



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 19, 21, and 22

[Docket No. FWS–HQ–MB–2022–0023; FXMB12320900000–245–FF09M31000]

RIN 1018–BC76

Regulatory Authorizations for Migratory Bird and Eagle Possession by the General Public, Educators, and Government Agencies

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are revising current regulatory authorizations and adding new regulatory authorizations for possession of migratory birds and eagles and for other purposes. These regulatory revisions will allow us to authorize the general public, educators, and government agency employees to possess migratory birds and eagles in certain specific situations and still meet our obligations to protect migratory birds and eagles under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. We also are changing the Airborne Hunting Act regulations to clarify what Federal authorizations may be used to comply with that statute.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Information Collection Requirements: If you wish to comment on the information collection requirements in this rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication of this rule in the *Federal Register*. Therefore, comments should be submitted to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service (see “Information Collection” section

below under **ADDRESSES**) by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Document availability:* This final rule, the proposed rule, and public comments received on the proposed rule are available at <https://www.regulations.gov> in Docket No. FWS–HQ–MB–2022–0023.

Information Collection Requirements: Written comments and suggestions on the information collection requirements should be submitted within 30 days of publication of this document to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or Info_Coll@fws.gov (email). Please reference OMB Control Number 1018–0200 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, Assistant Director–Migratory Birds Program, U.S. Fish and Wildlife Service, telephone: 703–358–2606, email: MB_mail@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) is the Federal agency delegated with the primary responsibility for managing migratory birds, including bald eagles and golden eagles. Our authority derives primarily from the Migratory Bird Treaty Act of

1918, as amended, 16 U.S.C. 703–12 (MBTA), which implements conventions with Canada, Mexico, Japan, and the Russian Federation. The MBTA protects certain migratory birds from take, except as permitted under the MBTA. We implement the provisions of the MBTA through regulations in parts 10, 13, 20, 21, and 22 of title 50 of the Code of Federal Regulations (CFR). Regulations pertaining to migratory bird permits are set forth at 50 CFR part 21. In addition, the Bald and Golden Eagle Protection Act, 16 U.S.C. 668–668d (the Eagle Act), prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act authorizes the Secretary of the Interior to issue regulations to permit the “taking” of eagles for various purposes, including the protection of “other interests in any particular locality” (16 U.S.C. 668a), provided the taking is compatible with the preservation of eagles. Regulations pertaining to eagle permits are set forth at 50 CFR part 22.

The Service has long authorized activities pertaining to migratory birds under regulatory authorizations. The origins of the regulatory authorization that provides for “general exceptions to permit requirements” (50 CFR 21.12) can be traced back to 1944. Regulatory authorizations are regulations that establish eligibility criteria and conditions without requiring a permit to conduct those activities. Regulatory authorizations are best suited for activities that have straightforward eligibility criteria and well-established conditions and pose a low risk to migratory bird populations.

The Service uses regulatory authorizations to authorize the take or possession of migratory birds. We may include mandatory or recommended conditions and recordkeeping, reporting, and inspection requirements. Regulatory authorizations have a relatively low administrative burden because they do not require submission of an application to obtain a permit from the Service prior to conducting an activity. Those who are eligible for a regulatory authorization must comply with any required conditions, including recordkeeping and reporting requirements, and are subject to enforcement for

noncompliance. Examples of current regulatory authorizations include general permit exceptions (50 CFR 21.12) as well as depredation and control orders (50 CFR part 21, subpart D).

We published a proposed rule on June 1, 2023 (88 FR 35809), to revise the existing regulatory authorizations, add new regulatory authorizations, and amend various provisions in the regulations governing the take and possession of migratory birds and eagles. The proposed rule included amendments to 50 CFR parts 21 and 22 to update references to 50 CFR 21.12. We also proposed to add a definition for “humane and healthful conditions” to 50 CFR 21.6 and 22.6, remove the current regulatory authorization for the possession of live migratory birds, and make clarifying changes to Federal authorizations under the Airborne Hunting Act (AHA) regulations (50 CFR 19.21). The comment period closed July 31, 2023.

This rulemaking improves organization and transparency of the regulations that set forth regulatory authorizations. We also include new regulatory authorizations, expanding the activities that do not require a permit both because they are well suited to straightforward eligibility criteria and because they are likely to have no or negligible impact on migratory bird populations and conservation. Finally, we modify the limitations on permits under the AHA regulations (50 CFR part 19) to support emerging uses of technology for bird conservation.

We describe each of the regulations in more detail below in this preamble.

This Rulemaking

In this rulemaking, the Service modifies five existing regulatory authorizations (prior to this rulemaking, located in 50 CFR 21.12(a)–(d) and indicated with “revised” in the preamble headings below) and redesignates them to their own sections. These modifications clarify language in the authorizations that was unclear, confusing, or created unintended restrictions or allowances. The Service also includes new regulatory

authorizations for the following activities: salvage, activities by agency natural-resource employees, and exhibition of eagle specimens. The regulations are not authorizing a new activity. Instead, they are changing the authorization mechanism from a permit to a regulatory authorization. After decades of issuance, the Service has developed straightforward eligibility criteria for these permit types and they have had no or negligible impact on migratory bird populations or their conservation. Moreover, the permit conditions do not require case-by-case customization, making these permit activities appropriate for a regulatory authorization.

General Public—Birds in Buildings Authorization (revised)

Current regulations include a regulatory authorization that allows any person (as defined in 50 CFR 10.12) to remove a migratory bird from the interior of a building or structure. We redesignate this regulation from § 21.12(d) to § 21.14 and make clarifying revisions. We expand the authorization from “residence or a commercial or government building” to “residence, business, or similar building or structure where people live or work.” We amend this text because it inadvertently excluded structures, such as belltowers, in which the presence of migratory birds is preventing the normal use of the structure’s interior, such as by causing a health or safety risk to humans or birds or damage to property such as foodstuffs or products for sale, or where the bird may become injured because it is trapped. It is beneficial to birds and humans for us to allow removal of birds unintentionally trapped in the interior of any building or structure. This authorization would not apply to birds or nests on the exterior of a building or structure. Removal of in-use nests on the exterior of buildings or structures would continue to require a permit, such as in exterior eaves or bridges. We also include additional text that requires removal of birds to be undertaken under humane and healthful conditions and provides sources for technical assistance, including the American Veterinary Medical Association Guidelines for the Euthanasia of Animals which is readily available online at

<https://www.avma.org/resources-tools/avma-policies/avma-guidelines-euthanasia-animals> with free public access.

General Public—Salvage Authorization (new)

Previously, regulations required a permit for any person to salvage (i.e., pick up) migratory birds found dead, including parts, feathers, nonviable eggs, and inactive nests. Salvage permits have been issued under the special purpose permits regulations (§ 21.95). We add a new authorization at § 21.16 for any person to salvage migratory birds found dead. Federal, Tribal, State, Territorial, or local guidance for safe handling and disposal of dead wildlife should be followed.

Salvage permits have minimal issuance criteria and no customized permit conditions. To reduce the administrative burden for the public and the Service, we replace the current permit requirement for salvage with a regulatory authorization. The primary purpose of adding this regulation is to address salvage situations where individuals are not actively seeking out dead birds. Examples include a person who discovers that a migratory bird has died from a vehicle-strike, but the remains are in good condition and the person wants to put the specimen to good use by donation to a nature center, or a homeowner who discovers a dead bird near their home and wants to put it in the trash. It does not make sense to prohibit these everyday activities or to require a permit to conduct them.

All birds salvaged under the new authorization must be promptly disposed of by donation to a person or entity authorized to receive them, such as for purposes of education or science, or by complete destruction. Complete destruction of dead migratory birds is most commonly achieved by burial or incineration, in accordance with applicable Federal, Tribal, State, Territorial, and local laws and ordinances. If allowed by local laws and ordinances, placing specimens in the trash is considered burial, as the specimens are ultimately buried in the landfill. Any person may contact the Service Migratory Bird

Program to determine if an entity is authorized to receive donated birds. Birds may not be retained for personal use, sold, bartered, or traded.

This authorization does not apply to any person who is salvaging birds for the purposes of scientific research. For research activities, the Service continues to require a scientific collecting permit (§ 21.73), which also provides authorization to collect samples from salvaged birds. The Service will continue to authorize salvage for utility purposes with a special purpose utility permit (§ 21.95) for migratory birds found dead on or near utility property, infrastructure, or rights-of-way. The Service reserves the right to notify any person that a permit is required to salvage migratory birds for purposes beyond the scope of this regulatory authorization.

Previously, persons without a salvage permit who found an eagle needed to notify a Federal, Tribal, or State wildlife agency who had authorization to salvage the eagle, parts, or feathers. Now, individuals who discover eagles have the option to contact the Service's National Eagle Repository (Repository) directly or continue contacting their Federal, Tribal, or State wildlife agency. The Service recognizes that bald eagles and golden eagles hold cultural significance for many Native American Tribes. In honor of our trust relationship with Native American Tribes, we make this change to reduce the current barriers to donation to the Repository. The Repository, in Commerce City, CO, may be contacted for donation instructions at repository@fws.gov or 303-287-2110.

We continue to require that any salvaged bald eagles or golden eagles be donated to the Repository and to allow the Repository to determine if eagles, parts, or feathers are suitable for distribution. However, the rule provides that, if determined unsuitable by the Repository, those items could be donated for scientific or exhibition purposes or completely destroyed, such as by burial or incineration, in accordance with applicable Federal, Tribal, State, and local laws and ordinances. The rule does not change the

authorization for Native American Tribes to retain eagles with a Tribal eagle remains permit (§ 22.60).

Public Institutions—Exhibition Use of Specimens Authorization (revised)

Previously, a Service regulation (at § 21.12(b)(1)) authorized certain public and private institutions to possess migratory birds without a permit. Some aspects of the purpose and scope of this regulation were unclear. With this final rule, the Service replaces § 21.12(b)(1) with the regulatory authorization for exhibition use of specimens at § 21.18.

In this authorization, public entities are authorized to possess lawfully acquired migratory bird specimens without a permit for the purposes of public conservation-education programs or public archival purposes. Similar to the definition of “public” in 50 CFR 10.12, the Service will use the term “public” for all part 21 and part 22 regulations to mean entities that are open to the general public and are either established, maintained, and operated as a governmental service or are privately endowed and organized but not operated for profit. Individuals and private for-profit entities are not considered public.

- “Open to the general public” means an entity that is open on a regularly scheduled basis during publicly posted hours of at least 400 hours per calendar year, such as for archive access or static display, or that conducts at least 12 public educational programs per year. The entity may charge a fee for entry or to attend programs. A program will not qualify as a public program if access is restricted to a limited group of individuals.

- “Governmental service” means services provided by government agencies, including Federal, Tribal, State, Territorial, or local agencies, as well as services provided by entities operating on behalf of a government agency, such as contractors. Those operating on behalf of an agency must have documentation (e.g., a letter from the

agency) authorizing operation. The purpose of the exhibition must be for conservation education or scientific purposes, but the purpose of the agency does not need to be education or science.

