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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 22

[Docket No. FWS-HQ-MB-2020-0023; FF09M30000-234-FXMB12320900000]

RIN 1018–BE70

Permits for Incidental Take of Eagles and Eagle Nests

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are revising the regulations for the issuance of permits for eagle incidental take and eagle nest take. The purpose of these revisions is to increase the efficiency and effectiveness of permitting, improve clarity for the regulated community, and increase the conservation benefit for eagles. In addition to continuing to authorize specific permits, we created general permits for certain activities under prescribed conditions, including general permit options for qualifying wind-energy generation projects, power line infrastructure, activities that may disturb breeding bald eagles, and bald eagle nest take. We also made improvements to the specific permit requirements and process. We also revised permit fees and clarified definitions.

DATES: Effective [INSERT DATE 60 DAYS AFTER DATE OF *FEDERAL REGISTER* PUBLICATION].

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 the date of publication of this rule in

the *Federal Register*. Therefore, comments should be submitted to OMB by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Document availability:* The finding of no significant impact, final environmental assessment, and supplementary information used in development of this rule, including a list of references cited, technical appendices, and public comments received are available at *https://www.regulations.gov* in Docket No. FWS-HQ-MB-2020-0023. Documents and additional information can also be found at: *https://www.fws.gov/regulations/eagle*.

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 1018–0167 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: jerome_ford@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 bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*) under the Bald and Golden Eagle Protection Act 16 U.S.C. 668–668d; [hereinafter the "Eagle Act"]). The Eagle Act prohibits the take, possession, and transportation 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 when "necessary … for the protection of other interests in any particular locality," provided the taking is compatible with the preservation of eagles (16 U.S.C. 668a). Regulations pertaining to eagle permits are set forth in title 50 of the Code of Federal Regulations (CFR) at 50 CFR part 22. These regulations authorize the take of eagles by an activity: They do not purport to nor can they authorize the underlying activity itself.

In 2009, subsequent to the delisting of the bald eagle from the List of Endangered and Threatened Wildlife at 50 CFR 17.11, the Service promulgated regulations (74 FR 46836, Sept. 11, 2009 [hereinafter the "2009 Eagle Rule"]) at 50 CFR part 22 that established two new permit types for the incidental take of eagles and eagle nests. Incidental take means foreseeable take that results from, but is not the purpose of, an activity. These regulations were revised in 2016 (81 FR 91494, December 16, 2016 [hereinafter the "2016 Eagle Rule"]) to extend tenure, update the Service's Eagle Management Unit (EMU) boundaries, require preconstruction monitoring for wind-energy projects, and to amend the preservation standard. The 2016 Eagle Rule was supported by a programmatic environmental impact statement (PEIS), and the Service's

final decision was described in a record of decision, both of which are available at *https://www.regulations.gov* in Docket No. FWS-R9-MB-2011-0094.

On September 14, 2021, the Service published an advance notice of proposed rulemaking (ANPR) to inform the public of changes the Service is considering that expedite and simplify the permit process authorizing incidental take of eagles (86 FR 51094). The ANPR also advised the public that the Service may prepare a draft environmental review pursuant to the National Environmental Policy Act of 1969, as amended. In the ANPR, we invited input from Tribes, Federal agencies, State agencies, nongovernmental organizations, and the general public for any pertinent issues we should address, including alternatives to our proposed approach for authorizing eagle incidental take. The public comment period closed on October 29, 2021. The Service used these comments to prepare a proposed rule and a draft environmental assessment (DEA) which we released on September 30, 2022 (87 FR 59598). The 60-day public comment period was extended to December 29, 2022 (87 FR 72957, November 28, 2022). The DEA and proposed rule are available in Docket No. FWS-HQ-MB-2020-0023 (available at *https://www.regulations.gov*).

Comments and materials we received, as well as supporting documentation we use in preparing the environmental analysis, are available for public inspection. For more information on public comments see the *Response to Public Comments* below. The Service also announces the availability of the finding of no significant impact (FONSI) for the Service's final environmental assessment (FEA). The FONSI is the final step in the National Environmental Policy Act (NEPA) process for this eagle rulemaking action, which includes revisions to the regulations governing permits for incidental take of eagles and take of eagle nests. The FONSI and FEA are available in Docket No. FWS-HQ-MB-2020-0023 (available at *https://www.regulations.gov*).

With this rulemaking, we do not change the 2016 preservation standard or PEIS management objectives. The Eagle Act and existing regulations require that any authorized take of eagles be "compatible with the preservation" of bald and golden eagles (16 U.S.C. 668a). Under existing regulations, the preservation standard is defined as consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units and the persistence of local populations throughout the geographic range of each species (50 CFR 22.6).

In 2009, the Service adopted different management criteria for bald eagles and golden eagles because of the different population statuses and growth rates of each species. We determined this approach is necessary both to achieve the preservation standard and to avoid being unnecessarily restrictive. We do not alter this approach with this rulemaking. In this rulemaking, the Service uses the recently updated population-size estimates and allowable take limits for bald eagles (87 FR 5493, February 1, 2022).

This Rulemaking

Overview

The Service creates a new subpart E within 50 CFR part 22 for eagle permit regulations authorizing take that is necessary for the protection of other interests in any particular locality (eagle take for other interests). This new subpart includes revised provisions for processing specific permits and creates general permits. General permits authorize incidental take by activity type that occur frequently enough for the Service to have developed a standardized approach to permitting and ensure permitting is consistent with the preservation standard. These regulations also restructure the existing specific permit regulations. These regulations apply, regardless of whether infrastructure is constructed before or after the final regulations.

We amend these regulations to better align with the purpose and need described in the 2016 PEIS. In the 2016 Eagle Rule, the Service sought to:

(1) increase compliance by simplifying the permitting framework and increasing certainty;

(2) allow for consistent and efficient administration of the program by Service staff;

(3) regulate based on best available science and data; and

(4) enhance protection of eagles throughout their ranges by increasing implementation of avoidance, minimization, and mitigation of adverse impacts from human activities.

In this rulemaking, we create a new subpart E for regulations governing the permitting of eagle take for other interests. We adopt two regulations for administering permitting: specific permits (§ 22.200) and general permits (§ 22.210). We further specify activity-specific eligibility criteria and permit requirements in four sections based on activity and type of eagle take:

- incidental take for permitting wind energy (§ 22.250),
- incidental take for permitting power lines (§ 22.260),
- disturbance take (§ 22.280), and
- nest take (§ 22.300).

For clarity and consistency, we have also moved regulatory content on permit conditions to a new section (§ 22.215) and content on compensatory mitigation standards to a new section (§ 22.220). We have created new definitions to define "general permit" and "incidental take" and included clarifying modifications to the definitions of "eagle management unit," "eagle nest," and "in-use nest" (§ 22.6). We have redesignated related regulations pertaining to permit requirements for take of golden eagle nests (moved from § 22.75 to § 22.325) and permits for bald eagle take exempted under the Endangered Species Act (moved from § 22.90 to § 22.400) to a new subpart E, with only the modification of a nonsubstantive change to the section title for § 22.325. Finally, we have

adopted administrative updates to 50 CFR part 13, General Permit Procedures, to update the text regarding information-collection requirements and the table of application fees. These changes to the designated section numbers for previous regulations are as follows:

Previous regulations in 50 CFR part 22	Regulatory Subject Matter	New sections in 50 CFR part 22, subpart E
§§ 22.80 and 22.85	Specific permits	§ 22.200
	General permits	§ 22.210
§§ 22.80 and 22.85	Permit conditions	§ 22.215
§ 22.80	Compensatory mitigation	§ 22.220
§ 22.80	Wind energy project incidental take	§ 22.250
§ 22.80	Power line incidental take	§ 22.260
§ 22.80	Eagle disturbance take	§ 22.280
§ 22.85	Eagle nest take	§ 22.300
§ 22.75	Golden eagle nest take for resource recovery operations	§ 22.325
§ 22.90	Bald eagle take exempted under the Endangered Species Act	§ 22.400

Specific Permits and General Permits for Eagle Take

Under these new and updated regulations, the Service will authorize eagle take using general permits and specific permits. General permits simplify and expedite the permitting process for activities that have relatively consistent and low risk to eagles and well-established avoidance, minimization, and compensatory mitigation measures. General-permit applicants self-identify eligibility and register with the Service. This includes providing required application information and fees and certifying that they meet eligibility criteria and will implement permit conditions and reporting requirements.

The Service will implement general permits for the following activities: (1) certain categories of bald eagle nest take, (2) certain activities that may cause bald eagle disturbance take, (3) eagle incidental take associated with power line infrastructure, and (4) eagle incidental take associated with certain wind energy projects. These are described in more detail in the following sections. The Service will audit general permits to ensure applicants are appropriately interpreting and applying eligibility criteria and complying with permit conditions. Audits will include reviewing submitted application

materials and reports. The Service will also request and review any plans or strategies required by permit conditions, like adaptive management plans.

The Service will continue to issue specific permits, which require submission of application materials to the Service for review and development of permit conditions. To maintain a review process adequate to meet the preservation standard for eagles, the Service retains the specific-permit approach for situations that have increased or uncertain risks to eagles. The applicant is responsible for submitting a qualifying application. The Service will determine, based on the materials provided, whether the application meets regulatory requirements. The Service is responsible for identifying and using the best available information in making these determinations. If an applicant is unable to meet Service data standards in applying, the Service may waive these data standards provided: (1) the application otherwise meets issuance criteria, (2) the Service has adequate information to estimate take, and (3) the waiver will be consistent with preservation of the eagle species. There is no process to petition the Service for a waiver; rather, this process will be at the Service's discretion and documented in the permit file. Specific permit conditions must meet or exceed the requirements of general permits, except when not practicable or when site-specific data warrants customization.

If the best available information indicates that continuing implementation of a general permit program is inconsistent with the preservation of bald eagles or golden eagles, the Service may suspend the general permit program temporarily or indefinitely. This suspension may apply to all or part of general-permit authorizations. Consistent with 50 CFR part 21 and part 22 permitting, Tribes or States may choose to be more restrictive than Federal regulations. Permittees must comply with Tribal and State laws and regulations to be in compliance with Federal eagle permits.

Eagle Incidental Take Permits for Wind Energy

With this rulemaking, the Service seeks to implement efficiencies in authorizing incidental take associated with wind energy projects. This final rule creates a general permit option for projects in areas that are low risk to eagles. We also revise the specific permit process to provide clarity to applicants and ensure processing is efficient and consistent with the preservation standard. With broader participation in permitting, the Service anticipates increased benefits to eagle populations as more projects implement avoidance, minimization, and mitigation measures.

The Service uses a combination of eagle relative abundance and proximity to eagle nests as eligibility criteria for wind energy general permits. The Service uses the Cornell Status and Trends definition of relative abundance and relative abundance products (Cornell Lab of Ornithology, Ithaca, New York, available at: *https://science.ebird.org/en/status-and-trends*). Relative abundance values determined for a project must be based on these publicly available Status and Trends relative abundance products for bald eagles and golden eagles. To help project proponents quickly determine eagle relative abundance, the Service will maintain an online mapping tool (*https://arcg.is/CKLKy1*).

For first-time applicants, general-permit eligibility is based on eagle relative abundance and proximity to eagle nests at the time of application. All turbines must be located in an area with eagle relative abundance less than the threshold identified by regulation (§ 22.250(c)(1)(ii) for both bald eagles and golden eagles). All turbines, including the space occupied by blades or other turbine infrastructure, must also be located at least 2 miles from a golden eagle nest and at least 660 feet from a bald eagle nest (§ 22.250(c)(1)(i)). Project proponents are expected to survey for eagle nests with due diligence and in accordance with any Service guidance for nest surveys.

The Service considered allowing general permit applicants to select authorization for just one species. By requiring both species, the Service is able to reduce administration costs and keep the general permit process simple. Both species are widely distributed and co-occur in most States. The Service recognizes that the risk to each species is not uniform, and we factored in the relative risk to each species into the relative abundance criteria, the nest buffers, and the compensatory mitigation requirements.

The Service added an eligibility criterion for wind energy projects that are renewing a general permit (§ 22.250(c)). A general permittee remains eligible to renew their permit, even if the Service revises eagle relative abundance thresholds or eagles construct a nest within the species-specific setback distances, as long as the project remains in compliance with all other general permit requirements. This includes provisions regarding the discovery of eagle remains or injured eagles remaining fewer than four eagles of the same species within a 5-year permit tenure (§ 22.210(b)(2)(i)). This eligibility applies to the turbines authorized under the original general permit and does not apply if there was a lapse in permit coverage or if any turbines are added to the project. It does apply if the turbines change ownership. If a project adds turbines, the new turbines must meet the qualifications for a first-time general permit (§ 22.250(c)(1)) when renewing a general permit for a project. If there is a lapse in coverage, the project must qualify for a first-time general permit (§ 22.250(c)(1)) and may then renew (§ 22.250(c)(2)), if eligible, or apply for a specific permit.

The Service acknowledges that existing wind projects have less ability to adapt to the location-based nature of the general permit eligibility criteria (as defined in § 22.250(b)). After extensive review, the Service could not identify general permit eligibility criteria with which a project could self-certify that did not add extensive complexity or uncertainty. However, the Service retained the proposed eligibility criterion that any existing project that does not meet general permit eligibility criteria can

submit an application for a specific permit (§ 22.200(b)) and request a letter of authorization to obtain a general permit (§ 22.250(c)). The Service will review all information provided in the application, including any site-specific, pre- or post-construction data. The Service will issue a letter of authorization to apply for a general permit if we determine that the take rates at the existing project are likely to be consistent with or lower than eagle take rates expected at similar-sized wind facilities that qualify for general permits. If an applicant receives a letter of authorization, we may refund the specific-permit application fee, but to cover the cost of review, we will not refund the administration fee. The letter of authorization may require additional avoidance, minimization, or compensatory mitigation requirements if appropriate (for example, when needed to ensure consistency with general permit take rates).

The Service estimates that more than 80 percent of existing land-based wind turbines in the lower 48 States may be eligible for general permits. Wind projects in Alaska, Hawaii, island territories, and the offshore environment should apply for a specific permit if authorization for eagle incidental take is sought. Authorization for incidental take due to power line infrastructure is not included under a general permit for wind. The Service expects wind projects to avoid risk to eagles by ensuring power line infrastructure is avian-safe, either by design or use of covers. In the rare circumstance associated power line infrastructure poses an electrocution or collision risk to eagles, authorization under the power line regulation is most appropriate. Specific permits are available for wind projects that do not meet general permit eligibility criteria or request the customization of a specific permit. We have created multiple tiers within specific permits: Tier 1, Tier 2, and Tier 2 with reimbursable agreement. Changes to the fee structure associated with these tiers are described in the Changes to the Fees section below. Tier 1 specific permits are for low-complexity wind project applications (1) that can comply with general permit conditions or require only minor modifications, (2)

where fatality estimates can be calculated with site-specific data collected to Service standards and submitted using the Service's information reporting template or where the applicant agrees to use the Service's generalized fatality estimation process (i.e., using the nationwide specific permit priors) for specific permits, (3) that agree to use a Service-approved conservation bank or in-lieu fee program to complete required compensatory mitigation, and (4) where the Service's decision can be categorically excluded under NEPA. The Service anticipates expediting Tier 1 specific permit application processing.

Tier 2 specific permits are for moderately complex applications that (1) need modifications to general-permit conditions, including negotiated compensatory-mitigation requirements or (2) for which fatality estimation requires more evaluation of site-specific data, or (3) negotiation of other requirements. For the highest complexity applications, such as applications that require more extensive permit-condition negotiations, cannot be categorically excluded from additional procedural requirements of NEPA, or other unique circumstances, the Service will charge the Tier 2 fee and require applicants, including government agencies, to enter into a reimbursable agreement with the Service to offset additional Service costs associated with this added complexity and review time in excess of 275 hours.

The Service will no longer specify an authorized number of eagles that may be incidentally killed or injured on the face of general or specific permits. Permits will authorize the incidental take of eagles. This means that permittees will not be considered out of compliance for exceeding an authorized level of eagle take. General permittees, however, must remain in compliance with the discovered eagle provisions, which are different from estimated eagle take. However, to ensure consistency with our preservation standard, we will estimate the number of eagles taken for internal tracking and calculating compensatory mitigation requirements. The Service will track estimated take that has been authorized for bald eagles and golden eagles within each eagle

management unit (EMU) and local area population (LAP). We will use the best-available information and tools in making these calculations, including compiling information on discovered eagle remains and injured eagles, applying statistical modeling to estimate eagle take that has been authorized under permits, and comparing estimated take and provided compensatory mitigation with EMU take limits and LAP thresholds.

The Service received numerous comments regarding the Service-led monitoring in the proposed rule. The Service reexamined the potential of using operations and maintenance staff to conduct concurrent monitoring instead. Ultimately, we decided to reduce the requirement for general permits to concurrent monitoring because that will still provide the information the Service requires while resulting in a substantial cost savings to the regulated community compared to the proposed Service-led monitoring. The Service intends to publish monitoring standards for specific permits that will be designed to maximize flexibility to the regulated community so permittees can select the best fatality monitoring method for their project, while still giving the Service the information needed to ensure we are authorizing take consistent with our preservation standard. Monitoring must be conducted in accordance with permit conditions and, if available, Service guidance. The Service may use administration fees to validate concurrent monitoring methods and analyze concurrent monitoring data. Under specific permits, additional monitoring may be included in the permit conditions, such as for permittees wanting to reduce mitigation requirements by implementing experimental technology or post-construction monitoring. The Service will require only third-party monitoring when warranted (e.g., addressing compliance concerns or applying controversial approaches).

