



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 91

[Docket No. FWS–HQ–MB–2021–0048; FXMB12330900000//212//FF09M13000]

RIN 1018-BF62

### Revision of Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest Regulations

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to revise the regulations governing the annual Migratory Bird Hunting and Conservation Stamp Contest (also known as the Federal Duck Stamp Contest (Contest)). Our proposed amendments would remove the previously specified permanent theme and the mandatory inclusion of an appropriate hunting element within all Contest entries and revise the qualifications of the judging panel to reflect this change. This change would be scheduled to begin with the 2022 Contest.

**DATES:** We will accept comments that we receive on or before [Insert date 30 days after date of publication in the **Federal Register**]. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on the closing date.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2021–0048.
- *U.S. Mail:* Public Comments Processing, Attn: FWS–HQ–MB–2021–0048, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: JAO/3W, Falls Church, VA

22041-3803.

We will not accept hand-delivered, emailed, or faxed comments. We will post all comments on <https://www.regulations.gov>. This generally means that your entire submission—including any personal identifying information—will be posted on the website. See **Public Comments Procedures** and **Public Availability of Comments**, below, for more information.

**FOR FURTHER INFORMATION CONTACT:** Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (202) 208–1050.

**SUPPLEMENTARY INFORMATION:**

**Background**

*History of the Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Program*

On March 16, 1934, Congress passed and President Franklin D. Roosevelt signed the Migratory Bird Hunting Stamp Act, which was later amended to become the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718–718j, 48 Stat. 452). Popularly known as the Duck Stamp Act, the law requires all waterfowl hunters who have attained the age of 16 to buy an annual stamp. Funds generated from Duck Stamp sales are used to protect waterfowl and wetland habitat that is incorporated into the National Wildlife Refuge System from willing sellers and those interested in obtaining conservation easements.

Over 1.5 million stamps are sold each year, and, as of 2021, Federal Duck Stamps have generated more than \$1.1 billion for the conservation of more than 6 million acres of waterfowl habitat in the United States. In addition to waterfowl, numerous other birds, mammals, fish, reptiles, and amphibians benefit from habitat protected by the Duck Stamp revenues, including an estimated one-third of the nation’s endangered and threatened species. The healthy wetlands protected by Duck Stamp funding sequester

carbon and contribute to addressing the impacts of climate change, including absorbing flood waters and storm surge. These wetlands purify water supplies and provide economic support to local communities as they attract outdoor recreationists from many different backgrounds.

### *History of the Duck Stamp Contest*

The first Federal Duck Stamp was designed at President Roosevelt's request by Jay N. "Ding" Darling, a nationally known political cartoonist for the *Des Moines Register* and a hunter and wildlife conservationist. In subsequent years, noted wildlife artists were asked to submit designs for the stamp. The first Contest was opened in 1949 to any U.S. artist who wished to enter. Since then, the Contest has attracted large numbers of entrants, and it remains the only art competition of its kind sponsored by the U.S. Government. The Secretary of the Interior appoints a panel of judges who have expertise in the area of art, waterfowl, or philately to select each year's winning design. Winners receive no compensation for the work, except a pane of Duck Stamps, based on their winning design, signed by the Secretary of the Interior. However, winners maintain the copyright to their artwork and may sell prints of their designs, which are sought by hunters, conservationists, and art collectors.

Waterfowl hunters have been the greatest contributors to the program, as they are required to purchase Duck Stamps in order to hunt waterfowl. Many individuals not engaged in hunting also purchase Duck Stamps to contribute to conservation or for the stamp's artistic value.

### *The 2020 Final Rule and 2021 Contest*

On May 8, 2020, the Service published a final rule (85 FR 27313) revising the regulations at 50 CFR part 91 governing the annual Federal Duck Stamp Contest. The Contest regulations made permanent the theme "celebrating our waterfowl hunting heritage" for all future Contests. The regulations require the inclusion of a waterfowl

hunting-related scene or accessory in every entry but do not specify what accessories to include. Requirements for the judging panel specified that all judges would have one or more prerequisite qualifications, which could include the ability to recognize waterfowl hunting accessories. An image of a drake lesser scaup with a lanyard and duck calls was chosen as the winner of the 2020 Contest, and this image will appear on the 2021–2022 Federal Duck Stamp when it is released for sale in July 2021.

