

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Parts 13 and 22**[Docket No. FWS–R9–MB–2011–0054;  
FF09M21200–123–FXMB123209EAGL0L2]

RIN 1018–AX91

**Eagle Permits; Changes in the Regulations Governing Eagle Permitting****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** We propose to revise the regulations for permits for nonpurposeful take of golden eagles (*Aquila chrysaetos*) and bald eagles (*Haliaeetus leucocephalus*) where the take is associated with, but not the purpose of, an activity. We propose to extend the maximum term for programmatic permits to 30 years. The permits must incorporate conditions specifying additional measures that may be necessary to ensure the preservation of eagles, should monitoring data indicate the need for the measures. This change will facilitate the responsible development of renewable energy and other projects designed to operate for many decades, while continuing to protect eagles consistent with statutory mandates. For a permit valid for 5 years or more, we propose to charge an application processing fee sufficient to offset the estimated costs associated with working with the applicants to develop site plans and conservation measures, and prepare applications, and for us to review applications. For any project that is deemed likely to take eagles, we also propose to collect an additional administration fee when we grant a permit. The proposed change does not affect the tenure of any other migratory bird or eagle permit type.

**DATES:** Electronic comments on this proposal via <http://www.regulations.gov> must be submitted by 11:59 p.m. Eastern time on May 14, 2012. Comments submitted by mail must be postmarked no later than May 14, 2012.

**ADDRESSES:** You may submit comments by either of the following two methods. Please do not submit comments by both.

- *Federal eRulemaking portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2011–0054.

- *U.S. mail or hand delivery:* Public Comments Processing, Attention: FWS–R9–MB–2011–0054; Division of Policy and Directives Management; U.S. Fish

and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203–1610.

We will not accept email or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information that you provide. See the Public Comments section below for more information.

Submit comments on the information collection requirements to the Desk Officer for the Department of the Interior at Office of Management and Budget (OMB–OIRA) at (202) 395–5806 (fax) or [OIRA\\_DOCKET@OMB.eop.gov](mailto:OIRA_DOCKET@OMB.eop.gov) (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or [INFCOL@fws.gov](mailto:INFCOL@fws.gov) (email).

**FOR FURTHER INFORMATION CONTACT:** Chief, Division of Migratory Bird Management, at 703–358–1714.

**SUPPLEMENTARY INFORMATION:****Background**

The Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) (Eagle Act) prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act regulations at title 50, part 22 of the Code of Federal Regulations (CFR), define the “take” of an eagle to include the following broad range of actions: “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb” (§ 22.3). The Eagle Act allows the Secretary of the Interior to authorize certain otherwise prohibited activities through regulations. The Secretary is authorized to prescribe regulations permitting the “taking, possession, and transportation of [bald eagles or golden eagles] \* \* \* for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or \* \* \* for the protection of wildlife or of agricultural or other interests in any particular locality,” provided such permits are “compatible with the preservation of the bald eagle or the golden eagle” (16 U.S.C. 668a). Both as a matter of statutory interpretation and as a matter of policy discretion, the Secretary applies the foregoing compatibility standard to all types of permits issued under the Eagle Act.

On September 11, 2009, we published a final rule that established new permit regulations under the Eagle Act for nonpurposeful take of eagles (74 FR 46836). Those regulations at 50 CFR

22.26 provide for permits to take bald eagles and golden eagles, where the taking is associated with, but not the purpose of, an activity. The regulations provide for both standard permits, which authorize individual instances of take that cannot practicably be avoided, and programmatic permits, which authorize recurring take that is unavoidable even after implementation of advanced conservation practices. We have issued standard permits for commercial and residential construction, transportation projects, maintenance of utility lines and dams, and in a variety of other circumstances where take is expected to occur in a limited timeframe, such as during clearing and construction.

“Programmatic take” of eagles is defined at 50 CFR 22.3 as “take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified.” Take that does not reoccur, or that is caused solely by indirect effects such as short-term construction, does not require a programmatic permit. For additional explanation of programmatic take and programmatic permits, see 74 FR 46841–46843.

We can issue programmatic permits for disturbance as well as take resulting in mortalities, based on implementation of “advanced conservation practices” developed in coordination with the Service. “Advanced conservation practices” are defined at 50 CFR 22.3 as “scientifically supportable measures approved by the Service that represent the best available techniques to reduce eagle disturbance and ongoing mortalities to a level where remaining take is unavoidable.” Most take authorized under § 22.26 has been in the form of disturbance; however, permits may authorize lethal take that is incidental to an otherwise lawful activity, such as mortalities caused by collisions with rotating wind turbines.

**Permit Duration and Transferability**

In February 2011, we published draft Eagle Conservation Plan Guidance that provided information on how to prepare Eagle Conservation Plans and apply for eagle take permits. Many commenters recommended that we extend the term of the permit, as we are proposing to do with this rule. Since publication of the 2009 final rule, we have reviewed applications from proponents of renewable energy projects, such as wind and solar power facilities, for programmatic permits to authorize eagle take that may result from both the construction and ongoing operations of renewable energy projects. During our

review, it became evident that the 5-year term limit imposed by the 2009 regulations (see 50 CFR 22.26(h)) needed to be extended to better correspond to the timeframe of renewable energy projects. We propose to amend the regulations to provide for terms of up to 30 years for programmatic permits. The maximum permit tenure for standard § 22.26 permits would remain at 5 years.

The extended tenure permit would be only for programmatic permits issued under 50 CFR 22.26 for nonpurposeful take of eagles. Permits for take of eagle nests (§ 22.27 and § 22.25), including programmatic nest take permits, such as we may issue to airports, would not be affected by any provisions proposed in this rule. Permits for collection and possession of eagles and eagle parts for scientific purposes (§ 22.21), exhibition (§ 22.21), Native American religious use (§ 22.22), depredation/health and safety (§ 22.23), and falconry (§ 21.29) also would be unaffected by this proposed rule.

Current regulations specify that the duration of programmatic permits is to be based, among other things, on “the nature and extent of mitigation measures incorporated into the terms and conditions of the permit.” In light of the much longer permit durations that would be possible under the proposed regulations, we intend to incorporate into the terms and conditions of the permit a commitment from the applicant to implement additional specified mitigation measures that would be triggered if the level of take anticipated is exceeded or if new scientific information demonstrates that the additional mitigation measures are necessary for the preservation of eagles. These additional specified mitigation measures could be described in detail in the permit so as to reduce uncertainty with respect to costs. It seems prudent to describe “up front” in the permit the consequences and expectations from the applicant of unexpected take or new information about eagle populations affected by the activity, as well as to describe the specific additional mitigation measures that may be required. However, if such conditions prove inadequate to meet the Eagle Act’s preservation standard, the regulations at § 22.26(c)(7) allow the Service to further amend programmatic permits if necessary to safeguard eagle populations. The last option would be permit revocation if the activity is not compatible with the preservation of the eagle. Potential additional mitigation measures identified as permit conditions would reduce the likelihood

of amendments to the permit or revocation.