- “Not operated for profit,” also known as nonprofit organizations, means an entity that is privately endowed (i.e., funded) and documented in accordance with Internal Revenue Service tax-exempt standards under 26 U.S.C. 501(c)(3) or similar Federal standards.

- The term “endowed” is interpreted as synonymous with “funded” and does not require a minimum endowment to qualify as public. The Service recommends that an entity’s financial health and stability should be sufficient to cover the operational costs of the activities conducted as well as costs in the event of unexpected closure, such as placement of specimens or live birds.

The regulatory authorization does not authorize the possession of live migratory birds; however, the exhibition and propagation of live birds will continue to be authorized by permit. Any entity in possession of live migratory birds and currently operating under § 21.12(b)(1) may continue activities currently authorized by § 21.12(b)(1) until the Service finalizes a rulemaking regarding the exhibition of live migratory birds and eagles for educational purposes (RIN 1018–BF58; see the advance notice of proposed rulemaking that published June 1, 2023, at 88 FR 35821; Docket No. FWS–HQ–MB–2023–0015). Once the live bird exhibition rulemaking is finalized, those entities will need to comply with the new regulations.

So that we may better understand the number and types of entities operating under the current exhibition exception, we request that entities currently operating under § 21.12(b)(1) email the Service at migbirdpermits@fws.gov by [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] with the following information:

- (1) The entity name, physical address, and, if different, mailing address;
- (2) the name, title, and contact information of the principal officer who is in charge of the organization;
- (3) the name, title, and contact information of the primary contact the Service should use, if different than the principal officer; and
- (4) the following statement: “This entity is currently operating under the permit exception at 50 CFR 21.12(b)(1) and intends to continue operating under the conditions of this exception until the Service publishes exhibition regulations.”

The Service will use this information to contact those entities once the new exhibition regulations are final.

Public Institutions—Authorization for Exhibition Use of Eagle Specimens (new)

Previously, an eagle exhibition permit (§ 22.50) was required to possess eagle specimens for exhibition purposes, including mounts, feathers, parts, eggs, and nests. These permits are limited under the Eagle Act to public museums, scientific societies, and zoological parks (16 U.S.C. 668a) and can include take and possession of live birds as well as specimens. Most of these permittees are government entities that display a single, mounted eagle in a visitor center or building entrance. These exhibition permits for specimens have straightforward issuance criteria and conditions that are standard for all permittees. Therefore, to reduce the administrative burden for these public entities and the Service, we provide a regulatory authorization at § 22.15 for public museums, scientific societies, and zoological parks to possess eagle specimens for exhibition use without a permit. Possession of live birds will continue to require a permit. This regulatory authorization also does not authorize any taking of eagles. Any eagle specimens must have been legally obtained under the terms of a part 22 eagle permit or as authorized by § 21.16. We create in part 22 a new subpart B that has a similar structure to part 21, subpart B, and sets forth regulatory authorizations for eagles.

We anticipate no change in the availability of eagles for members of federally recognized Tribes as a result of this action. Nearly all eagle specimens for exhibition use are already in possession. Any eagle specimens newly acquired for exhibition use must be approved by the Repository as not suitable for Native American distribution. Documentation showing lawful acquisition and written authorization from the Repository for donation must accompany any newly acquired specimens before transfer to exhibition use.

The Eagle Act (16 U.S.C. 668a) restricts authorization for scientific or exhibition purposes to “public museums, scientific societies, and zoological parks.” The Service uses a plain-English interpretation of “museum” and “zoological park,” by which a public museum is a building or place where objects are curated for and displayed to the public, and a zoological park is a place where living animals are kept in enclosures and displayed to the public. The Eagle Act’s inclusion of the term “scientific societies” does not readily have a plain-English interpretation. Therefore, the Service adopts the following interpretation: A scientific society is any entity that, as part of its purpose, promotes public knowledge about science or conducts research and makes data and findings available to the public. Scientific societies may include government agencies, schools and universities, and nongovernmental organizations. Qualifying as a public museum, scientific society, or zoological park is only one of the criteria necessary to conduct eagle exhibition or eagle scientific collecting activities. We would continue to maintain appropriate standards for evaluating an entity’s qualifications relative to the authorization requested.

Licensed Veterinarians Authorization (revised)

A regulatory authorization authorizes licensed veterinarians to provide veterinary care of sick, injured, and orphaned migratory birds including eagles. We redesignate this regulation from §§ 21.12(c) to 21.22 and make the following revisions: (1) Edit the

existing language to improve readability, (2) clarify what is included in veterinary care, and (3) clarify expectations regarding disposition of live and dead migratory birds. A Federal rehabilitation permit (§ 21.76) is required to conduct amputations and other procedures that could render a bird nonreleasable. A Federal rehabilitation permit is also required to determine if a sick, injured, or orphaned bird is nonreleasable, where nonreleasable means the bird is not suitable for release into the wild because of injury, being imprinted, or for other reasons determined by the Service.

Mortality Event Authorization (revised)

Regulations currently authorize natural resource and public health agency employees to address avian disease outbreaks without a permit. We expand this authorization from infectious disease outbreaks to include mortality events of suspected disease outbreaks because some mortality events (e.g., those caused by toxins or mass starvation) may have an unclear cause at the time of discovery and a timely response is necessary to ensure public safety until the cause of avian mortality can be determined.

We redesignate this regulation from §§ 21.12(b)(2) to 21.32 and make revisions as follows. We clarify that the scope of this authorization includes all mortality events where infectious disease is a suspected cause. A mortality event is an unforeseen event that results in an unexpectedly high number of sick or dead birds in a particular location over a short period of time from a cause that appears to be biologically related. For example, multiple dead birds of taxonomically related species exhibiting similar clinical signs in a discrete geographic area over roughly the same time period. We adopt the U.S. Geological Survey, National Wildlife Health Center's interpretation of "unexpectedly high" as five or more individuals (see <https://www.usgs.gov/centers/nwhc>). The National Wildlife Health Center is the science lead in the Department of the Interior (DOI) on the detection, control, and prevention of wildlife disease in the United States. The primary use of this regulatory authorization is to respond to avian infectious disease outbreaks,

such as avian influenza or West Nile virus. Timely response is necessary to identify the cause of the outbreak, contain its spread, and reduce exposure and potential infection of humans, livestock, other domestic animals, and wildlife.

This authorization does not apply to mortality events due to causes that are not suspected as disease-related, such as collisions with infrastructure, fall-out due to circling lights, and other non-disease-related mortality. The authorization also does not apply to the take of asymptomatic birds, including for activities such as disease monitoring. Instead, agencies conducting disease monitoring of asymptomatic birds should obtain a scientific collecting permit (§ 21.73).

Natural Resource Agency Employees Authorization (new)

With this regulation, the Service establishes a new regulatory authorization at § 21.34 to salvage birds, use migratory bird specimens for educational programs, transport birds to medical care, and relocate birds in harm's way. These activities were previously authorized by special purpose permits (§ 21.95) issued to Service and State wildlife agency employees. This authorization facilitates Federal, State, Territorial, and federally recognized Tribal natural resource agency employees conducting routine activities involving birds and reduces the administrative burden of the permit process on the Service and other natural resource agencies. The regulatory authorization adopts the same conditions that the Service currently uses when issuing permits to employees of the Service and State wildlife agencies under the special-purpose permit regulations at § 21.95.

This authorization extends the authorization at § 21.76 for transporting birds to medical care by authorizing possession of sick, injured, or orphaned birds by natural resource employees, when necessary and humane, for up to 72 hours or to humanely euthanize birds if necessary. Natural resource agency employees are often in remote areas and are in the best position to provide humane care, without increasing bird stress by

transporting long distances. Consistent with current permit conditions, this regulatory revision would authorize the salvage of birds and relocation when birds or humans are at risk.

Law Enforcement Authorization (revised)

Current regulations authorize DOI law enforcement personnel to conduct certain activities without a permit. We redesignate this regulation from §§ 21.12(a) to 21.40 and clarify that this authorization pertains to all law enforcement agencies authorized to enforce laws consistent with the MBTA or the Eagle Act. This authorization will be limited to personnel performing official law enforcement duties. Under this regulation, we also allow law enforcement agents to temporarily designate authority to another individual to acquire, possess, transport, or dispose of migratory birds on behalf of law enforcement in certain circumstances—for example, to pick up and dispose of a deceased bird in a remote area. This temporary designation should be recorded in writing by the law enforcement agent delegating the authority. The document must record the name and contact information of both the individual authorized and the authorizing agent as well as the dates authorized and clearly explain the extent of the actions the individual is authorized to perform.

Humane and Healthful Conditions Definition

Regulations at 50 CFR 13.41 currently require that any live wildlife must be possessed under “humane and healthful conditions.” Under this rule, we add a definition to the *Definitions* sections for 50 CFR parts 21 and 22 (at §§ 21.6 and 22.6) to define “humane and healthful conditions” as the phrase applies to the possession of live migratory birds and live bald eagles and golden eagles. The definition is identical for both part 21 and part 22 and includes both temporary (e.g., trap–release activities) and long-term (e.g., rehabilitation or exhibition activities) possession. The definition also clarifies that humane and healthful conditions include all aspects of possession and care,

such as handling, housing, feeding, watering, sanitation, ventilation, shelter, protection from predators and vermin, enrichment, veterinary care, and euthanasia.

Rehabilitation Regulations

We remove the reference at § 21.76(e)(1) to the *Minimum Standards for Wildlife Rehabilitation* (2000) as guidelines for evaluating the adequacy of caging dimensions. The National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council recently published an updated *Standards for Wildlife Rehabilitation* (2021). The Service considered proposing to amend the regulation at § 21.76(e)(1) to reference the updated edition. Instead, we will apply the Service's *Migratory Bird Permit Memorandum: Evaluating Humane and Healthful Conditions at Rehabilitation Facilities* (MBPM-12). Consistent with MBPM-12, the Service will use the most current edition of *Standards for Wildlife Rehabilitation* as the Service's approved guidance document for evaluating humane and healthful conditions at rehabilitation facilities. Applicants should review the rehabilitation permit application form and application FAQ for the most current Service approved guidance.

Airborne Hunting Act Regulations

We amend the regulations at 50 CFR part 19 to authorize any person to hunt, shoot, or harass migratory birds under the Airborne Hunting Act (AHA) using any appropriate part 21 or part 22 permit. While the harassment, as defined in 50 CFR 19.4, of migratory birds alone does not otherwise require authorization under the MBTA, the AHA clearly prohibits the use of any aircraft to harass any wildlife, including migratory birds (§ 19.11), necessitating the need to issue a permit to authorize the harassment of migratory birds with aircraft. Service regulations previously limited the issuance of Federal permits authorizing any person to hunt, shoot, or harass any wildlife from an aircraft, to migratory bird depredation permits issued under 50 CFR 21.100.

The Service removes this limitation and will use the most appropriate permit type for the purpose of the activity requested; for example, scientific-collecting permits (§ 21.73) for research. AHA authorization may also be added to other permit types, including for utility or communication tower purposes under special purpose utility permits (§ 21.95) or for eagle harassment associated with monitoring using aircraft with eagle incidental take permits (§ 22.250 or § 22.260, respectively); preconstruction surveys conducted by Federal or State employees will continue to be authorized under § 19.12(1).