Compensatory mitigation is required for general permits. General permits must obtain eagle credits from a Service-approved conservation bank or in-lieu fee program based on the hazardous volume of the project (§ 22.250(f)(7)(ii)). An eagle credit is the

amount of compensatory mitigation needed to offset the take of an eagle. Service-approved in-lieu fee programs and conservation banks will be authorized for particular EMUs, consistent with the methodology approved by the Service. However, the Service will retain the right to direct funds from an EMU-scale to an LAP-scale, if the Service identifies concerns with a particular LAP.

Compensatory mitigation is also required for specific permits for wind energy. Applicants must include their expected method of compensatory mitigation in the permit application (§ 22.250(f)(7)(i)). The Service will derive the amount of compensatory mitigation required using a project-specific fatality estimate, based upon either site-specific data that meets the Service's data collection standards or the Service's generalized fatality estimation process (i.e., using the nationwide specific permit priors). These priors are probability distributions, created using information from a range of projects under Service review and others described with sufficient detail in Whitfield (2009), that describe exposure and collision probability in the Service's collision risk model before any site-specific information is taken into account. All compensatory mitigation for golden eagles must be performed at a 1.2:1 (mitigation:take) ratio. The Service expects Tier 1 specific permits to use a Service-approved conservation bank or in-lieu fee program to meet mitigation requirements. Tier 2 specific permit applications may use a Service-approved conservation bank or in-lieu fee program or submit a plan to the Service for implementing compensatory mitigation consistent with § 22.200 and Service-wide mitigation policies. To ensure consistency with the preservation standard, wind energy projects that are eligible for general permits but choose to obtain a specific permit will be required to meet or exceed the general permit mitigation requirements. Compensatory mitigation is not required for wind turbine infrastructure that is considered baseline. Baseline, as described in the 2016 PEIS, refers to infrastructure that existed and was operating in its current configuration and size prior to September 11, 2009.

The Service retains the maximum 30-year tenure for specific permits for wind projects. This tenure is appropriate given the amount of time that wind energy projects typically operate on the landscape. Specific permits may be requested and authorized for any duration (in 1-year increments) up to 30 years. General permits for wind projects are valid for 5 years from the date of registration. Upon expiration of general permits, project applicants may reapply and obtain a new 5-year general permit. General permits for eagle take cannot be amended during each 5-year term.

For both general and specific permits, the Service will continue requiring implementation of all practicable avoidance and minimization measures to reduce the likelihood of take. These conditions would likely include reducing eagle attractants at a site (e.g., minimizing prey populations or perch locations), minimizing human-caused food sources at a site (e.g., roadkill, livestock), and implementing adaptive-management plans that modify facility operations at a site if certain circumstances occur, such as when a certain number of eagle mortalities are detected. General permit conditions will be nonnegotiable and fixed for the term of the permit. Renewed general permits will have the most current version of general permit conditions. Specific permit conditions will use the general permit conditions as a foundation but may be modified or added to as appropriate. The appropriate fee tier will be charged based on the amount of negotiation and modification required.

Permittees must train relevant employees to look for, recognize, and report eagle take as part of their regular duties. Permit conditions will specify a minimum frequency required (e.g., once every 3 months) and require that trained employees visually scan for injured eagles and eagle remains while in the vicinity of project infrastructure. Permit conditions will direct disposal (e.g., shipped to National Eagle Repository) and reporting (e.g., summary emailed to the Service) requirements and timelines.

When three or four eagles of one species are discovered within the general permit tenure, we require additional conditions. If three eagles of one species are found, the permittee must notify the Service and implement an adaptive management plan. If a fourth eagle of that same species is found, these steps must be repeated, and the project would no longer qualify for future general permits. The discovered-eagles provision aids in identifying the rare project eligible for a general permit but experiencing more take than other projects covered by general permits. By requiring notification from projects operating under general permits if three and four eagles are found, we ensure that the overall take authorized by the general-permit program remains within the range we predict and is appropriately offset to the degree necessary for the preservation of each eagle species. It is important to note that found eagle remains at any project represent only the minimum number of eagles that may have been killed by a project. Depending on the probability of detection, which is determined by factors like site topography and vegetation, the number of eagles actually taken may be close to the number of eagles found, or the number actually taken could be substantially higher.

We will allow time for project proponents to adjust to these amended regulations. Project proponents who have submitted a permit application will have 6 months from the publication date of the final rule to choose whether to have their application reviewed and administered under all the provisions of the prior regulations, as amended in 2016, or all the provisions of the current regulations. Any application fees paid prior to the publication date of the final rule may be used to pay for application and administration fees required under the new regulations. However, the Service will not refund any application fees paid prior to the publication date of the final rule because the Service will have already undergone substantial processing of the application. Project proponents who hold a permit under the 2016 regulations may continue under that permit's conditions until the permit expires. Permittees that want to modify existing permits to

comply with current regulations may contact their permitting office to determine if a substantive amendment request or a new application is most appropriate.

Eagle Incidental Take Permits for Power Lines

Power line entities have expressed interest in obtaining authorization for eagle incidental take caused by powerline infrastructure; however, a number of barriers have limited participation in permitting. We create a general permit option for power line entities that can comply with standardized conditions. We also revise the specific permit process to provide as an option for power line entities that require more customization. The Service anticipates increased benefits to eagle populations as more power line entities obtain permits and implement required avoidance, minimization, and mitigation measures.

All power line entities are eligible for general permits. The Service recommends a general permit for any power line entity that can comply with standardized general permit conditions. Specific permits are available for power line entities that seek customized permit conditions. We have created multiple tiers within specific permits: Tier 1, Tier 2, and Tier 2 with reimbursable agreement. Tier 1 specific permits are for low-complexity applications that require minor modifications to the general-permit conditions and where the Service's decision can be categorically excluded under NEPA. The Service anticipates expediting Tier 1 application processing. Tier 2 specific permits are for moderately complex applications that can be categorically excluded from additional NEPA procedural requirements and need unique or substantive modifications to the general-permit conditions, such as negotiated compensatory mitigation requirements. In the rare circumstance a power line application exceeds 275 hours in review time, the Service will charge the Tier 2 fee and require applicants, including government agencies, to enter into a reimbursable agreement with the Service to offset additional Service costs associated with this added complexity and increased review time exceeding 275 hours.

Exceeding 275 hours is expected only in rare cases; for example, if the Service's decision cannot be categorically excluded under NEPA or permit conditions require extensive negotiations.

The Service will not specify a number of eagles authorized on the face of general or specific permits. However, the Service will use annual reports submitted by permittees to estimate the number of eagles taken for internal tracking and to ensure consistency with our preservation standard. We will use the best-available information and tools in making these calculations. The monitoring required for general permits and most specific permits will be limited to concurrent monitoring by operations and maintenance personnel while onsite. Monitoring must be conducted in accordance with permit conditions and, if available, Service guidance. The Service may use administration fees to validate concurrent monitoring methods and analyze concurrent monitoring data. Specific permits may require concurrent monitoring or additional monitoring.

For both general and specific permits, the Service will require implementation of all practicable avoidance and minimization measures to reduce the likelihood of take. To aid in assessing what measures are practicable to implement, the Service will refer to the Avian Power Line Interaction Committee (APLIC) suggested practices, including *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006* and *Reducing Avian Collisions with Power Lines: The State of the Art in 2012*, as well as updated versions or new suggested practice documents, as they become available. General permits for power line entities include the conditions listed in § 22.260(d). Specific permit conditions will use the general permit conditions as a foundation but may be modified or added to as appropriate. The appropriate fee tier will be charged based on the amount of negotiation and modification required.

As part of general-permit conditions, the Service requires power line entities to develop four strategies: collision response, proactive retrofit, reactive retrofit, and

shooting response, as defined in § 22.260(b). The Service encourages power line entities with an Avian Protection Plan (APP) to incorporate these strategies into the APP. However, power line entities may choose to include these four strategies as part of an APP or as stand-alone strategies.

Collision response strategy describes the process to identify collision-caused mortality events, evaluate factors, and implement risk-reduction strategies (see § 22.260(b) and (d)). The Service expects risk-reduction strategies to be commensurate with future collision risk. For example, an entity would implement all practicable risk-reduction strategies for a power-line segment with repeat mortality events in a high-risk location but for power-line segments with rare or no known collision events, no action or continued monitoring may be appropriate.

Proactive retrofit strategy describes how existing infrastructure will be converted to avian-safe (as defined in § 22.260(b)) within a set timeline (see § 22.260(b) and (d)). Investor-owned utilities must have a 50-year proactive retrofit strategy to convert poles in high-risk eagle areas to avian-safe; therefore, 10 percent of poles in high-risk eagle areas must be converted during each general-permit 5-year tenure (§ 22.260(d)(2)(i)). High-risk eagle areas occur where eagles are likely to be present and interact with power line infrastructure. Conversely, low-risk eagle areas occur where eagles are not present or unlikely to interact with power line infrastructure, such as urban areas. Applicants will be responsible for the assessment of high-risk eagle areas, based on this standard. Other utilities (publicly owned or cooperative) must have a 75-year proactive retrofit strategy to convert poles in high-risk eagle areas to avian-safe; therefore, 7 percent of poles in high-risk eagle areas must be converted during each permit tenure (§ 22.260(d)(2)(ii)). The Service uses the U.S. Energy Information Administration definitions for investor-owned, publicly owned, and cooperative utilities. The Service recognizes that this strategy may take more time than the other strategies to develop. As a condition of the general permit,

general permittees that do not already have a proactive retrofit strategy will have 3 years from the effective date of this final rule to develop one.

Reactive retrofit strategy describes how infrastructure will be retrofit to avian-safe in response to an eagle electrocution or death (see § 22.260(b) and § 22.260(d)). A total of 13 poles or a half-mile segment of line must be retrofit. The typical pole selection is the pole that caused the electrocution and six poles in each direction. However, if retrofitting other poles in the circuit provides more benefit to eagles, those poles may be retrofitted by prioritizing the highest risk poles closest to the electrocution event. Poles outside of the circuit that caused the electrocution may be counted towards this retrofit requirement only if all poles in the circuit are already avian-safe. Converting poles to buried line is an avian-safe retrofit.

To implement the above strategies, power line entities evaluate the electrocution or collision incident within 90 days and implement a response within 1 year of the incident. If extenuating circumstances occur in implementing the strategies, such as catastrophic weather, extensive fire, or other event that substantively disrupts power delivery, the power line entity must do the following: (1) Document and maintain records of the relevant circumstances, including why circumstances are extenuating and the plan to implement the delayed retrofits or collision reduction measures. (2) If implementation of delayed retrofits or collision reduction measures will extend past the expiration of the current general permit tenure and the permittee wants to renew the general permit, notify the Service at least 180 days prior to permit expiration. (3) If the general permit is renewed, any delayed retrofits or collision reduction measures must be implemented during the renewed general permit tenure. Otherwise, the permittee is no longer eligible for a general permit; however, the permittee may apply for a specific permit.

Shooting response strategy describes the process the permittee follows when eagles are found killed or injured near power line infrastructure to identify if shooting is

suspected, communicate with law enforcement, and identify and implement appropriate shooting-reduction strategies (see § 22.260(b) and § 22.260(d)). Power line entities are not responsible for law enforcement of nor liable for shooting events. At a minimum, power line entities must immediately contact the Service's Office of Law Enforcement if an eagle is found killed or injured near power line infrastructure and shooting is suspected. Where there are repeated shooting events, the power line entity should develop other strategies, including coordinating with the relevant land-management agency if the death or injury occurs on government property. The Service is working with APLIC and others to develop resources and suggested practices. It is generally assumed that eagle remains or injured eagles discovered in the vicinity of power line infrastructure are taken by that power line infrastructure, unless necropsy or other information proves otherwise.

In addition to the above strategies, power line entities must also consider eagles in siting and design for new construction and rebuild projects and ensure that all poles constructed in high-risk areas are avian-safe, as practicable. This provision is not required if it would impact human health and safety, require overly burdensome engineering, or have significant adverse effects on biological, cultural, or historical resources. Permittees must also train onsite personnel to scan for and appropriately report discovered eagle remains. Under specific permits, additional monitoring may be required.

Compensatory mitigation is required for both general permits and specific permits. General permits must implement a proactive retrofit strategy (§ 22.260(d)(3)). Compensatory mitigation for specific permits will be determined for each application and included in permit conditions (§ 22.260(e)(2)). The Service will track take that has been authorized for bald eagles and golden eagles within each eagle management unit (EMU) and local area population (LAP).

General permits for power line entities are valid for 5 years from the date of registration. Upon expiration of a general permit, a project applicant may reapply and

obtain a new 5-year general permit. General permits cannot be amended during each 5-year term. The Service retains a maximum tenure of 30 years for specific permits for power line entities. The 30-year tenure is appropriate given the extended time power line infrastructure is expected to operate on the landscape. Specific permits may be requested and authorized for any duration (in 1-year increments) up to 30 years.

Eagle Disturbance Take Permits

More than two-thirds of the eagle-take permits the Service currently issues are for incidental disturbance by activities conducted near bald eagle nests. Incidental take by disturbance is different from incidental take resulting in injury or mortality. To reduce complexity and improve clarity, this final rule creates a new stand-alone regulatory section for the incidental take of bald eagles or golden eagles by disturbance (§ 22.280). This regulation revises portions of the previous disturbance-take regulation (50 CFR 22.80). The Service retains the existing definition of "disturb" (50 CFR 22.6) and clarifies further what does and does not constitute disturbance take (§ 22.280(b)).

The Service creates general permits for eagle incidental take by disturbance in § 22.280. The Service uses the standardized approach to permitting based on the 2007 Activity-Specific Guidelines of the National Bald Eagle Management Guidelines (hereinafter the "Guidelines"). Between publication of the Guidelines in 2007 and nationwide eagle-population surveys in 2018, we estimate that bald eagle populations have quadrupled in the Lower 48 United States (USFWS. 2021. Final Report: Bald Eagle Population Size: 2020 Update. December 2020. Division of Migratory Bird Management, Washington D.C. U.S.A.). This includes growth into environments that are developed or in the process of being developed, increasing the demand for permits for eagle disturbance. By creating general permits, the Service will better align the conservation value gained from permitting with ensuring the preservation of eagles. We estimate about 85 percent of projects that cause disturbance will qualify for general permits.

General permits are available for the disturbance of bald eagles when the disturbance will be a result of one or more of the following activities: building construction, linear infrastructure construction and maintenance, alteration of shorelines and water bodies, alteration of vegetation, motorized recreation, nonmotorized recreation, aircraft operation, prescribed burn operations, and loud intermittent noises. General permits cover conducting the activity, as well as pre-construction work, including geotechnical work. The Service did not include prescribed-burn operations in the proposed rule because, at the time, we considered such activities part of alteration of vegetation. However, after considering public comment on the issue and to ensure clarity for the regulated community, we included prescribed burning as a potential disturbance activity in the final regulation. Prescribed burning includes the footprint of the burn as well as where biproducts of the burn will be present, such as smoke, ash, or embers. Specific permits are available for disturbance to bald eagles from activities that are not eligible for general permits and any activity that may result in disturbance to golden eagles.

The Service specifies distances in the regulation within which these activities may cause disturbance. Activities occurring farther than the distances specified below do not require a permit because they are unlikely to cause disturbance. Regularly occurring activities that occur within these distances and pre-date an eagle pair's selection of a given nest site are assumed tolerated by the eagles, unlikely to cause disturbance, and do not require a permit.

Tribes communicated concern about the issuance of general permits for nest disturbance and nest take on lands of Tribal interest. In response, the Service has restricted eligibility, and general permits are not available for nest disturbance or nest take for nest structures located in Indian country, as defined in 18 U.S.C. 1151. The Service considers the case-by-case review of specific permits appropriate for nests

located in Indian country. This restriction does not apply when the Tribal government is the applicant for the permit on their own land.

Hazing—the use of nonlethal methods to disperse eagles away from a site—does not constitute eagle disturbance unless it is adjacent to an in-use nest and disrupts eagle breeding activity. The intent of hazing is to deter eagle depredation (e.g., substantial injury to wildlife or agriculture) or reduce threats to human or eagle health and safety by temporarily displacing individual eagles from a location. We currently recommend nest buffers of 660 feet for bald eagles and 1 mile for golden eagles.

The Service also considers activities that are conducted adjacent to a communal roost or foraging area do not constitute eagle disturbance and do not require a permit. "Communal roost site" and "foraging area" are defined by regulation (50 CFR 22.6). Removal of a foraging area has greater potential to cause disturbance; therefore, we further clarify here that activities that completely prevent the use of a foraging area may cause disturbance. A proponent of a project likely to fully prevent the use of a foraging area should apply for a specific permit, particularly if the activity will remove all foraging opportunities within 1 mile of an in-use nest.