The current regulations require advanced conservation practices to avoid and minimize take of eagles to the maximum degree. Additional conservation measures that may be implemented during the life of a project for the proposed longer-term permit would be designed to achieve the intended (but not fully achieved) objectives of the original mitigation measures. The additional conservation measures may also include additional compensatory mitigation to mitigate to the level of authorized take, or, if necessary for the preservation of eagles, below the originally authorized take levels, for example if, during the 30-year permit tenure, new information indicates unexpected declines in eagle populations that warrant restricting take.

We seek public comment on how this approach could be implemented in a way that is not unduly burdensome, in light of the fact that, under the 2009 final rule, programmatic permits are to be issued where take is necessary, and FWS “interpret[s] ‘necessary’ as something that cannot practicably be avoided.” See *Eagle Permits; Take Necessary To Protect Interests in Particular Localities; Final Rules*, (74 FR 46836–46852, September 11, 2009).

Monitoring and reporting by the permittee will be critically important for assessing impacts to eagles. For example, we have relatively little information on the impacts of wind energy on eagles. The impacts could be due to turbine design or operation, location of a facility or even a single turbine, weather conditions, or other factors. In addition to ensuring that the effects of the permitted activity are compatible with the preservation of eagles, monitoring data will be critical for assessing the impacts of proposed facilities, small or large, in the future.

Current regulations also allow Service personnel to access the site where take is permitted for purposes of monitoring (see § 22.26(c)(4)). Some of the cost of the proposed increased application processing fees is to recoup Service costs for conducting periodic evaluations of the site to ascertain whether take from the permitted activity does not exceed what was anticipated and also whether the conservation measures being implemented are both necessary and sufficient.

#### **Right of Succession and Transferability of Permits**

We are also proposing changes to regulations at 50 CFR 13.24 (Right of succession by certain persons) and

13.25 (Transfer of permits and scope of permit authorization) to allow a programmatic permit to be transferable to the new owner of a project, and to ensure that any successors to the permittee commit to carrying out the conditions of the permit. We recognize that a succession of owners may purchase or resell the affected company or land during the term of the permit. We will negotiate such permits if successive owners agree to the terms of the permit.

Regulations at 50 CFR 13.24 and 13.25 impose restrictions on the right of succession and transferability of Service permits. These restrictions are appropriate for most wildlife permitting situations, but they are impractical and unduly restrictive for situations in which the permitted activity will be conducted over a lengthy period of years and ownership of the land or facility covered by a permit could reasonably be expected to change over that period.

For that reason, existing regulations carve out an exception from the usual restrictions on succession and transferability for certain Endangered Species Act (ESA) permits that typically have these characteristics. Specifically, 50 CFR 13.25(b) allows certain permits issued under the ESA to be transferred in whole or in part through a joint submission by the permittee and proposed transferee, subject to certain determinations that we must make. This proposed rule would treat Eagle Act programmatic permits issued pursuant to 50 CFR 22.26 in the same way that ESA incidental take permits issued pursuant to 50 CFR 17.22(b) and 17.32(b) are currently treated. Thus, in the event of a sale of a permitted facility to a new owner, the permit could be transferred through the mechanism set forth in 50 CFR 13.25(b) without the need to issue a new permit. Similarly, the holder of a permit authorizing multiple new facilities in a given area could transfer that permit in part to the new owner of a particular qualifying facility through the mechanism set forth in 50 CFR 13.25(b).

An analogous second proposed change to 50 CFR 13.25 would provide similar treatment for Eagle Act programmatic permits issued to State or local governmental entities as is currently provided for ESA permits issued to such governmental entities. Under proposed new paragraph (f) of 50 CFR 13.25, a person would be considered to be under the direct control of an Eagle Act programmatic permittee (and, therefore, authorized to carry out the activity contemplated by the permit) if the person is under the

jurisdiction of the permittee, and if the permit allows the person to carry out the authorized activity.

Currently, 50 CFR 13.24 allows for certain persons to be successors to a permit: The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; or a receiver or trustee in bankruptcy or a court-designated assignee for the benefit of creditors. For most Service permits, with the exception of certain long-term permits issued under ESA regulations, all the potential successor needs to do to gain the privileges of the permit is to "furnish the permit for endorsement" to the permit office within 90 days from the date the successor begins to carry out the permitted activity. We are proposing that long-term Eagle Act permits be subject to the same additional provisions that currently apply to long-term ESA permits. The permit would be subject to our determination that: the successor meets all of the qualifications under this part for holding a permit; has provided adequate written assurances that it will provide sufficient funding for any applicable conservation plan or agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and has provided other information we determine is needed for processing the request.

The proposed revisions to 50 CFR 13.25(b) would also allow for transfer of ESA permits issued for Safe Harbor Agreements per 50 CFR 17.22(c) or 17.32(c) and Candidate Conservation Agreements with Assurances per 50 CFR 17.22(d) or 17.32(d). The existing regulation limits such transfer only to permits issued under 50 CFR 17.22(b) but that limitation was an oversight that the Service now proposes to correct.

Existing paragraph 13.25(d) provides that "any person who is under the direct control of the permittee" is covered by the authorization in the permit. This general provision applies to all wildlife and plants permits issued by the Service, including eagle permits. See 50 CFR 13.3. We are also proposing to add a new paragraph 13.25(f) to clarify when a person is considered to be under the direct control of a government agency that receives a non-purposeful eagle take permit and therefore is covered by the take authorization in the permit. Under new paragraph 13.25(f) the authorization under the permit issued to the government agency extends to any person who is under the jurisdiction of the permittee, provided the permittee has the regulatory authority to require the person to comply with the terms and

conditions of the permit and the permit provides that such person(s) may carry out the authorized activity. The Service's position is that this clarifying language describes the current situation that applies to any Service wildlife or plant permit issued to a government agency for an activity regulated by the agency, but we are proposing to add this specific provision to ensure there is no ambiguity with regard to non-purposeful eagle take permits issued under paragraph 22.26.