The Service considers aircraft operating at minimum safe altitudes, as defined in 14 CFR 91.119(a), (b), or (c) at or above 500 feet above the surface, unlikely to harass migratory birds. Aircraft operating closer than 500 feet above the surface at any time under 14 CFR 91.119(c) or (d), or operating under a waiver of 14 CFR 91.119, should consider whether migratory bird harassment may occur and, if so, obtain authorization under AHA regulations if an AHA exception (16 U.S.C. 742j-1(b)(1)) does not apply. Unmanned aircraft systems (UAS or “drones”) are classified and regulated as “aircraft” by the FAA, by definition, as “a device that is used or intended to be used for flight in the air” (14 CFR 1.1). The DOI Office of Aviation Services follows the FAA definition (Operational Procedures Memorandum 11). UAS used for commercial operations are regulated under 14 CFR part 107. Recreational use of UAS is regulated under 49 U.S.C. 44809. Pilots of UAS who plan to fly less than 400 feet above ground level should consider whether migratory bird harassment may occur and, if so, obtain authorization under the AHA if an AHA exception does not apply.

The regulatory revisions to 50 CFR 19.21 authorize new and emerging uses of aircraft, including UAS, which is consistent with the AHA’s exception for permits that authorize “administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops” (16 U.S.C. 742j-1(b)(1)).

Disqualifying Factors

The Service adds disqualifying factors at § 21.5 and § 22.5. The regulations at 50 CFR part 13 describe general permit procedures, including issuance of permits (§ 13.21), and the factors that disqualify a person from receiving a permit. These factors include conviction of a felony violation of the MBTA or Eagle Act, prior revocation of permits for certain reasons, failure to pay fees and fines, and failure to submit reports.

For legal purposes, the Service considers regulatory authorizations to constitute a permit as defined in 50 CFR 10.12. The definition of “permit” refers to a “document.” We interpret the term “document” to include a regulation such as this final rule, which describes, authorizes, and limits regulated activities and is signed by an authorized official—the DOI Assistant Secretary of Fish and Wildlife and Parks.

Therefore, to clarify that the disqualifying factors for permits also apply to regulatory authorizations, we add §§ 21.5 and 22.5, which adopt the part 13 disqualifying factors for all activities authorized by regulation or permit under parts 21 and 22. The text is adapted from § 13.21(c) to improve readability and clarify requirements.

Editorial Corrections

Because we redesignated the regulatory authorizations to new CFR sections, we correct cross-references to these sections in other parts of our regulations. Affected sections include rehabilitation permits (§ 21.76), falconry standards and falconry permitting (§ 21.82), raptor propagation permitting (§ 21.85), and eagle scientific and exhibition permits (§ 22.50). In this rulemaking, we are not making any changes to the falconry regulations or raptor propagation regulations beyond updating regulation references. These updates are administrative in nature; they do not change the species protected by the regulations or the permit requirements or any other requirements of the MBTA or its implementing regulations. We also update the address in the application

procedures of banding or marking permits (§ 21.70) to reflect that the Bird Banding Lab is part of the U.S. Geological Survey and not the Service.

Summary of Changes from the Proposed Rule

Based on comments we received on the proposed rule (88 FR 35809, June 1, 2023), we made changes to the proposed regulations as set forth in the final regulations in this document. In general, changes included clarifying updates in response to the public comments received and nonsubstantive edits to improve readability. The following is a summary of the changes made between the proposed rule and this final rule:

1. Airborne Hunting Act—We added a clause to proposed § 19.21 to clarify that we will issue the appropriate part 21 or part 22 permit based on the purpose of the take or the activity being conducted.

2. Scope of regulations—We reformatted § 21.4 to improve readability and to easily identify the headings of the listed regulations.

3. Disqualifying factors—To clarify that the disqualifying factors set forth in 50 CFR part 13 also apply to regulatory authorizations, we had proposed new regulations at §§ 21.5 and 22.5 to adopt the factors set forth in part 13. After further review, we have revised the proposed language for §§ 21.5 and 22.5 to improve clarity.

4. Birds in buildings authorization—To reduce confusion regarding what types of structures and under what circumstances birds can be removed from buildings, we added clarifying language to proposed § 21.14.

5. Salvage authorization—We reorganized proposed § 21.16 to improve readability. We also clarified that this authorization is not intended for individuals actively searching for dead birds, such as for scientific research. Additionally, we added that any person who salvages eagles may turn in the specimens to a Federal, Tribal, or State wildlife agency as an alternative to contacting the National Eagle Repository.

6. Exhibition use of specimens, including eagle specimens, authorization—In § 21.18, we further clarified what entities qualify as “public” to avoid unintended restrictions regarding who qualifies under this regulatory authorization.

To clarify how pre-MBTA specimens may be displayed, we added a reference to § 21.4(a) to § 21.18, and to clarify how pre-Eagle Act specimens may be displayed, we added a reference to § 22.4(a) to § 22.15. We also added a recordkeeping requirement to document how entities meet the eligibility criteria for this authorization.

7. Licensed veterinarian authorization— We had proposed to move the authorization pertaining to licensed veterinarians to § 21.20; however, in this final rule, we are placing this authorization at § 21.22 to allow for a future rule to set forth a different provision at § 21.20. In § 21.22, we added a recommendation that a licensed veterinarian contact a federally permitted migratory bird rehabilitator when needing assistance in determining whether birds are suitable for release and suitable release locations when releasing birds in the first 24 hours. We also added language to clarify that a determination of nonreleasable status may only be determined by the holder of a rehabilitation permit.

8. Mortality event authorization—In § 21.32, we added examples to further clarify what we consider to be a qualified mortality event. We also added instructions for who to contact when a mortality event involves eagles.

9. Natural resource agency employees authorization—In § 21.34, we clarified recordkeeping requirements to confirm that keeping records of salvaged birds is not required under this regulation.

10. Banding or marking permits—We revised § 21.70 to correct an incorrect address that we discovered after publishing the proposed rule.

11. Rehabilitation permits—In § 21.76, we clarified that Service approved guidance will be used to evaluate rehabilitation facilities.

12. For consistency throughout the rule, where we used the term “remains,” we replaced it with “specimens” where appropriate, and where we used the term “institution,” we replaced it with “entity” where appropriate.

13. Finally, we revised the heading for part 21, subpart B, from “Exceptions to Permit Requirements” to “Regulatory Authorizations for Migratory Birds” and the heading for part 22, subpart B, from “Exceptions to Permit Requirements” to “Regulatory Authorizations for Eagles” to better reflect the contents of the revised subparts. We also revised the headings of new sections being added to part 21, subpart B, to conform style with the current section headings in that subpart and to distinguish clearly between sections pertaining to regulatory authorizations and sections pertaining to permit exceptions.

Response to Public Comments

The Service received 12 unique letters, which contained 59 distinct comments, on the proposed rule. The following section contains the substantive public comments we received on the proposed rule and our responses. Where appropriate, we explain why we did or did not incorporate the changes suggested by the commenters into this final rule. Not included are the many comments providing general support for provisions of the rulemaking. Likewise, we do not include summaries of any comments providing general opposition, unless they contain suggestions for improvement. We also do not respond to comments that we considered to be outside the scope of this rulemaking.

Birds in Buildings

Comment. Clarify what is considered “human-occupied.”

Response. The Service agrees that this term created confusion. We have revised the regulatory text to explain that “human-occupied” means a building or structure where people live or work.

Comment. Clarify who is allowed to remove migratory birds from a building because the text as proposed could mean any person at any time for any reason.

Response. The regulation allows any person to remove birds or nests from the interior of a building or structure where people live or work, but only when the presence of migratory birds is preventing the normal use of the interior of the building or the structure, including causing a health or safety risk to humans or birds, damage to property such as foodstuffs or products for sale, or if the bird may become injured because it is trapped. The Service added examples to § 21.14 to further clarify purpose and scope. This provision does not authorize possession of or incubating eggs. As stated in § 21.14(b)(3), eggs or nestlings must be transported to a federally permitted migratory bird rehabilitator or humanely destroyed or euthanized by following the American Veterinary Medical Association Guidelines for the Euthanasia of Animals.

Comment. How should the public locate a federally permitted rehabilitator?

Response: The Service maintains a map of federally permitted migratory bird rehabilitators. This map can be found by visiting the migratory bird permits webpage (<https://www.fws.gov/program/migratory-bird-permits/living-around-birds>) or the Service's arcgis webpage (<https://fws.maps.arcgis.com/>) and selecting "Find a Migratory Bird Rehab Facility."

Comment. How can the public access the proper guidelines for euthanasia and the drugs or equipment necessary?

Response. The American Veterinary Medical Association Guidelines for the Euthanasia of Animals is readily available online at <https://www.avma.org/resources-tools/avma-policies/avma-guidelines-euthanasia-animals> with free public access.

Comment. The Service should consider developing a voluntary self-reporting tool for birds removed under the birds-in-buildings authorization.

Response. The Service recognizes the value in information relating to the take of migratory birds; however, we must also balance the value of information collection with the time and cost burden of that collection. We are revising an existing regulation that did not previously have a reporting requirement, and we did not propose a new reporting requirement. As the Service continues to develop the technology for easy, online reporting, we may consider changing our approach in the future.

Salvage Authorization

Comment. Members of the public should consult with the Service or appropriate State agencies prior to disposal of dead migratory birds if high mortalities are encountered.

Response. As stated in § 21.16(f), any person salvaging birds must notify the Service Office of Law Enforcement if five or more birds are found dead.

Comment. The Service should continue to require permits for large-scale salvage operations at commercial facilities, including standardized specimen trials conducted at wind and solar energy facilities.

Response. The Service agrees. Large-scale salvage operations that would require possession of migratory bird specimens do not qualify under § 21.16. This authorization does not apply to any person who is conducting research and salvaging birds for the purposes of scientific research. The Service continues to require a scientific collecting permit (§ 21.73) for research activities, especially if samples will be collected from those salvaged birds. The Service will continue to authorize salvage for utility purposes with a special-purpose utility permit (§ 21.95) for migratory birds found dead on utility property, structures, and rights-of-way.

Comment. This rule could allow anyone to pick up birds, eggs, and nests for any reason or kill birds for feathers with no oversight by the Service.

Response. Nothing in this rulemaking allows birds to be killed for feathers. While anyone can salvage dead birds, nonviable eggs, and inactive nests, they must be promptly donated and not retained in possession. All salvaged migratory bird specimens must either be donated to a person or institution authorized to receive them under a valid permit or regulatory authorization or disposed of by destroying the specimens. The Service has long been authorizing these activities, which have straightforward eligibility criteria and standardized permit conditions, making them appropriate for a regulatory authorization. The Service will continue to monitor legal activities and take enforcement action on illegal activities.

Comment. Define “promptly disposed of.”