The Service will require monitoring eagles under general and specific disturbance-take permits. Monitoring will typically consist of collecting information sufficient to determine whether nestlings have fledged from the nest. Specific permits for disturbance may require monitoring as long as necessary to determine any impacts to the eagles for which take is authorized, including up to 3 years after permit tenure. The Service does not require compensatory mitigation for general permits. Compensatory mitigation may be required for specific permits to ensure the preservation of eagles. For example, any disturbance take of golden eagles that is not part of the Service's previously established 2009 baseline or disturbance take of bald eagles that exceeds the LAP authorized-take threshold and is otherwise unsustainable requires implementation of

compensatory mitigation. Monitoring, and if required, compensatory-mitigation outcomes must be reported annually.

For both specific and general disturbance permits, we will require that applicants provide the coordinates of the nest(s) for which they are requesting disturbance authorization. Precise location information is necessary for both the Service staff who conduct eagle-population management and law enforcement. For disturbance take, we retain a 5-year tenure for specific permits and implement a 1-year tenure for general permits. These permits are renewable in the rare circumstance that an activity is likely to cause disturbance to eagles over a long period of time. In the rare event that the Service's decision to issue a disturbance specific permit cannot be categorically excluded under NEPA, a reimbursable agreement may be used to cover costs associated with the preparation of an environmental analysis and compliance with the procedural requirements of NEPA.

For both specific and general permits, we require permit conditions that include implementation of measures to avoid and minimize, to the extent practicable, the risk that authorized activities may disturb eagles. To determine practicability, the Service will consider eagle-population status, the known efficacy of the measure, and the potential burden on the permittee. For specific permits, applicants will have the opportunity to provide input into these permit conditions. General-permit conditions will be standardized by activity type based on effective techniques that have been consistently and successfully used in specific permits for the past 10 years or more.

The Service uses this rulemaking to clarify that the regulations for disturbance take of eagles will be used to authorize the incidental take of eagle nests. Incidental take of nests caused by activities includes actions that agitate or bother eagles to a degree that interferes with normal breeding and sheltering behavior. For example, prescribed burns may result in the disturbance of breeding eagles through smoke exposure and may disrupt

breeding activity by unintentionally taking nests when a fire moves unexpectedly across break lines or into tree canopies. Authorization is provided only for incidental take of nests that occurs after application of all practicable avoidance and minimization measures. Incidental take authorization does not include take caused by lack of due diligence or negligence; for example, failure to identify nest locations prior to conducting an activity.

To date, incidental take of nests has been a rare issue and, therefore, is currently most appropriately addressed under specific permits. However, the Service will regularly review this issue with other implementation decisions. Applicants requesting incidental take of nests must demonstrate that incidental nest take cannot be practicably avoided. The Service does not anticipate authorizing the incidental take of nests for development activities. In the Service's experience, developers have sufficient knowledge of the landscape and control of their activity to make incidental nest take practicably avoidable during development.

Eagle Nest Take Permits

The Service has revised the regulations for eagle nest take (§ 22.300). This final rule creates a general permit for the take of bald eagle nests in certain circumstances. We retain specific permits for the take of any golden eagle nest as well as for the take of bald eagle nests that is not eligible for a general permit. We also clarify that relocation or obstruction of a nest constitutes nest take.

We retain the four justifications for authorizing eagle nest take, which are emergency, health and safety, removal from human-engineered structures, and other purposes. We also add protection of species on the List of Endangered and Threatened Wildlife (§ 17.11) as a purpose for eagle nest take. General permits are limited to bald eagle nest take for the purposes of emergencies, protection of health and safety, and protection of human-engineered structures. In Alaska only, bald eagle nests may also be

taken for other purposes. After more than 10 years of issuing permits to remove bald eagle nests, the Service has developed standard permit conditions that can be applied to authorizing the take of bald eagle nests using general permits for these purposes.

We will continue to require specific permits for any take of golden eagle nests because these situations have unique conditions that require site-specific permitting and because of the population status of golden eagles. We will also continue to require a specific permit for take of bald eagle nests under the "other purposes" in the lower 48 States because the Service must ensure that those permits provide a net benefit to eagles. The net-benefit determination depends on the circumstances of the purpose requiring nest take. In Alaska, general permits are appropriate because the Service has already developed and implemented standard conditions there and Alaska has a robust bald eagle population.

In this rulemaking, the Service adds a fifth justification for authorizing the take of eagle nests when necessary for the protection of species on the List of Endangered and Threatened Wildlife (§ 17.11) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544). This activity would require a specific permit issued only to a Federal, State, or Tribal agency responsible for implementing actions for the protection of the species of concern. With expanding bald eagle populations, the Service anticipates an increase in situations where bald eagle management may be a necessary part of implementing recovery plans.

The Service will not require monitoring for general permits. After more than a decade of annual monitoring reports, we expect a 1-year permit tenure to better capture the necessary information to meet the preservation standard than requiring monitoring. In addition, a 1-year permit term without required monitoring is less burdensome to the applicant. Specific permits may require monitoring—for example, a permittee may need to monitor the area near where a nest was removed for one or more seasons to determine

whether the affected eagles relocate and successfully fledge young. To be conservative, we will assume that each nest take authorized by the general permit will result in a loss of breeding productivity for one breeding season. We may change this practice in the future if data warrants a change in our assumption.

The Service will not require compensatory mitigation for nest-take general permits, unless it is for other purposes in Alaska where compensatory mitigation is required to achieve the associated net benefit. General permits for nest take are limited to bald eagle nests in situations that are typically hazardous to eagles or where eagles benefit from resolving the situation requiring the permit. Compensatory mitigation is also not generally warranted for nest-take general permits because of the improving population status of bald eagles. Compensatory mitigation may be required for specific permits. In determining compensatory mitigation, the Service will consider the purpose for the nest take, whether nest take reduces risk to eagles, and the population status of the species. A specific-permit applicant may meet this requirement by obtaining the Service-approved number of eagle credits from a Service-approved conservation bank or in-lieu fee program. The applicant may also propose other types of compensatory mitigation for Service approval.

For both specific and general nest take permits, we will require that applicants provide the coordinates of the nest(s) for which they are requesting take authorization. Precise location information is necessary for both the Service staff who conduct eagle-population management and law enforcement. The permit application may also require supporting documentation for certain types of requests (for example, an arborist report in the case of hazard-tree removal).

For nest take, we retain the 5-year limit for specific permits and implement a 1-year limit for general permits. These permits are renewable. The Service considered providing for a longer general-permit tenure; however, doing so would require that the

Service require further monitoring from all general permittees that was inconsistent with the purpose of general permits. We have crafted these reduced tenure and permit-per-nest requirements to better ensure general permits for nest take are compatible with the preservation of eagles.

Permit conditions will include the applicable regional-breeding-season start date. Additionally, the general permit will authorize the removal of a specific nest. General permits may authorize bald eagle nest removal from the nesting substrate at the location requested and the location of any subsequent nesting attempts by the eagle pair within one-half mile of the location requested for the duration of the permit if the subsequent nest re-creates the emergency, safety, or functional hazard of the original nest. Take of an additional eagle nest more than one-half mile away requires an additional permit.

Changes to Definitions and Procedures

As part of this rulemaking, we have narrowed the definition of "eagle nest" to exclude nest structures on failed nesting substrate. Previously, we defined "eagle nest" to mean any assemblage of materials built, maintained, or used by bald eagles or golden eagles for the purpose of reproduction. We have added a qualification that it must be possible for eagles to reuse the nesting substrate for breeding purposes. Nesting substrate that, due to natural circumstances, is no longer and will never again be available to eagles for functional use will no longer meet the regulatory definition of an eagle nest. This definition of "eagle nest" does not allow for modification of alternate (unused) nest substrate to a degree that prevents future breeding activity. These activities will continue to constitute nest take.

We revise this definition to address uncommon but occasional instances in which eagle nests or nesting substrate are impacted by weather or other natural factors to such a degree that they become permanently unusable to eagles for reproductive purposes. For example, if a nest tree falls and the bald eagle nest retains its structure, the nest would no

longer retain the official designation of an eagle nest as the substrate was substantively changed by the nest tree falling. A permit is not necessary for individuals and organizations to destroy and remove materials that formerly held the designation of an eagle nest but no longer meet the definition. However, individuals and organizations may not collect these materials nor possess them beyond what is necessary to dispose of the nest. Eggs, feathers, and other eagle parts are often naturally incorporated into nests with time. The Eagle Act prohibits possession, transportation, and sale of these items, either individually or in their incorporated state with former nesting materials, without Federal authorization.

We also have revised the definition of "in-use nest" to clarify that the eggs referred to in the definition of in-use nest must be viable. As with our revision of the definition for "eagle nest," this change ensures that our definition is more relevant to what is biologically important to eagles. Nonviable eggs may persist in a nest or even become incorporated into a nest's structure. However, by their nature, these eggs will not hatch. Under previous definitions, permittees have been prevented from removing what is otherwise an alternate nest because of the presence of nonviable eggs outside of breeding season. In implementing the revised definition, the Service presumes that eggs are viable unless the applicant provides evidence to document otherwise (e.g., absence of adults for several days, presence of eggs out of breeding season).

For clarity, we add a definition of "general permit" to 50 CFR part 22 to distinguish general permits from the definition of "permit" in 50 CFR 10.12. We interpret the statutory language requiring a permit to be procured from the Service for take of bald eagles for any purpose to include general permits set forth in this document as well as the more typical individual or specific permits (see 16 U.S.C. 668a).

We clarify in the regulation pertaining to illegal activities (50 CFR 22.12) that obtaining an eagle permit of any type for a continuing activity does not in and of itself

resolve take that occurred before issuance of the permit. This provision is currently in § 22.80(e)(8) but applies to all of the regulations in part 22 and is therefore better located in § 22.12. We also have updated the definition of "eagle management unit" and include a definition of "incidental take" to improve transparency to the public and general-permit applicants.

Along with this final rule, the Service will also implement the three following changes to our implementation of incidental-take permits for eagles. We will apply the baseline take for golden eagles established in the 2009 EA nationwide. Currently, baseline take for golden eagles is limited to only west of the 100th meridian. In the 2016 PEIS, the Service conservatively assumed that all authorized take of golden eagles east of the 100th meridian should require compensatory mitigation regardless of whether the authorized take was occurring prior to September 11, 2009, and was considered part of the baseline. However, recent information on the population status of golden eagles in the Eastern United States demonstrates that this conservative restriction is not necessary to ensure that take of golden eagles is compatible with the preservation standard, so we are eliminating this unnecessary restriction.

We will also update the number of bald eagles debited from EMU take limits and LAP thresholds when authorizing nest disturbance, based on new information. Before this change, the Service assumed a loss of productivity equivalent to 1.33 bald eagles per year for each authorized nest disturbance in the United States, except in the Southwest, where we assumed a loss of 0.95 bald eagles per year. Based on recent Service analysis of new information, we will update the nationwide debit from 1.33 to a value of 0.26 bald eagles per year. However, because of low sample sizes in our analysis, we are not updating the debit in the Southwest, which will remain at 0.95 bald eagles per year.

Finally, we will remove the 10 percent threshold for unauthorized mortality in a local area population (LAP) that was introduced with the 2016 rulemaking. We have

since concluded that georeferenced data on unauthorized eagle mortalities are sparse and biased, making meaningful evaluation and application of unauthorized take at the LAP scale difficult or impossible.

Changes to Fees

The Service charges application fees to cover the costs of administering regulations and permits. This includes paying for staff to: provide technical assistance and guide applicants through the permitting process, review application information, assess the biological impact and environmental effects of the proposed activity, and evaluate whether the applicant meets eligibility and issuance criteria. For specific permits, these actions are primarily conducted before permit issuance. For general permits, these actions will be conducted as part of an auditing process to ensure applicants are correctly interpreting eligibility criteria and complying with permit conditions and requirements. Fees are also used to pay for developing and maintaining an online permit-registration system and database.

General-permit fees include an administration fee. In response to public comments, the Service adjusted the administration fee to reflect the elimination of the proposed Service-led monitoring. Instead, the administration fee will be used to maintain and ground-truth the permit program to ensure it is compatible with the preservation of eagles, including to: (1) better understand eagle population dynamics, including the risk to eagles from authorized activities; (2) better understand mitigation outcomes, including researching and validating avoidance, minimization, and compensatory mitigation measures; (3) address and improve various components of the eagle permitting program, including gathering and analyzing demographic data, GPS tagging and tracking eagles for programmatic monitoring, and researching and validating monitoring measures. Some portion of the administration fees may also be used, as necessary, to fund Service staff time to manage and implement the general permit administration fees. Specific-permit

fees also include an administration fee. We will use the administration fee for specific permits for the same purpose as application fees—to fund staff for the administration of specific permits, including environmental review and support of the online permit system and database.

The permit fee and administration fee must be paid at the time of application. We consider permit renewals to be permit applications for fee purposes. General permits cannot be amended. However, specific permits may be amended during their tenure. There are three types of amendments. *Administrative* amendments are administrative changes, including name and address information. Consistent with § 13.11(d)(5), there is no fee charged for administrative amendments. *Substantive* amendments are those that pertain to the purpose and conditions of the permit. Consistent with § 13.11(d)(5), we will charge an amendment fee. The Service will charge an amendment fee and an administration fee for permittee-requested substantive amendments that require new analysis, such as modifications that result in re-estimating take, re-evaluating compensatory mitigation requirements, or requiring additional environmental review to comply with procedural requirements under NEPA (§ 22.200(e)).

For general permits, the Service adopts a scaled administration-fee structure to accommodate different sizes of projects. For power lines, general-permit administration fees are separated into Tier 1 for non-investor-owned and Tier 2 for investor-owned. The Service uses the U.S. Energy Information Administration's definition of investor-owned utilities as "large electric distributors that issue stock owned by shareholders" (*https://www.eia.gov/*). For wind energy, general-permit administration fees are separated into Tier 1 for distributed and community wind projects and Tier 2 for utility wind projects. We use the Service's Land-Based Wind Energy Guidelines definition of these terms (*https://www.fws.gov*). The Service may revise the interpretation of these terms in future rulemakings.

The Service retains the existing tiers of commercial and noncommercial for disturbance and nest-take permits. Applications are commercial, unless (1) an individual applies using section A of the application form for activities on that individual's privately owned property for individual purposes, or (2) a government or not-for-profit entity applies for take associated with public property using section B of the application form and includes documentation demonstrating its qualifying status (e.g., documentation that the entity is a government agency or that the entity is a current, recognized nonprofit organization by the Internal Revenue Service (IRS) as described in section 501(c)(3)).

For specific permits, the Service estimates a wide range of potential permit costs. Costs would vary based on factors like the complexity of the application or the required environmental review. To accommodate this wide range, the Service includes a tiered fee structure in § 13.11(d) and describes criteria for each tier in § 22.200(c)(2)(vii) and below. For incidental take, the Service will charge a Tier 1 application fee when specific-permit conditions require negligible modification from the standardized general-permit conditions, including the use of a Service-approved in-lieu fee program or conservation bank for compensatory mitigation. Tier 1 permits would require Service staff to review and evaluate the application and coordinate internally prior to permit issuance. We do not anticipate requiring additional environmental compliance review under NEPA for Tier 1 specific permits beyond documenting that the action is within the scope of the existing 2016 PEIS and the 2023 EA issued with this rulemaking. For wind energy or other applications that require a fatality estimate, Service estimation of expected take must require minimal data manipulation; for example, the applicant collects site-specific data according to Service standards or adopts the Service's generalized fatality estimate (i.e., using the nationwide specific permit priors).

The Service will assess a Tier 2 fee for specific permits of moderate to high complexity that cannot or do not wish to meet the requirements for Tier 1. Because Tier 2

applications are more complex, more staff hours, including higher graded staff, are required to review application information, assess biological impacts and environmental effects of the proposed activity, and determine whether the application meets eligibility and issuance criteria. These projects may include more complex technical assistance, coordination with other programs or agencies, and documenting NEPA compliance. We estimate the amount of staff time to complete these tasks for moderately complex projects will be 250 to 275 hours per permit based on processing times for similarly complex permits issued by the Service.

We retain the provision in § 13.11(d)(2) that allows an applicant to request, and the Service to support, issuance of one consolidated permit when more than one type of permit is required for an activity and those permits are issued by the same office. When the Service supports consolidation, a single specific permit may authorize multiple activities, for example power lines with nest take or wind energy with power lines. The Service will develop guidance for consolidating permits. Because of the automated nature of general permits that have avoidance, minimization, and compensatory mitigation requirements developed for each activity, a project proponent would have to obtain the relevant individual general permits. Therefore, consolidating general permits is not allowed.

The Service expects specific-permit applicants to diligently pursue obtaining a permit after applying. We will consider a permit application abandoned or withdrawn if an applicant does not respond to requests for information or engage in good-faith negotiations. Once we consider an application abandoned or withdrawn, the applicant must submit a new application, including fees, to obtain take coverage for the activity.

Once effective, under this final rule the Service will not charge an application fee to government entities, consistent with other permits issued in accordance with § 13.11(d)(3); the Service will charge an administration fee to any Federal, Tribal, State, or

local government agency for permits issued under part 22 subpart E. The Service may also require government agencies to enter into a reimbursable agreement. This fee is necessary to ensure the permitting program remains consistent with the preservation of eagles.