#### **Permit Application Processing Fee and Administration Fee**

This proposed rule also would amend the schedule of permit application processing fees set forth at 50 CFR 13.11 by substantially increasing the fees to be charged for processing applications for programmatic permits for nonpurposeful take of bald or golden eagles. However, Federal, State, tribal, and other governmental agencies are exempt from the requirement to pay permit application processing fees for any permits issued by the Service (see 50 CFR 13.11(d)(3)(i)). This proposed rule would not change that exemption.

Current regulations set the permit application fee for eagle nonpurposeful take permits for private individual and entities at \$500 for standard permits and \$1,000 for programmatic permits. The renewal fees are \$150 and \$500, respectively. Experience to date has demonstrated that these fee amounts are significantly less than the actual cost to the Service of reviewing and processing programmatic permit applications, including providing technical assistance, as well as the anticipated costs of administering the permits. This would particularly be the case for programmatic permits that authorize the taking of eagles over a decade or more.

Executive Branch agencies have been directed to recover costs for providing special benefits to identifiable recipients (<http://www.whitehouse.gov/omb/circulars/a025>). The Service must recover the costs for working with applicants, assessing permit applications, and undertaking monitoring associated with each permit. Many of these costs are borne by the Service prior to receiving the permit application. The proposed increased application processing fee reflects the estimated cost to the Service of developing and monitoring the effectiveness of the terms and conditions of the permit.

Most of the costs to the Service will occur during the development and initiation of projects. The application processing fee we are proposing combines both the costs of working with

the applicant prior to submitting a permit application and processing the application. We estimate that cost to be approximately \$36,000, and accordingly are proposing a permit application processing fee for a programmatic permit of \$36,000. Not all permit applications will be approved, and, as with other permits issued by the Service, the application processing fee will not be refunded once an application is processed (see 50 CFR 13.11(d)(i)).

We also propose to collect permit administration fees based on the duration of the permits to recover the Service costs for monitoring and working with the permittees over the lives of the permits (items 11 and 12 in Table 1). We estimate those costs to be approximately \$2,600 for each 5 years that the permit is valid. Therefore our proposed administration fees range from \$2,600 for permits with tenures of 5 years or less to \$15,600 for 30-year permits. We propose to collect the entire permit administration fee when we issue a permit.

The Service typically assesses a fee for processing substantive amendments to permits during the tenure of the permit. For all programmatic permits, regardless of duration, the amendment processing fee is proposed to be \$1,000, and the fee for processing the transfer of a programmatic permit is proposed to be \$1,000.

For some ongoing activities, such as the operation of some types of infrastructure, there is a likelihood that one or more eagles will be taken during the lifetime of the operation, but the overall impact to eagles is expected to be small. The smaller impact may correlate with the size of the project, but project scale may not be as important as where the project is sited in relation to eagle use-areas, including migration corridors. In evaluating which projects are "small-impact," information about eagle use of the area will be a key factor in determining whether a project has a reduced likelihood of taking eagles. We strongly encourage wind energy developers and other project proponents to avoid known eagle-use areas when siting their projects.

If there will be no impact, a permit is not necessary or appropriate. However, if any take will occur, a permit is necessary to avoid violating the Eagle Act and developers and operators of "small-impact" projects may wish to seek the coverage provided by a programmatic permit to cover non-purposeful eagle take for up to 30 years. The proposed application processing fee for such programmatic, small-impact projects such as some small wind

projects and other activities expected to have low levels of take is \$5,000 and there would be no administration fee for

these permits. We are proposing a \$1,000 fee for amending small-impact programmatic permits. Table 1 is a

comparison between the current fee structure and the proposed fee structure for § 22.26 permits.

TABLE 1—PROPOSED APPLICATION COSTS, AMENDMENT FEES, AND TRANSFER FEES

	Current fees				Proposed fees			
	Application cost	Additional cost for every 5 years*	Amendment fee	Transfer fee	Application cost	Additional costs for every 5 years*	Amendment fee	Transfer fee
Standard .....	\$1,000	NA	\$500	NA	\$500	NA	\$1,000	\$1,000
Programmatic .....	1,000	NA	500	NA	36,000	\$2,600	1,000	1,000
Small-Impact Programmatic .....	1,000	NA	500	NA	5,000	0	1,000	1,000

\* Administration fee

Table 2 shows the proposed application and administration fees for

the programmatic permits of different tenures.

TABLE 2—PROPOSED PROGRAMMATIC PERMIT FEES

Permit tenure	Application processing fee	Administration fee
Up to 5 years .....	\$36,000	\$2,600
Over 5 years to 10 years .....	36,000	5,200
Over 10 years to 15 years .....	36,000	7,800
Over 15 years to 20 years .....	36,000	10,400
Over 20 years to 25 years .....	36,000	13,000
Over 25 years to 30 years .....	36,000	15,600
Small-Impact, 5 to 30 years .....	5,000	NA

**Economic Analysis**

This rule will provide for the authorization of activities that take bald eagles and golden eagles under the Bald and Golden Eagle Protection Act (Eagle Act). Under the rule, the public will have the opportunity to apply for permits to authorize the take of bald eagles and golden eagles under the Eagle Act. This proposed rule amends the Eagle Act to provide terms of up to 30 years for programmatic permits. Currently, permits are available for only up to five years, which does not allow some applicants enough time to secure the funding, lease agreements, and other necessary assurances to move forward with longer-term projects.

In the 2009 final rule, the Service estimated that we would receive

approximately 40 programmatic permit applications each year of which one-half would be by private applicants (Federal, State, local, and tribal applicants are not required to pay a permit applicant fee). The annual programmatic fee cost was estimated to be \$24,000 (74 FR 46849). This was calculated at the sum of the total number of new applicants (20) times the application fee (\$1,000) plus the number of annual amendments (8) times the amendment fee (\$500).

Because industry has indicated that it desires a longer permit, the Service is proposing to expand the program to include a variety of permits based on a five-year interval. Permits will be made available for 5 years minimum through 30 years maximum. The application cost associated with this permit for the

private sector is proposed to be \$36,000. Applicants with small-impact projects may choose to apply for a small impact permit for a fee of \$5,000. Upon issuance of a permit, the Service would charge a permit administration fee of \$2,600 for every 5-year interval. This fee however, only applies to the programmatic permits and does not apply to the small-impact permit.

The fee to amend programmatic permits is being proposed to increase from \$500 to \$1,000. These fees are being proposed so that the Service can better recoup their own costs for reviewing and processing these permits. Table 3 presents a breakdown of permit fees by permit tenure.