Response. The regulation at § 21.16(a)(1) states that all salvaged specimens must be disposed of within 7 calendar days. We added language to § 21.16(b)(3) and (c)(3) stating “unless directed otherwise by the Service” to cover situations with extenuating circumstances.

Comment. The Service should develop a list of institutions willing to accept salvaged bird specimens and make it available online.

Response. At this time, we are unable to post a comprehensive list of those entities authorized to receive donated birds; however, the regional Migratory Bird Permit Offices can respond to inquiries from the donors or the recipients to assist with determining eligibility.

Comment. Does the regulatory authorization apply to regular salvage of birds?

Response. This authorization does not apply to any person who is salvaging birds for the purposes of scientific research. The Service continues to require a scientific collecting permit (§ 21.73) for research activities, which also provides authorization for any samples collected from those salvaged birds. The Service will continue to authorize salvage for utility purposes with a special-purpose utility permit (§ 21.95) for migratory

birds found dead on or near utility property, infrastructure, or rights-of-way. The Service reserves the right to notify any person that a permit is required to salvage migratory birds for purposes beyond the scope of this regulatory authorization.

Comment. Does “any person” include a company or other entity?

Response. In § 10.12, the Service defines “person” to mean any individual, firm, corporation, association, partnership, club, or private body, any one or all, as the context requires. The use of “any person” in the regulations in this final rule aligns with the regulatory definition of “person.”

Exhibition Use of Specimens Authorization

Comment. There should not be an annual reporting requirement for educational use of specimens under § 21.18.

Response. The Service did not propose an annual reporting requirement. The proposed and final rules require that records be maintained and be available upon request as outlined in § 21.18(g).

Comment. This rule removes Service oversight and control over the collection, keeping, transferring, and displaying of migratory birds, which could be misused and exploited.

Response. The regulations pertain to the exhibition use of migratory bird specimens. The Service did not propose nor does this rule change any requirements regarding collection or take of live birds from the wild. As with any regulation, there is the potential for misuse or exploitation. Restricting possession under this regulatory authorization to government agencies and nonprofit organizations limits that potential and is a minimal extension beyond what was previously authorized under § 21.12(b)(2).

Comment. Is the Service proposing a new definition of “public”?

Response. The Service is not proposing a change to the definition of “public” in § 10.12. We are applying the current definition to the regulations in this rule.

Comment. Clarify what eliminating the general authorization to possess live birds means for exempt facilities.

Response. Any entity currently operating under § 21.12(b)(1) may continue activities currently authorized by the regulatory authorization until the Service finalizes a rulemaking regarding the exhibition of live migratory birds and eagles for educational purposes (RIN 1018–BF58). Once the educational use rulemaking is finalized, those entities would need to comply with the new regulations. See discussion of this issue above under “This Rulemaking” and *Public Institutions—Exhibition Use of Specimens Authorization (revised)*.

Exhibition Use of Eagle Specimens Authorization

Comment. Natural resource agencies should be included in the list of entities that may possess eagle specimens for exhibition and educational purposes instead of relying on the interpretation that these agencies are covered as “public scientific societies.”

Response. The Eagle Act (16 U.S.C. 668a) restricts possession to public museums, zoological parks, and scientific societies. The Service cannot revise the statutory language. We interpret a “scientific society” to include any entity that, as part of its purpose, promotes public knowledge about science or conducts research and makes data and findings available to the public; thus, the term includes government agencies as well as public schools and universities and certain nongovernmental organizations.

Comment. Can the Service make it easier and more efficient for agencies and the general public to provide eagle specimens to the National Eagle Repository and clarify who makes the determination that an eagle specimen is not suitable for Native American distribution?

Response. This rule provides the authority for agencies and the public to salvage and ship eagle specimens to the National Eagle Repository without first obtaining a permit. The Repository provides instructions for obtaining a pre-paid shipping label and

shipping boxes on their website. The Repository determines if eagles, parts, or feathers are suitable for distribution. If determined unsuitable by the Repository, eagles, parts, or feathers may be donated for scientific or exhibition purposes or completely destroyed. The Repository should be contacted directly with questions regarding suitability for distribution.

Licensed Veterinarian Authorization

Comment. Prior consultation with an avian veterinarian or migratory bird rehabilitator should be required before providing veterinary care authorized under this part.

Response. The Service agrees that birds should get the best possible care. Trained avian veterinarians and migratory bird rehabilitators have the most training to provide quality care. However, individuals with these skills are not available in all areas. In these situations, licensed veterinarians are best positioned to provide care. The Service currently authorizes licensed veterinarians to conduct these activities and will continue to do so.

Comment. Unless a veterinarian possesses a rehabilitation permit, a veterinarian may not have the background to properly evaluate whether a bird is medically and behaviorally healthy enough for release or to determine suitable habitat for each species.

Response. The Service agrees that not all veterinarians have the background and training to make these determinations. The Service restricts disposition in most cases to either euthanasia or transfer to a rehabilitator. Veterinarians occasionally receive birds that require only a short period of rest prior to being suitable for release (e.g., mild collisions with windows or vehicles). Transport of these birds to a rehabilitation facility may decrease survivability. We are trusting the professionalism of licensed veterinarians to seek assistance if a situation is outside the scope of their professional skill. We have added language in § 21.22 recommending that veterinarians contact a federally permitted

migratory bird rehabilitator or their regional Migratory Bird Permit Office for assistance with determining whether a bird is suitable for release or determining suitable habitat for release, if necessary.

Comment. The rule is contradictory in stating that veterinarians cannot determine whether a bird is nonreleasable while, at the same time, prohibiting release of a bird held in care for longer than 24 hours, thus making the bird nonreleasable.

Response. Holding a bird in care longer than 24 hours does not make the bird nonreleasable. The regulations require only transfer of the bird to a federally permitted migratory bird rehabilitator to assess its condition, including determining releasability, within that timeframe.

Comment. The following statement in the proposed rule is ambiguous: “Within 48 hours after hospitalization is no longer required, live migratory birds must be transferred to a federally permitted migratory bird rehabilitator.”

Response. The Service clarified the language as follows: “After hospitalization is no longer required, within 48 hours, live migratory birds must be transferred to a federally permitted migratory bird rehabilitator.”

Airborne Hunting Act

Comment. Clarify how unmanned aircraft systems (UAS) can be used for harassment but not authorized as a method of take (e.g., killing a bird or contributing to the loss of a nest or young).

Response. The AHA requires authorization to hunt, shoot, or harass wildlife from aircraft, including UAS. The MBTA prohibits the take of migratory birds. This includes the killing of adult birds as well as conducting activities that result in the death, injury, or orphaning of eggs or chicks, such as keeping adults away from a nest resulting in nest abandonment or nest failure. The Service can issue permits for the take of migratory birds under the MBTA and the harassment of migratory birds under the AHA. The Service can

also issue a permit for an aircraft or UAS to be an authorized method of take or harassment, provided that the take or harassment is humane and consistent with both the MBTA and AHA.

UAS are an emerging technology, and we do not want to unduly restrict technological advances and their application to migratory bird monitoring and research or human or wildlife health and safety. Any request to take birds using UAS would be evaluated through the permit application process, to ensure it is humane and the best available alternative that is consistent with the conservation of migratory birds. For example, the use of UAS has been explored as a method to addle eggs (which is a form of take) in nests on infrastructure that are creating a wildfire risk. With appropriate safeguards, this method poses minimal risk to human safety and adult birds.

Comment. Include §§ 21.41 and 21.23 as options for authorizing the use of UAS under § 19.21.

Response. The Service agrees that the AHA regulations should provide for more permit options under these regulations. Because of the emerging nature of UAS, the Service decided not to restrict authorization to any particular permit type and instead to allow use of the most appropriate regulation and permit under part 21 or part 22, which would include both permitting examples included in this comment. This provision will allow us to be as flexible as possible and use the most-appropriate permit type available.

Comment. If a State issues a permit pursuant to subpart D of the part 19 regulations, no Federal permit should be required.

Response. The Service has not revised the provision at § 19.31(a) that provides for the State to issue a permit for airborne hunting or harassing of wildlife. A Federal migratory bird permit would not be required for the harassment of migratory birds if someone holds a valid State permit that complies with the AHA. However, additional Federal permits may be required to hunt or otherwise take migratory birds.

Comment. The Service should develop a new regulatory authorization to allow the use of drones in nest surveys.

Response. The Service considered a regulatory authorization for specific uses of UAS that are unlikely to harass migratory birds. However, because of the emerging nature of UAS, continuing to authorize these activities by permit will ensure proposed activities are evaluated through the permit application process, to ensure the activities adopt a humane approach that is the best available alternative consistent with the conservation of migratory birds.

Definitions

Comment. One commenter appreciated the inclusion of a definition for “humane and healthful conditions” but cautioned against using subjective terms such as “fear,” “pain,” and “suffering” as these terms may make it difficult to enforce this provision and recommended relying more heavily on “stress” as a physiological condition.

Response. We recognize that these terms are subjective in nature. Stress is a physiological condition; however, it is still largely interpreted by demonstrated physical behaviors in most settings. Responses vary among birds, so observing for a variety of other indicators such as fear, pain, and suffering is appropriate. Those in possession of live birds should use the best available information when assessing the condition of a bird.

Comment. The regulations should state that the U.S. Department of Agriculture (USDA) is the primary regulator of animal welfare.

Response. The Service’s regulations in § 13.41 require that wildlife in care be housed in humane and healthful conditions. The Service is using the regulations in this rule to clarify what humane and healthful conditions means in the context of the activities authorized in part 21 and part 22. This definition was developed in coordination with USDA Animal Care.

Effective Date

The Administrative Procedure Act at 5 U.S.C. 553(d)(1) allows Federal agencies to make a rule effective in less than 30 days if the rule is a substantive rule that grants or recognizes an exemption or relieves a restriction. We are making this rule effective upon publication in the *Federal Register* because this rule relieves restrictions on current permit holders. This rule is deregulatory in nature because it replaces existing permit requirements with regulatory authorizations that do not require a permit. Therefore, existing permit holders will not need to renew their permits, and affected entities will not need to obtain new permits.

We further have good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon publication in the *Federal Register* as renewals for these permit types begin in January. This rulemaking action will eliminate about 1,800 permits, with resulting considerable cost savings of time and money to both permit holders and the Federal Government. Delaying the effective date by 30 days would lead to unnecessary costs and efforts for permit holders, most of who prepare and submit renewal applications and fees with their annual report, which are due in January. It would also hinder the efficiency of migratory bird conservation efforts, as staff would need to process refunds and return applications.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)

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

Executive Order (E.O.) 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop

regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866 and E.O. 13563. Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. 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 (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. 104121)), 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 will 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 determined that this action will not have an economic impact on any small entities. This rule is deregulatory in nature. It would expand the scope of current regulatory authorizations as well as eliminate current permits by creating new authorizations. Thus, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

This is not a major rule under SBREFA (5 U.S.C. 804(2)). This rule will not have an annual effect on the economy of \$100 million or more; will not cause a major increase

in costs or prices for consumers, individual industries, or Federal, Tribal, State, Territorial, or local government agencies, or geographic regions; and 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.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

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

a. This rule will not “significantly or uniquely” affect small governments. A small government agency plan is not required. The regulatory revisions will not affect small government activities in any significant way.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year. Therefore, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Takings (E.O. 12630)

In accordance with E.O. 12630, the rule will not have significant takings implications. This rule does not contain a provision for taking of private property, so a takings implication assessment is not required. This rule is deregulatory in nature. It expands the scope of current authorizations as well as eliminates current permits by creating new authorizations.