Administrative Changes

The Service has made the following administrative changes to the organizational structure of our eagle-take-authorization regulations to improve clarity. To reduce confusion, we redesignate the current subpart C "Specific Eagle Permit Provisions" as "Eagle Possession Permit Provisions." We create a new subpart E pertaining to "Take of Eagles for Other Interests." This subpart now houses regulations that authorize permits for the taking of eagles for the protection of other interests in any particular locality.

We redesignate regulations for permits to take golden eagle nests for resource development and recovery operations from § 22.75 to subpart E, at § 22.325. We update the section heading as "Golden eagle nest take for resource recovery operations" to clarify that this regulation applies to resource development or recovery operations as authorized by 16 U.S.C. 668a. The purpose of this regulation is to authorize the removal of golden eagle nests that are physically in the way of resource recovery operations, such as on the cliff wall of a mine. We do not change the regulatory requirements that any take authorized must be compatible with the preservation of eagles (newly designated § 22.325(c)) and cannot be reasonably avoided (newly designated § 22.325(c)(1)). The take of nests in proximity to resource development and recovery operations to minimize the risk of disturbance, injury, or mortality to eagles is authorized under § 22.300. We also redesignate the current regulations at § 22.90 pertaining to permits for bald eagle take exempted under the Endangered Species Act to § 22.400 in subpart E.

Sequencing of General Permits Registration Availability

To implement the general permits authorized under this rulemaking, the Service is developing an online general-permit registration system. After the effective date of this regulation, [INSERT DATE 60 DAYS AFTER DATE OF *FEDERAL REGISTER* PUBLICATION], the Service will implement the general permit registration system in stages to ensure the technology is working appropriately. General permit registration for incidental take of eagles by wind energy projects and by power lines is anticipated to be available starting on May 6, 2024. General permit registration for disturbance of eagles and take of eagle nests is anticipated to be available starting on July 8, 2024. In the event these availability dates change, the Service will provide updated dates on *https://www.fws.gov/regulations/eagle* and the ePermits website *https://epermits.fws.gov*. Those interested in applying for a wind energy or power line general permit between the effective date of the rule and the availability of the registration system may apply by: (1) completing application form 3–200–71, including sections B–D and the general permit questions in section E and (2) emailing the complete, signed form to *migratorybirdpermits@fws.gov*. The Service will reply to the email with the general permit conditions. Entities must comply with and are authorized by the general permit conditions until the registration system is available. Once available, entities will have 10 business days to register for a general permit using the registration system, including paying fees. Failure to register, once available, voids the prior coverage granted through the above process.

For those interested in applying for disturbance or nest take permits, the Service will continue to use specific permits for the remainder of the 2024 nesting season. For activities starting on or after September 1, 2024, general permits registration is expected to be available. However, in the event it is not, the procedure described in the paragraph above will be used starting July 8th until the registration system is available.

Compliance with the Endangered Species Act

The general permits addressed in the regulations may not be used for an activity if implementing the requirements of the general permit may affect ESA-listed species or species proposed for listing or designated or proposed critical habitat (e.g., burying a cable to avoid impacts to eagles would result in effects to an ESA-listed snake or plant). In those cases, the proponent should apply for a specific permit and, if appropriate, the Service will conduct an intra-service section 7 consultation on its issuance of the eagle incidental take permit. That said, since eagle incidental take permits would authorize only the incidental take of eagles and not the underlying activity, except as it relates to implementing the conditions of the permit, the Service's issuance of an eagle incidental take permit would not serve as a nexus for ESA section 7 purposes for the underlying activity.

Response to Public Comments

The Service received 203 unique letters, which contained 1,649 individual substantive comments, on the proposed rule. The following sections contain a summary of the substantive public comments we received on the proposed rule and our responses. Topics are listed in alphabetical order. Where appropriate, we explain why we did or did not incorporate the changes suggested by the commenters into this final rule. Due to the high number of comments, this summary presents major themes occurring throughout the comments. 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.

Audits

Issue. Commenters requested more information regarding the proposed audit program, including details about the auditing process, required documentation, and expectations for audited entities. Some comments expressed concerns with the estimated

annual percentage of audited projects, with many indicating a desire for more projects to be audited annually.

Response. We are developing internal auditing procedures and external answers to frequently asked questions on audits. Limited desktop audits and onsite inspections will be conducted to determine if a project meets eligibility criteria and whether the permittee is complying with the regulations and permit conditions. In general, Service staff will conduct an audit following similar procedures to how staff currently review a permit application and administer permits. Audits may include reviewing application materials for completeness and general-permit eligibility. We will verify required reports were submitted and review the reports. Any required records, plans, or other documents will be requested of the permittee and reviewed. If there is a compliance concern, the applicant will be given the opportunity to submit additional information to address the concern. If, during an audit, the Service determines that the permittee is not eligible for a general permit or is out of compliance with general permit conditions, we will communicate to the permittee options for coming into compliance.

The Service has estimated the number of audits that can be conducted each year based on the expected average time to conduct an audit and the fee money available to fund staff to conduct audits. Staff will conduct as many audits as possible with the available funds. There are many uncertainties right now as to how much staff time is needed to conduct an audit. We estimate approximately 1 percent of general permits will be audited each year. If we find general permittees are providing complete information, audits may go quickly and more projects can be audited. We will regularly assess the cost-per-audit and the percentage of projects audited to adjust the fee structure accordingly.

Avoidance and Minimization Measures

Issue. Several commenters expressed concern with a lack of specificity in the regulation regarding avoidance and minimization measures.

Response. The role of regulation is to establish performance standards, whereas the role of permit conditions is to provide specificity on how those performance standards may be met by each permittee. Overly prescriptive regulations are difficult to keep current and can limit innovation. Instead, we will provide permit conditions and other documents to communicate the Service's recommendations on how to meet regulatory requirements. Avoidance and minimization requirements for general permits are based on the most commonly applied and effective measures learned by the Service from more than a decade of permitting. Eligibility criteria and the performance standards established in the regulation conditions can be revised through rulemaking. As information and technology change, the Service may update our recommendations and expectations on how eligibility criteria and conditions may be met.

Issue. Some commenters expressed the desire to see permit conditions that incorporate the use of experimental or emerging technology to avoid and minimize incidental take by wind energy projects, including Identiflight Bird Detection System, painting one turbine blade black, or seasonal restrictions on wind turbine operation.

Response. The Service supports science and technology that increases safe eagle passage through wind energy facilities. There is no restriction on permittees implementing these technologies, which can be used to meet the performance standards of the regulation. However, the efficacy of these technologies and the details surrounding their implementation have not been sufficiently studied to warrant prescriptive requirements in these regulations at this time. The Service continues to stay abreast of scientific developments and may include these types of technologies in future rulemakings if evidence demonstrates their effectiveness. Specific permit applicants may

request that the Service consider the permittee's use of emerging technologies when the Service estimates fatality.

Issue. We received requests to include perch discouragers as a standard avoidance and minimization measure for power line poles.

Response. We did not require perch discouragers as a minimization measure for power line general permits because the effectiveness is situation dependent. We encourage the use of perch deterrents where they may be effective. However, APLIC has moved away from broad implementation of perch discouragers because devices installed to prevent perching may provide a substrate to secure nest material, and, in some cases, may increase electrocution risk (APLIC 2023). Prather and Messmer (2010) tested several types of perch discouragers and found no difference in perching on poles with or without discouragers. However, we support the use of perch discouragers in situations where it is the best or only option for reducing electrocution of eagles.

Issue. Multiple commenters requested that we create "no go zones" or similar restrictions prohibiting the installation of wind turbines in the most important areas for eagles.

Response. The Service did not create "no go zones" because doing so is outside the scope of the Eagle Act. The Service's authority under the Eagle Act allows the regulation of incidental take of bald eagles and golden eagles. Our regulatory authority does not extend beyond that mandate to prohibit the installation of wind turbines or other infrastructure. The Eagle Act ensures the preservation of our two eagle species by protecting the survival and breeding productivity of individual birds but does not directly mandate protection of eagle habitat. Consequently, the Eagle Act does not give the Service authority to prohibit certain types of land use, including development. Instead, it allows us to influence certain types of land use to reduce the risk of take of bald eagles and golden eagles, including disturbance of breeding eagles, and to require avoidance,

minimization, and compensatory mitigation from individuals and entities unable to avoid taking these species. These features of our regulatory process are common to both existing regulations and these new regulations.

Climate Change

Issue. The Service received comments regarding the implications of climate change for this rulemaking and the inclusion of climate change in the EA.

Response. The Service recognizes the threats that climate change poses to eagles as well as other wildlife. The Service supports all actions that address climate change, including renewable energy development. The Service believes that this rule will help facilitate the development of renewable energy projects by revising the current permitting approach for eagle incidental take. The permit framework developed for renewable projects creates clear expectations for projects to achieve compliance, in some cases with no direct interaction with the Service (e.g., general permits). The Service is balancing the need for regulatory certainty, eagle preservation, and the need for renewable energy development to combat climate change. While we intend the changes to the eagle-permit regulations to encourage more projects to apply for a permit, we expect that this rulemaking will have no impact on the number of future renewable energy projects on the landscape and, thus, no impact on the trajectory of climate change.

Compensatory Mitigation

Issue. The Service received numerous comments related to compensatory mitigation requirements, including advocating for different methods to achieve these requirements, including lead abatement, carcass removal from roads, and habitat enhancement.

Response. The Service is actively working on reviewing and approving other forms of mitigation and encourages potential mitigation providers to submit their proposals. As part of this rule, we created a new regulation specific to compensatory

mitigation to more clearly signal requirements to the public. Quantifying the benefits of various compensatory mitigation measures and developing standards for their application in permitting is complex. To date, the Service has authorized power pole retrofits and lead abatement as compensatory mitigation measures. The Service is actively developing other compensatory mitigation methods, such as roadside carcass removal, that will decrease eagle mortality or increase eagle productivity. The Service encourages interested mitigation providers to contact the Service with ideas on compensatory mitigation methods. The Service agrees that it is important to develop compensatory mitigation methods that offset different sources of mortality and have a wider range of mitigation providers across the country. We will continue to engage stakeholders and develop additional guidance and standards for approving mitigation providers. This will include gathering information to address mitigation measure effectiveness and uncertainty and establishing appropriate assurances for the durability of mitigation measures.

Issue. Some commenters expressed concerns with scaling compensatory mitigation at the Eagle-Management-Unit (EMU) level rather than the local-area-population (LAP) level.

Response. The final rule retains the requirement to site compensatory mitigation within the same EMU where the take is authorized. Authorized take may affect individual eagles that are both resident and migratory. Banding records have demonstrated eagle movements within EMUs beyond individual LAPs. Thus, requiring that compensatory mitigation occur at small scales (e.g., the LAP scale) may be limiting the benefits of compensatory mitigation unnecessarily and doing so at an inappropriate ecological scale. Additionally, limiting compensatory mitigation options to the LAP scale is currently not practicable until there are sufficient mitigation providers capable of supporting every LAP. When compensatory mitigation is required by the Service to address an LAP

concern, the regulation prioritizes implementing compensatory mitigation in the LAP where the impacts occurred.

Issue. Several commenters expressed concerns with requiring compensatory mitigation for bald eagles and indicated this requirement is not necessary to meet the preservation standard.

Response. The general-permit compensatory mitigation requirement includes a small portion for bald eagles. This is necessary to ensure that the general-permit program is consistent with the preservation standard established by the Eagle Act and implementing regulations. General permits do not provide for the project-specific review prior to issuance; therefore, possible LAP effects must be addressed after issuance. One tool is to require a small amount of compensatory mitigation from general permittees that the Service can direct to areas where LAP thresholds are at risk of being exceeded. The rate of this extra compensatory mitigation is based on bald eagle take predictions, but the mitigation amounts provided can be used for either species of eagle. If an applicant does not want to pay this extra mitigation cost, which the Service expects to be relatively small for each project, the applicant may apply for a specific permit where project-specific review would determine mitigation requirements.

Issue. Several commenters proposed a conservation fund or conservation fee in addition to any required compensatory mitigation.

Response. The Service has numerous authorities that allow it to charge an entity permit fees and enter into reimbursable agreements. Funds collected through permit fees and reimbursable agreements are used to defer the cost of administering the permit program, including, but not limited to, salary and other staff-related costs and costs to ensure that issuance of permits is compatible with the preservation of eagles. Based on suggestions provided in public comments and as consistent with the use of collected fees, the Service will use these fees to fund analysis to: (1) better understand eagle population

dynamics, including the risk to eagles from authorized activities; (2) better understand mitigation outcomes, including researching and validating avoidance, minimization, and compensatory mitigation measures; and (3) address and improve various components of the eagle permitting program, including gathering and analyzing demographic data, GPS tagging and tracking eagles for programmatic monitoring, and researching and validating monitoring measures. The Service does not have express statutory authority under the Eagle Act to require contribution into a conservation fund beyond these purposes, nor the specific authority to direct such funds if they were collected.

Changes to Fees

Issue. Multiple commenters suggested that the fees for general permits were too high and would disincentivize smaller entities from participating.

Response. In the final rule, the Service has adopted a scaled fee approach for both general permits and specific permits. For power lines, general-permit administration fees are separated into Tier 1 for non-investor-owned utilities and Tier 2 for investor-owned utilities (using U.S. Energy Information Administration definitions). For wind energy, general-permit administration fees are separated into Tier 1 distributed and community scale and Tier 2 utility scale, using the Service's Land-Based Wind Energy Guidelines definitions. For specific permits, the Service created a tiered fee structure for wind energy and power line projects consisting of three tiers: Tier 1, Tier 2, and Tier 2 with reimbursable agreement, where a Tier 1 fee is charged for standard applications and a Tier 2 fee is charged for complex applications. A reimbursable agreement will be used when processing time exceeds 275 staff hours. The Service retains the current non-commercial and commercial tiering for disturbance and nest take permits.

Coordination with States

Issue. Several commenters stressed the need for the Service to coordinate with other Federal and State agencies on the issuance of general and specific permits.

Response. The Service values coordination with Tribal, State, and Federal partners, and we intend to continue to coordinate and share information about permits issued. For general permits, we will regularly be compiling and distributing information on general permits issued. We have updated the regulation to reflect what information will be made readily available to partners and the public. For specific permits, the Service will continue to consult States, Tribes, and other Federal agencies as part of our normal permitting procedures. In addition, Department of the Interior disclosure policies (68 FR 52610, Sept. 4, 2003) under the Privacy Act also provide for routine disclosures to Federal, Tribal, State, local, or foreign agencies, including to exchange information on permits granted or denied, to ensure compliance with all applicable permitting requirements and obtain advice relevant to approving or denying a permit.

Issue. Some commenters expressed concern about the locations of eagle nests being shared with the public, while others stated that some States are prohibited from disclosing nest locations and that the Service should not require that information on permit applications.

Response. The Service requires precise location information on nest locations to properly analyze effects to eagles, including LAP effects, as well as for law enforcement purposes. The Service will take all available measures to protect eagles and their nest locations. The Service will continue to coordinate with State wildlife agencies on these matters.

Issue. We received comments that expressed concerns with the take of eagles in States where either the bald eagle, golden eagle, or both are listed as threatened or endangered at the State level. These comments requested that the Service provide details regarding coordination with the States with respect to the distribution of authorized take across individual EMUs, as well as in relation to the quantification of LAP thresholds.

Response. Federal issuance of a permit does not supersede Tribal or State protections of a species. Tribes, States, and other Federal agencies are not required to authorize incidental take of bald eagles or golden eagles, even if a permittee has obtained a Service general or specific permit. It is the responsibility of the permittee to ensure they are in compliance with all applicable laws and regulations. To support the protection of local populations in this rulemaking, the Service has retained the existing preservation standard that requires the Service to determine that permits we issue are consistent with eagle preservation at the EMU and LAP scales. Under general permits, the Service will not analyze cumulative take at the LAP scale prior to general permit issuance. However, the Service will review general permits issued and analyze cumulative take at the LAP scale if an area of concern is identified. States are encouraged to review the Service's issued permits and submit any information to the Service that might assist with assessing impacts to LAPs. If the Service is concerned about the status of any LAP, we can either (a) direct compensatory mitigation to areas of concern, or (b) suspend the general-permit program in whole or in part.

Definitions

Issue. The Service received comments on the definition of "in-use nest," particularly regarding determining egg viability and nests that are considered under construction.

Response. The purpose of this change is to address the increasing frequency of instances of bald eagle nest activity outside of the breeding season, including non-viable eggs in nests outside of breeding season and nests being maintained outside of breeding season. The Service agrees with the expressed difficulty of determining if an egg is viable in the field. Eggs should be assumed viable, unless evidence proves otherwise. Evidence like the absence of adults for several days or presence of eggs out of breeding season should be used to assess the likelihood of an egg being viable. We removed the

protections for nests under construction or under maintenance for bald eagles. The previous definitions were part of a conservative approach for the recovering bald eagle that is no longer warranted. These changes are appropriate and improve consistency between the Eagle Act nest protections with the Migratory Bird Treaty Act nest protections.

EA Alternatives

Issue. The Service should reconsider Alternative 2 in the draft EA.

