities in the second location must meet the standards in paragraph (d) of this section and of the corresponding State, tribal, or territorial lands, and your facilities must be listed on your falconry permit.

(3) *Classes of permit to practice falconry.* We recognize Apprentice, General, and Master Falconer levels. Each State, tribe, or territory may have any number of permit levels, but the standards for them must be at least as restrictive as these Federal standards. Your State, tribe, or territory may have

more restrictive laws or regulations governing falconry.

(i) Requirements and possession options for an Apprentice Falconer.

(A) You must be at least 12 years of age.

(B) If you are under 18 years of age, a parent or legal guardian must sign your application and is legally responsible for your activities.

(C) You must have a letter from a Master Falconer or a General Falconer with a valid State, tribal, or territorial falconry permit who is at least 18 years old and has at least 2 years experience at the General Falconer level, stating that he or she will assist you, as necessary, in:

(1) Learning about the husbandry and training of raptors held for falconry;

(2) Learning and about relevant wildlife laws and regulations, and

(3) Deciding what species of raptor is appropriate for you to possess while an Apprentice.

(D) Regardless of the number of State, tribal, or territorial falconry permits you have, you may possess no more than one raptor for use in falconry.

(E) You may possess a wild-caught or captive-bred raptor of any Falconiform or Strigiform species except the following: American swallow-tailed kite (*Elanoides forficatus*), bald eagle (*Haliaeetus leucocephalus*), white-tailed eagle (*Haliaeetus albicilla*), Steller's sea-eagle (*Haliaeetus pelagicus*), northern harrier (*Circus cyaneus*), Swainson's hawk (*Buteo swainsoni*), ferruginous hawk (*Buteo regalis*), golden eagle (*Aquila chrysaetos*), peregrine falcon (*Falco peregrinus*), prairie falcon (*Falco mexicanus*), flammulated owl (*Otus flammeolus*), burrowing owl (*Athene cunicularia*), and short-eared owl (*Asio flammeus*).

(F) You do not need to capture a wild raptor yourself; it can be transferred to you by another falconry permittee.

(G) You may not possess a raptor taken from the wild as a nestling.

(H) You may not possess a bird that is imprinted on humans.

(I) Your raptor facilities must pass inspection by your State, tribe, or territory before you may be granted a permit.

(ii) Requirements and possession options for a General Falconer.

(A) You must be at least 16 years of age.

(B) If you are 16 or 17 years of age, a parent or legal guardian must sign your application and must be legally responsible for your activities.

(C) You must submit a document from a General Falconer or Master Falconer (preferably your sponsor) to your State, tribal, or territorial wildlife agency

stating that you have practiced falconry with wild raptor(s) at the Apprentice Falconer level or equivalent for at least 2 years, including maintaining, training, flying, and hunting the raptor(s) for least 4 months in each year. That practice may include capture and release of falconry raptors.

(D) You may not substitute any falconry school program or education to shorten the period of 2 years at the Apprentice level.

(E) You may take and possess any species of Falconiform or Strigiform except a golden eagle, a bald eagle, a white-tailed eagle, or a Steller's sea-eagle. You may use captive-bred individuals and hybrids of the species you are allowed to possess.

(F) Regardless of the number of State, tribal, or territorial falconry permits you have, you may possess no more than 3 raptors.

(iii) Requirements and possession options for a Master Falconer.

(A) You must have practiced falconry with your own raptor(s) at the General Falconer level for at least 5 years.

(B) You may take and possess any species of Falconiform or Strigiform except a bald eagle. However, you may take and possess a golden eagle, a white-tailed eagle, or a Steller's sea eagle only if you meet the qualifications set forth under paragraph (c)(3)(iv).

(C) You may possess any captive-bred individuals or hybrids of species your State, tribe, or territory allows you to possess.

(D) Regardless of the number of State, tribal, or territorial falconry permits you have, you may possess no more than 5 wild raptors, including golden eagles.

(E) You may possess any number of captive-bred raptors. However, you must train them in the pursuit of wild game and use them in hunting.

(iv) If you meet the requirements in paragraph (c) of this section for falconry you may possess up to 3 eagles of the following species: golden eagle, white-tailed eagle, or Steller's sea eagle.

(A) Your State, tribal, or territorial agency that regulates falconry must document the following before approving your request to possess an eagle to use in falconry:

(1) Your experience in handling large raptors, including information about the species you have handled and the type and duration of the activity in which you gained the experience.

(2) At least two letters of reference from people with experience handling and/or flying large raptors such as eagles, ferruginous hawks (*Buteo regalis*), goshawks (*Accipiter gentilis*), or great horned owls (*Bubo virginianus*). Each must contain a concise history of

the author's experience with large raptors, which can include, but is not limited to, handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors. Each letter must also assess your ability to care for eagles and fly them in falconry.

(B) A golden eagle, white-tailed eagle, or Steller's sea-eagle you hold will count as one of the raptors you are allowed to possess.

(4) *Taking a test to qualify for a falconry permit.* Before you are issued an Apprentice permit you must correctly answer at least 80 percent of the questions on an examination administered by the State, tribe, or territory under which you wish to obtain a falconry permit. The examination must cover care and handling of falconry raptors, Federal, State or territorial, and tribal (if applicable) laws and regulations relevant to falconry, and other appropriate subject matter. Contact your State, tribal, or territorial agency that regulates falconry for information about permits and taking the test.

(5) *Reinstatement of a lapsed falconry permit if your State, tribe, or territory allows it.*

(i) If your permit has lapsed for fewer than 5 years, it may be reinstated at the level you held previously if you have proof of your certification at that level.

(ii) If your permit has lapsed for 5 years or longer, you must correctly answer at least 80 percent of the questions on an examination administered by the State, tribe, or territory in which you wish to obtain a falconry permit. If you pass the exam, your permit may be reinstated at the level you previously held. Your facilities must pass State, tribal, or territorial inspection before you may possess a falconry bird.

(6) *Permit to practice falconry at an appropriate level if you have experience in falconry but are a new resident in the United States.* You may qualify for the falconry permit appropriate for your experience. To demonstrate your knowledge of U.S. falconry laws and regulations, you must correctly answer at least 80 percent of the questions on the supervised examination for falconers administered by the State, tribe, or territory under which you wish to obtain a falconry permit. If you pass the test, the State, tribe, or territory will decide for which level of falconry permit you are qualified, consistent with the class requirements in paragraph (c)(3) of this section. To do so, the State, tribe, or territory should base its decision on your documentation of your experience. Your falconry

facilities must meet the standards in paragraph (d)(1) of this section before you may keep a raptor to use in falconry.