Federalism (E.O. 13132)

This rule does not have sufficient federalism effects to warrant preparation of a federalism summary impact statement under E.O. 13132. It will not interfere with the States’ abilities to manage themselves or their funds. No significant economic impacts are expected to result from the regulations changes.

Civil Justice Reform (E.O. 12988)

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

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This rule contains new information collections. All information collections require approval by the OMB under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*). We 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. We will ask OMB to review and approve the information collection requirements contained in this rulemaking related to permit applications, reports, and related information collections under the MBTA.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

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

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Comments that you submit in response to this rulemaking are a matter of public record. Before including your address, phone number, email 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.

The information that we collect to determine eligibility to possess migratory birds and eagles by the general public, educators, and government agencies is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity under the MBTA and Eagle Act. The new information collection requirements identified below require approval by OMB:

1. ***Written Petitions—Request for Waiver from Disqualification (50 CFR 21.5)***—A conviction, or entry of a plea of guilty or nolo contendere, for a felony violation of the Lacey Act (16 U.S.C. 42, as amended), the Migratory Bird Treaty Act (16 U.S.C. 703–712), or the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) disqualifies any such person from exercising the authorization granted by regulation or permit under part 21, unless such disqualification has been expressly waived by the Director in response to a written petition. This disqualification is lifted when the required reports are submitted unless the Service notifies the person in writing of permanent disqualification due to repeated or extended failure to meet reporting requirements.

2. ***Obtaining Landowner Permission to Access Land (50 CFR 21.16)***—The regulations in that section authorize salvage activities and provide an exception to permit requirements for these activities. Any person may salvage migratory bird specimens under the conditions set forth in that section of the regulations. Specimens include whole birds found dead, parts, feathers, inactive nests, and nonviable eggs. This authorization

does not apply to live birds, viable eggs, or in-use nests. This authorization does not grant land access. Authorized individuals requiring access are responsible for obtaining permission from landowners when necessary and for complying with other applicable laws. This authorization is not intended for individuals actively searching for dead birds, such as for scientific research.

3. *3rd Party Notifications—National Eagle Repository (50 CFR 21.16)*—The National Eagle Repository (Repository) is responsible for determining whether salvaged eagle remains must be sent to the Repository or distributed to others. Eagle specimens include a whole bald eagle or golden eagle (eagle), part of an eagle (e.g., wing or tail), or feathers. Authorized individuals who salvage eagle specimens must immediately contact the Repository and follow the Repository’s instructions on transferring the eagle, parts, or feathers to the Repository.

4. *3rd Party Notifications—Transfer of Live Migratory Birds (50 CFR 21.22)*—The regulations in that section authorize any person who finds a sick, injured, or orphaned migratory bird, including bald eagles and golden eagles, to take possession of the bird for immediate transport to a licensed veterinarian or federally permitted migratory bird rehabilitator. Within 48 hours after hospitalization is no longer required, live migratory birds must be transferred to a federally permitted migratory bird rehabilitator. If unable to transfer a bird within that time, authorized individuals must contact their regional migratory bird permit office for assistance in locating a permitted migratory bird rehabilitator, authorization to continue care, or a recommendation to euthanize the bird.

5. *3rd Party Notifications—Endangered and Threatened Wildlife (50 CFR 21.22)*—Licensed veterinarians must notify the appropriate Ecological Services Office within 24 hours of receiving a migratory bird that is also on the List of Endangered and Threatened Wildlife (50 CFR 17.11).

6. *Requests for Written Authorization—National Eagle Repository (50 CFR 22.15)*—The regulations in that section authorize public museums, public scientific societies, and public zoological parks to possess lawfully acquired eagle specimens, including whole bird specimens, parts, feathers, inactive nests, and nonviable eggs, for conservation education purposes. Bald eagle and golden eagle specimens must be acquired from persons authorized by permit or regulatory authorization to possess and donate them. Authorized individuals are responsible for ensuring specimens were legally acquired. Eagle specimens salvaged after [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] must have written authorization from the National Eagle Repository for exhibition use.

7. *Agency Designation Letter (50 CFR 21.34)*—The regulations in that section authorize employees of Federal, State, Territorial, and federally recognized Tribal natural resource agencies to conduct the following activities while performing their official duties without a permit: salvage, exhibition use, transport, and relocation. Individuals under the direct supervision of an agency employee (e.g., volunteers or agents under contract to the agency) may, within the scope of their official duties, conduct the activities authorized by this authorization. An authorized individual must have a designation letter from the agency describing the activities that may be conducted by the individual and any date and location restrictions that apply.

8. *Law Enforcement Authorization (50 CFR 21.40)*—The regulations in that section authorize law enforcement personnel who enforce provisions of the MBTA or Eagle Act to take, acquire, possess, transport, and dispose of migratory birds, whether alive or dead, including their parts, nests, or eggs, while performing official duties and without a permit. Law enforcement personnel may designate non-law-enforcement personnel to acquire, possess, transport, or dispose of migratory birds on the behalf of law enforcement under this authorization. This designation includes recording the name

and contact information of the individual designated, dates valid, activities authorized, and name and contact information of the authorizing agent.

9. 3rd Party Notifications—Federally Permitted Rehabilitator (50 CFR 21.14, 21.34)—Authorized individuals must immediately contact a federally permitted migratory bird rehabilitator and follow the rehabilitator’s instructions when:

a. § 21.14—Any birds removed by trapping must be immediately released to the wild in a humane and healthful manner. However, for any bird that becomes exhausted, ill, injured, or orphaned, the authorized individual must immediately contact a federally permitted migratory bird rehabilitator and follow the rehabilitator’s instructions.

b. § 21.14—Authorized individuals may remove nests, eggs, and nestlings from the interior of a human-occupied building or structure. They are encouraged to seek the assistance of a federally permitted migratory bird rehabilitator or their regional Migratory Bird Permit Office prior to removing eggs or nestlings.

c. § 21.34—Natural resource agency employees may transport sick, injured, or orphaned birds in accordance with § 21.76(a). If transport is not feasible within 24 hours, they must follow the instructions of a federally permitted migratory bird rehabilitator to provide supportive care, retain in an appropriate enclosure for up to 72 hours, or euthanize the birds.

10. Tagging Requirements (50 CFR 21.16, 21.18, 22.15)—Several regulations in this rulemaking require authorized individuals to tag specimens for identification:

a. § 21.16—Specimens intended for donation with the species, date, location of salvage, and the name and contact information of the person who salvaged the specimen. The tag must remain with the specimen.

b. § 21.18—Each migratory bird specimen must remain tagged with the species, date, location, name of the donor, and donor’s authorization for acquisition. Specimen tags may be temporarily removed during educational programs.

c. § 22.15—Each eagle specimen must remain tagged with the species, date, location, name of the donor, and the donor’s authorization for acquisition. Specimen tags may be temporarily removed during educational programs.

11. ***Law Enforcement Notifications (50 CFR 21.16, 21.32)***—Several regulations in this rulemaking require authorized individuals to notify the Office of Law Enforcement if illegal activity is suspected:

a. § 21.16—Authorized individuals must notify the Service Office of Law Enforcement prior to salvaging the birds if they suspect birds were purposefully illegally killed or if five or more birds are found dead.

b. § 21.32—Authorized individuals investigating mortality events must notify the Service Office of Law Enforcement if illegal activity is suspected.

12. ***Verification of Legal Acquisition (50 CFR 21.18, 22.15)***—Several regulations in this rulemaking require authorized individuals to verify that specimens were obtained legally:

a. § 21.18—Migratory bird specimens must be acquired from persons authorized by permit or regulatory authorization to possess and donate them. Authorized individuals are responsible for ensuring specimens were legally acquired.

b. § 22.15—Bald eagle and golden eagle specimens must be acquired from persons authorized by permit or regulatory authorization to possess and donate them. Authorized individuals are responsible for ensuring specimens were legally acquired.

13. ***Records Retention Requirements (50 CFR 21.16, 21.18, 21.22, 21.34, 22.15)***—Regulations in this rulemaking require authorized individuals to maintain records of activities conducted under their authorization:

a. § 21.16—Authorized individuals must maintain records of all donated birds, including eagles sent to the Repository, for 5 years. Records must include species, specimen type, date, location salvaged, and recipient. At any reasonable time upon

request by the Service, the authorized individual must allow the Service to inspect any birds held under this authorization and to review any records kept.

b. § 21.18—Authorized individuals must maintain accurate records of operations on a calendar-year basis and retain these records for 5 years. Records must reflect how the authorized individual meets the eligibility criteria for this authorization, the programs conducted, each specimen in possession, and, if applicable, specimen disposition. At any reasonable time upon request by the Service, the authorized individual must allow the Service to inspect any migratory bird specimens held under this regulatory authorization and review any records kept.

c. § 21.22—Licensed veterinarians must keep records for 5 years of all migratory birds held and treated under this authorization, including those euthanized. Records must include the species of bird, the type of injury, the date of acquisition, disposition (e.g., live bird transferred, specimens destroyed, or specimens donated), and the date and cause of death, if applicable. Upon an inspection request, authorized individuals must present available specimens and records at any reasonable time.

d. § 21.34—Agencies must keep records for 5 years of activities conducted under paragraphs (a)(2) through (a)(4) of that section of the regulations. The records must include the species and number of birds, the type of activity, date, and disposition.

e. § 22.15—Authorized individuals must maintain accurate records of operations on a calendar-year basis and retain these records for 5 years. Records must reflect how the authorized individual meets the eligibility criteria for this authorization, the programs conducted, each specimen in possession, and, if applicable, specimen disposition. At any reasonable time upon request by the Service, authorized individuals must allow the Service to inspect any migratory bird specimens held under this regulatory authorization and review any records kept.

14. 3rd Party Notifications—Educational Programs (50 CFR 21.18, 22.15)—

Several regulations in this rulemaking require specimens to be available for educational purposes:

a. § 21.18—Migratory bird specimens must be used for public conservation educational programs or held for public archival purposes. Programs must include information about migratory bird ecology, biology, or conservation. Specimens held for archival purposes must be properly archived and readily accessible to the public for research purposes.

b. § 22.15—Eagle specimens must be used for public educational programs or held for public archival purposes. Programs must include information about eagle ecology, biology, or conservation. Specimens held for archival purposes must be properly archived and readily accessible to the public for research purposes.