TABLE 3—PROPOSED NEW FEES FOR EAGLE INCIDENTAL TAKE PERMITS

Permit tenure	Application processing fee	Administration fee	Total
5 years .....	\$36,000	\$2,600	\$38,600
5–10 years .....	36,000	5,200	41,200
11–15 years .....	36,000	7,800	43,800
16–20 years .....	36,000	10,400	46,400
21–25 years .....	36,000	13,000	49,000
26–30 years .....	36,000	15,600	51,600
Small Impact .....	5,000	.....	5,000

Table 4 shows the estimated burden and cost to the government to provide technical assistance to project proponents, process an eagle nonpurposeful take permit application, as well as monitor the project over the life of the permit.

TABLE 4—ANTICIPATED HOURS SPENT PROCESSING A LONG-TERM PROGRAMMATIC PERMIT OVER THE LIFE OF THE 30-YEAR PERMIT. HOURS FOR TASKS 11 AND 12 DEPEND ON PERMIT TENURE <sup>1</sup>

Task No.	Service biologist and examiner task	Grade level and hours				
		GS 9	GS 11	GS 12	GS 13	GS 14
1	Participate in preapplication communication with a potential applicant.		12	12	10	
2	Participate in preapplication technical assistance with a potential applicant.		10	20	10	
3	Coordinate regionally and nationally on permit preapplication/permit application.		25	25		
4	Review and determine the adequacy of the information an applicant provides.		12	12	1	
5	Conduct any internal research necessary to verify information in the application or evaluate the biological impact of the proposed activity.		12	2	1	
6	Coordinate internally, regionally on application (tribal, SHPO, biological, etc).		20	2	4	2
7	Evaluate whether the proposed activity meets the issuance criteria.		8	4		
8	Prepare or review NEPA documentation		80	80	80	
9	Prepare either a permit or a denial letter for the applicant		12	4		
10	When necessary to evaluate the impact of the proposed activity, visit the location to examine site-specific conditions.		16	16	3	
11	Monitor reports over 30 years		60	40	40	
12	Evaluate project impacts for adaptive management, including coordination with permittee if minimization or mitigation measures are not adequate.	12	20	20	20	4
Total hours		12	287	237	169	6
Cost per hour (Step 5 × 1.5 × 1.25) <sup>2</sup>		\$50.92	\$61.61	\$73.85	\$87.82	\$103.78
Total cost per grade level		\$611	\$17,682	\$17,502	\$14,841	\$623
Total Cost per Permit		\$51,259				

<sup>1</sup> Labor cost based on 2012 hourly locality rates for Portland-Vancouver-Beaverton, OR-WA ([http://www.opm.gov/oca/12tables/html/por\\_h.asp](http://www.opm.gov/oca/12tables/html/por_h.asp)).  
<sup>2</sup> 1.5 for employee benefits and other Government costs; 1.25 for overhead for Service Field Offices.

**Lower-Bound Estimate**

For the purposes of this analysis the Service has estimated both a lower-bound and upper-bound economic impact scenario. Under the lower-bound

scenario, the Service estimates that over the next 30 years it will process 1,043 permit applications. Permit applications will begin modestly in this year and quickly rise to an average of 40 per year beginning in the year 2020. Table 5

shows specifically how many permits each year, by type, the Service expects. In addition, the Service expects that they will have to process on average one amendment per year beginning in 2013.

TABLE 5—ESTIMATED PERMIT APPLICATIONS BY TENURE (2012–2041)—LOWER-BOUND ESTIMATE

	2012	2013	2014	2015	2016	2017	2018	2019	2020–2041*	30 yr total
5-year	0	0	0	0	0	0	0	0	0	
10-year	1	1	1	2	2	2	3	3	3	81
15-year	0	1	1	2	2	2	4	4	4	104
20-year	0	1	2	3	4	5	5	5	6	157
25-year	0	0	0	0	0	0	0	0	0	
30-year	2	2	4	6	10	12	20	21	22	561
Small-impact	1	2	3	4	5	5	5	5	5	140
Total	4	7	11	17	23	26	37	38	*40	1,043

\* Per Year.

\* Based on the estimated number of permit applications identified in Table 3, the Service estimates that the government would incur a net loss of

over \$32.1 million (three percent discount rate) or \$18.5 million (seven percent discount rate) under the current

fee structure. This is illustrated in Table 6.

TABLE 6—ESTIMATED BASELINE ECONOMIC IMPACT ASSOCIATED WITH BASELINE FEES TO GOVERNMENT AND PRIVATE SECTOR APPLICANTS (\$2011)—LOWER-BOUND ESTIMATE

Discount rate	Government cost	Private cost			Total net cost to government
		Application fees	Amendments	Total private	
0.03					
NPV .....	\$32,835,964	\$640,579	\$9,800	\$650,379	(\$32,185,585)
ANN .....	(1,675,267)	(32,682)	(500)	(33,182)	1,642,085
0.07					
NPV .....	18,873,469	368,192	6,205	374,397	(18,499,072)
ANN .....	(1,520,945)	(29,671)	(500)	(30,171)	1,490,774

The net loss to government associated with processing permits is expected to fall under the proposed new fees to less than \$0.5 million under both a three percent and seven percent discount rate. Table 7 shows the results.

TABLE 7—ESTIMATED ECONOMIC IMPACT ASSOCIATED WITH PROPOSED FEES TO GOVERNMENT AND PRIVATE SECTOR APPLICANTS (\$2011)—LOWER-BOUND ESTIMATE

Discount rate	Government cost	Private cost			Total net cost to government
		Application fees	Amendments	Total private	
0.03					
NPV .....	\$8,204,590	\$7,777,030	\$19,600	\$7,782,926	(\$421,664)
ANN .....	(418,592)	(396,778)	(1,000)	(397,079)	21,513
0.07					
NPV .....	1,613,041	1,510,720	12,409	1,513,022	(100,019)
ANN .....	(129,989)	(121,744)	(1,000)	(121,929)	8,060

**Upper-Bound Economic Impact Estimate**

For the upper-bound cost analysis, the Service is providing a conservative estimate of impacts. Specifically, this analysis is based on an assumption that every permit application will be for the maximum number of years (30). While the Service does not yet offer a 30 year permit, the Service expects these permits, if approved, to be in high demand, particularly from wind power generator farms as the lifecycle of these plants are expected to last longer than 30 years.