Response. The Service did reconsider Alternative 2 and again concludes it has a high risk of not meeting our preservation standard if implemented. Under Alternative 2, the regulations would be revised to include a general permit for land-based wind energy facilities only, with eligibility based on a project's distance from eagle nests and compensatory mitigation requirements in the form of a flat, per-project fee for mitigation. Adopting Alternative 2 is problematic because neither the Service nor project proponents know where all eagle nests on the landscape are located. This lack of data reduces our ability to reliably determine whether a specific wind project is eligible for a general permit. This situation also adds uncertainty for projects as well as to any assessment the Service might perform. Considering this, we expect Alternative 2 would come with the highest risk of inconsistency with our preservation standard compared to the other alternatives.

The Service concludes that the general-permit program described under Alternatives 3 and 4 will best accomplish the dual goals of increasing participation and increasing conservation for eagles, where more than 80 percent of existing turbines on the landscape are eligible for general permits (and the associated benefits of those general permits) and where paths to a streamlined issuance of specific permits are described.

The Service also concludes that Alternative 2's flat fee for mitigation and monitoring may disincentivize smaller projects (e.g., tens of turbines) from applying for

take permits compared to larger projects (e.g., hundreds of turbines). The Service estimates that an average wind project qualifying for a general permit will pay $312,000 in compensatory mitigation under Alternative 2. This is nearly ten times the estimated compensatory mitigation cost of $37,200 for Alternatives 3 and 4. Although industry trends may be toward new construction of larger facilities and consolidated ownership, wind energy facilities are long lived (usually 30 years or more). Older facilities will continue to operate and must be considered when estimating participation in eagle incidental-take permitting and when considering financial impacts to permittees under Alternative 2 (Section 5.4.5.1 of the Environmental Assessment). Although risk to eagles from small facilities that are eligible for general permits may be relatively low, under Alternative 2, those businesses would be more susceptible to future enforcement actions and associated enforcement costs in the event of an eagle take if they remain unpermitted due to the relatively high cost of flat fees.

EA Economic Analysis

Issue. The Service received several comments on our estimated mitigation costs, with some commenters suggesting our estimates were too high while others suggested they were too low.

Response. Because compensatory mitigation is provided either by the permittee or a third party, costs can vary widely. We acknowledge that the costs estimated for compensatory mitigation under all alternatives in the FEA are estimates and are likely to vary, perhaps substantially, across all permitted projects based on the mitigation method selected, the in-lieu fee program or conservation bank selected, and other details. These details are difficult to account for in an economic analysis, but we considered them as accurately as possible based on current data and our estimated projections. In the FEA, the Service estimates compensatory mitigation for an average wind energy general permit to be $37,200. These estimates are based solely on estimates of compensatory-mitigation

costs using power pole retrofits, which are the only cost estimates the Service currently has available.

Issue. The Service received comments specifically on our cost estimates for retrofitting power poles under the power line regulation.

Response. We updated the FEA to reflect our assumption that the proactive retrofit requirements associated with this rule are not expected to result in additional costs to power line entities. As stated in section 5.6.5 of the FEA, the Service assumes that power line entities most likely to apply for a permit are entities that have a risk of taking eagles and are already retrofitting power poles, thus already meeting this requirement.

Eligibility—Wind Energy General Permit

Issue. Many commenters expressed concerns with the general-permit eligibility for wind energy, specifically regarding the distance from bald eagle nests.

Response. The Service acknowledges the uncertainty that is created if bald eagles initiate nesting near a project with a wind energy general permit. Therefore, we revised eligibility criteria (§ 22.250(c)) to provide that a general permittee remains eligible to renew their permit, even if the Service revises eagle relative abundance thresholds or eagles construct nests within the species-specific setback distances, as long as the project does not discover the remains of four eagles of the same species within a 5-year permit tenure.

Issue. Multiple comments requested that the Service create a general permit option for existing wind energy projects (as defined in § 22.250(b)) occurring within the specific permit zone.

Response. The Service acknowledges the unique challenges of existing projects being subject to new regulations. However, after extensive review, the Service could not identify a set of general-permit eligibility criteria that a project could self-certify without adding extensive complexity or uncertainty. Therefore, the Service retained and clarified

the eligibility criterion that any existing project that does not meet general permit eligibility criteria can apply for a specific permit (§ 22.200(b)(7) while requesting a letter of authorization to obtain a general permit (§ 22.250(c)).

The Service will review all information provided in the application, including any site-specific, pre-construction or post-construction data. If we determine that the take rates at the existing project are likely to be consistent with or lower than eagle take rates expected at similar-sized wind facilities that qualify for general permits, the Service will issue a letter of authorization to register for a general permit. If an applicant receives a letter of authorization, we may refund the specific permit application fee, but to cover the cost of review, we will not refund the administration fee. The letter of authorization may require additional avoidance, minimization, or compensatory mitigation requirements as needed to ensure consistency with general permit take rates. The Service anticipates expediting the processing of these applications.

Issue. Commenters suggested that the Service should allow the use of site-specific data to determine eligibility for general permits.

Response. The Service recognizes the value in site-specific data. However, the purpose of general permits is to apply an efficient and streamlined approach for issuing permits to projects that the Service can pre-determine pose relatively low risk to eagles. It is not currently possible to evaluate site-specific data in an automated manner, which is necessary for general permits. Applicants that prefer to use site-specific data may apply for a specific permit and request review for inclusion in the general-permit program as described in a previous comment response.

Issue. Commenters suggested that existing projects should still qualify for a general permit even if some of the project's turbines are within the specific permit zone.

Response. The Service reviewed at length the possibility of automatically allowing general-permit eligibility for projects that overlap the boundaries between

specific and general permit zones. This deviation from the proposed rule appears simple but comes with an increased risk that our general permit program would be inconsistent with the preservation standard established by the Eagle Act and implementing regulations. The risk is further increased because the projects that would be eligible for general permits by partially overlapping the general-permit zone would very likely create higher risk to eagles than other projects that fully encompass the general-permit zone. The Service must choose between addressing that risk by increasing the mitigation costs for all general permittees or retaining that all turbines must be in the general permit zone. Because of how substantive the increased mitigation costs were, the Service instead provides a mechanism for existing projects to request an eligibility determination case-by-case as described in a previous comment response.

Issue. Comments noted that many existing projects would not qualify for a general permit and stated that many of the current deficiencies with the specific permit program would still be present under the new regulations.

Response. The Service has developed and will implement a streamlined approach to specific permits. One approach we considered and adopted in the final rule was the creation of new tiers for reviewing specific-permit applications. The purpose of these tiers is to separate the specific-permit applications that are able to adopt standardized approaches from those which request more extensive review and negotiation. Applicants that are willing to accept standard specific-permit conditions (and do not require additional NEPA analysis) are eligible for a less expensive application fee and faster permit-review times.

Eligibility—Relative Abundance Map and Thresholds

Issue. Comments suggested that the relative abundance maps should indicate levels of risk so developers could choose to avoid the highest risk areas, or, at a

minimum, understand increased mitigation costs that might be associated with higher risk areas.

Response. The map published with the final rule uses eagle relative abundance as an index for potential risk. We use relative abundance data for eagles because the presence of more eagles in a given area at different times of the year results in more interactions between turbines and eagles and therefore increased risk of collisions. Thus, relative abundance data is an effective proxy for determining the risk of eagle take in a particular location. Although there are only two levels of risk depicted in this map, it does highlight areas that the Service has deemed to have relatively high or relatively uncertain risk to eagles. It is our intent that this map will be used by developers when siting wind-related infrastructure. As additional data become available, we will continue to refine our "risk maps."

Issue. The Service received numerous comments regarding the use of eBird Status and Trends relative abundance products to create the relative abundance map. Some commenters expressed concern that use of eBird data would underestimate eagle abundance in areas inaccessible to birders.

Response. The Service recognized that data products from the Cornell Lab of Ornithology using eBird data is new to many. It is important to distinguish that the data products the Service is using are distinct from raw eBird data. We consider the products from the Cornell Lab of Ornithology to be currently the best available science for developing a nationwide approach to permitting. We recognize and acknowledge the uncertainties that are included with this method, such as areas where raw eBird data has limited reporting. However, the Cornell Lab of Ornithology eBird Status and Trends relative abundance products use machine learning to fill in these gaps based on the models' ability to relate the eBird observations to environmental predictors derived from global remote sensing data. For example, reliability of species distribution model

predictions can be increased for unsampled locations and times by relating environmental predictors to observed occurrences or abundances. This approach allows us to predict abundance in places that may not be frequented as often (or at all) by eBird users.

Issue. Several comments suggested we use information from other datasets (e.g., migration counts, telemetry studies, roost registries, USGS breeding bird survey, Audubon Christmas Bird Count, and the Midwinter Bald Eagle Survey) to supplement and improve maps either in addition to or as part of the eBird models.

Response. The Service agrees that the best information should be used to determine eagle relative abundance. To implement general permits, the Service must regulate at the national scale, which is why this regulation relies on data products from the Cornell Lab of Ornithology. The Service intends to incorporate other data into our mapping efforts, as appropriate. However, it will take time to review each dataset, including its assumptions and biases, and incorporate those data into mapping efforts in a meaningful way and at appropriate scales. We welcome additional information and data that could help with risk mapping and any investment in data integration efforts.

Issue. We received comments requesting that the Service further stratify relative abundance thresholds according to differences in geography (e.g., northern and southern for bald eagles and eastern and western for golden eagles).

Response. The Service considered further stratification and the creation of separate relative abundance criteria for each eagle species preceding the public comment period. However, adding additional strata would have changed the scale at which the relative abundance is evaluated and would have added significant complexity to the general permit program for wind energy facilities. Thus, we elected not to incorporate these changes.

The Service will update the map and relative abundance thresholds periodically. In the FEA, we suggested every 5 years or different intervals if information suggests

shorter or longer intervals are more appropriate. Between updates, the Service will consider any suggestions for better and more effective ways to map relative eagle abundance.

General Permits

Issue. One commenter indicated that they thought the proposed rule placed too much emphasis on general permits. Previously, all eagle take was permitted with specific permits.

Response. This rule emphasizes general permits because that is the provision that is being introduced with this rulemaking. The Service has retained the specific permit approach and provisions. In this rulemaking, the Service has created general permits as an alternative approach to obtaining eagle take authorization for projects that meet eligibility criteria. The purpose of general permits is to simplify and expedite the permitting process for activities for which the Service has well-established avoidance and minimization measures and that have relatively consistent and low risk to eagles. The regulations are based on the well-established avoidance, minimization, and compensatory mitigation measures that the Service has been implementing as permit conditions for the past 14 years. This approach allows us to confidently authorize take consistent with the preservation standard established by the Eagle Act and implementing regulations without requiring Service review prior to issuance. We will continue to refine the general permit approach and incorporate public input on eligibility criteria for all general-permit categories included in this rule to ensure that general permits effectively simplify and expedite the permit process for eligible projects while meeting the preservation standard.

Issue. Many comments recommended that the Service allow project proponents to apply for a separate permit for bald and golden eagles, as opposed to requiring coverage for both species.

Response. In reviewing comments, the Service realized we did not sufficiently explain in the proposed rule that the mitigation requirements are specific to that EMU and proportional to golden eagle abundance in the EMU. Commenters expressed concern that projects in the East, where golden eagle use of wind projects is seasonal and generally relatively low, would be paying to compensate for authorized golden eagle take in the West, where golden eagle use of wind projects can be relatively high. This is not the case. Projects in the Atlantic and Mississippi EMU have a lower golden eagle mitigation rate that is commensurate with the generally lower risk of golden eagle take in those EMUs. Similarly, projects in the Central and Pacific EMUs will be required to pay a higher compensatory mitigation rate for golden eagles, commensurate with the generally higher risk of golden eagle take there. There is a small amount of additional mitigation required in all EMUs, to provide funds if a LAP threshold is exceeded and mitigation is necessary for the program to remain consistent with our preservation standard. These details are covered in the Final Environmental Assessment associated with this rulemaking.

Between the proposed and final rule, the Service again analyzed the possibility of authorizing general permits by species and did not select that approach at this time. While seemingly a straightforward request, separating the species introduces uncertainty, which increases the risk and complexity of general permits. To meet the preservation standard, the Service estimates general permit mitigation requirements based on enrollment and has no basis for predicting how many projects will opt for coverage of one species versus both. The Service would effectively need to develop separate general permits for each species, including corresponding eligibility thresholds, eligibility maps, mitigation costs, and perhaps monitoring standards. In the interest of keeping general permits easy to apply for and implement, the Service retained the requirement that all general permits authorize take of both eagle species. The Service will continue to review this approach in future rulemaking.

To illustrate the mitigation costs that will be required under general permits and how they differ across project sizes and across EMUs, consider two hypothetical projects: one with 30 and one with 100 project turbines, all turbines having a 95.7m rotor diameter. Both projects are eligible for a general permit and are located in the Atlantic/Mississippi EMU (where general permit mitigation rates for golden eagles are the lowest). We will also consider those same two projects as being eligible for general permits in the Pacific EMU (where general permit mitigation rates for golden eagles are the highest). The 30-turbine project in the Atlantic/Mississippi EMU would be required to mitigate for 0.20 golden eagles and 0.06 additional eagles (LAP mitigation), or 0.26 total eagles, every 5 years. That same project in the Pacific EMU would be required to mitigate for the take of 0.42 golden eagles and 0.06 additional eagles (LAP mitigation), or 0.48 total eagles, every 5 years. The 100-turbine project in the Atlantic/Mississippi EMU would be required to mitigate for 0.66 golden eagles and 0.20 additional eagles (LAP mitigation), or 0.86 total eagles every 5 years. That same 100-turbine project in the Pacific EMU would be required to mitigate for 1.40 golden eagles and 0.20 additional eagles (LAP mitigation), or 1.60 total eagles every 5 years.

These two hypothetical projects illustrate the relatively low cost of obtaining golden eagle take coverage for projects that are eligible for a general permit, and especially the lower cost for smaller projects and projects in the East, where golden eagle presence is seasonal and they are generally less abundant than in many parts of the West. We are hopeful that general permit applicants who think their risk to golden eagles is low will view this relatively low mitigation cost as worth the price of incidental take authorization for golden eagles, in the event such take should occur. If applicants wish to receive a permit for only one eagle species, they may apply for a specific permit.

Issue. Several comments expressed concern with regard to potential suspension or termination of the general permit program, including a suggestion that suspension or termination should be subject to public notice and comment prior to finalization.

Response. The Service recognizes the uncertainty that a potential suspension or termination causes. Suspension or termination of general permitting is an important aspect to allow the Service to respond quickly in the event of sudden changes in eagle populations at the LAP or EMU scale; however, it is not a step the Service would take lightly and without a notice and comment process.

Regulations currently allow for the revocation of a permit if "the population(s) of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population" (50 CFR 13.28(a)(5)). The Service will regularly evaluate whether the authorized take of bald eagles and golden eagles under general permits remains compatible with the preservation of eagles. If the Service finds that issuance of general permits in a particular LAP or EMU is not compatible with the preservation of bald eagles or golden eagles, we would first consider adding additional precautions to the permitting program through rulemaking. Rulemaking requires public review and comment periods. However, the Service is preserving, as a last resort, the option of suspending general permit issuance locally or nationally after publishing a notice in the *Federal Register*. This notice may include an opportunity for the public to comment on next steps. If the Service suspends general permitting, take currently authorized under a general permit remains authorized until expiration of that permit, unless the permittee is notified otherwise.

Issue. Some commenters asked us to explain how "low effects" are determined for general permits.

Response. Public comment indicated that the Service's intent was not clear in the usage of the phrase "low effects." We have modified the text to instead reference "low risk." General permits simplify and expedite the permitting process for activities that have relatively consistent and low risk to eagles and well-established avoidance, minimization, and compensatory mitigation measures. For wind energy facilities, projects that have low risk will be determined by the relative abundance of eagles and the proximity of wind turbines to nest locations. For other general permits, the Service considers the implementation of the well-established avoidance and minimization measures to result in those projects being low risk to eagles.

Guidance

Issue. Several commenters requested more information regarding guidance documents that the Service plans to develop.

Response. The Service is working on internal procedures, external outreach, and guidance documents to help the public understand and comply with these new regulations. In developing guidance, the Service will follow standard Federal guidance practices. All regulatory requirements are included in the rule. Guidance documents provide a step-down from the rule that explain and clarify the Service's expectations on how to meet regulatory requirements.

Monitoring

Issue. While many commenters were supportive of the removal of third-party monitoring, we received comments in support of retaining this provision.

Response. The third-party monitoring requirement has proven impracticable or impossible to implement at some projects for a variety of factors, including health, safety, liability, and access issues for project sites that are leased from multiple private landowners. These factors have created a barrier to obtaining a permit. The Service reviewed the purpose of third-party monitoring and determined in most circumstances it

is sufficient to rely on the requirement that the permittee must certify that the information submitted is complete and accurate to the best of their knowledge and belief, subject to criminal penalty for supplying false information. The Service concluded that the existing penalties for false reporting under eagle take permits will be enough to dissuade most permittees from intentionally providing inaccurate reports. We retain the ability to require third-party monitoring on a case-by-case basis for specific permits, particularly if we have ongoing compliance concerns.

Issue. Commenters expressed concern over the amount of money the Service was proposing to spend on monitoring.

Response. The Service recognizes the tradeoff between spending money on monitoring or on compensatory mitigation. Monitoring can be expensive, and it may not be immediately clear how more monitoring benefits eagle preservation. The benefit of compensatory mitigation is more straightforward. While extensive monitoring has occurred at numerous wind projects, it remains difficult to draw programmatic, cross-project conclusions. Monitoring in a manner that allows for programmatic conclusions is critical to ensure implementing these new regulations will be compatible with eagle preservation.