15. Notification Requirement—Current Authorizations (50 CFR 21.18)—

Entities currently operating under 50 CFR 21.12(b)(1) are requested to email the Service by [INSERT DATE 90 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] with the following information: (1) the entity name, physical address, and, if different, mailing address; (2) the name, title, and contact information of the principal officer who is in charge of the organization; (3) the name, title, and contact information of the primary contact the Service should use, if different than the principal officer; and (4) the following statement: “This entity is currently operating under the permit exception 50 CFR 21.12(b)(1) and intends to continue operating under the conditions of this exception until the Service publishes exhibition regulations.” This information will be used by the Service primarily to contact entities once new regulations pertaining to exhibition are final; however, the Service may also use this information to better understand the number and types of entities currently operating under this exception.

Title of Collection: Regulatory Authorizations for Migratory Bird and Eagle Possession by the General Public, Educators, and Government Agencies; 50 CFR parts 21 and 22.

OMB Control Number: 1018–0200.

Form Numbers: None.

Type of Review: New.

Respondents/Affected Public: Individuals; private sector; and State/local/Tribal governments.

Total Estimated Number of Annual Respondents: 4,800.

Total Estimated Number of Annual Responses: 4,800.

Estimated Completion Time per Response: Varies from 15 minutes to 1 hour, depending on activity.

Total Estimated Number of Annual Burden Hours: 3,310.

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

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: None.

On June 1, 2023, we published in the *Federal Register* (88 FR 35809) a proposed rule (RIN 1018–BC76) that announced our intention to request OMB approval of the information collections explained above. In that proposed rule, we solicited comments for 60 days on the information collections in this submission, ending on July 31, 2023.

Summaries of comments addressing the information collections contained in this rule, as well as the agency response to those comments, can be found in the *Response to Public Comments* section of this rule, as well as in the information collection request submitted to OMB on the RegInfo.gov website (<https://www.reginfo.gov/public/>).

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to the Service Information Collection Clearance Officer, U.S.

Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to Info_Coll@fws.gov. Please reference OMB Control Number 1018–0200 in the subject line of your comments.

National Environmental Policy Act

We have analyzed this 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. We find that the action fits within a class of actions listed in the categorical exclusions included in the DOI Departmental Manual at 516 DM 8.5, specifically: A.(1) Changes or amendments to an approved action when such changes have no or minor potential environmental impact; and C.(1) The issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR chapter I, subchapter B, when such permits cause no or negligible environmental disturbance. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife. The Service considers regulatory authorizations, also called permit exceptions, to be a type of permit. “Permit” is defined in 50 CFR 10.12, and the Service considers the regulations in this final rule to be the means by which the Service describes, authorizes, and limits the activity. The authorized official is the DOI Assistant Secretary of Fish and Wildlife and Parks. Therefore, promulgation of a regulatory authorization that causes no or negligible environmental disturbance falls within the categorical exclusion for permits.

Similar activities authorized under this final rule have previously been authorized under regulatory authorizations or permits without significant environmental effects. All but one of the regulatory authorizations under this final rule either benefits living birds (e.g., rescuing a live bird from inside of a building) or involves handling birds that died from causes unrelated to the regulatory authorization. One authorization allows law

enforcement personnel to take individual migratory birds while acting under their official duties. However, the take of individual birds under those circumstances is limited and would not have population-level impacts.

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 the Secretary 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 “ensure 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)). Our final action of issuing regulatory authorizations for non-ESA-listed migratory birds and eagles does not authorize, fund, or carry out any activity that may affect—directly or indirectly—any ESA-listed species or their critical habitat. All activities involving live migratory birds that are also on the List of Endangered and Threatened Wildlife (50 CFR 17.11) requires additional authorization under the ESA. Within this final rule, we have included clauses where appropriate indicating that either additional authorizations are required or notification to the appropriate Ecological Services Office is required when an activity involves migratory birds that are also on the List of Endangered and Threatened Wildlife.

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 rule would not interfere with Tribes’ abilities to manage themselves, their funds, or Tribal lands. Furthermore, this rulemaking adds provisions that expand Tribal authorization and self-governance.

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

E.O. 13211 addresses regulations that significantly affect energy supply, distribution, and use, and requires agencies to prepare statements of energy effects when undertaking certain actions. This 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 19

Aircraft, Fish, Hunting, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 21

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

50 CFR Part 22

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

Regulation Promulgation

For the reasons described in the preamble, the U.S. Fish and Wildlife Service amends title 50, chapter I, subchapter B of the Code of Federal Regulations, as set forth below:

PART 19—AIRBORNE HUNTING

1. The authority citation for part 19 continues to read as follows:

Authority: Fish and Wildlife Act of 1956, 85 Stat. 480, as amended, 86 Stat. 905 (16 U.S.C. 742a–j-1).

2. Revise § 19.21 to read as follows:

§ 19.21 Limitation on Federal permits.

No Federal permits will be issued that authorize any person to hunt, shoot, or harass from an aircraft any wildlife, except for migratory birds according to Federal permits issued under part 21 or part 22 of this subchapter when the purpose of the action is consistent with the purpose of the permit regulation.

PART 21—MIGRATORY BIRD PERMITS

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

Authority: 16 U.S.C. 703–712.

Subpart A—Introduction and General Requirements

4. Amend § 21.4 by:

a. Revising the section heading;

b. In paragraph (a), removing the word “*Provide*” and adding in its place the word “*Provided*”; and

c. Revising paragraph (b).

The revisions read as follows:

§ 21.4 Scope of regulations.

* * * * *

(b) Except as set forth in paragraphs (b)(1) and (2) of this section, the regulations in this part do not apply to the bald eagle (*Haliaeetus leucocephalus*) or the golden eagle (*Aquila chrysaetos*), for which regulations are provided in part 22 of this subchapter:

(1) In this part in subpart B, which sets forth regulatory authorizations for migratory birds, the following sections of this part apply to the migratory birds listed in 50 CFR 10.13, including the bald eagle (*Haliaeetus leucocephalus*) and the golden eagle (*Aquila chrysaetos*):

(i) § 21.16: Authorization—salvage;

(ii) § 21.22: Authorization—licensed veterinarians;

- (iii) § 21.32: Authorization—mortality events;
- (iv) § 21.34: Authorization—natural resource agency employees; and
- (v) § 21.40: Authorization—law enforcement personnel.

(2) In this part in subpart C, which sets forth specific permit provisions, the following sections of this part apply to the migratory birds listed in 50 CFR 10.13, including the bald eagle (*Haliaeetus leucocephalus*) and the golden eagle (*Aquila chrysaetos*):

- (i) § 21.63: Taxidermist permits;
- (ii) § 21.70: Banding or marking permits;
- (iii) § 21.76: Rehabilitation permits; and
- (iv) § 21.82: Falconry standards and falconry permitting.

* * * * *

5. Add § 21.5 to read as follows:

§ 21.5 Disqualifying factors.

A person may not hold, or act under authorization of, a permit granted by regulation or permit under this part if any of the following circumstances apply, unless the Director expressly waives that disqualification in writing prior to any act in question:

- (a) The person has been convicted of or pled guilty or *nolo contendere* to a felony violation of the Lacey Act (18 U.S.C. 42, as amended), the Migratory Bird Treaty Act (16 U.S.C. 703–712), or the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d).
- (b) The person has had any other authorization, license, or permit issued pursuant to the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act revoked in accordance with § 13.28 of this subchapter B within the last 5 years.
- (c) The person has failed to pay any required fees, penalties, or other money owed, for any reason, to the United States. Disqualification is effective as soon as the deficiency applies. This disqualification is lifted when the money owed is paid in full

unless the Service notifies the person in writing of permanent disqualification due to repeated or extended failure to pay.

(d) The person has failed to submit timely, accurate, or valid reports required under this part. Disqualification is effective as soon as the deficiency applies. This disqualification is lifted when the required reports are submitted unless the Service notifies the person in writing of permanent disqualification due to repeated or extended failure to meet reporting requirements.

6. Amend § 21.6 by adding a definition for “Humane and healthful conditions” in alphabetic order to read as follows:

§ 21.6 Definitions.

* * * * *

Humane and healthful conditions means using methods supported by the best available science that minimize fear, pain, stress, and suffering of a migratory bird held in possession. This definition applies during capture, possession (temporary or long term), and transport. Humane and healthful conditions pertain to handling (e.g., during capture, care, release, restraint, and training), housing (whether temporary, permanent, or during transport), shelter, feeding and watering, sanitation, ventilation, protection from predators and vermin, and, as applicable, enrichment, veterinary care, and euthanasia.

* * * * *

7. Revise the heading of subpart B to read as follows:

Subpart B—Regulatory Authorizations for Migratory Birds

* * * * *

8. Add § 21.14 to read as follows:

§ 21.14 Authorization—birds in buildings.

(a) Any person may, without a permit, humanely remove a migratory bird from the interior of a residence, business, or similar building or structure where people live or

work under the conditions set forth in this section. Authorization is limited to when the presence of migratory birds is preventing the normal use of the interior of a building or structure, such as causing a health or safety risk to humans or birds or damage to property such as foodstuffs or products for sale, or if the bird may become injured because it is trapped. This authorization does not apply to birds or nests on the exterior of buildings, such as siding or eaves, or to structures that are not human-occupied, such as bridges.

(b) This authorization is subject to the following conditions:

(1) *Humane conditions.* Any trapping, handling, transporting, or release of migratory birds must be conducted under humane and healthful conditions as defined in § 21.6. You may not use adhesive traps (such as glue traps) or any other method of capture likely to harm the bird.

(2) *Release.* Any birds removed by trapping must be immediately released to the wild in a humane and healthful manner. However, for any bird that becomes exhausted, ill, injured, or orphaned, you must immediately contact a federally permitted migratory bird rehabilitator and follow the rehabilitator's instructions.

(3) *Nests.* You may remove nests, eggs, and nestlings from the interior of a human-occupied building or structure. When possible, prevent the need for take of occupied nests by waiting until nestlings fledge. You may transport eggs or nestlings to a federally permitted migratory bird rehabilitator, if the rehabilitator recommends that you do so. Otherwise, you may humanely destroy eggs or euthanize nestlings following the American Veterinary Medical Association Guidelines for the Euthanasia of Animals or an equivalent process.

(4) *Prevention.* To the degree feasible, you must prevent birds from reentering buildings or structures by taking such actions as patching holes or installing bird exclusion devices. Exclusion devices must be regularly monitored, maintained, and repaired to ensure they remain effective and to prevent entrapment, injury, or death.

(5) *Disposal.* You may not lethally take migratory birds, except as authorized in paragraph (b)(3) of this section for chicks and eggs. If your actions to remove the trapped migratory bird are likely to result in lethal take of an adult bird, you must first obtain a Federal migratory bird permit. If you otherwise comply with the requirements of this section and a bird you are trying to remove dies, you must immediately dispose of the specimen by donation to any person or entity authorized to receive them under a valid permit or regulatory authorization. Otherwise, you must dispose of migratory bird specimens by destruction in accordance with Federal, Tribal, State, Territorial, or local laws and ordinances.

(c) Additional authorization is required for bald eagles, golden eagles, and species on the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11(h)).

(d) You must also comply with any Federal, Tribal, State, or Territorial requirements that apply to removing migratory birds from buildings.

9. Add § 21.16 to read as follows:

§ 21.16 Authorization—salvage.

The regulations in this section authorize salvage activities and provide a regulatory authorization for these activities.