According to the American Wind Energy Association, the level of production is expected to double by the end of this century in order to meet a goal of providing 20 percent of the country's electricity supply ([http://www.awea.org/issues/supply\\_chain/Market-Growth-Potential.cfm](http://www.awea.org/issues/supply_chain/Market-Growth-Potential.cfm)). Based on the 2009 final rule's assumption that there would be 20 private programmatic permits issued annually, this analysis assumes that by 2020 industry will be seeking on average 40 permits per year. Over the next thirty years, the Service could issue 1,108 30-year permits. The

Service also estimates, for purposes of this analysis that there will be one amendment, on average per year. Table 8 shows the baseline calculation of future impacts to the government under the existing fee structure based on the application assumptions just mentioned. If the fee structure is not changed, the government would incur a total net cost of over \$35.2 million based on a three percent discount rate, as shown in Table 9. This roughly translates into an impact of \$50,250 per permit.

TABLE 8—ESTIMATED PERMIT APPLICATIONS BY TYPE (2012–2041)—UPPER-BOUND ESTIMATE

	2012	2013	2014	2015	2016	2017	2018	2019	2020–2041	30 year total
30-year .....	20	22	25	27	30	32	35	37	40	1,108
Total .....	20	22	25	27	30	32	35	37	40	1,108

TABLE 9—ESTIMATED ECONOMIC IMPACT ASSOCIATED WITH BASELINE FEES TO GOVERNMENT AND PRIVATE SECTOR APPLICANTS (\$2011)—UPPER-BOUND ESTIMATE

Discount rate	Government cost	Private cost			Total net cost to government
		Application fees	Amendments	Total private	
0.03					
NPV .....	\$35,912,443	\$700,596	\$9,315	\$709,911	(\$35,202,532)
ANN .....	(1,832,226)	(35,744)	(475)	(36,219)	1,796,007
0.07					
NPV .....	21,655,515	422,466	5,737	428,203	(21,227,312)
ANN .....	(1,745,140)	(34,045)	(462)	(34,507)	1,710,633

Table 10 shows the calculated total cost to industry over the next 30 years under the revised fee and amendment structure. The Table shows both the net present value of impacts of total costs as well as annualized costs using both a three percent and seven percent

discount rate as prescribed by the Office of Management and Budget. Based on a three percent rate, the total maximum cost to the Service would be \$35.9 million compared to a total private sector application cost of \$36.2 million. The net discounted cost to the

government associated with processing these applications would be \$257,000, which is equivalent to about \$350 per permit. Under this proposal the government would recoup the cost of its services (as identified in Table 2) on essentially a break-even basis.

TABLE 10—ESTIMATED ECONOMIC IMPACT ASSOCIATED WITH PROPOSED FEES TO GOVERNMENT AND PRIVATE SECTOR APPLICANTS (\$2011)—UPPER-BOUND ESTIMATE

Discount rate	Government cost	Private cost			Total net cost to government
		Application fees	Amendments	Total private	
0.03					
NPV .....	\$35,912,443	\$36,150,772	\$18,630	\$36,169,401	\$256,958
ANN .....	(1,832,226)	(1,844,386)	(950)	(1,845,336)	(13,110)
0.07					
NPV .....	21,655,515	21,799,229	11,474	21,810,704	155,189
ANN .....	(1,745,140)	(1,756,721)	(925)	(1,757,646)	(12,506)

Over time, the application processing and administration fees needed to recoup costs to the Service will likely need to increase to account for inflation. Adjustment in fees may also be warranted to reflect actual costs (versus the cost estimates we are using for this rulemaking). Consequently, we anticipate revising the fee schedule periodically in the future. However, each permittee who has paid the fees required at the time his or her permit was issued would not be required to submit additional administration fees during the life of the permit.

In a separate notice being published in today's **Federal Register**, we are soliciting public comment on all other aspects of the nonpurposeful eagle take permit regulations at § 22.26 that are not addressed in this proposed rule.

**Public Comments**

We request comments on this proposed rule. Specifically, we are interested in public comment on the Service's plan to require commitment from long-term programmatic permit applicants to implement additional specified mitigation measures if take exceeds predicted levels or if monitoring or new scientific information indicates that such measures are necessary to protect eagles adequately. We are interested in public comment on how such an approach could be developed in a way that would be practicable. Also, we are interested in suggestions for identifying and specifically defining what we are referring to as "programmatic, small-impact" projects that are expected to result in take of eagles over the life of their operations but are expected to have negligible impacts on bald or golden eagle populations, individually.

We request public comment on whether the fee proposal should be revised in the final regulation to consist of a processing fee to be paid on submission of the permit application and an administration fee to be paid if the applicant is advised that the permit has been approved. We also seek comment on whether the administration fee that would recoup the costs of monitoring during the life of the permit should be a one-time expense paid when the permit is issued. The alternative would be to require the permittee to pay for those costs periodically over the life of the permit.

You may submit your comments and supporting materials by one of the methods listed in **ADDRESSES**. We request that you submit comments by only one method. We will not consider comments sent by email or fax, or written comments sent to an address other than the one listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request that we withhold this information from public review, but we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at <http://www.regulations.gov>, or by appointment, during normal business hours, by contacting one of the people listed above under **FOR FURTHER INFORMATION CONTACT**.

**Required Determinations**

*Regulatory Planning and Review (Executive Order 12866)*

The Office of Management and Budget (OMB) has determined that this rule is significant 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; and
- (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 businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal

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

In the nearly two and a half years since the eagle permit regulations were published, we have received only one programmatic permit application, which was for a utility-scale wind energy facility. As noted previously, we anticipate a greater volume of permit applications in the future, although we expect the number to increase gradually for a period of years and perhaps eventually reach an average of 40 or fewer per year.

Utility-scale wind energy facilities and electric transmission companies are likely to be the most frequent programmatic permit applicants, because of the known risk to eagles from collisions with wind turbines and electric power lines. Although smaller wind energy facilities could seek programmatic permits, we anticipate that most of the applications for wind energy facilities will be for those that are commercial or utility scale. Small projects often will consist of turbines with smaller structural dimensions (smaller tower and rotor blades) than commercial scale turbines. The number of turbines associated with utility-scale facilities, and their distribution on the landscape, are such that they are likely to pose a much greater risk of incidentally taking eagles than are facilities with few, smaller turbines.

Given current domestic wind energy cumulative wind capacity and other wind energy industry statistics, we anticipate that a substantial number of applicants for programmatic permits for wind energy projects will be small entities as defined in 13 CFR 121.201 (e.g., industrial building construction companies with less than \$33.5 million of annual receipts, or electrical generating companies with less than 4 million megawatt hours of generation, transmission and/or distribution). The SBA Small Business Size Standards identifies utilities engaged in electric power generation and electric power distribution as small entities if their total output for the preceding fiscal year did not exceed 4 million megawatt hours. Using this standard, we estimate that a substantial number of applicants for a programmatic permit would be small entities.