The 2021 Contest species and regulations, with the permanent theme and mandatory inclusion of waterfowl hunting-related accessories or scenes in all entries, have been widely publicized and remain in effect for the 2021 Contest with the entry period beginning on June 1, 2021. The Service encourages artists to continue with their entries for the 2021 Contest and to adhere to the theme, entry qualifications, and judging requirements as published in the current regulations. This proposed rule, even if finalized before the 2021 Contest, will be applicable beginning with the 2022 Contest and each Contest thereafter.

### **Proposed Changes to the Regulations at 50 CFR part 91**

With this proposed rule, we propose to remove the permanent “celebrating our waterfowl hunting heritage” theme and the mandatory inclusion of an appropriate hunting-related element in Contest entries, and accordingly revise the qualifications for selection as a judge and the scoring criteria for the Contest, beginning with the 2022 Contest, as described below. Since the implementation of the 2020 rule requiring the inclusion of a mandatory hunting-related element, many Duck Stamp Contest artists have continued to express their dissatisfaction with this element being a requirement for all entries. The Service has proposed this change to allow artists more freedom of expression when designing their entries.

Currently, § 91.14 explains that a live portrayal of any bird(s) of the five or fewer identified eligible waterfowl species must be the dominant feature of the design. In the

May 8, 2020, final rule, we added to § 91.14 a paragraph (b) containing an additional permanent requirement that all Contest entries must also include one or more elements that reflect the theme “celebrating our waterfowl hunting heritage.” We propose to remove this requirement. Removing this requirement would not preclude artists from including other appropriate elements (e.g., hunting dogs, decoys, and hunting scenes) in their artwork as long as an eligible waterfowl species is in the foreground, portrayed alive, and is clearly the focus of attention.

Paragraph (b) of § 91.21 outlines the qualifications of the judging panel. In the May 8, 2020, final rule, we revised § 91.21(b) to add “an understanding and appreciation of the waterfowl hunting heritage and ability to recognize waterfowl hunting accessories” as a prerequisite for the judges, among the other qualifications. We propose to remove that prerequisite from the qualifications of Contest judges.

Finally, § 91.23 sets forth the scoring criteria for the competition. In the May 8, 2020, final rule, we revised the criteria to include that Contest entries would also be judged on how well they illustrate the theme of “celebrating our waterfowl hunting heritage.” We propose to remove that judging requirement.

### **Public Comments Procedures**

To ensure that any final action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. We will accept public comments we receive on or before the date listed above in **DATES**. We are striving to ensure that any final rule resulting from this proposed rule would allow sufficient time for artists to prepare their submissions by the June 1, 2022, opening of the 2022 Contest entry submission period. The comments that will be most useful are those supported by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition,

please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in **ADDRESSES**. We will not accept comments hand-delivered or those sent by e-mail or fax or to an address not listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information, such as your address, telephone number, or e-mail address—will be posted on the website. Please note that comments submitted to this website are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on <http://www.regulations.gov>.

In addition, all comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection via <http://www.regulations.gov>. Search for FWS–HQ–MB–2021–0048, which is the docket number for this rulemaking.

### **Public Availability of Comments**

As stated above in more detail, before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold

your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## **Required Determinations**

### *National Environmental Policy Act*

This proposed rule is categorically excluded. It reflects an administrative modification of procedures and the impacts are limited to administrative effects (516 DM 8.5(a)(3)). A detailed statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is therefore not required.

### *Endangered Species Act Consideration*

Of the species on our List of Eligible Species, only two species are currently listed as endangered or threatened under section 4 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.). No legal complications arise from the dual listing as the two lists are developed under separate authorities and for different purposes. Because this proposed rule is strictly administrative in nature, it has no effect on endangered or threatened species. Thus, it does not require consultation under section 7 of the ESA.