(a) *Salvage and disposition of bald eagle and golden eagle specimens.* The National Eagle Repository (Repository) is responsible for determining whether salvaged eagle specimens must be sent to the Repository or distributed to others. Eagle specimens include a whole bald eagle or golden eagle (eagle), part of an eagle (e.g., wing or tail), or feathers. Salvage of any eagle nest or egg in any condition is not authorized.

(1) If you salvage eagle specimens, you must immediately contact the Repository. When possible, contact the Repository prior to salvage. Alternatively, you may turn in salvaged eagles to your Federal, Tribal, or State wildlife agency.

(2) If the Repository determines specimens must be sent to the Repository, you must follow the Repository's shipping instructions and ship specimens within 7 days of receiving instructions from the Repository.

(3) If the Repository determines eagle specimens may be distributed to others, the Repository will provide written documentation for donation of the eagle specimen. Unless otherwise documented by the Service in writing, you must donate or otherwise legally dispose of the eagle specimen within 7 days of receiving instructions from the Repository. You may donate specimens to a public museum, public scientific society, or public zoological park authorized to receive eagle specimens for scientific or exhibition purposes under a regulatory authorization (50 CFR 22.15) or valid permit (50 CFR 22.50).

(4) If not donated, the eagle specimens must be disposed of by destruction in accordance with Federal, Tribal, State, and local laws and ordinances.

(5) Personal use is not authorized. Eagle specimens may not be held in possession for more than 7 calendar days, unless directed otherwise by the Service. Eagle specimens may not be purchased, sold, bartered, or offered for purchase, sale, or barter.

(b) *Salvage of migratory birds.* Any person may salvage migratory bird specimens under the conditions set forth in this section. Specimens include whole birds found dead, parts, feathers, inactive nests, and nonviable eggs. The following restrictions apply:

(1) This authorization does not apply to live birds, viable eggs, or in-use nests. Salvage of eggs during breeding season is not authorized, except you may salvage nonviable eggs if you are professionally trained to distinguish viable eggs from nonviable eggs. Salvage of viable eggs is not authorized under this section.

(2) Additional authorization is required to salvage bird species on the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11(h)).

(3) Salvage and disposition of bald eagles and golden eagles is limited as described in paragraphs (a)(1) through (a)(5) of this section.

(4) You must dispose of all salvaged specimens as described below within 7 calendar days.

(5) You must tag each specimen intended for donation with the species, date, location of salvage, and the name and contact information of the person who salvaged the specimen. The tag must remain with the specimen.

(6) You must report the band information of any salvaged migratory bird with a Federal band to the U.S. Geological Survey Bird Banding Laboratory.

(c) *Disposition of migratory birds.* (1) Except for bald eagles or golden eagles, salvaged migratory bird specimens may be disposed of by donation to any person or entity authorized to receive them under a valid permit or regulatory authorization.

(2) If not donated, migratory bird specimens must be disposed of by destruction in accordance with Federal, Tribal, State, Territorial, and local laws and ordinances.

(3) Personal use is not authorized. Birds, parts, nests, and eggs may not be held in possession for more than 7 calendar days, unless directed otherwise by the Service. Migratory bird specimens may not be purchased, sold, bartered, or offered for purchase, sale, or barter.

(d) *Records.* You must maintain records of all donated birds, including eagles sent to the Repository, for 5 years. Records must include species, specimen type, date, location salvaged, and recipient. At any reasonable time upon request by the Service, you must allow the Service to inspect any birds held under this authorization and to review any records kept.

(e) *Other requirements.* Additional Federal, Tribal, State, or Territorial permits may be required. This authorization does not grant land access. You are responsible for obtaining permission from landowners when necessary and for complying with other

applicable laws. This authorization is not intended for individuals actively searching for dead birds, such as for scientific research.

(f) *Reporting to law enforcement.* If you suspect birds were illegally killed or if five or more birds are found dead, you must notify the Service Office of Law Enforcement (see 50 CFR 10.22 for contact information) prior to salvaging the birds and follow the instructions provided.

10. Add § 21.18 to read as follows:

§ 21.18 Authorization—exhibition use of specimens.

(a) *Scope.* For conservation education purposes, qualified public entities are authorized to possess lawfully acquired migratory bird specimens, including whole bird specimens, parts, feathers, inactive nests, and nonviable eggs, as described in the regulations in this section. This authorization does not apply to live birds, viable eggs, or in-use nests. For specimens of bald eagles or golden eagles, see 50 CFR 22.15. Qualified public entities must be:

(1) Open to the general public;

(2) Established, maintained, and operated as a governmental service or privately endowed and organized but not operated for profit; and

(3) Conducting programs for the purpose of educating the public about migratory bird biology, ecology, and conservation.

(b) *Acquisition.* Migratory bird specimens must be acquired from persons authorized by valid permit or regulatory authorization to possess and donate them. You are responsible for ensuring specimens were legally acquired.

(c) *Disposition.* You may dispose of migratory bird specimens by donating them to any person or entity authorized to receive them under a valid permit or regulatory authorization. Otherwise, you must dispose of migratory bird specimens by destruction in accordance with Federal, Tribal, State, Territorial, or local laws and ordinances.

(d) *Possession.* Each migratory bird specimen must remain tagged with the species, date, location, name of the donor, and donor's authorization for acquisition (e.g., permit number or CFR citation of the applicable regulatory authorization, e.g., 50 CFR 21.16). Specimen tags may be temporarily removed during educational programs. Migratory bird specimens may be taxidermied by a federally permitted taxidermist (§ 21.63), or by employees or volunteers of your organization, as part of their official duties.

(e) *Educational programs.* Migratory bird specimens must be used for public conservation education programs or held for public archival purposes. Specimens held for archival purposes must be properly archived and readily accessible to the public for research purposes. Specimens may be used for observational research without additional authorization; however, removal of samples requires additional authorization, such as a scientific collecting permit (§ 21.73).

(f) *Prohibitions.* Specimens may not be purchased, sold, or bartered. You must not display any migratory bird specimens in a manner that implies personal use or include specimens used in millinery, ornamental, or similar objects, except as authorized for pre-Act specimens lawfully acquired in accordance with § 21.4(a).

(g) *Records.* You must maintain accurate records of operations on a calendar-year basis and retain these records for 5 years. Records must reflect how you meet the eligibility criteria for this authorization, the programs conducted, each specimen in possession, and, if applicable, specimen disposition. At any reasonable time upon request by the Service, you must allow the Service to inspect any migratory bird specimens held under this regulatory authorization and review any records kept.

(h) *Other laws.* You must comply with any Federal, Tribal, State, or Territorial requirements that apply to possession of migratory bird specimens for exhibition use.

11. Add § 21.22 to read as follows:

§ 21.22 Authorization—licensed veterinarians.

(a) Any person who finds a sick, injured, or orphaned migratory bird, including bald eagles and golden eagles, may, without a permit, take possession of the bird for immediate transport to a licensed veterinarian or federally permitted migratory bird rehabilitator.

(b) Licensed veterinarians are authorized to take the following actions without a permit:

(1) Take from the wild or receive from any person, a sick, injured, or orphaned migratory bird, including bald eagles and golden eagles, for the purpose of providing veterinary care.

(2) Perform diagnostics as well as surgical and nonsurgical procedures necessary for triage, including euthanizing migratory birds (See § 21.76(e)(4)(iii)–(iv)). Under this authorization, licensed veterinarians may not conduct amputations and other procedures that could render a bird nonreleasable.

(3) Release migratory birds that have been in care less than 24 hours to suitable habitat in the wild. The Service recommends contacting a federally permitted migratory bird rehabilitator if you need assistance determining if birds are suitable for release and suitable release locations.

(4) Transfer birds to a federally permitted migratory bird rehabilitator.

(5) Dispose of dead migratory birds in accordance with § 21.76(e)(4)(vi) and dispose of dead bald eagles and golden eagles in accordance with § 21.76(e)(4)(vi)(C).

(c) Licensed veterinarians are not authorized to release to the wild migratory birds held in care longer than 24 hours. Any migratory bird held longer than 24 hours must be transferred to a federally permitted migratory bird rehabilitator.

(d) After hospitalization is no longer required, within 48 hours, live migratory birds must be transferred to a federally permitted migratory bird rehabilitator. Any

determination of nonreleasable status requires a rehabilitation permit (§ 21.76) and may not be made under this regulatory authorization. If unable to transfer a bird within that time, you must contact your regional migratory bird permit office for assistance in locating a permitted migratory bird rehabilitator, authorization to continue care, or a recommendation to euthanize the bird.

(e) Migratory birds in possession under this authorization must be maintained in humane and healthful conditions as defined in §§ 21.6 and 22.6 of this subchapter B.

(f) Licensed veterinarians must notify the appropriate Ecological Services Office within 24 hours of receiving a migratory bird that is also on the List of Endangered and Threatened Wildlife (50 CFR 17.11). See 50 CFR 2.2 for a list of Service regional offices.

(g) Licensed veterinarians must keep records for 5 years of all migratory birds held and treated under this authorization, including those euthanized. Records must include the species of bird, the type of injury, the date of acquisition, disposition (e.g., live bird transferred, specimens destroyed, or specimens donated), and, if the bird died in your care, the date and cause of death. Upon an inspection request, individuals must present available specimens and records at any reasonable time.

12. Add § 21.32 to read as follows:

§ 21.32 Authorization—mortality events.

(a) Natural resource and public health employees performing official duties are authorized without a permit to collect, possess, transport, and dispose of migratory birds found sick, injured, or dead as part of a mortality event, which is an unforeseen event that results in an unexpectedly high number of sick or dead birds in a particular location over a short period of time from a cause that appears to be related. For example, multiple dead birds of taxonomically related species exhibiting similar clinical signs in a discrete geographic area over roughly the same time period with all of the birds exhibiting similar

pathological behavior or clinical signs. Birds or their parts may be analyzed for suspected or confirmed cause of death.

(b) Natural resource and public health employees include employees of:

- (1) Government natural resource agencies;
- (2) Government public health agencies;
- (3) Government agricultural agencies; and
- (4) Laboratories working on behalf of such agencies.

(c) Sick or injured birds may be humanely euthanized or transported to a federally permitted rehabilitator or licensed veterinarian for care or euthanasia. If euthanized, specimens may be analyzed for cause of death.

(d) This authorization does not include take and possession of uninjured or asymptomatic birds. Take of asymptomatic birds, such as for disease monitoring, requires a scientific collecting permit (§ 21.73).

(e) This authorization does not apply to mortality events that do not readily appear to be disease-related.

(f) Notify the Service Office of Law Enforcement (see 50 CFR 10.22 for contact information) if you suspect birds were illegally killed or injured.

(g) If the mortality event involves eagles, you must immediately contact the National Eagle Repository. When possible, contact the Repository prior to salvage. Alternatively, you may turn in salvaged eagles to your Federal, Tribal, or State wildlife agency.

(h) Additional Federal, Tribal, State, or Territorial permits may be required. This authorization does not grant land access. You are responsible for obtaining permission from landowners when necessary and for complying with other applicable laws.