(7) *Banding or tagging raptors used in falconry.*

(i) If you take a goshawk, Harris's hawk (*Parabuteo unicinctus*), peregrine falcon, or gyrfalcon (*Falco rusticolus*) from the wild or acquire one from a rehabilitator, you must band the raptor with a permanent, nonreusable, numbered Fish and Wildlife Service leg band that your State, tribal, or territorial agency will supply. If you wish, you may purchase and implant an ISO (International Organization for Standardization)-compliant (134.2 kHz) microchip in the bird in lieu of a band. You must report the band number and/or microchip information when you report your acquisition of the bird. Contact your State, tribal, or territorial agency for information on obtaining and disposing of bands. Within 10 days from the day on which you take the raptor from the wild, you must report take of the bird by entering the required information (including band number and/or microchip information) in the electronic database at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry. You may request an appropriate band from your State, tribal, or territorial agency in advance of any effort to capture a raptor. Your State, tribe, or territory may require that you band other species taken from the wild.

(ii) A raptor bred in captivity must be banded with a seamless metal band (see § 21.30) or have an implanted ISO-compliant (134.2 kHz) microchip. If you must remove a seamless band or if it is lost, within 10 days from the day you remove or note the loss of the band you must report it and request a replacement U.S. Fish and Wildlife Service nonreusable band from your State, tribe, or territory. You must submit the required information electronically immediately upon rebanding or microchipping the raptor at <http://permits.fws.gov/186A>, and by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry if your regulating agency requires a signed form. You must replace a band that is removed or lost, or you may implant an ISO-compliant (134.2 kHz) microchip in the bird and report the microchip information at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A form submitted to your State, tribal, or territorial agency that governs falconry.

(iii) If the band must be removed or is lost from a raptor in your possession,

you must report the loss of the band within 5 days, and you must then do at least one of the following:

(A) Request a U.S. Fish and Wildlife Service nonreusable band from your State, tribal, or territorial agency that regulates falconry. You must submit the required information immediately upon rebanding the raptor at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry.

(B) Purchase and implant an ISO-compliant (134.2 kHz) microchip in the bird and report the microchip information at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A form to your State, tribal, or territorial agency that governs falconry.

(iv) You must not alter, deface, or counterfeit a band. You may remove the rear tab on a band on a raptor you take from the wild, and you may smooth any imperfect surface if you do not affect the integrity of the band or the numbering on it.

(v) If you document health or injury problems for a raptor you possess that are caused by the band, the State, tribe, or territory may provide an exemption to the requirement for that raptor. In that case, you must keep a copy of the exemption paperwork with you when transporting or flying the raptor. If your bird is a wild goshawk, Harris's hawk, peregrine falcon, or gyrfalcon, you must replace the band with an ISO-compliant microchip that we will supply to your State, tribe, or territory. We will not provide a microchip for a wild goshawk, Harris's hawk, peregrine falcon, or gyrfalcon unless you have demonstrated that a band causes an injury or a health problem for the bird.

(vi) You may not band a raptor removed from the wild with a seamless numbered band.

(8) *Carrying your permit(s) when conducting falconry activities.* You must have your permit(s) or legible copies of them in your immediate possession if you are not at the location of your falconry facilities and you are trapping, transporting, working with, or flying your falconry raptor(s).

(9) *Transporting a falconry raptor or raptors to other States or territories.* If you have a valid falconry permit, you may possess and transport for falconry purposes a lawfully possessed raptor through other States or territories. However, any State, tribe, or territory may further regulate such transport.

(d) *Facilities and care requirements.*

(1) *Facilities you must have and maintain.* You must keep all raptors you hold under your falconry permit in humane and healthful conditions.

(i) Whether they are indoors (a "mews") or outdoors (a "weathering area"), your raptor facilities must protect raptors in them from the environment, predators, and domestic animals. You are responsible for the maintenance and security (protection from predators) of raptors you possess under your permit.

(ii) You must have raptor housing facilities approved by your State, tribe, or territory before you may obtain a bird to use in falconry. Your State, tribe, or territory may require that you have both indoor and outdoor facilities. A representative of your agency that regulates falconry, or its designee, must certify that your facilities and equipment meet the following standards:

(A) For housing wild raptors indoors or outdoors, the facility must protect raptors from predators and domestic animals.

(1) The facility must have a suitable perch for each raptor, at least one opening for sunlight, and must provide a healthy environment for raptors inside.

(2) You may house untethered raptors together if they are compatible with each other.

(3) Each raptor must have an area large enough to allow it to fly if it is untethered or, if tethered, to fully extend its wings or bate (attempt to fly while tethered) without damaging its feathers or contacting other raptors.

(4) Each raptor must have a pan of clean water available.

(B) An indoor facility must be large enough to allow easy access for the care and feeding of raptors kept there.

(1) If raptors you house in this indoor facility are not tethered, all walls that are not solid must be protected on the inside. Suitable materials may include vertical bars spaced narrower than the width of the body of the smallest raptor you house in the enclosure. However, heavy-duty netting or other such materials may be used to cover the walls or roof of the enclosure.

(2) Acceptable indoor facilities include shelf perch enclosures where raptors are tethered side by side. Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and maintain healthy feathers.

(C) You may keep a falconry raptor or raptors inside your place of residence if you provide a suitable perch or perches. If you house your raptor(s) inside your home, you do not need to modify windows or other openings of the structure. Raptors kept in your home must be tethered when they are not

being moved into or out of the location in which they are kept.

(D) An outdoor facility must be totally enclosed, and may be made of heavy-gauge wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material.

(1) The facility must be covered and have at least a covered perch to protect a raptor held in it from predators and weather.

(2) The facility must be large enough to insure that the birds cannot strike the enclosure when flying from the perch.

(3) New types of housing facilities and/or husbandry practices may be used if they satisfy the requirements above and are approved by the State, tribal, or territorial authority regulating falconry.

(iii) You may keep falconry raptors outside in the open if they are under watch, such as by you or a family member at any location or, for example, by a designated individual in a weathering yard at a falconry meet.

(iv) You must inform your State, tribal, or territorial agency within 5 business days if you change the location of your facilities.

(2) *Falconry facilities on property you do not own.*

(i) Your falconry facilities may be on property owned by another person where you reside, or at a different location. Regardless of location, the facilities must meet the standards in paragraph (d)(1) of this section and those of the State, tribe, or territory from which you have a falconry permit.

(ii) You must submit to your State, tribal, or territorial agency that regulates falconry a signed and dated statement showing that you or the property owner (if your facilities are not on property that you own) agrees that the falconry facilities, equipment, and raptors may be inspected without advance notice by State, tribal (if applicable), or territorial authorities at any reasonable time of day. Inspections must be in the presence of the permittee.