An applicant for a programmatic permit would pay a \$36,000 processing fee, or \$5,000 for a small-impact project, to apply for a permit up to 30 years. Additionally a permittee would pay an administration fee ranging from \$2,600 to \$15,600, depending upon the permit tenure. No administration fee would be assessed for a small-impact permit. Amortized over the life of a 30-year permit, this would range from \$167 per year to \$1,720 per year. We believe most applicants will seek a 30-year permit to match the life of the project. We do not believe this would impose a significant economic impact on these small entities. We may lack information on other potential economic impacts to these small entities. Therefore, we request comments and information from industry and any other interested parties regarding probable economic impacts of this proposal.

Although businesses in other business sectors, such as railroads, timber companies, and pipeline companies could also apply for programmatic permits, we anticipate the number of permit applicants in such sectors to be very small, on the order of one or two per year for each such sector. Thus, we anticipate that the proposed rule would not have a significant economic impact on a substantial number of small entities in sectors other than the utility sector as described above.

In addition to the increased application processing fee, the additional specified mitigation measures that could be required under the terms and conditions of permits issued with a term of longer than 5 years could result in some additional costs to the permittee, but those costs should be offset by the reduction in uncertainty for the permittee achieved by securing a 30-year programmatic permit rather than a 5-year standard permit. Consequently, we certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)).

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

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

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

#### *Unfunded Mandates Reform Act*

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

a. This proposed rule would not "significantly or uniquely" affect small governments. A small government agency plan is not required. The proposed regulations changes would not affect small government activities in any significant way.

b. This proposed rule would not produce a Federal mandate of \$100 million or greater in any year. It is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

#### *Takings*

In accordance with E.O. 12630, the rule would not have significant takings implications. This proposed rule does not contain any provisions that could constitute taking of private property. Therefore, a takings implication assessment is not required.

#### *Federalism*

This proposed rule would not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It would not interfere with the States' abilities to manage themselves or their funds. No significant economic impacts are expected to result from the regulations change.

#### *Civil Justice Reform*

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

#### *Paperwork Reduction Act*

This proposed rule contains a collection of information that we are submitting to the Office of Management and Budget (OMB) for review and approval under Sec. 3507(d) of the Paperwork Reduction Act (PRA). OMB has reviewed and approved the information collection requirements associated with migratory bird permits and assigned OMB Control Number 1018-0022, which expires February 28, 2014. This approval includes 5-year eagle take programmatic permits.

We propose to revise the regulations for permits for nonpurposeful take of golden eagles and bald eagles where the take is associated with, but not the purpose, of the activity. We propose to extend the maximum term for programmatic permits to 30 years, if they incorporate conditions requiring the permittee to implement additional adaptive conservation measures if necessary to ensure the preservation of

eagles. This change will facilitate the development of renewable energy and other projects that are designed to be in operation for many decades. This change will also provide more certainty to project proponents and their funding sources, while continuing to protect eagles consistent with statutory mandates. We also propose to raise the application processing fee for 5-year programmatic permits from \$1,000 to \$36,000. See above, under "Permit Application Processing Fee and Administration Fee" for more detailed information on the increase in permit fees.

For permits valid for more than 5 years, we propose to charge a fee sufficient to offset the estimated costs associated with processing and our periodic review of these permits. Revised OMB circular A-25 directs Executive Branch agencies to recover costs, stating that, "When a service (or privilege) provides special benefits to an

identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price)." Further, Circular A-25 directs that, "Except as provided in Section 6c, user charges will be sufficient to recover the full cost to the Federal Government (as defined in Section 6d) of providing the service, resource, or good when the Government is acting in its capacity as sovereign." Thus, the directive to the Service is to recover the costs for working with applicants, assessing permit applications, and undertaking monitoring associated with each permit. Many of these costs are borne by the Service prior to receiving an eagle permit.

We are requesting that OMB assign a new control number for the requirements associated with the new programmatic permits. When we publish the final rule, we will

incorporate the new requirements into OMB Control Number 1018-0022 and discontinue the new number. An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

*Title:* Long-Term Eagle Take Programmatic Permits, 50 CFR 13 and 22.

*OMB Control Number:* None. This is a new collection.

*Service Form Number(s):* 3-200-71 and 3-202-15.

*Type of Request:* New collection.

*Description of Respondents:* Individuals; businesses; and State, local, and tribal governments. We expect that the majority of private applicants seeking a 30-year permit will be in the energy production and electrical distribution business.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

Activity	Number of non-Federal respondents *	Number of responses	Completion time per response	Total annual hours spent
Application **	20	20	452	9,040
Monitoring and Reporting	20	20	312	6,240
Recordkeeping	20	20	30	600
Amendments	3	3	70	210
Transfers	3	3	120	120
<b>Totals</b>	<b>66</b>	<b>66</b>		<b>16,210</b>

\* For the next three years, we expect a maximum of 20 private entities to apply for programmatic long-term permits.

\*\* Includes researching permit requirements, conducting pre-application surveys/studies, and completing the application form.

*Estimated Total Nonhour Burden Cost:* \$688,000, based primarily on application processing fees, as well as fees for amendments to permits and for transfer of permits. States, local governments, and tribal governments are exempt from paying these fees.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of the reporting burden, including:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection to the Desk Officer for the Department of the

Interior at OMB-OIRA at (202) 395-5806 (fax) or [OIRA\\_DOCKET@OMB.eop.gov](mailto:OIRA_DOCKET@OMB.eop.gov) (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042-PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or [INFOCOL@fws.gov](mailto:INFOCOL@fws.gov) (email).

*National Environmental Policy Act*

We have analyzed this proposed rule in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and Department regulations at 43 CFR part 46. The changes we propose to 50 CFR 22.26 would have negligible new effects. Although take authorizations under the proposed regulations could be valid for up to 30 years, we would continue to require appropriate mitigation for impacts to eagles and will thoroughly evaluate the effects to eagles at periodic intervals during the life of the permit. If necessary, we would require the permittee to implement additional measures specified in the terms and

conditions of the permit to further safeguard eagles. This would be similar to the current process, which could also require an applicant to implement additional measures to renew a permit after expiration of the current 5-year term limit. In 2009, we completed a Final Environmental Assessment (FEA) on the take authorized by permits under § 22.26 when we published those permit regulations (U.S. Fish and Wildlife Service; Final Environmental Assessment: Proposal to Permit Take as Provided Under the Bald and Golden Eagle Protection Act; April 2009). The proposed changes to the regulation would fully comply with the FEA. Any take of eagles under these proposed revisions must be compatible with the preservation of the eagles and cannot be permitted if it would exceed the take thresholds established in the 2009 FEA.