13. Add § 21.34 to read as follows:

§ 21.34 Authorization—natural resource agency employees.

(a) *Authorized activities.* While performing official duties, employees of Federal, State, Territorial, and federally recognized Tribal natural resource agencies may conduct the following activities without a permit:

(1) *Salvage.* Natural resource agency employees may salvage migratory bird specimens found dead in accordance with the salvage authorization (§ 21.16).

(2) *Exhibition use.* Natural resource agency employees may possess migratory bird specimens for conservation education programs in accordance with the authorizations for exhibition use of specimens (§ 21.18) and the exhibition use of eagle specimens (50 CFR 22.15). Additional authorization under this part 21 and part 22 of this subchapter B is required to possess live birds, viable eggs, or in-use nests for exhibition use.

(3) *Transport.* Natural resource agency employees may transport sick, injured, or orphaned birds in accordance with § 21.76(a). If transport is not feasible within 24 hours, employees must follow the instructions of a federally permitted migratory bird rehabilitator to provide supportive care, retain in an appropriate enclosure for up to 72 hours, or euthanize the birds.

(4) *Relocate.* Natural resource agency employees may trap and relocate migratory birds, nests, eggs, and chicks in accordance with § 21.14. Employees are authorized to conduct these activities either to remove birds from structures or whenever birds or humans are at risk if birds are not relocated. Additional authorization is required for bald eagles, golden eagles, or migratory birds on the List of Endangered and Threatened Wildlife (50 CFR 17.11).

(b) *Volunteers and contractors.* Individuals under the direct supervision of an agency employee (e.g., volunteers or agents under contract to the agency) may, within the scope of their official duties, conduct the activities authorized by this authorization. An

authorized individual must have a designation letter from the agency describing the activities that may be conducted by the individual and any date and location restrictions that apply.

(c) *Official capacity.* Employees and other authorized individuals must act within their official duties, training, and experience when conducting authorized activities, especially when handling live birds. Live birds must always be cared for under humane and healthful conditions as defined in § 21.6 and § 22.6 of this subchapter B.

(d) *Records.* Agencies must keep records for 5 years of activities conducted under paragraphs (a)(2) through (a)(4) of this section. The records must include the species and number of birds, the type of activity, date, and disposition.

14. Add § 21.40 to read as follows:

§ 21.40 Authorization—law enforcement personnel.

(a) Without a permit and when performing official duties, law enforcement personnel authorized to enforce the provisions of the Migratory Bird Treaty Act (16 U.S.C. 706 and 708) or Bald and Golden Eagle Protection Act (16 U.S.C. 668b) may take, acquire, possess, transport, and dispose of migratory birds (including bald eagles and golden eagles), whether alive or dead, including their parts, nests, or eggs.

(b) Law enforcement personnel may designate non-law-enforcement personnel to acquire, possess, transport, or dispose of migratory birds on the behalf of law enforcement under this authorization. This designation includes recording the name and contact information of the individual designated, dates valid, activities authorized, and name and contact information of the authorizing agent.

Subpart C—Specific Permit Provisions

§ 21.70 [Amended]

15. In § 21.70, amend paragraph (b) by removing the words “Office of Migratory Bird Management, U.S. Fish and Wildlife Service” and adding in their place the words “U.S. Geological Survey”.

16. Amend § 21.76 by revising paragraphs (a), (e)(1), and (e)(4)(vi)(A) to read as follows:

§ 21.76 Rehabilitation permits.

(a) *What is the permit requirement?* Except as provided in § 21.22, a rehabilitation permit is required to take, temporarily possess, or transport any migratory bird for rehabilitation purposes. However, any person who finds a sick, injured, or orphaned migratory bird may, without a permit, take possession of the bird for immediate transport to a permitted rehabilitator or licensed veterinarian.

* * * * *

(e) * * *

(1) *Facilities.* You must conduct the activities authorized by this permit in appropriate facilities that are approved and identified on the face of your permit. In evaluating facilities, Service approved guidance will be used unless the rehabilitator demonstrates that variation from the guidance is humane for the bird(s) and both reasonable and necessary to accommodate the rehabilitator's particular circumstances. However, except as provided by paragraph (f)(2)(i) of this section, all facilities must comply with the following criteria:

* * * * *

(4) * * *

(vi) * * *

(A) You may donate dead birds and parts thereof, except threatened and endangered species, bald eagles, and golden eagles, to persons authorized by permit to

possess migratory bird specimens or exempted from permit requirements under the regulations in subpart B of this part.

* * * * *

17. Amend § 21.82 by revising paragraphs (f)(12)(ii) and (v) and (f)(13)(ii) to read as follows:

§ 21.82 Falconry standards and falconry permitting.

* * * * *

(f) * * *

(12) * * *

(ii) You may donate feathers from a falconry bird, except golden eagle feathers, to any person or entity with a valid permit to possess them, or to anyone exempt from the permit requirement under the regulations in subpart B of this part.

* * * * *

(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 entity exempt from the permit requirement under the regulations in subpart B of this part 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) * * *

(ii) You may donate the body or feathers of any other species of falconry raptor to any person or entity exempt from the permit requirement under the regulations in subpart B of this part or authorized by permit to acquire and possess such parts or feathers.

* * * * *

18. Amend § 21.85 by revising the section heading and paragraph (k)(1) to read as follows:

§ 21.85 Raptor propagation permitting.

* * * * *

(k) * * *

(1) You may donate the body or feathers of any species you possess under your propagation permit to any person or entity exempt from the permit requirement under the regulations in subpart B of this part or authorized by permit to acquire and possess such parts or feathers.

* * * * *

PART 22—EAGLE PERMITS

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

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

Subpart A—Introduction and General Requirements

20. Add § 22.5 to read as follows:

§ 22.5 Disqualifying factors.

A person may not hold, or act under authorization of, a permit granted by regulation or permit under this part if any of the following circumstances apply, unless the Director expressly waives that disqualification in writing prior to any act in question:

(a) The person has been convicted of or pled guilty or *nolo contendere* to a felony violation of the Lacey Act (18 U.S.C. 42, as amended), the Migratory Bird Treaty Act (16 U.S.C. 703–712), or the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d).

(b) The person has had any other authorization, license, or permit issued pursuant to the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act revoked in accordance with § 13.28 of subchapter B within the last 5 years.

(c) The person has failed to pay any required fees, penalties, or other money owed, for any reason, to the United States. Disqualification is effective as soon as the deficiency applies. This disqualification is lifted when the money owed is paid in full

unless the Service notifies the person in writing of permanent disqualification due to repeated or extended failure to pay.

(d) The person has failed to submit timely, accurate, or valid reports required under this part. Disqualification is effective as soon as the deficiency applies. This disqualification is lifted when the required reports are submitted unless the Service notifies the person in writing of permanent disqualification due to repeated or extended failure to meet reporting requirements.

21. Amend § 22.6 by adding a definition for “Humane and healthful conditions” in alphabetic order to read as follows:

§ 22.6 Definitions.

* * * * *

Humane and healthful conditions means using methods supported by the best available science that minimize fear, pain, stress, and suffering of a migratory bird held in possession. This definition applies during capture, possession (temporary or long term), and transport. Humane and healthful conditions pertain to handling (e.g., during capture, care, release, restraint, and training), housing (whether temporary, permanent, or during transport), shelter, feeding and watering, sanitation, ventilation, protection from predators and vermin, and, as applicable, enrichment, veterinary care, and euthanasia.

* * * * *

22. Add § 22.15 under a new subpart B to read as follows:

Subpart B—Regulatory Authorizations for Eagles

§ 22.15 Authorization—exhibition use of eagle specimens.

(a) *Scope.* The regulations in this section authorize qualified public entities to possess lawfully acquired eagle specimens, including whole bird specimens, parts, feathers, inactive nests, and nonviable eggs, for conservation education purposes. This

authorization does not apply to live eagles, viable eggs, or in-use nests. Qualified public entities must be:

- (1) A museum, scientific society, or zoological park;
- (2) Open to the general public;
- (3) Established, maintained, and operated as a governmental service or privately endowed and organized but not operated for profit; and
- (4) Conducting programs for the purpose of educating the public about bald eagle or golden eagle biology, ecology, and conservation.

(b) *Acquisition.* Bald eagle and golden eagle specimens must be acquired from persons authorized by valid permit or regulatory authorization to possess and donate them. You are responsible for ensuring specimens were legally acquired. Eagle specimens salvaged after [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] must have written documentation from the National Eagle Repository for exhibition use.

(c) *Disposition.* You may dispose of eagle specimens by donating them to any entity authorized to receive them under a valid permit or regulatory authorization. You may contact the National Eagle Repository and, if directed, ship the specimens to the Repository. Otherwise, you must dispose of eagle specimens by destruction in accordance with Federal, Tribal, State, or local laws and ordinances.

(d) *Possession.* Each eagle specimen must remain tagged with the species, date, location, name of the donor, and donor's authorization for acquisition (e.g., permit number or CFR citation of the applicable regulatory authorization, e.g., 50 CFR 21.16). Specimen tags may be temporarily removed during educational programs. Eagle specimens may be taxidermied by a federally permitted taxidermist (§ 21.63 of this subchapter B), or by employees or volunteers of your organization, as part of their official duties.

(e) *Educational programs.* Eagle specimens must be used for public educational programs or held for public archival purposes. Specimens held for archival purposes must be properly archived and readily accessible to the public for research purposes. Specimens may be used for observational research without additional authorization; however, removal of samples requires additional authorization, such as an eagle scientific permit (§ 22.50).

(f) *Prohibitions.* Specimens may not be purchased, sold, or bartered. You must not display any bald eagle or golden eagle specimens in a manner that implies personal use or include specimens used in millinery, ornamental, or similar objects, except as authorized for pre-Act specimens lawfully acquired in accordance with § 22.4(a).

(g) *Records.* You must maintain accurate records of operations on a calendar-year basis and retain these records for 5 years. Records must reflect how you meet the eligibility criteria for this authorization, the programs conducted, each specimen in possession, and, if applicable, specimen disposition. At any reasonable time upon request by the Service, you must allow the Service to inspect any migratory bird specimens held under this regulatory authorization and review any records kept.

(h) *Other laws.* You must comply with any Federal, Tribal, State, or Territorial requirements that apply to possession of eagle specimens for exhibition use.

Subpart C—Eagle Possession Permit Provisions

23. Amend § 22.50 by revising the section heading and the undesignated introductory paragraph to read as follows:

§ 22.50 Eagle scientific and exhibition permits.

We may, under the provisions of this section, issue a permit authorizing the taking, possession, transportation within the United States, or transportation into or out of the United States of lawfully possessed bald eagles or golden eagles, or their parts, nests, or eggs for the scientific or exhibition purposes of public museums, public scientific

societies, or public zoological parks. A permit is not required if your activities fall within the authorization for exhibition use of eagle specimens (§ 22.15). We will not issue a permit under the regulations in this section that authorizes the transport into or out of the United States of any live bald or golden eagles, or any viable eggs of these birds.

* * * * *

Shannon A. Estenoz,

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