(3) *Equipment you must have and maintain.* You must have jesses or the materials and equipment to make them, leash and swivel, bath container, and appropriate scales or balances for weighing raptor(s) you possess.

(4) *Facilities you must have for a raptor when you are transporting it, using it for hunting, or are away from your home with it.* You must be sure that the bird has a suitable perch and is protected from extreme temperatures, wind, and excessive disturbance. A "giant hood" or similar container is acceptable for transporting or housing a raptor when you are away from your home.

(5) *Temporarily housing a raptor outside of your permanent facilities when you are not transporting it or using it for hunting.* You may house a raptor in temporary facilities for no more than 120 consecutive calendar days if the bird has a suitable perch and is protected from predators, domestic animals, extreme temperatures, wind, and excessive disturbance.

(6) *Care of falconry raptors by another falconry permittee.* Another falconry permittee may care for a raptor or raptors for you at your facilities or at that person's facilities for up to 120 consecutive calendar days. The other person must have a signed and dated statement from you authorizing the temporary possession, plus a copy of FWS form 3-186A that shows that you are the possessor of each of the raptors. The statement must include information about the time period for which he or she will keep the raptor(s), and about what he or she is allowed to do with it or them.

(i) Your raptor(s) will remain on your falconry permit, and will not be counted against the possession limit of the person caring for your raptors.

(ii) If the person caring for your raptor(s) holds the appropriate level falconry permit, he or she may fly your raptor(s) in whatever way you authorize, including hunting.

(iii) This care of your raptors may be extended indefinitely in extenuating circumstances, such as illness, military service, or for a family emergency. The State, tribe, or territory may consider such instances on a case-by-case basis.

(7) *Care of falconry raptors by someone who does not have a falconry permit.* Another person may care for falconry birds you possess at your facilities for up to 45 consecutive calendar days.

(i) The raptor(s) will remain on your falconry permit.

(ii) The raptors must remain in your facilities.

(iii) This care may be extended indefinitely in extenuating circumstances, such as illness, military service, or for a family emergency.

(iv) The person(s) caring for your raptors may not fly them for any reason.

(8) *Residence part of the year in another jurisdiction.*

(i) The State, tribe, or territory in which you live part-time may require that you obtain its falconry permit. You must contact the State, tribal, or territorial agency that regulates falconry to determine whether you need a permit.

(ii) If you live for more than 120 consecutive days in a State or territory or on tribal lands other than where you

maintain your primary residence, your falconry facilities in the second State must meet the standards in this section.

(9) *Falconry facilities, raptors, equipment, and records inspections.* Falconry bird(s), facilities, equipment, and records may be inspected only in the presence of the permittee, during business hours on any day of the week by State, tribal, or territorial officials.

(e) *Taking, possessing, and transporting raptors for falconry.*

(1) *Raptor species you may take from the wild to use for falconry.*

(i) You may not intentionally capture a raptor species that your classification as a falconer does not allow you to possess for falconry. If you capture a bird you are not allowed to possess, you must release it immediately.

(ii) On some tribal lands and in some States there may be State, tribal, or Federal restrictions on the take or use of these species, and you may need a tribal or State permit or permits to capture a bird.

(iii) State, tribal, or territorial regulations on take may be more restrictive than those in this section.

(iv) Take of any species must be in compliance with these regulations.

(v) If you are a Master Falconer and your State, tribe, or territory allows you to possess golden eagles, in any year you may take one or two golden eagles from the wild only in a livestock depredation area during the time the depredation area is in effect. A livestock depredation area is declared by U.S.D.A. Wildlife Services or upon the request of a State governor.

(2) *How and when you may take raptors from the wild to use in falconry.* You may take no more than two raptors from the wild each year to use in falconry.

(i) If you transfer a bird you take from the wild to another permittee in the same year in which you capture it, the bird will count as one of the raptors you are allowed to take from the wild that year; it will not count as a capture by the recipient, though it will always be considered a wild bird.

(ii) If you are a General or Master Falconer, you may remove nestlings from a nest or aerie in accordance with tribal (if applicable), State, territorial, and Federal restrictions.

(iii) You may not take raptors at any time or in any manner that violates any law of the State, tribe, or territory on whose land you are trapping.

(iv) If you are responsible for reporting take of a raptor from the wild, you can report by entering the required information in the electronic database at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your

State, tribal, or territorial agency that governs falconry. You must do this at your first opportunity to do so, but no later than 10 days after the capture of the bird.

(v) If you are present at the capture site, even if another person captures the bird for you, you are considered the person who removes the bird from the wild. You are responsible for filing a 3-186A form reporting take of the bird from the wild. This would occur, for example, if another person climbs a tree or rappells down a cliff and takes a nestling for you and gives it to you at the tree or cliff.

(vi) If you are not at the immediate location where the bird is taken from the wild, the person who removes the bird from the wild must be a General or Master Falconer, and must report take of the bird. If that person then transfers the bird to you, you must both file 3-186A forms reporting the transaction at your first opportunity to do so, but no later than 10 days after the transfer. The bird will count as one of the two raptors the person who took it from the wild is allowed to capture in any year. The bird will not count as a bird you took from the wild. The person who takes the bird

from the wild must report the take even if he or she promptly transfers the bird to you.

(vii) If you have a long-term or permanent physical impairment that prevents you from attending the capture of a species you can use for falconry, a General or Master Falconer may capture a bird for you. You are then responsible for filing a 3-186A form reporting take of the bird from the wild, and the bird will count against the take of wild raptors that you are allowed in any year.

(viii) You must promptly release any bird you capture unintentionally.

(3) *Other restrictions on taking raptors from the wild for falconry.*

(i) If you are an Apprentice Falconer, you may take any species from the wild except the following: American swallow-tailed kite, bald eagle, white-tailed eagle, Steller's sea-eagle, northern harrier, Swainson's hawk, ferruginous hawk, golden eagle, peregrine falcon, prairie falcon, flammulated owl, burrowing owl, and short-eared owl.

(ii) If you are a General or Master Falconer, you may take raptors less than 1 year of age from the wild during any period or periods specified by the State, tribe, or territory. However, you may take an American kestrel or great horned

owl of any age from the wild during any period or periods specified by the State, tribe, or territory.

(iii) If you are a Master Falconer authorized to possess golden eagles for use in falconry, you may capture an immature or subadult golden eagle in a livestock depredation area during the time the depredation area is in effect.

(A) You may capture a nesting adult golden eagle, or take a nestling from its nest, in a livestock depredation area if a biologist representing the agency responsible for declaring the depredation area has determined that the adult eagle is preying on livestock.