However, based on public comment, the Service reviewed its proposed approach to monitoring. We determined that we can accomplish monitoring goals under general permits with concurrent fatality monitoring, which will be required under general permits, and without additional monitoring performed by or contracted by the Service. In the final rule, we require concurrent monitoring conducted according to Service protocols by project operations and maintenance staff, which will be sufficient to meet the Service's monitoring needs, provided there is sufficient participation in wind energy general permitting. We continue to require an administration fee, a portion of which will be used to validate the concurrent monitoring approach and analyze monitoring data.

Issue. We received comments that expressed concern over the removal of the required 5-year check-ins.

Response. The purpose of 5-year review is to update take estimates and related compensatory mitigation for the subsequent 5-year period. It also provides the Service with an opportunity to amend the permit to reduce or eliminate conservation measures or other permit conditions that prove to be ineffective or unnecessary. The purpose of these reviews does not change with this rulemaking. However, the 5-year requirement has introduced unintended uncertainty which, according to public comment, has reduced participation in eagle take permitting under the 2016 regulations. It has also resulted in timing issues, where post-construction monitoring or other data is available off-cycle from the 5-year timing (e.g., year 3 or 4) but cannot be used until the scheduled check-in. Instead, check-ins may now be initiated by the permittee or the Service in response to events that warrant review, for example, updating fatality estimates and associated compensatory mitigation requirements or revising permit conditions to reflect the best available science.

Issue. We received comments stating that our current surveys are not sufficient to adequately estimate eagle population numbers and that mortality data reporting is voluntary and unreliable.

Response. The Service uses the best available science in ensuring that general and specific permits are consistent with the preservation of eagles. The Service has conducted aerial surveys for both bald eagles and golden eagles relatively recently and consider these survey efforts adequate to estimate populations of both species within applicable parts of their range. The Service agrees that voluntary reporting of mortality data is unreliable. With this rulemaking, the Service improves voluntary reporting at wind projects in two ways. First, through increasing participation in permitting and prescribing the concurrent monitoring protocol all projects use, the Service expects improved

quantity and quality of eagle fatality data at wind projects. Second, through the collection of an administration fee, the Service can direct funds as needed to ensure permitting is consistent with the preservation standard, including by survey populations and by analyzing project-specific mortality data.

Issue. Commenters felt that monitoring related to disturbance take and nest take should not be required, specifically in instances where the activity does not directly take eagles, as with communication towers.

Response. Unlike permits that authorize the incidental injury or death of eagles, monitoring required under nest take and nest disturbance permits is intended to detect breeding outcomes during current and subsequent nesting attempts and, if appropriate and practical, document if eagles breed again at their original or any new nesting location. The loss of breeding productivity constitutes take, as it prevents eagles from being added to the population. Monitoring requirements allow the Service to more accurately account for authorized take against our established species-specific take limits and, over time, may allow us to qualify or quantify the effectiveness of permit conditions.

Nest Disturbance

Issue. Comments regarding nest disturbance primarily focused on the buffer distances set for general permits, including those for in-use and alternate nests, and advocated for distances based on the level of tolerance to disturbance.

Response. By specifying distances in our bald eagle nest disturbance general permit, we are not suggesting that all activities within these distances must apply for a permit. Rather, we are setting a standard that only those activities listed within the final rule (§ 22.280(b)) within these distances can receive a general permit. This standard is intended to prevent project proponents applying for unnecessary permits for activities beyond these distances that are unlikely to disturb breeding bald eagles. Further, the specific and general permits for nest disturbance are not a prerequisite to carrying out

activities or starting projects. Instead, they cover any disturbance that may result as an unintentional consequence of an activity. If an individual or entity assesses that their activities are unlikely to disturb breeding eagles, they do not need the Service's consent or concurrence to proceed, though they may be held liable if their activities do ultimately cause disturbance.

The Service acknowledges the growing body of evidence demonstrating that some portions of the bald eagle breeding population demonstrate increased tolerance to human activities. Our standards under the nest disturbance general permit reflect this consideration. We use the 330- and 660-foot distances for bald eagles because we are generally unconcerned with activities beyond these ranges, and we discourage proponents from applying for permits where best available science suggests they are unnecessary. Within those distances, project proponents may assess their relative risk to eagles (e.g., whether or not a similar activity is or has occurred closer to the nest) and determine whether or not to apply for a permit.

Regarding alternate nests, we agree that, by definition, activities at these nests cannot expose breeding eagles to sensory disturbance, as the eagles are not present. However, as the National Bald Eagle Management Guidelines (2007) note, alterations to the nest site and surrounding habitat may discourage eagles from breeding when encountered by eagles returning to that nest site. We will continue to update the National Bald Eagle Management Guidelines as well as develop similar guidelines for golden eagles.

Issue. We received requests for a regulatory authorization for State wildlife agencies for land-management activities that may improve eagle-nesting habitat, including prescribed fire and mowing.

Response. The Service acknowledges the usefulness of regulatory authorizations; however, we do not consider regulatory authorizations an appropriate mechanism to

authorize the mortality or injury of bald eagles or golden eagles at this time. Most land-management activities, such as alteration of shorelines, alteration of vegetation, and prescribed burns, are eligible for general permits for eagle disturbance take. General permits for disturbance caused by agriculture, mining, and oil and gas operations are not available at this time. We have received permit requests for these activities infrequently, thus we have not yet developed standard avoidance and minimization measures. Operators of these and other activities may apply for specific permits. As we gain more information on the effects of these activities and identify effective avoidance and minimization measures, we may in future rulemakings add general-permit regulations for these and other activities.

Issue. Commenters asked whether a single general permit authorizes several types of disturbance or whether a separate general permit will be needed for each type of disturbance that could occur.

Response. Consistent with our current approach to permitting, a single permit for disturbance of bald eagle nests can authorize disturbance of a nest from multiple sources of disturbance of a single project or operation. For example, a general permit could authorize disturbance from land clearing, external construction, blasting, and operations and management activities associated with one project. The bald eagle nest disturbance permit is a "one permit, one nesting territory" system that simplifies our bald eagle population management tracking and reduces the amount of monitoring we require from permittees.

Issue. Commenters also expressed the desire for one permit for all bald eagle disturbance associated with a given activity for the 5-year permit term.

Response. Allowing coverage for an unspecified number of nests and ad hoc accounting of effects would hinder our ability to ensure take is consistent with the preservation standard established by the Eagle Act and implementing regulations.

Individuals or entities that want to obtain coverage for disturbance of multiple nesting territories may apply for a specific permit.

Nest Take

Issue. Comments related to nest take centered on the creation of general permits and the lack of Service review of those permits.

Response. General permits are generally limited to three scenarios: emergency circumstances, health and human safety concerns, or nests on human-engineered structures. These situations, such as wildfire hazard and structural failure, often pose risks to both the nest and for people. In these situations, it is often imperative that the permit be issued as quickly as possible, as doing so often reduces the risk or effects to eagles. The Service also has been implementing permits for these activities since 2009 and has well-developed permit conditions with avoidance and minimization measures. The expedient processing and standardized approach make these permits a great fit for general permits.

The Service will review these permits. In reviewing bald eagle nest take permits at the program scale, given the current and expected number of permits issued and the status of the bald eagle, the Service is confident that issuance is consistent with the preservation of the bald eagle. We will continue to review nest take at the program scale to ensure that general permit issuance is consistent with the preservation of bald eagles. The Service will also audit a percentage of nest take permits, to ensure that the applicants meet eligibility criteria and comply with permit conditions. We will work to address any compliance concerns with individual permittees.

Issue. Some commenters requested that a single general permit for nest take authorize the take of multiple nests from a single project or across a defined area.

Response. Issuing one general permit for each nest allows the Service to efficiently track take. If the Service allowed coverage for an unspecified number of nests, the associated ad-hoc accounting of effects would make it much more difficult for the

Service to ensure authorized take is consist with the preservation standard. Specific permits remain available for the take of multiple nests.

Issue. One commenter stated that the proposed regulation would no longer require the Service to make a finding of net benefit to eagles for nest take authorized under "other purposes." The commenter interpreted the proposed rule to state that compensatory mitigation is required only when the take exceeds the limit of the applicable EMU.

Response. Since 2009, the regulations require the finding of a net benefit to eagles for nest take authorized under "other purposes." For all nest-take requests outside of Alaska, a specific permit is required for the purposes of the Service determining whether a net benefit will be achieved by the proposed action, or, if the activity does not provide the net benefit, the compensatory mitigation proposal. The net benefit to eagles is scaled to the effects of the nest removal. The Service did include a general permit for "other purposes" in Alaska because of the scaled effects of nest removal. In Alaska, well-established permit conditions provide sufficient avoidance, minimization, and compensatory mitigation scaled to the effects of nest removal, given the robust population status of the bald eagle and the available nesting habitat.

Issue. Some entities expressed support for the creation of general permits for golden eagle nest take.

Response. The Service did not include but will continue to work to develop general permits for golden eagle nest take. The Service has issued few golden-eagle nest take permits and therefore does not have sufficient, well-established measures to create general conditions for golden eagle nest take.

Issue. One commenter suggested that authorizing the take of eagle nests to protect threatened or endangered species should apply only to bald eagles due to the golden eagle's population status.

Response. With expanding bald eagle populations, the Service foresees situations arising where the take of an eagle nest may be necessary for the recovery of threatened or endangered species. However, the Service acknowledges the tradeoffs are more complex with golden eagles. Because this is an emerging issue, a specific permit must be obtained for this type of activity. The Service added an additional precaution in that the Federal, State, or Tribal agency responsible for the species of concern must obtain the permit. The Service will assess the tradeoffs between the eagle species taken and the endangered or threatened species. The Service will consider the evidence that eagles are limiting the recovery of a threatened or endangered species and analyze whether the eagle nest removal will improve recovery for the threatened or endangered species in question. The Service will consider if issuing this permit, including required avoidance and minimization measures and compensatory mitigation, is consistent with our preservation standard at both the LAP and EMU scale. Finally, the Service will consider if other methods are feasible that have less effect on eagles but will still abate or prevent the problem. As a final protection for golden eagles, the Service may require compensatory mitigation for the take of golden eagle nests.

Permit Conditions

Issue. Commenters asked whether the provisions in the new rule would apply to entities that currently have long-term incidental take permits and entities that applied but have yet to receive a permit.

Response. Projects that have submitted an application as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], will have until August 12, 2024, to choose whether to have their application reviewed and administered under all the provisions of the 2016 regulations or all the provisions of these new regulations. Projects permitted under the 2016 regulations may continue under existing permit conditions until the permit expires. Permittees that want to modify existing permit conditions to comply

with the new regulations may contact their permitting office at any time to determine whether a substantive amendment request or a new application is most appropriate. For qualifying projects that elect to have their pending applications reviewed and administered under all the provisions of these new regulations, application fees paid prior to August 12, 2024, may be used to pay for application and administration fees required under the new regulations.

Issue. Multiple commenters expressed concerns over operations and maintenance staff conducting monitoring, suggesting that they might underreport their findings or that they would find too few available carcasses to provide useful information on eagle take.

Response. There are two aspects to this concern. The Service acknowledges the concern about staff intentionally underreporting their findings. Based on input the Service received, we predict this will be a rare circumstance and one that can be discovered and addressed with the assistance of the Office of Law Enforcement. With any permit, there will be good actors and bad actors, and the Service will address bad actors accordingly.

For the second aspect, the Service disagrees that concurrent monitoring will not provide useful information. Service analysis suggests that, on a large scale (e.g., aggregation of all general permits), concurrent monitoring will provide sufficient information over time to allow the Service to be confident that our resulting program-wide take estimates are consistent with the preservation of eagles.

Issue. A commenter requested clarification as to when an adaptive management plan is required.

Response. It is expected that wind energy project proponents will develop an adaptive management plan prior to or on obtaining a general permit. However, implementation of the adaptive management plan is required only if a certain number of fatalities are discovered at a wind energy facility. If three bald eagle injuries or mortalities, or three golden eagle injuries or mortalities, are discovered at a project during

the 5-year general permit tenure, the permittee must provide the Service with an adaptive management plan and specify which avoidance and minimization measures the permittee will implement. If an injury or mortality of a fourth eagle of that species attributable to the project is discovered, the permittee must identify and implement the avoidance and minimization measures outlined in the adaptive management plan. Adaptive management plans may be revised during the permit tenure. A copy of adaptive management plan(s) may be requested by the Service at any time as part of an audit.

Issue. One commenter asked for clarification whether circumstances impacting eagles outside of a specific permittee's control (e.g., decrease or shift in population due to disease, climatic factors, or illegal take like poisoning and poaching) could result in new obligations being imposed on a specific permit holder.

Response. Circumstances outside the permittee's and the Service's control will continue to affect eagle populations. The permittee's responsibility is to comply with the requirements of their permit. The Service's responsibility is to ensure permits issued are consistent with the preservation of eagles, including at the EMU and LAP scales. If situations arise at the EMU and LAP scale that are detrimental to eagle populations, the Service may need to act to ensure preservation of eagles, which may include programmatic changes to permits or changes to a subset of permits. Generally, we will first attempt to address these issues modifying the requirements for or restricting new permits. However, consistent with 50 CFR 13.23(b), the Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity.

Power Lines

Issue. Comments regarding eagle incidental take permits for power lines were focused primarily on the required conditions and definitions in the regulation.

Response. The Service made several improvements to the power line regulation:

1. To better align with standard industry terminology, the Service revised the term "electrocution-safe" to "avian-safe."

2. The Service clarified that power line entities are required to ensure that all poles constructed in high-risk eagle areas are avian-safe, allowing the entity to determine those areas within the parameters provided by Service guidance.

3. To address concerns regarding the siting of projects and buffer distances, we revised the conditions to read as follows: "For new construction and rebuild projects, reconstruction, or replacement projects, incorporate information on eagles into siting and design considerations. Minimize eagle risk by siting away from eagle use areas (e.g., nests and winter roosts), accounting for the risk to and population status of the species, unless this requirement would unduly impact human health and safety; require overly burdensome engineering; or have significant adverse effects on biological, cultural, or historical resources."

4. The Service modified the definition of "collision response strategy" to reflect that any risk-reduction strategies implemented post-collision should be commensurate with the collision risk. This may include no changes for one-off situations that are unlikely to reoccur. References to changes in engineering design have been removed and will instead be included in guidance.

5. Many companies were concerned that the proactive retrofit strategy would be infeasible to implement. Proactive retrofit strategies are important, as they serve as the compensatory mitigation requirement for power line entities. However, the Service also wants to ensure that requirements are feasible. The Service modified the requirement to a 50-year strategy for investor-owned utilities and a 75-year strategy for non-investor-owned utilities, with 5-year benchmarks. We also clarified that this requirement applies only to poles in high-risk eagle areas that are not avian-safe but may include other poles in the service area as well. The Service provides for delayed implementation to allow

utilities to develop proactive retrofit strategies. The Service also provides for extenuating circumstances, such as catastrophic weather, wildfire, or other events that substantively disrupt power delivery, in implementing these strategies. Finally, we note that specific permits are available for any utility that is unable to implement the general permit requirements.

6. The Service amended the conditions associated with the reactive retrofit strategy to clarify that the evaluation of the incident must be completed within 90 days and the response implemented within 1 year of the incident.

7. The Service clarified that the minimum expectation for the eagle shooting response strategy is for utilities to notify the Office of Law Enforcement in the case of a confirmed or suspected shooting. However, we will work with industry to develop other common-sense response options.

Issue. Several comments expressed concerns regarding the costs associated with implementing the avoidance and minimization measures for power lines.

Response. The fees and costs to applicants to participate in the permitting framework have been updated and are included in the FEA. See tables 5–1 (No Action Alternative), 5–4 (Alternative 2), 5–10 (Alternative 3), and 5–14 (Alternative 4). These tables comprise all fees and costs that a permittee is expected to accrue in applying for and complying with all permits. As stated in section 5.6.5 of the FEA, the Service assumes that power line entities most likely to apply for a permit are entities that have a risk of taking eagles and are already retrofitting power poles, thus already meeting this requirement. Therefore, the Service does not anticipate an added cost to power line entities for the retrofit requirement.

Specific Permits

Issue. Several commenters expressed concerns with delays in specific permit issuance review and requested that the Service further streamline the specific permit process.

Response. The Service will be implementing several approaches to improve efficiency in the specific permit process. One approach codified in this rulemaking is the creation of new tiers for reviewing specific permit applications. These tiers separate the specific permit applications that require extensive review and negotiation from those that do not, creating a streamlined approach and corresponding reduced application fee for projects that meet the new Tier-1 criteria.