### *Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory

objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal 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) (5 U.S.C. 601 et seq.). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. The changes we propose are intended primarily to clarify the requirements for the Contest. These changes would affect individuals, not businesses or other small entities as defined in the Regulatory Flexibility Act. Currently, Duck Stamp sales average approximately 1.5 million each year. Active waterfowl hunters, the only people required to purchase an annual stamp, number approximately 1.1 million each year. Duck Stamps are also purchased by stamp and wildlife art collectors, bird watchers, and other conservationists, and a current stamp can be used for access at any national wildlife refuge that has an entry fee. Many hunters also purchase multiple stamps for different purposes. We are



currently unable to quantify numbers of stamps purchased by each user group; we do not anticipate being able to attribute any variability in sales due to the proposed changes in the Contest. In recent years, when no theme is required, we have received an average of 200 entries per year to the Contest. We anticipate that the number of entries into the Federal Duck Stamp Contest will range between 140 and 250 in any given year.

We therefore certify that, if adopted, this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

#### *Clarity of This Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rulemaking, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rulemaking is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

(a) Would not have an annual effect on the economy of \$100 million or more.

(b) Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

(c) 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.

*Paperwork Reduction Act of 1995 (PRA)*

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). OMB has previously approved the information collection requirements associated with the Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest and assigned OMB Control Number 1018–0172. You may view the information collection request(s) at <http://www.reginfo.gov/public/do/PRAMain>. An 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.

*Unfunded Mandates Reform Act*

This proposed rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rulemaking does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

*Civil Justice Reform*

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

### *Takings*

In accordance with E.O. 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required.

### *Energy Supply, Distribution, or Use*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This proposed rule would revise the current regulations at 50 CFR part 91 that govern the Federal Duck Stamp Contest. This rule would not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

### *Government-to-Government Relationship with Tribes*

Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. Individual Tribal members must meet the same regulatory requirements as other individuals who enter the Federal Duck Stamp Contest.

### *Federalism*

These proposed revisions to part 91 do not contain significant Federalism implications. A federalism summary impact statement under Executive Order 13132 is not required.

### **List of Subjects in 50 CFR Part 91**

Hunting, Wildlife.

### **Proposed Regulation Promulgation**

Accordingly, we propose to amend part 91, subchapter G of chapter I, title 50 of the Code of Federal Regulations as follows:

### **PART 91—MIGRATORY BIRD HUNTING AND CONSERVATION STAMP**

## CONTEST

1. The authority citation for part 91 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

2. Revise §91.14 to read as follows:

### **§ 91.14 Restrictions on subject matter for entry.**

A live portrayal of any bird(s) of the five or fewer identified eligible waterfowl species must be the dominant feature of the design. The design may depict more than one of the eligible species. The judges' overall mandate is to select the best design that will make an interesting, useful, and attractive duck stamp that will be accepted and prized by hunters, stamp collectors, conservationists, and others. The design must be the contestant's original hand-drawn creation. The entry design may not be copied or duplicated from previously published art, including photographs, or from images in any format published on the Internet. Photographs, computer-generated art, or art produced from a computer printer or other computer/mechanical output device (airbrush method excepted) are not eligible to be entered into the contest and will be disqualified. An entry submitted in a prior contest that was not selected for a Federal or State stamp design may be submitted in the current contest if the entry meets the criteria set forth in this section.

3. Amend §91.21 by revising paragraph (b) to read as follows:

### **§ 91.21 Selection and qualification of contest judges.**

\* \* \* \* \*

(b) *Qualifications.* The panel of five judges will comprise individuals who have one or more of the following prerequisites: recognized art credentials, knowledge of the anatomical makeup and the natural habitat of the eligible waterfowl species, an understanding of the wildlife sporting world in which the Duck Stamp is used, an awareness of philately and the role the Duck Stamp plays in stamp collecting, and

demonstrated support for the conservation of waterfowl and wetlands through active involvement in the conservation community.

\* \* \* \* \*

4. Revise §91.23 to read as follows:

**§ 91.23 Scoring criteria for contest.**

Entries will be judged on the basis of anatomical accuracy, artistic composition, and suitability for reduction in the production of a stamp.

---

**Shannon A. Estenoz,**  
*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks,  
Exercising the Delegated Authority of the Assistant Secretary for Fish and  
Wildlife and Parks.*

[FR Doc. 2021-13476 Filed: 6/22/2021 8:45 am; Publication Date: 6/23/2021]