(B) You must determine the locations of the livestock depredation areas declared by USDA Wildlife Services, or the State that has established a livestock depredation area. We will not notify you about them.

(C) Before you begin any trapping activities, you must inform our regional Law Enforcement office of your capture plans. You must notify the offices in person, in writing, or via facsimile or email at least 3 business days before you start trapping. You may send an email to with your trapping plans to lawenforcement@fws.gov, or

If you plan to trap a golden eagle in	you must notify
(1) California, Idaho, Nevada, Oregon, or Washington,	U.S. Fish and Wildlife Service Special Agent in Charge - Law Enforcement 911 NE 11th Avenue Portland, Oregon 97232-4181 503-231-6125 facsimile 503-231-6197
(2) Arizona, New Mexico, Oklahoma, or Texas,	U.S. Fish and Wildlife Service Special Agent in Charge - Law Enforcement P.O. Box 329 Albuquerque, New Mexico 87103 505-248-7889 facsimile 505-248-7899
(3) Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, or Wisconsin,	U.S. Fish and Wildlife Service Special Agent in Charge - Law Enforcement P.O. Box 45 Federal Building Fort Snelling, Minnesota 55111-0045 612-713-5320 facsimile 612-713-5283
(4) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, or Tennessee,	U.S. Fish and Wildlife Service Special Agent in Charge - Law Enforcement P.O. Box 49226 Atlanta, Georgia 30359 404-679-7057 facsimile 404-679-7065

If you plan to trap a golden eagle in	you must notify
(5) Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, or West Virginia,	U.S. Fish and Wildlife Service Special Agent in Charge - Law Enforcement P.O. Box 659 Hadley, Massachusetts 01035-0659 413-253-8274 facsimile 413-253-8459
(6) Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, or Wyoming,	U.S. Fish and Wildlife Service Special Agent in Charge - Law Enforcement P.O. Box 25486 Denver Federal Center (60130) Denver, Colorado 80225-0486 303-236-7540 facsimile 303-236-7901
(7) Alaska,	U.S. Fish and Wildlife Service Special Agent in Charge - Law Enforcement 1011 East Tudor Road Suite 155 Anchorage, Alaska 99503-6199 907-786-3311 facsimile 907-786-3313

(D) You also must meet all requirements of the State or territory in which you plan to trap, or the tribe on whose lands you plan to trap.

(E) You must have permission from the landowner to capture an eagle; or if you wish to capture one on public land, the responsible agency must allow it.

(iv) You may recapture a falconry bird you have lost at any time. We do not consider recapture of a wild bird to be taking a bird from the wild.

(v) You may recapture a raptor wearing falconry equipment or a captive-bred bird at any time - even if you are not allowed to possess the species. The bird will not count against your possession limit, nor will its take from the wild count against your limit. You must report your recapture of the bird to your State, tribal, or territorial agency that regulates falconry no more than 5 working days after the recapture. You must return a recaptured falconry bird to the person who lost it, if that person may legally possess it. Disposition of a bird whose legal possession cannot be determined will be at the discretion of the State, tribe, or territory.

(vi) You may take any raptor that you are authorized to possess from the wild if the bird is banded with a Federal Bird Banding Laboratory aluminum band except that you may not take a banded peregrine falcon from the wild.

(A) If a raptor (including a peregrine falcon) you capture is marked with a seamless metal band, a transmitter, or any other item identifying it as a falconry bird, you must report your

capture of the bird to your State, tribal, or territorial agency that regulates falconry no more than 5 working days after the capture. You must return a recaptured falconry bird to the person who lost it. If that person cannot possess the bird or does not wish to possess it, you may keep it. Otherwise, disposition of a bird whose legal possession cannot be determined will be at the discretion of the State, tribe, or territory. While you keep a bird for return to the person who lost it, the bird will not count against your possession limit or your limit on take of raptors from the wild if you have reported possessing the bird to your State, tribal, or territorial falconry permit office.

(B) If you capture a peregrine falcon that has a research band (such as a colored band with alphanumeric codes) or a research marking attached to it, you must immediately release the bird, except that if the falcon has a transmitter attached to it, you are authorized to possess the bird up to 30 days if you wish to contact the researcher to determine if he or she wishes to replace the transmitter or its batteries. If the researcher wishes to do so, or to have the transmitter removed, the researcher or his or her designee can make the change or allow you to do so before you release the bird. If the researcher does not wish to keep the transmitter on the falcon, you may keep the bird if you captured it in circumstances in which capture of wild peregrines is allowed.

(C) If a raptor you capture has any other band, research marking, or

transmitter attached to it, you must promptly report the band numbers and all other relevant information to the Federal Bird Banding Laboratory at 1-800-327-2263.

(1) You may contact the researcher and determine if he or she wishes to replace a transmitter attached to a bird you capture. If so, you are authorized to possess the bird up to 30 days until the researcher or his or her designee does so, or until you can replace it yourself. Disposition of the bird will be at the discretion of the researcher and your State, tribal, or territorial agency that regulates falconry.

(2) If you possess such a bird temporarily, it will not count against your possession limit for falconry raptors.

(vii) You must leave at least one young from any nest or aerie from which you take a nestling.

(viii) If you are an Apprentice Falconer, you may not take a nestling from the wild.

(ix) If you are a Master Falconer with a permit to do so, you may take, transport, or possess up to three eagles, including golden eagles, white-tailed eagles, or Steller's sea-eagles, subject to the requirements in paragraph (c)(3)(iv) of this section and § 22.24 of this part. A golden eagle, white-tailed eagle, or Steller's sea-eagle you possess counts as a bird to be included under your possession limit.

(x) If you are a General or Master Falconer, you may take no more than one bird of a threatened species from the wild each year if the regulations in

part 17 of this subchapter allow it and if you obtain a Federal endangered species permit to do so before you take the bird. You also may need a State, tribal, or territorial endangered species permit to take a listed species.

(4) *Take of a species or subspecies that was recently removed from the Federal List of Endangered and Threatened Wildlife to use in falconry.* We must first publish a management plan for the species. If take is allowed in the management plan, you may do so in accordance with the provisions for take in the plan.

(5) *Raptors injured due to falconer trapping efforts.* You have two options for dealing with a bird injured by your trapping efforts. In either case, you are responsible for the costs of care and rehabilitation of the bird.

(i) You may put the bird on your falconry permit. You must report take of the bird by entering the required information in the electronic database at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry at your first opportunity to do so, but no more than 10 days after capture of the bird. You must then have the bird treated by a veterinarian or a permitted wildlife rehabilitator. The bird will count against your possession limit.