In addition to creating a tiered approach allowing faster processing for Tier-1 specific permits, the Service will institute a procedural change to further expedite review of some projects. To date, 42 eagle incidental take permits have been issued to wind energy projects across the country. While all permit decisions were analyzed in an EA or, occasionally, an EIS, our experience with issuing these permits has led us to conclude that a categorical exclusion would be appropriate for most permit decisions because relevant environmental impacts for most decisions have already been analyzed in the 2016 PEIS and extraordinary circumstances are unlikely to apply, given the general impacts we disclosed in our NEPA analyses for previously analyzed decisions. Specific permit decisions we expect to categorically exclude from further NEPA analysis must, at a minimum, include the following criteria: (1) Estimated annual eagle take, after compensatory mitigation (if required), is below EMU take limits; (2) estimated annual eagle take, combined with other authorized take in the vicinity, does not exceed five percent of the project-specific Local Area Population; (3) permit conditions do not have the potential to cause effects on cultural resources or other historic properties protected by the National Historic Preservation Act; (4) permit issuance will not be precedent setting; (5) the permit decision and permit conditions will not be based on take estimates

produced from new or unpublished methods or models; and (6) no other extraordinary circumstances that prevent application of the categorical exclusion exist. If the Service determines categorical exclusion is not appropriate, the Service will initiate an EA or EIS in accordance with NEPA. To ensure linear and efficient progress, substantive Service work on these documents will begin after the applicant and the Service have completed negotiations on the conditions of the permit.

Tribal Concerns

Issue. There were concerns expressed regarding the removal of protections from § 22.85 of the existing regulations, including the following:

- Evaluation of cultural significance of a local eagle population;
- Finding of a practicable alternative to nest removal;
- Finding of a net benefit to eagles and subsequent compensatory mitigation;
- Determination of whether suitable nesting and foraging habitat is available to accommodate eagles displaced by nest removal; and
- Finding that permits will not preclude higher priorities, including Native American Tribal religious use.

Response. The Service did not intend to remove the protections listed above. Many were moved to other sections or condensed with other regulatory language with the intent to provide clarity. However, comments indicate this rearrangement did not improve clarity. We have re-expanded the regulatory language or relocated the language to the expected locations.

Issue. Several comments from Tribes focused on the creation of general permits, particularly for nest take and nest disturbance.

Response. Regarding opposition to general permits for nest take and nest disturbance, the Service notes that these permits are only for emergencies, for health and safety issues, or on human-engineered structures. In most cases, these situations are a risk

to both eagles and humans. The qualifications for specific and general permits for nest disturbance and nest take are comparable to the standards established in 2016. Additionally, the conditions for our general permits will be based on the conditions the Service commonly requires in its current specific nest take and nest disturbance permits. While we are aiming to make applying easier for project proponents by simplifying the administrative process, we are not making permits easier to secure in the sense of relaxing requirements to protect eagles.

The standards we are establishing around general permits for take and disturbance of bald eagle nests will assure continued preservation of this species for two reasons: First, because those standards are based on the knowledge and experience we have gained from issuing and monitoring hundreds of permits over nearly two decades, and second, a growing body of scientific literature has demonstrated that breeding bald eagles show a higher tolerance and resilience to disturbance and other impacts than previously thought. We do not have comparable data or experience in managing golden eagle nests and have therefore not opened the general-permit program up to removal or disturbance of golden-eagle nests in this rulemaking.

We acknowledge and appreciate Tribal concerns regarding the degree of oversight required for general permits when compared to specific permits. As part of this final rule, we have added a new eligibility restriction for nest-disturbance and nest-take activities in Indian country, as defined in 18 U.S.C. 1151, after recent consultation with Tribes. General permits will not be available for nest take or nest disturbance for nest structures located in Indian country, unless requested by the Tribe itself. Furthermore, the Service will make publicly available a list of all general permits issued, which Tribes can review. We will be implementing an audit program to ensure that those participating in our general permits are truly eligible and are complying with the permits' terms. For specific

permits, the Service will continue to notify Tribes regarding activities conducted on their lands.

Issue. Many Tribes believe the new regulations remove opportunities for Tribal engagement and bypass government-to-government consultation, especially for potential impacts to Tribal lands or resources.

Response. Throughout all phases of the rulemaking process, the Service has encouraged and continues to welcome government-to-government consultation. In addition, we conducted multiple information sessions specifically for Tribes. The Service acknowledges our Federal Tribal trust responsibilities and deeply honors our sovereign nation-to-nation relationship with Tribes. To date, one Tribe requested government-to-government consultation regarding this regulation. The Service made modifications to the final rule based on this consultation. We invite bilateral government-to-government consultation at any time.

Wind Energy

Issue. Some commenters expressed concerns about the cumulative impacts of wind energy projects on the landscape on eagle populations, particularly at the LAP scale.

Response. The Service has considered at length how to implement general permits for wind projects that are consistent with the regulatory preservation standard at the LAP scale. The Service will use all available information and the best available tools to estimate where authorized take rates may be the highest relative to our estimated eagle-population densities. Further, we will require Service-approved in-lieu fee programs to allocate a small amount of compensatory mitigation from each general permittee to be available to address LAP concerns. With these extra mitigation funds, in-lieu fee programs can deploy compensatory mitigation for eagles in areas where LAP thresholds are close to being exceeded (or have been exceeded). If, after expenditure of these funds,

the Service still determines that general-permit issuance is not consistent with the preservation standard, we retain the right to amend, suspend, or revoke general permits in order to safeguard local eagle populations.

Issue. We received comments regarding the take thresholds associated with wind energy general permits, including comments that such thresholds are not necessary for bald eagles, that such thresholds may cause the general permit program to fail, and requests to remove species-specific take thresholds.

Response. The Service calculated the take threshold for bald eagles and the take threshold for golden eagles to ensure general permitting is consistent with the preservation of both eagle species. The calculated threshold for each species ended up being four eagles. Ensuring take is compatible with eagle preservation primarily depends on the take rates for each eagle species, not the combined take rate of eagles in general. Therefore, there are separate take thresholds for each species, not a combined threshold for "eagles." Finding four golden eagles creates a fatality estimate similar to what we would expect to see at an average-sized project in the specific-permit zone. Finding four bald eagles would produce a similar result. However, a project that discovers two dead bald eagles and two dead golden eagles during one permit term would be taking eagles at lower rates than expected under specific permits and, thus, a general permit is appropriate.

In response to comments that general permit take thresholds are not necessary for bald eagles, we reiterate that the goal of these thresholds is to ensure that the Service has appropriately accounted for the level of eagle take for projects receiving general permits in a way that is consistent with our preservation standard and ensure that projects with relatively high risk to eagles (of either species) are paired with the most appropriate management actions that are commensurate with higher or uncertain take rates. Exceeding the discovered eagles thresholds established by these regulations is not a

violation of the permit. Rather, a project that discovers more than established thresholds indicates that there are potentially unique circumstances at the project site that would benefit from Service engagement through the specific permit process. The specific permit process allows for Service review of site-specific data and collaboration with the permit applicant on development of additional data collection and avoidance and minimization approaches appropriate for the project to ensure permit issuance criteria are met and that authorized take is consistent with our preservation standard, particularly at the local scale. This is not possible under an automated general permit process.

In response to the comment that the general permit program is likely to fail, our analysis of take in the general permit zones suggests that it should be a rare wind project in the general permit zone that takes eagles at rates high enough to discover four or more bald eagles within a 5-year period. Our estimates for even large wind projects in the general permit zone are substantially lower than estimated bald eagle fatalities at a similar-sized project in the specific permit zone, on which the four-eagle threshold was based. Thus, we expect that only a small proportion of projects receiving general permits will exceed the bald eagle threshold.

Issue. The Service received multiple comments regarding the use of Evidence of Absence software (Dalthrop et al. 2017) for specific permits; many of the comments requested that the Service eliminate the use of Evidence of Absence software as a compliance measure. Instead of Evidence of Absence software, one commenter suggested the Service should instead assess compliance based on the actual number of eagles found during fatality monitoring.

Response. The Service recognizes the limitations of Evidence of Absence software. Therefore, on specific permits the Service will authorize incidental take of bald eagles, golden eagles, or both but will not specify a take limit. The Service will continue to use the best available statistical programs to evaluate and estimate mortality rates.

Currently Evidence of Absence software is the best estimator available to handle zero-inflated data (i.e., data that has an excess of zero counts). The Service will use estimated mortality rates to calculate compensatory mitigation requirements. The Service will also use estimated mortality rates to estimate the number of eagles authorized for internal tracking purposes. The Service will use estimated mortality rates for eagles instead of number of eagles found, as this approach is more appropriate for understanding how permit issuance effects eagle populations.

Issue. Multiple comments expressed disapproval of the Collision Risk Model (CRM), with some stating the lack of predictability with the CRM results in increased costs and timelines.

Response. The Service recognizes that, as with all models, we must continue working to improve the CRM. However, the CRM represents the best science available today. The CRM was developed using site-specific and species-specific eagle exposure and eagle collision data provided from wind energy facilities across the Nation and represents the best available data to assess risk to eagles by turbines. The Service's CRM evaluates risk across projects in a consistent and predictable way while accounting and managing for uncertainty. The Service uses site-specific data to inform the CRM and have the estimate reflect risk for a given project while accounting for variability in both eagle use and collision risk. In the 2016 eagle rule and PEIS, the Service described the adaptive management framework for authorization of eagle take. At wind facilities, the Services uses monitoring data—consistent with methods outlined in the Land-Based Wind Energy Guidelines (*www.fws.gov/media/land-based-wind-energy-guidelines*)—to inform the initial take authorization for a permit. We use monitoring data collected under the permit to update the estimates over time. Any mitigation paid by the permittee initially that exceeds updated take estimates is credited forward, reducing future mitigation burden.

The Service can evaluate alternative models as part of the adaptive management framework over time; however, to ensure consistency and adherence to management objectives, initial permit estimates are based on our peer-reviewed modeling framework. Monitoring can be designed, in coordination with the Service, to compare updates to the CRM modeling framework to results from other models. Any comparison would need to evaluate the model's ability to quantify uncertainty. Similarly, the Service's eagle permit biologists consider all site-specific data available when thinking about potential avoidance and minimization measures that may reduce risk at a given project, but rely on the CRM and consistent, representative monitoring data to represent risk across all permitted projects. Site-specific data (e.g., mortality monitoring) without use of a model designed to extrapolate beyond the monitoring period does not appropriately account for variability in eagle risk.

The Service will use the CRM to calculate eagle fatalities for internal tracking and calculating mitigation requirements for specific permits. While the Service generally does not recommend that project proponents propose an alternative CRM, under the new rule Tier 2 specific permittees with a reimbursable agreement may request consideration of an alternative CRM. The Service will review these requests on a case-by-case basis and anticipates requiring, at a minimum, publication of the alternative CRM in the *Federal Register* for public review at the cost of the applicant, including quantification of the uncertainty of the model (i.e., confidence in the estimate). The Service may also require third-party monitoring to validate the model.

Issue. Commenters requested clarification on take limits associated with the permits.

Response. Wind energy general permits and specific permits will not have a take limit associated with them. Wind projects with a general permit cannot discover four or more bald eagles or four or more golden eagles within a 5-year permit term and remain

eligible for another general permit in the future. We will continue to estimate take at wind projects for both general and specific permits to ensure consistency with the preservation standard and, for specific permits, determine required compensatory mitigation. For specific permits, the Service will require additional compensatory mitigation if it concludes (through data received in annual reporting or otherwise) that permitted take exceeds the level of compensatory mitigation already provided. If we determine that take at a permitted facility is not consistent with our preservation standard, we will conduct an administrative check-in and likely require amendments to the permit.

Required Determinations

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

Executive Order 12866 (E.O. 12866), as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rulemaking action is significant.

Executive Order 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, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). 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.

Costs and benefits of the rule can be broken down into three categories; impacts to permittees, impacts to the Service, and societal impacts. Impacts to permittees include permitting costs as described in Table 1, below, as well as other unquantifiable costs such

as the costs associated with reading and understanding the rule, time spent on permit application, and costs associated with training staff on the requirements of the rule. Benefits to permittees include the ability to acquire a permit and eliminate the risk of enforcement associated with incidental eagle take. Where the costs of the proposed permit exceed the benefits associated with the risk of enforcement (e.g., projects with low risk of incidental eagle take or projects with perceived low risk of legal enforcement), we do not expect entities to apply for a permit. Impacts to the Service include costs associated with processing and auditing these permits; these costs are anticipated to be less than the benefits of anticipated reductions in staff time associated with processing these permits, as general permits can be issued without the need for Service interaction. Societal impacts include benefits associated with an anticipated increase in eagle populations associated with reduced incidental take and beneficial activities associated with compensatory mitigation requirements; no societal costs are assumed.

Table 1 below shows the permit count and cost under the 2016 regulations, the expected number of permits and average permit costs under this rule, and the estimated marginal costs and impacts between the 2016 regulations and this rule. Additional analysis is available in the supporting FEA.

Table 1—Average Annual Cost and Permit Count Comparison Between 2016 Regulations and This Rule

Type of Permit	Factors	2016 Regulations		This Rule		Marginal Cost Change from 2016 Regulations to this Rule (savings in parentheses)
		Number of Annual Permits	Fees and Costs per Permit	Number of Annual Permits	Fees and Costs per Permit	
Wind Energy Project (General)	Permit Applicati	Note: the current framework does not include wind energy general permits. The corresponding existing type of permits are wind energy specific permits, the numbers and costs of which are included below.		22 (Tier 1); 52 (Tier 2)	$1,000	$1,000
	Administration Fee				$2,500 (Tier 1) $10,000 (Tier 2)	$2,500 (Tier 1) $10,000 (Tier 2)
	Average Compensatory Mitigation Costs				$37,200	$37,200
	Average Monitoring Costs				$0	$0
	Average Cost Per Permit				$40,700 (Tier 1) $48,200 (Tier 2)	$40,700 (Tier 1) $48,200 (Tier 2)
	Average Annual Cost to Industry				$3,401,800	$3,401,800
Wind Energy Project (Specific)	Permit Application Fee	6	$36,000	6	$18,000 (SP Tier 1) $26,000 (SP Tier 2) $82,000 (SP Tier 2 with reimbursable agreement) (assumes that the average project will be a SP Tier 2 project)	($10,000)
	Administration Fee		$8,000		$10,000	$2,000
	Average Compensatory Mitigation Costs		$960,000		$1,080,000	$120,000
	Average Monitoring Costs		$1,100,000		$1,100,000	$0
	Average Cost Per Permit		$2,104,000		$2,216,000	$112,000
	Average Annual Cost to Industry		$12,624,000		$13,296,000	$672,000
Power Line Entities (General)	Permit Application Fee	Note: the current framework does not include power line entity general permits		4 (Tier 1)0.2 (Tier 2)	$1,000	$1,000
	Administration Fee				$2,500 (Tier 1) $10,000 (Tier 2)	$2,500 (Tier 1) $10,000 (Tier 2)
	Average Power Pole Retrofit Costs				$0	$0
	Average Cost Per Permit				$3,500 (Tier 1) $11, 000 (Tier 2)	$3,500 (Tier 1) $11, 000 (Tier 2)
	Average Annual Cost to Industry				$16,200	$16,200
Nest Disturbance (General)	Permit Application Fee	Note: the current framework does not include nest disturbance general permits. The corresponding existing type of permits are nest disturbance specific permits, the		81	$500	$500
	Compensatory Mitigation Costs				$0	$0

	Monitoring Costs	numbers and costs of which are included below			$0	$0
	Average Cost Per Permit				$500	$500
	Average Annual Cost to Industry				$40,500	$40,500
Nest Disturbance (Specific))	Permit Application Fee	96	$2,500	14	$2,500	$0
	Compensatory Mitigation Costs		$0		$0	$0
	Monitoring Costs		$0		$0	$0
	Average Cost Per Permit		$2,500		$2,500	$0
	Average Annual Cost to Industry		$240,000		$35,000	($205,000)
Nest Take (General)	Permit Application Fee	Note: the current framework does not include nest take general permits. The corresponding existing type of permits are nest take specific permits, the numbers and costs of which are included below		34	$500	$500
	Compensatory Mitigation Costs				$0	$0
	Monitoring Costs				$0	$0
	Average Cost Per Permit				$500	$500
	Average Annual Cost to Industry				$17,000	$17,000
Nest Take (Specific)	Permit Application Fee	40	$2,500	6	$2,500	$0
	Compensatory Mitigation Costs		$0		$0	$0
	Monitoring Costs		$0		$0	$0
	Average Cost Per Permit		$2,500		$2,500	$0
	Average Annual Cost to Industry		$100,000		$15,000	($85,000)
Average Annual Permits Counts and Costs[4]		**142**	**$12,964,000**	**219**	**$16,821,500**	**$3,857,500**

The maximum total estimated annual cost to industry for this rule is $16,821,500. The maximum total estimated cost over 5 years for all permits is $84,107,500. The average annual equivalent cost is $13,794,294 with a total net present value cost of $68,971,471 using a 7 percent discount rate. The average annual equivalent cost is $15,407,509 with a total net present value of $77,037,544 at a 3 percent discount rate. These discount rates represent a range of values that the Office of Management and Budget recommends as a Federal-program discount rate for benefit-cost analysis for most Federal programs. The above costs represent the total gross cost of the rule and do not reflect the costs associated with the existing regulations. This rule is expected to create an estimated maximum of $3,857,500 in new costs annually and $19,287,500 in new

marginal costs over 5 years, as compared to the 2016 regulations. These estimates represent the maximum quantifiable costs; they do not represent other costs that may be incurred, such as the costs for entities to read and understand the rule, time spent on permit application, and costs associated with training staff on the requirements of the rule. However, these new marginal costs are more than offset by savings to both industry and the Service in terms of reduced Eagle Act enforcement costs and no requirements for preconstruction monitoring under general permits and the removed requirement for third-party monitoring under specific permits. The anticipated 74 wind-energy projects and 4 power-line entities that annually receive and comply with a permit will no longer be subject to potential enforcement under the Eagle Act, which can result in substantial legal costs, nor will they incur costs to estimate and reduce their legal risks, which may include biological surveys and hiring staff and attorneys. While this total reduced enforcement cost is not quantifiable due to limited data, the Service expects that the savings exceed the total new costs associated with this rule. The costs of this rule are also offset by the ecosystem-services benefits associated with potential decreased take leading to increased populations of eagles.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121, 201, 110 Stat. 847)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). We examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act and certify that this action will not have a significant economic impact on a substantial number of small entities. This analysis first estimates the number of businesses potentially impacted and then estimates the economic impact of this rule.