We have determined that the proposed changes to 50 CFR 22.26 are categorically excluded under the NEPA because the action is a revision of regulations that would change the tenure of a permit issued under 50 CFR

22.26. A change in the permit tenure would not remove the permittee's obligation to comply with the provisions of the permit. The revision of 50 CFR 10.13 is strictly administrative. Therefore, it is categorically excluded from further NEPA requirements (43 CFR 46.210(i)). No more comprehensive NEPA analysis of the regulations change is required.

*Endangered and Threatened Species*

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 Act" (16 U.S.C. 1536(a)(1)). It further states that the Federal agency 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)). This proposed rule would not affect endangered or threatened species or critical habitats; it simply proposes to increase the number of years that a programmatic permit may be valid under certain conditions. In addition, each individual permit must comply with the provisions of section 7 at the time the permit is issued.

*Government-to-Government Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that this proposed rule would not interfere with tribes' abilities to manage themselves, their funds, or tribal lands. However, we have not yet consulted with tribes regarding this proposed rule.

Some tribes that value eagles as part of their cultural heritage objected to the promulgation of the 2009 eagle take permit rule based on the belief that the regulations would not adequately protect eagles. Those tribes may perceive further negative effects from these proposed changes. However, eagles would be sufficiently protected under this proposal because only those applicants who commit to adaptive management measures to ensure the preservation of eagles will receive permits with terms longer than 5 years.

*Energy Supply, Distribution, or Use (Executive Order 13211)*

E.O. 13211 addresses regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule, if finalized as proposed, would facilitate the funding, construction, and operation

of numerous energy generation projects, including wind power facilities, the rule is not a significant regulatory action under E.O. 13211, and no Statement of Energy Effects is required.

**List of Subjects**

*50 CFR Part 13*

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

*50 CFR Part 22*

Birds, Exports, Imports, Migratory birds, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Proposed Regulation Promulgation**

For the reasons described in the preamble, we propose to amend subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 13—GENERAL PERMIT PROCEDURES**

1. The authority for part 13 continues to read as follows:

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

2. Revise the table in § 13.11(d)(4) to read as follows:

**§ 13.11 Application procedures.**

\* \* \* \* \*  
(d) \* \* \*  
(4) \* \* \*

Type of permit	CFR citation	Permit application fee	Administration fee <sup>1</sup>	Amendment fee
<b>Migratory Bird Treaty Act</b>				
Migratory Bird Import/Export .....	50 CFR 21	75	.....	.....
Migratory Bird Banding or Marking .....	50 CFR 21	No fee	.....	.....
Migratory Bird Scientific Collecting .....	50 CFR 21	100	.....	50
Migratory Bird Taxidermy .....	50 CFR 21	100	.....	.....
Waterfowl Sale and Disposal .....	50 CFR 21	75	.....	.....
Special Canada Goose .....	50 CFR 21	No fee	.....	.....
Migratory Bird Special Purpose/Education .....	50 CFR 21	75	.....	.....
Migratory Bird Special Purpose/Salvage .....	50 CFR 21	75	.....	.....
Migratory Bird Special Purpose/Game Bird Propagation .....	50 CFR 21	75	.....	.....
Migratory Bird Special Purpose/Miscellaneous .....	50 CFR 21	100	.....	.....
Falconry .....	50 CFR 21	100	.....	.....
Raptor Propagation .....	50 CFR 21	100	.....	.....
Migratory Bird Rehabilitation .....	50 CFR 21	50	.....	.....
Migratory Bird Depredation .....	50 CFR 21	100	.....	50
Migratory Bird Depredation/Homeowner .....	50 CFR 21	50	.....	.....
<b>Bald and Golden Eagle Protection Act</b>				
Eagle Scientific Collecting .....	50 CFR 22	100	.....	50
Eagle Exhibition .....	50 CFR 22	75	.....	.....
Eagle Falconry .....	50 CFR 22	100	.....	.....
Eagle—Native American Religion .....	50 CFR 22	No fee	.....	.....
Eagle Take permits—Depredation and Protection of Health and Safety .....	50 CFR 22	100	.....	.....
Golden Eagle Nest Take .....	50 CFR 22	100	.....	50

Type of permit	CFR citation	Permit application fee	Administration fee <sup>1</sup>	Amendment fee
Eagle Transport—Scientific or Exhibition .....	50 CFR 22	75	.....	.....
Eagle Transport—Native American Religious Purposes .....	50 CFR 22	No fee	.....	.....
Eagle Take—Associated With but Not the Purpose of an Activity .....	50 CFR 22	500	.....	150
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, small-impact projects, 5- to 30-year tenure.	50 CFR 22	5,000	.....	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, up to 5-year tenure.	50 CFR 22	36,000	2,600	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 5-year to 10-year tenure.	50 CFR 22	36,000	5,200	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 10-year to 15-year tenure.	50 CFR 22	36,000	7,800	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 15-year to 20-year tenure.	50 CFR 22	36,000	10,400	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 20-year to 25-year tenure.	50 CFR 22	36,000	13,000	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 25-year to 30-year tenure.	50 CFR 22	36,000	15,600	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Transfer of a programmatic permit.	50 CFR 22	1,000	.....	.....
Eagle Nest Take .....	50 CFR 22	500	.....	150
Eagle Nest Take—Programmatic .....	50 CFR 22	1000	.....	500
Eagle Take—Exempted under ESA .....	50 CFR 22	No fee	.....	.....