(ii) You may give the bird directly to a veterinarian, or a permitted wildlife rehabilitator, or an appropriate wildlife agency employee. If you do so, it will not count against your allowed take or the number of raptors you may possess.

(6) *Acquisition, transfer, release, loss, or rebanding of a raptor.*

(i) If you acquire a raptor; transfer, reband, or microchip a raptor; if a raptor you possess is stolen; if you lose a raptor to the wild and you do not recover it within 30 days; or if a bird you possess for falconry dies; you must report the change within 10 days by entering the required information in the electronic database at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry.

(ii) If a raptor you possess is stolen, you must report the theft to your State, tribal, or territorial agency that regulates falconry and to your Fish and Wildlife Service Regional Law Enforcement office (see paragraph (e)(3)(iii)(C) of this section) within 10 days of the theft of the bird.

(iii) You must keep copies of all electronic database submissions documenting take, transfer, loss, rebanding or microchipping of each falconry raptor until 5 years after you

have transferred or lost the bird, or it has died.

(7) *Acquiring a bird for falconry from a permitted rehabilitator.* You may acquire a raptor of any age of a species that you are permitted to possess directly from a rehabilitator. Transfer to you is at the discretion of the rehabilitator.

(i) If you acquire a bird from a rehabilitator, within 10 days of the transaction you must report it by entering the required information in the electronic database at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry.

(ii) If you acquire a bird from a rehabilitator, it will count as one of the raptors you are allowed to take from the wild that year.

(8) *Flying a hybrid raptor in falconry.* When flown free, a hybrid raptor must have at least two attached radio transmitters to help you to locate the bird.

(9) *Releasing a falconry bird to the wild.* You must follow all applicable State or territorial and Federal laws and regulations before releasing a falconry bird to the wild.

(i) If the species you wish to release is not native to the State or territory, or is a hybrid of any kind, you may not release the bird to the wild. You may transfer it to another falconry permittee.

(ii) If the species you wish to release is native to the State or territory and is captive-bred, you may not release the bird to the wild unless you have permission from the State, tribe, or territory to release the bird. If you are permitted to do so, you must hack the bird (allow it to adjust) to the wild at an appropriate time of year and an appropriate location. You must remove its falconry band (if it has one) and report release of the bird by entering the required information in the electronic database at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry.

(iii) If the species you wish to release is native to the State and was taken from the wild, you may release the bird only at an appropriate time of year and an appropriate location. You must remove its falconry band and report release of the bird by entering the required information in the electronic database at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry.

(iv) You may not permanently release hybrid raptors to the wild.

(10) *Restrictions on transfers of falconry raptors from other falconers.* We do not restrict the number of wild-caught or captive-bred raptors transferred to you, but you may not exceed your possession limit.

(f) *Additional information on the practice of falconry.*

(1) *Raptors removed from the wild for falconry are always considered "wild" raptors.* No matter how long such a bird is held in captivity or whether it is transferred to another permittee or permit type, it is always considered a "wild" bird. However, it is considered to be taken from the wild only by the person who originally captured it. We do not consider the raptor to be taken from the wild by any subsequent permittee to whom it is legally transferred.

(2) *"Hacking" of falconry raptors.* Hacking (temporary release to the wild) is an approved method for falconers to condition raptors for falconry. If you are a General Falconer or a Master Falconer, you may hack a falconry raptor or raptors.

(i) You may need permission from your State, tribal, or territorial wildlife agency to hack a bird you possess for falconry. Check with your State, tribal, or territorial agency that regulates falconry to determine if hacking is allowed.

(ii) Any bird you are hacking counts against your possession limit and must be a species you are authorized to possess.

(iii) Any hybrid you hack must have two attached functioning radio transmitters during hacking.

(iv) You may not hack a falconry bird near a nesting area of a Federally threatened or endangered bird species or in any other location where the raptor is likely to harm a Federally listed threatened or endangered animal species that might be disturbed or taken by your falconry bird. You should contact your State or territorial wildlife agency before hacking a falconry bird to ensure that this does not occur. You can contact the State Fish and Wildlife Service office in your State or territory for information on Federally-listed species.

(3) *Use of other falconry training or conditioning techniques.* You may use other acceptable falconry practices, such as, but not limited to, the use of creance (tethered) flying, lures, balloons, or kites in training or conditioning falconry raptors. You also may fly falconry birds at bird species not protected under the Migratory Bird Treaty Act or at pen-raised animals.

(4) *Selling or trading raptors under a falconry permit.*

(i) If allowed by your State, tribe or territory, you may sell, purchase, or barter, or offer to sell, purchase, or barter captive-bred raptors marked with seamless bands to other permittees who are authorized to possess them.

(ii) You may not purchase, sell, trade, or barter wild raptors. You may only transfer them.

(5) *Transfer of wild-caught raptors captured for falconry to another type of permit.* Under some circumstances you may transfer a raptor to another permit type if the recipient of the bird (which could be you) possesses the necessary permits for the other activity.

(i) If your State, tribe, or territory allows you to do so, you may transfer a wild-caught falconry bird to a raptor propagation permit after the bird has been used in falconry for at least 2 years (1 year for a sharp-shinned hawk, a Cooper's hawk, a merlin, or an American kestrel). When you transfer the bird, you must provide a copy of the 3-186A form documenting acquisition of the bird by the propagator to the Federal migratory bird permit office that administers the propagation permit.

(ii) You may transfer a wild-caught bird to another permit type in less than 2 years (1 year for a sharp-shinned hawk, a Cooper's hawk, a merlin, or an American kestrel) if the bird has been injured and a veterinarian or permitted wildlife rehabilitator has determined that the bird can no longer be flown for falconry.

(A) When you transfer the bird, you must provide a copy of the 3-186A form documenting acquisition of the bird to the Federal migratory bird permit office that administers the other permit type.

(B) When you transfer the bird, you must provide a copy of the certification from the veterinarian or rehabilitator that the bird is not useable in falconry to the Federal migratory bird permits office that administers the other permit type.

(6) *Transfer of captive-bred falconry raptors to another type of permit.* You may transfer captive-bred falconry raptors if the holder of the other permit type is authorized to possess the bird(s). Within 10 days you must report the transfer by entering the required information in the electronic database at <http://permits.fws.gov/186A> or by submitting a standard paper form 3-186A to your State, tribal, or territorial agency that governs falconry.

(7) *Use of raptors held under a falconry permit in captive propagation.* You may use raptors you possess for falconry in captive propagation if you or the person overseeing the propagation has the necessary permit(s) (see § 21.30). You do not need to transfer a

bird from your falconry permit if you use it for fewer than 8 months in a year in captive propagation, but you must do so if you permanently transfer the bird for propagation. The bird must then be banded as required in § 21.30.

(8) *Use of falconry raptors in conservation education programs.* If you are a General or Master Falconer, you may use a bird you possess in conservation education programs presented in public venues.

(i) You do not need a Federal education permit to conduct conservation education activities using a falconry raptor held under a State, tribal, or territorial falconry permit.

(ii) You may present conservation programs as an Apprentice Falconer if you are under the supervision of a General or Master Falconer when you do so.

(iii) You must use the bird primarily for falconry.

(iv) You may charge a fee for presentation of a conservation education program. The fee may not exceed the amount required to recoup your costs.

(v) In conservation education programs, you must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds, although not all of these topics must be addressed in every presentation. You may not give presentations that do not address falconry and conservation education.

(vi) You are responsible for all liability associated with conservation education activities you undertake (see 50 CFR 13.50).

(9) *Other educational uses of falconry raptors.* You may allow photography, filming, or other such uses of falconry raptors to make movies or other sources of information on the practice of falconry or on the biology, ecological roles, and conservation needs of raptors and other migratory birds, though you may not be paid for doing so.

(i) You may not use falconry raptors to make movies, commercials, or in other commercial ventures that are not related to falconry.

(ii) You may not use falconry raptors for entertainment; advertisements; promotion or endorsement of any products, merchandise, goods, services, meetings, or fairs; or as a representation of any business, company, corporation, or other organization.

(10) *Assisting in rehabilitation of raptors to prepare them for release.* If your State, tribe, or territory allows you to do so, and if you are a General or Master Falconer, you may assist a permitted migratory bird rehabilitator to condition raptors in preparation for their release to the wild. You may keep

a bird you are helping to rehabilitate in your facilities.

(i) The rehabilitator must provide you with a letter or form that identifies the bird and explains that you are assisting in its rehabilitation.

(ii) You do not need to meet the rehabilitator facility standards. You need only meet the facility standards in this section; your facilities are not subject to inspection for compliance with the standards in § 21.31.

(iii) You do not have to add any raptor you possess for this purpose to your falconry permit; it will remain under the permit of the rehabilitator.

(iv) You must return any such bird that cannot be permanently released to the wild to the rehabilitator for placement within the 180-day timeframe in which the rehabilitator is authorized to possess the bird, unless the issuing office authorizes you to retain the bird for longer than 180 days.

(v) Upon coordination with the rehabilitator, you must release all releaseable raptors to the wild or return them to the rehabilitator for release within the 180-day timeframe in which the rehabilitator is authorized to possess the birds, unless the issuing office authorizes you to retain and condition a bird for longer than 180 days, or unless the rehabilitator transfers the bird to you to hold under your falconry permit.

(11) *Using a falconry bird in abatement activities.*

(i) If you are a Master Falconer, you may conduct abatement activities with a bird or birds you possess for falconry, if you have a Special Purpose Abatement permit. If you are a General Falconer, you may conduct abatement activities only as a subpermittee of the holder of the abatement permit.

(ii) You may receive payment for providing abatement services if you have a Special Purpose Abatement permit.

(12) *Feathers that a falconry bird or birds molts.*

(i) For imping (replacing a damaged feather with a molted feather), you may possess flight feathers for each species of raptor you possess or previously held for as long as you have a valid falconry permit. You may receive feathers for imping from other permitted falconers, wildlife rehabilitators, or propagators in the United States, and you may give feathers to them. You may not buy, sell, or barter such feathers.

(ii) You may donate feathers from a falconry bird, except golden eagle feathers, to any person or institution with a valid permit to have them, or to anyone exempt from the permit requirement under § 21.12.

(iii) Except for primary or secondary flight feathers or retrices from a golden eagle, you are not required to gather feathers that are molted or otherwise lost by a falconry bird. You may leave the feathers where they fall, store them for imping, or destroy them. However, you must collect molted flight feathers and retrices from a golden eagle. If you choose not to keep them for imping, you must send them to the National Eagle Repository.

(iv) We request that you send all feathers (including body feathers) that you collect from any falconry golden eagle and that you do not need for imping, to the National Eagle Repository at the following address: U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022. The telephone number at the Repository is 303-287-2110.

(v) If your permit expires or is revoked, you must donate the feathers of any species of falconry raptor except a golden eagle to any person or any institution exempt from the permit requirement under § 21.12 or authorized by permit to acquire and possess the feathers. If you do not donate the feathers, you must burn, bury, or otherwise destroy them.

(13) *Disposition of carcasses of falconry birds that die.*

(i) You must send the entire body of a golden eagle you held for falconry, including all feathers, talons, and other parts, to the National Eagle Repository.

(ii) You may donate the body or feathers of any other species of falconry raptor to any person or institution exempt under § 21.12 or authorized by permit to acquire and possess such parts or feathers.

(iii) If the bird was banded or microchipped prior to its death, you may keep the body of any falconry raptor except that of a golden eagle. You may keep the body so that the feathers are available for imping, or you may have the body mounted by a taxidermist. You may use the mount in giving conservation education programs. If the bird was banded, you must leave the band on the body. If the bird has an implanted microchip, you must leave the microchip in place.

(iv) If you do not wish to donate the bird body or feathers or keep it yourself, you must burn, bury, or otherwise destroy it or them within 10 days of the death of the bird or after final examination by a veterinarian to determine cause of death. Carcasses of euthanized raptors could pose a risk of secondary poisoning of eagles and other scavengers. You must take appropriate precautions to avoid such poisonings.

(v) If you do not donate the bird body or feathers or have the body mounted by a taxidermist, you may possess the flight feathers for as long as you have a valid falconry permit. However, you may not buy, sell, or barter the feathers. You must keep the paperwork documenting your acquisition of the bird.

(14) *Visitors practicing falconry in the United States.*

(i) A visitor to the United States may qualify for a temporary falconry permit appropriate for his or her experience.

(A) The permit may be valid for any period specified by the State, tribe, or territory.

(B) To demonstrate knowledge of U.S. falconry laws and regulations, the visitor must correctly answer at least 80 percent of the questions on the supervised examination for falconers administered by the tribe, State, or territory from which he or she wishes to obtain a temporary falconry permit. If the visitor passes the test, the tribe, State, or territory will decide for what level of temporary permit the person is qualified. The decision should be based on the individual's documentation of his or her experience.

(C) If you hold a temporary falconry permit, you may possess raptors for falconry if you have approved falconry facilities.

(D) A holder of a temporary falconry permit may fly raptors held for falconry by a permitted falconer.

(E) A holder of a temporary falconry permit may not take a bird from the wild to use in falconry.