**Endangered Species Act/CITES/Lacey Act**

ESA Recovery .....	50 CFR 17	100	.....	50
ESA Interstate Commerce .....	50 CFR 17	100	.....	50
ESA Enhancement of Survival (Safe Harbor Agreement) .....	50 CFR 17	50	.....	25
ESA Enhancement of Survival (Candidate Conservation Agreement with Assurances).	50 CFR 17	50	.....	25
ESA Incidental Take (Habitat Conservation Plan) .....	50 CFR 17	100	.....	50
ESA and CITES Import/Export and Foreign Commerce .....	50 CFR 17	100	.....	50
ESA and CITES Museum Exchange .....	50 CFR 17	100	.....	50
ESA Captive-bred Wildlife Registration .....	50 CFR 17	200	.....	100
—Renewal of Captive-bred wildlife registration .....	50 CFR 17	100	.....	.....
CITES Import (including trophies under ESA and MMPA) .....	50 CFR 17, 18, 23.	100	.....	50
CITES Export .....	50 CFR 23	100	.....	50
CITES Pre-Convention .....	50 CFR 23	75	.....	40
CITES Certificate of Origin .....	50 CFR 23	75	.....	40
CITES Re-export .....	50 CFR 23	75	.....	40
CITES Personal Effects and Pet Export/Re-Export .....	50 CFR 23	50	.....	.....
CITES Appendix II Export (native furbearers and alligators—excluding live animals).	50 CFR 23	100	.....	50
CITES Master File (includes files for artificial propagation, biomedical, etc. and covers import, export, and re-export documents).	50 CFR 23	200	.....	100
—Renewal of CITES Master File .....	50 CFR 23	100	.....	.....
—Single-use permits issued on Master File .....	50 CFR 23	<sup>2</sup> 5	.....	.....
CITES Annual Program File .....	50 CFR 23	50	.....	.....
—Single-use permits issued under Annual Program .....	50 CFR 23	<sup>2</sup> 5	.....	.....
CITES replacement documents (lost, stolen, or damaged documents) .....	50 CFR 23	50	.....	50
CITES Passport for Traveling Exhibitions and Pets .....	50 CFR 23	<sup>3</sup> 75	.....	.....
CITES/ESA Passport for Traveling Exhibitions .....	50 CFR 23	<sup>3</sup> 100	.....	.....
CITES Introduction from the Sea .....	50 CFR 23	100	.....	50
CITES Participation in the Plant Rescue Center Program .....	50 CFR 23	No fee	.....	.....
CITES Registration of Commercial Breeding Operations for Appendix-I wildlife .....	50 CFR 23	100	.....	.....
CITES Request for Approval of an Export Program for a State or Tribe (American Ginseng, Certain Furbearers, and American Alligator).	50 CFR 23	No fee	.....	.....
Import/Export License .....	50 CFR 14	100	.....	50
Designated Port Exception .....	50 CFR 14	100	.....	50
Injurious Wildlife Permit .....	50 CFR 16	100	.....	50
—Transport Authorization for Injurious Wildlife .....	50 CFR 16	25	.....	.....

**Wild Bird Conservation Act (WBCA)**

Personal Pet Import .....	50 CFR 15	50	.....	.....
WBCA Scientific Research, Zoological Breeding or Display, Cooperative Breeding.	50 CFR 15	100	.....	50
WBCA Approval of Cooperative Breeding Program .....	50 CFR 15	200	.....	100
—Renewal of a WBCA Cooperative Breeding Program .....	50 CFR 15	50	.....	.....
WBCA Approval of a Foreign Breeding Facility .....	50 CFR 15	<sup>4</sup> 250	.....	.....

Type of permit	CFR citation	Permit application fee	Administration fee <sup>1</sup>	Amendment fee
<b>Marine Mammal Protection Act</b>				
Marine Mammal Public Display .....	50 CFR 18	300	.....	150
Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery.	50 CFR 18	150	.....	75
—Renewal of Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery.	50 CFR 18	75	.....	.....

<sup>1</sup> Assessed when a permit is issued.

<sup>2</sup> Each.

<sup>3</sup> Per animal.

<sup>4</sup> Per species.

\* \* \* \* \*  
 3. Amend § 13.24 by revising paragraph (c) to read as follows:

**§ 13.24 Right of succession by certain persons.**

\* \* \* \* \*  
 (c) In the case of permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) or permits issued under § 22.26 of this subchapter B, the successor's authorization under the permit is also subject to our determination that:

(1) The successor meets all of the qualifications under this part for holding a permit;

(2) The successor has provided adequate written assurances that it will provide sufficient funding for any applicable conservation measures, conservation plan, or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The successor has provided such other information as we determine is relevant to the processing of the request.

4. Amend § 13.25 by revising paragraph (b) and adding a new paragraph (f) to read as follows:

**§ 13.25 Transfer of permits and scope of permit authorization.**

\* \* \* \* \*  
 (b) Permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) or permits issued under § 22.26 of this subchapter B may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided we determine that:

(1) The proposed transferee meets all of the qualifications under this part for holding a permit;

(2) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation measures,

conservation plan, or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The proposed transferee has provided such other information as we determine is relevant to the processing of the submission.

\* \* \* \* \*  
 (f) In the case of permits issued under § 22.26 of this subchapter B to a Federal, State, tribal, or local governmental entity, a person is under the direct control of the permittee if the person is under the jurisdiction of the permittee, provided the permittee has the regulatory authority to require the person to comply with the terms and conditions of the permit and the permit provides that such person(s) may carry out the authorized activity.

**PART 22—EAGLE PERMITS**

5. The authority for part 22 continues to read as follows:

**Authority:** 16 U.S.C. 668–668d; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

6. Amend § 22.26 by revising paragraph (h) and adding paragraph (i) to read as follows:

**§ 22.26 Permits for eagle take that is associated with, but not the purpose of, an activity.**

\* \* \* \* \*  
 (h) *Permit duration.* The duration of each permit issued under this section will be designated on its face and will be based on the duration of the proposed activities, the period of time for which take will occur, the level of impacts to eagles, and the nature and extent of mitigation measures incorporated into the terms and conditions of the permit. Standard permits will not exceed 5 years. A permit for programmatic take will be issued for a term no shorter than 5 years and no longer than 30 years.

(i) *Transfer of programmatic permits.* Programmatic permits may be

transferred to new owners of facilities, provided that the new owners have never had a permit issued by the U.S. Fish and Wildlife Service suspended or revoked, and have not been convicted of violating a Federal wildlife law in the last 10 years. The transferee must meet all of the qualifications under this part for holding a permit, as well as the requirements of § 13.25(b) of this subchapter B.

Dated: January 19, 2012.

**Rachel Jacobson,**  
*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 22**

[Docket No. FWS–R9–MB–2011–0094: 91200–1231–9BPP]

**RIN 1018–AY30**

**Eagle Permits; Revisions to Regulations Governing Take Necessary To Protect Interests in Particular Localities**

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** We solicit public comment on possible revisions to regulations under the Bald and Golden Eagle Protection Act for permits to take eagles where the take is associated with, but not the purpose of, otherwise lawful activities. During the 2 years that the regulations have been in effect, some stakeholders have expressed concerns with some provisions of the rule. We are giving interested members of the public the opportunity to review the regulations and recommend revisions that would create a more efficient permit process