(ii) For the duration of a permit from a State, tribe, or territory, a visitor may use any bird for falconry that he or she possess legally in his or her country of residence for that purpose, provided that import of that species to the United States is not prohibited, and provided that he or she has met all permitting requirements of his or her country of residence.

(A) A visitor must comply with the provisions in this section, those of the State, tribe or territory where he or she wishes to conduct falconry, and all States through which he or she will travel with the bird.

(B) The visitor may transport registered raptors. He or she may need one or more additional permits to bring a raptor into the United States or to return home with it (*see* 50 CFR part 14 (importation, exportation, and transportation of wildlife), part 15 (Wild Bird Conservation Act), part 17 (endangered and threatened species), part 21 (migratory bird import and export permits), and part 23 (endangered species convention)).

(C) Unless the visitor has the necessary permit(s) to bring a raptor into the United States and leave it here, he or she must take raptors brought into the country for falconry out of the country when he or she leaves. If a raptor brought into the United States dies or is lost while in this country, the visitor must document the loss before leaving the United States by reporting the loss to the State, tribal, or territorial agency that governs falconry where the bird was lost.

(D) When flown free, any bird brought to this country temporarily must have two attached radio transmitters that will allow the falconer to locate it.

(E) There also may be tribal or State restrictions on nonresidents practicing falconry or importing a raptor or raptors held for falconry.

(15) *Taking falconry raptors to another country to use in falconry activities.* A permit issued under this section authorizes you to export and then import raptors you legally possess for falconry to another country to use in falconry without an additional migratory bird import/export permit issued under § 21.21.

(i) You must meet any requirements in 50 CFR 14 subpart B.

(ii) You may need one or more additional permits to take a bird from the United States or to return home with it (*see* 50 CFR part 15 (Wild Bird Conservation Act), part 17 (endangered and threatened species), and part 23 (endangered species convention)).

(iii) Unless you have the necessary permit(s) to permanently export a raptor from the United States, you must bring any raptor you take out of the country for falconry back to the United States when you return. Each raptor must be covered by a CITES certificate of ownership issued under part 23 of this chapter. You must have full documentation of the lawful origin of each raptor (a copy of a propagation report with band number or a 3-186A report), and each must be identifiable with a seamless band or a permanent, nonreusable, numbered Fish and Wildlife Service leg band issued by the Service or an implanted microchip for identification.

(iv) If the raptor dies or is lost, you are not required to bring it back but must report the loss immediately upon your return to the United States in the manner required by the falconry regulations of your State, and any conditions on your CITES certificate.

(16) *Permission to capture, fly, or release a falconry bird at any location.* You do not need special or written permission for any of these activities on public lands if it is authorized.

However, you must comply with all applicable Federal, State, tribal, or territorial laws regarding falconry activities, including hunting. Your falconry permit does not authorize you to capture or release raptors or practice falconry on public lands if it is prohibited on those lands, or on private property, without permission from the landowner or custodian.

(17) *Practicing falconry in the vicinity of a Federally listed threatened or endangered animal species.* In practicing falconry you must ensure that your activities do not cause the take of Federally listed threatened or

endangered wildlife. "Take" under the Endangered Species Act means "to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct" (Endangered Species Act § 3(18)). Within this definition, "harass" means any act that may injure wildlife by disrupting normal behavior, including breeding, feeding, or sheltering, and "harm" means an act that actually kills or injures wildlife (50 CFR 17.3). To obtain information about threatened or endangered species that may occur in your State or on tribal lands where you wish to practice falconry, contact your

State, tribal, or territorial agency that regulates falconry. You can contact your State Fish and Wildlife Service office for information on Federally-listed species.

(18) *Trapping a bird for use in falconry in areas used by the northern aplomado falcon.* Capture of a northern aplomado falcon (*Falco femoralis septentrionalis*) is not authorized because it is a violation of the Endangered Species Act. To avoid trapping northern aplomado falcons, you must comply with the following conditions when trapping a bird for use in falconry in the following counties.

If you trap in	You may trap a bird for falconry in the following counties if you comply with the conditions below.
(i) Arizona,	Cochise, Graham, Pima, Pinal, or Santa Cruz.
(ii) New Mexico,	Doa Ana, Eddy, Grant, Hidalgo, Lea, Luna, Otero, Sierra, or Socorro.
(iii) Texas,	Aransas, Brewster, Brooks, Calhoun, Cameron, Culberson, Duval, Ector, El Paso, Hidalgo, Hudspeth, Jackson, Jeff Davis, Kenedy, Kinney, Kleberg, Matagorda, Maverick, Midland, Nueces, Pecos, Presidio, Reeves, Refugio, San Patricio, Starr, Terrell, Val Verde, Victoria, Webb, Willacy, or Zapata.

(iv) If you are an Apprentice Falconer, you must be accompanied by a General or Master Falconer when trapping in one of these counties.

(v) You may not begin trapping if you observe a northern aplomado falcon in the vicinity of your intended trapping effort.

(vi) You must suspend trapping if a northern aplomado falcon arrives in the vicinity of your trapping effort.

(19) *Prey item killed by a falconry bird without your intent, including an animal taken outside of a regular hunting season.*

(i) You may allow your falconry bird to feed on the animal, but you may not take the animal into your possession.

(ii) You must report take of any federally listed threatened or endangered species to our Ecological Services Field Office for the location in which the take occurred.

(20) *Take of bird species for which a depredation order is in place.* With a falconry bird, you may take any species listed in parts 21.43, 44, 45, or 46 of this subchapter at any time in accordance with the conditions of the applicable depredation order, as long as you are not paid for doing so.

(21) *Transfer of falconry raptors if a permittee dies.* A surviving spouse, executor, administrator, or other legal representative of a deceased falconry permittee may transfer any bird held by the permittee to another authorized permittee within 90 days of the death of the falconry permittee. After 90 days, disposition of a bird held under the

permit is at the discretion of the authority that issued it.

(g) *Applying for a falconry permit.* If you apply for a falconry permit, you must include the following information plus any other information required by your State, tribe, or territory.

(1) The completed application form from your State, tribal, or territorial agency that regulates falconry permits.

(2) Proof that you have passed the falconry test administered by the State, tribe, or territory where you maintain your legal residence, or proof that you have previously held a falconry permit at the level you seek.

(3) For an Apprentice permit, you must provide the following:

(i) A letter from a General or Master Falconer stating that he or she has agreed to assist you in learning about the husbandry and training of raptors held for falconry and about relevant wildlife laws and regulations, and in deciding what species of raptor is appropriate for you to possess while an Apprentice.

(ii) An original, signed certification that you are particularly familiar with § 10.13 of this subchapter, the list of migratory bird species to which the Migratory Bird Treaty Act applies; part 13 of this subchapter, general permit regulations; part 21 of this subchapter, migratory bird permits; and part 22 of this subchapter, eagle permits. The certification can be incorporated into tribal and State application forms, and must be worded as follows:

I certify that I have read and am familiar with the regulations in title 50, part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of chapter I of title 50, and that the information I have submitted is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of 18 U.S.C. 1001.

(4) For an Apprentice or General Falconry permit, a parent or legal guardian must co-sign your application if you are under 18.

(5) For a General Falconer permit:
(i) Information documenting your experience maintaining falconry raptors, including a summary of what species you held as an Apprentice Falconer and how long you possessed each bird, and

(ii) A letter from a General Falconer or Master Falconer (preferably your sponsor) attesting that you have practiced falconry with raptor(s) taken from the wild at the Apprentice Falconer level for at least 2 years, including maintaining, training, flying, and hunting the raptor(s) for an average of 6 months per year, with at least 4 months in each year.

(6) For a Master Falconer permit, you must attest that you have practiced falconry at the General Falconer level for at least 5 years.

(h) *Updating a falconry permit after a move.* If you move to a new State or outside the jurisdiction of your tribe or territory and take falconry birds with you, within 30 days you must inform

both your former State, tribe, or territory and the permitting authority for your new place of residence of your address change. To obtain a new falconry permit, you must follow the permit application procedures of the authority under which you wish to acquire a new permit. You may keep falconry birds you hold while you apply for a new falconry permit. However, the State, tribe, or territory into which you move may place restrictions on your possession of falconry birds until you meet the residency requirements there.

(i) *Restoration of revoked permits.* Upon request of the person whose permit has been revoked, the State, tribe, or territory may restore the person's falconry permit at the end of the revocation period.

(j) *Information collection requirements.* The information collection required for falconry applications and for falconry bird disposition on FWS Form 3-186A is approved by the Office of Management and Budget under control number 1018-0022. The information is necessary to determine take of raptors from the wild for falconry.

(k) *Database required of States, tribes, and territories.* Each State, tribe, or territory that permits falconry must maintain information in a database. The information will enable enforcement of this section.

(1) The State, tribal, or territorial database must be compatible with the database that we maintain. The State, tribal, or territorial database must contain the following information:

(i) The current address of each person with a falconry permit.

(ii) The classification of each person with a falconry permit - Apprentice Falconer, General Falconer, or Master Falconer.

(iii) The address of the falconry facilities of each person with a falconry permit.

(iv) The Federal falconry identifier number assigned via the 3-186A system to each person with a falconry permit.

(v) Whether each permittee is authorized to possess eagles.

(vi) Information on the status of each person's permit: whether it is active, suspended, or revoked.

(2) Information on each permit granted, including changes in status from Apprentice Falconer to General Falconer or General Falconer to Master Falconer, and moves of falconers or their facilities must be entered into the State's, tribe's, or territory's database within 30 days of the granting of the permit or a falconer's change in status. New additions to the State, tribal, or

territorial database must be forwarded to us monthly.

■ 6. Amend § 21.31 by revising paragraphs (e)(3) and (e)(4)(ii) to read as follows:

§ 21.31 Rehabilitation permits.*****

(e) * * *

(3) *Subpermittees.* Except as provided by paragraph (f)(2)(ii) of this section, anyone who will be performing activities that require permit authorization under paragraph (b)(1) of this section when you or a subpermittee are not present, including any individual who transports birds to or from your facility on a regular basis, must either possess a Federal rehabilitation permit or be authorized as your subpermittee by being named in writing to your issuing Migratory Bird Permit Office. This does not apply to General Falconers or Master Falconers, who may assist with conditioning raptors for release without being your subpermittee. If you have a falconer assist in conditioning a rehabilitated raptor for release, you must provide the falconer with a letter or form that identifies the bird and explains that the falconer is assisting in rehabilitation of the raptor.

(i) Your subpermittees must be at least 18 years of age and possess sufficient experience to tend the species in their care.

(ii) Your subpermittees who are authorized to care for migratory birds at a site other than your facility must have facilities adequate to house the species in their care, based on the criteria of paragraph (e)(1) of this section. All such facilities except those of a falconer assisting in conditioning raptors for release must be approved by the issuing office.

(iii) As the primary permittee, you are legally responsible for ensuring that your subpermittees, staff, and volunteers adhere to the terms of your permit when conducting migratory bird rehabilitation activities.

(4) * * *

(ii) After a bird is rehabilitated to a condition suitable for release to the wild, you must release it to suitable habitat as soon as seasonal conditions allow, except that you may transfer a rehabilitated wild raptor to a holder of a State, tribal, or territorial falconry permit if the permit holder is authorized to hold the species for use in falconry. The transfer may need the approval of your State, tribe, or territory. The falconer must complete a Form 3-186A reporting the transfer.

(A) You may not retain migratory birds longer than 180 days without additional authorization from your

Regional Migratory Bird Permit Office. If the appropriate season for release is outside the 180-day timeframe, you must seek authorization from your Fish and Wildlife Service Regional Migratory Bird Permit Office to possess the bird until the appropriate season.

(B) Before releasing a threatened or endangered migratory bird, you must comply with any requirements for the release from your Fish and Wildlife Service Regional Migratory Bird Permit Office.

* * * * *

PART 22—EAGLE PERMITS

■ 7. The authority citation for part 22 continues to read as follows:

Authority: 16 U.S.C. 668a; 16 U.S.C. 703-712; 16 U.S.C. 1531-1544.

■ 8. Revise § 22.24 to read as follows:

§ 22.24 Permits for falconry purposes.

(a) *Use of golden eagles in falconry.* If you meet the conditions outlined in § 21.29 (c)(3)(iv) of this part, and you have a permit to possess a golden eagle (*Aquila chrysaetos*) from your State, tribe, or territory, we consider your permit sufficient for the purposes of the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d), subject to the requirement that take of golden eagles for falconry is compatible with the preservation of the golden eagle.

(b) *Transfer of golden eagles trapped by government employees to falconers.* If you (the falconer) have the necessary permit(s) from your State, tribe, or territory, a government employee who has trapped a golden eagle under Federal, State, or tribal permit authority may transfer the bird to you if he or she cannot release the eagle in an appropriate location. A golden eagle may only be taken from a livestock depredation area declared by USDA Wildlife Services or a State governor. You must contact USDA Wildlife Services or the appropriate State agency to determine if a livestock depredation area has been delineated.

Dated: July 2, 2008

David M. Verhey

Acting Assistant Secretary for Fish and Wildlife and Parks.

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