To assess the effects of this rule on small entities, we focus on the proposed general and specific permit approach for incidental take by wind-energy facilities and electric-transmission companies. We also address nest disturbance and nest take permits for businesses in other sectors, such as housing and building construction, railroads, timber companies, pipeline companies, and gold ore mining.

Using the North American Industry Classification System (NAICS), the U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. While the NAICS was updated in 2023, we are using the 2017 NAICS to best compare to the most recent 2017 Statistics of U.S. Businesses (SUSB) tables that contain information on receipts. Relevant 2017 NAICS small business definitions include:

- fewer than 250 employees for "Wind Electric Power Generation" (NAICS sector 221115),
- fewer than 1,000 employees for "Electric Power Distribution" (NAICS sector 221122),
- fewer than 500 employees for "Logging" (NAICS sector 113310),

 less than $36.5 million of average annual receipts for “Construction of Buildings” (NAICS sectors 236115, 236116, 236117, 236210, and 236220),

 less than $36.5 million of average annual receipts for “Highway, Street, and Bridge Construction” (NAICS sector 237310),

 less than $15.0 million of average annual receipts for “Support Activities for Rail Transportation” (NAICS sector 488210), and

 fewer than 1,500 employees for “Gold Ore Mining” (NAICS sector 212221).

Table 2 indicates the number of businesses within each industry and the estimated percentage of small businesses impacted by this rule.

Table 2—Distribution and Potential Impact to Businesses[1]

NAICS code	Description	Total Firms/Establishments		Small businesses potentially impacted by this rule	
		Number of all businesses	Number of small businesses	Number	Percentage
221115	Wind Electric Power Generation[2]	459	135	22	16
221122	Electric Power Distribution[3]	1,233	1,169	0	0
113310	Logging[4]	7,992	7,977	up to 13	<1
236115	New Single-family Housing Construction (Except For-Sale Builders)[4]	49,215	49,143	up to 13	<1
236116	New Multifamily Housing Construction (Except For-Sale Builders)[4]	3,175	2,851	up to 13	<1
236117	New Housing For-Sale Builders[4]	15,483	15,099	up to 13	<1
236118	Residential Remodelers[4]	103,079	102,998	up to 13	<1
236210	Industrial Building Construction[4]	2,997	2,847	up to 13	1

236220	Commercial and Institutional Building Construction[4]	38,079	36,100	up to 13	<1
237310	Highway, Street, and Bridge Construction[4]	8,826	8,198	up to 13	<1
237990	Other Heavy and Civil Engineering Construction[4]	4,165	4,052	up to 13	<1
488210	Support Activities for Rail Transportation[4]	564	484	up to 13	3
212221	Gold Ore Mining[4]	147	132	up to 2	2

1. Data is from the latest Statistics of U.S. Businesses (SUSB) tables that contain information on receipts, which is from 2017.
2. The number of potentially impacted small businesses is based on the distribution of businesses by enterprise size from 2017 SUSB data tables, the total number of estimated annual permits, and the small business standards threshold from SBA.
3. Permitting will be required at a large utility scale similar to existing Special Purpose Utility permits (SPUT permits) that the Service issues.
4. We estimate that the number of nest disturbance and nest take permits will be similar to the number issued over the last 5 years: 677. The non-electric and wind power generation NAICS represent sectors that have historically requested permits. We evenly distributed the estimated total amount of disturbance and take permits across all sectors, with the exception of gold ore mining, for the 5-year period, which comes to 67 permits. Gold ore mining entities have historically applied for only 1 to 2 permits per year, or up to 10 over a 5-year period. We also assumed an evenly distributed number of permits across each year, 13, for the remainder of the sectors.

In the last 5 years (2017 through 2022), the Service has issued 26 permits to wind-energy generation facilities and 677 specific permits to other entities, which averages about 141 permits annually. For the 677 non-wind specific permits, most were issued to businesses and to government agencies, and the remaining were issued to individuals. The number of specific permits issued under this rule over the first 5 years may be higher or lower than the existing permit program under the 2016 regulations due to the creation of general permits and the remaining complexity associated with specific permits. General permits typically allow the regulated community to apply for and obtain a permit more easily, particularly when projects are designed at the outset to comply with general-permit

eligibility criteria. Specific permits are available to wind-energy-project applicants that do not meet general-permit eligibility criteria. Based on these assumptions, we estimate that the number of specific permits under this rule will be similar to the number of existing permits over the last 5 years, which is close to 30 permits. Although small, noncommercial, wind-energy facilities (e.g., single-turbine facilities connected to public buildings) could apply for incidental take permits, we anticipate that most of the applications for wind-energy facilities will be for utility-scale projects. The largest expected impacts to small businesses under this rule would be an increase in the number of permits issued to wind-energy generation facilities due to the changes being made in the application requirements and the availability of general permits and the inclusion of general and specific permits tailored to power-line entities. We expect that this rule will impact 16 percent of wind-energy generation small businesses, with the expected costs of such permits described in tables 3 (general permits) and 4 (specific permits), and a breakdown of general permits by enterprise size category in table 5.

Electric power distribution entities are eligible for both general and specific incidental take permits in the proposed regulation. However, based on the NAICS definitions, we assume that none of the potential electric power distribution permittees would be small businesses.

Businesses that apply for nest take and nest-disturbance permits typically include home construction, road construction, and various other construction projects. We assume that the number of nest take and nest disturbance permits will continue along this trend over the next 5 years. For this analysis, we evenly distributed those permits across industry sectors that best represent the NAICS industry sectors that applied for permits historically. We anticipate the number of permit applicants in those sectors would be relatively small, on the order of 1 to 13 per year for each sector, except gold ore mining, which historically applied for only 1 to 2 permits annually. As a result, this rule will

impact less than 1 to 2.5 percent of small businesses in NAICS sectors 236115, 236116, 236117, 236118, 236210, 236220, 237310, 237990, 488210, and 212221. The cost per entity for nest take and nest disturbance permitting under this rule is minimal, totaling $100 per eagle or nest, per year. The minimal cost of these permits is not expected to result in a significant impact to small businesses in these sectors, regardless of the total percentage of small businesses impacted as a whole.

As described above, the wind-energy generation industry is the only industry for which specific and general permits could result in a significant impact on small businesses. Table 3 shows the expected difference between 5-year costs for specific permits and 5-year costs for general permits for wind-energy generation facilities. Wind-energy generation facilities will pay less for a general permit compared to the costs associated with a standard permit under the 2016 regulations. The permit application fee (including costs for auditing) is reduced from $36,000 to $1,000 for a general permit. In addition, applicants will pay an administration fee of either $2,500 (Tier 1) or $10,000 (Tier 2), as compared to the existing specific permit administration fee of $8,000. Compensatory mitigation costs for general permits for a wind-energy project will average $37,200. This is a significant decrease from the specific-permit cost under the 2016 regulations of $960,000 (using our calculation from the EA of $120,000 as the cost of an eagle credit). The average costs for monitoring for a wind-energy project will be negligible, a cost savings from the specific permit monitoring cost estimates of $1,100,000 under the 2016 regulations. The total estimated cost savings between a specific permit under the 2016 regulations and a general permit under this regulation is therefore slightly over $2,000,000 per permit (depending on whether the project is a Tier 1 or a Tier 2 project). The total number of estimated permits shows an estimated overall increase in industry costs associated with permitting under this rule, but only because the

Service expects a substantial jump in participation across industry due to the improvements in the permit process and reduction in costs and time required per permit.

Table 3—Wind General Permit Costs and Savings (5-Year Costs)

Cost Category	Specific—2016 Regulations (Average)	General—This Rule (Average)	Cost Savings (Average)
Permit Application Fee	$36,000	$1,000	$35,000
Administration Fee	$8,000	$2,500 (Tier 1) $10,000 (Tier 2)	$5,500 (Tier 1) ($2,000) (Tier 2)
Compensatory Mitigation Costs	$960,000	$37,200	$922,800
Monitoring Costs	$1,100,000	$0	$1,100,000
Total Cost	$2,104,000	$40,700 (Tier 1) $48,200 (Tier 2)	$2,063,300 (Tier 1) $2,055,800 (Tier 2)

Table 4 displays the new cost for specific permits under this rule compared to the cost for specific permits under the 2016 regulations. Under this rule, entities will pay $1,080,000 for compensatory mitigation, an increase of $120,000 from the $960,000 cost under the 2016 regulations. These costs have increased due to updates in the estimated amount of required mitigation for projects in the specific-permit category. The Service may issue three types of wind-energy specific permits under this rule. Tier 1 permits are for the simplest types of projects and would require a $10,000 permit-application cost. Tier 2 permits are similar to existing specific permits and require a $26,000 permit application cost. Tier 2 with reimbursable agreement permits require permittees to pay for staff time via a reimbursable agreement above and beyond the $26,000 permit application cost. For purposes of this analysis, we assume that the average specific permit will be a Tier 2 permit with the same permit-application cost as the specific-permit structure under the 2016 regulations. Entities will continue to pay their own monitoring costs estimated at $1,100,000 over the life of the permit. As a result, the total average cost increase to entities receiving a wind-energy specific permit under this rule is $112,000.

Table 4—Wind Energy Specific Permit Costs and Savings (5-Year Costs)

Cost Category	Specific—2016 Regulations (Average)	Specific—This Rule (Average)	Cost Savings (Average)
Permit Application Fee	$36,000	$26,000	$10,000
Administration Fee	$8,000	$10,000	($2,000)
Compensatory Mitigation Costs	$960,000	$1,080,000	($120,000)
Monitoring Costs	$1,100,000	$1,100,000	$0
Total Cost	$2,104,000	$2,216,000	($112,000)

Businesses in the "wind electric power generation industry" are defined as small if they have fewer than 250 employees. The 2017 SUSB Annual Data Tables report the annual payroll amounts by industry that fall within enterprise size categories. The data for "wind electric power generation" does not contain a range for businesses with under 250 employees; the closest reporting range is fewer than 500 employees. Table 5 shows a range of receipts by enterprise size and establishment count as well as the projected percentage of receipts impacted by this rule both at the individual establishments level and the total for that enterprise size. The wind-energy project general-permit cost will be paid in full at the time of the permit application; therefore, the 5-year cost of $48,200 is assessed in the first year. This cost would then be assessed again at the renewal of the permit in 5 years. Due to this being a one-time cost that covers a 5-year period, this amount equates to at most one percent of total annual receipts by enterprise size (table 5). As a result, this cost will not create a substantial impact on small businesses or specific industries. We base this determination on permit costs for general permits. The number of specific permits issued is expected to follow the same trend as under the 2016 regulations, and permits are likely to be issued in areas of higher risk to eagles to large, complex facilities that are well above the industry-standard payroll amount. Therefore, we do not expect any impacts to small businesses associated with these specific permits.

Table 5—Range of Receipts Impacted by This Rule: Wind Electric Power Generation General Permits

(Using 2017 SUSB Annual Data Table)

Enterprise Size[1]	Establis hments	Annual Receipts ($1,000)	Average Receipt for Size (=receipt / establish-ments) ($1,000)	Annual Cost Per Permit for Establishm ent	Number of Establish-ments Impacted Annually[2]	Total Annual % of Receipts Impacted by This Rule	Annual % of Receipts for Impacted Establish ments
01: Total	459	$8,001,761	$17,433	$48,200	74	0.04%	0.3%
02: <5 employees	45	$80,905	$1,798	$48,200	7	0.42%	2.7%
03: 5–9 employees	8	$14,478	$1,810	$48,200	1	0.33%	2.7%
04: 10–14 employees	7	$15,873	$2,268	$48,200	1	0.30%	2.1%
05: 15–19 employees	8	$39,960	$4,995	$48,200	1	0.12%	1.0%
06: <20 employees	68	$151,216	$2,224	$48,200	11	0.35%	2.2%
12: 50–74 employees	9	$98,897	$10,989	$48,200	1	0.05%	0.4%
19: <500 employees	135	$1,469,292	$10,884	$48,200	22	0.07%	0.4%
24: 2,000–2,499 employees	12	$75,879	$6,323	$48,200	2	0.13%	0.8%
25: 2,500–4,999 employees	11	$91,973	$8,361	$48,200	2	0.10%	0.6%
26: 5,000+ employees	240	$5,368,670	$22,369	$48,200	39	0.04%	0.2%

[1]2017 NAICS thresholds for "Wind Electric Power Generation" (NAICS 221115) define small businesses as having fewer than 250 employees.
[2]The number of establishments impacted annually is based on the weighting of the number of establishments in that enterprise size compared to the total number of establishments. That weight value was multiplied by the total number of estimated annual permits (74) to derive the figures shown. Note that the total sum of <500 and the enterprise sizes greater than 500 will not total 74 due to missing enterprise size categories from the SUSB 2017 data tables.

While electric-power-distribution companies are currently eligible to apply for a specific permit, under this rule, these entities are eligible to apply for general permits. The permit application fee for these general permits is $1,000, and the administration fee is either $2,500 (for Tier 1 permittees) or $10,000 (for Tier 2 permittees). The costs for power-pole retrofits called for under the proactive retrofit strategy are estimated to be $0. Many larger utilities already have existing avian protection and retrofit strategies in place and would not incur new costs or benefits associated with the proposed retrofit strategy. For entities without an avian protection plan and a retrofit strategy in place, we expect

that the retrofit requirement for a general permit will not create substantial new costs for those entities. Any costs associated with retrofitting power poles to be avian-safe (estimated from approximately $500–$2,500 per pole) would be at least partly recouped by increased reliability and a reduction in costs associated with eagle-electrocution response. The Service assumes that the primary interest in permits in the first 5 years would be from firms with existing special-purpose-utility permits to salvage dead birds. These firms with known incidental take of eagles will benefit from a permit authorizing that take. No existing special-purpose-utility permit holder is a small business, and, therefore, there will not be a substantial impact to small businesses from this rule.

A commercial business applying for a standard nest disturbance or nest take permit under the 2016 regulations would have to pay $500 per nest per year, while a noncommercial entity would pay $100 per nest per year. Under this rule, both commercial and noncommercial permittees would pay $100 per nest per year for a general permit. Businesses in the construction industry are defined as small if they have annual revenue less than $36.5 million. Depending on the type of permit applications submitted by an individual small business, the permit fees represent less than one percent of revenue. Thus, the creation of a general permit will not have a significant economic effect on a substantial number of small businesses in the construction sectors. The changes in general permit application fees are shown in tables 6 and 7. The costs of a specific permit for both nest disturbance and nest take would be unchanged from the existing regulation.

Table 6 shows the expected difference between the 5-year costs for a nest-disturbance permit under the 2016 regulations and a general permit under this rule.

Table 6—Nest Disturbance General Permit Costs and Savings (5-Year Costs)

Cost Category	Nest Disturbance—2016 Regulations	Nest Disturbance—This Rule	Cost Savings
Permit Application Costs	$2,500	$500	$2,000

Table 7 shows the expected difference between the 5-year costs for a nest-take permit under the 2016 regulations and a general permit under this rule.

Table 7—Nest Take General Permit Costs and Savings (5-Year Costs)

Cost Category	Nest Take—2016 Regulations	Nest Take—This Rule	Cost Savings
Permit Application Costs	$2,500	$500	$2,000

This rule is expected to create an overall savings due to reduced costs for general permits compared to specific permits under the 2016 regulations. This rule is expected to create additional savings to both industry and the Service in terms of reduced Eagle Act enforcement costs. Entities that receive and comply with a permit will no longer be subject to potential enforcement under the Eagle Act, which can result in substantial legal costs, nor will they incur costs to estimate and reduce their legal risks, which may include biological surveys and hiring staff and attorneys. While this total reduced enforcement cost is not quantifiable due to limited data, the Service expects that it exceeds the total of new costs associated with this rule.

In sum, this rule impacts a substantial number of small businesses in NAICS sector 221115, "Wind Electric Power Generation"; however, the economic impacts to individual businesses are not significant. As described above, the number of businesses belonging to other industries impacted is not substantial and the magnitude of those economic impacts is not significant. Based on the available information analyzed above, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.). Therefore, a regulatory flexibility analysis is not required, and a small entity compliance guide is not required.

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

In accordance with the Unfunded Mandates Reform Act, we have determined the following:

a. This rule will not "significantly or uniquely" affect small governments in a negative way. There would be no permit administration costs incurred by small governments because they would not be administering the issuance of Federal permits. Small governments could potentially apply for permits for nest take or nest disturbance, but fees for those permits are small and would not significantly affect small governments in a negative way. A small government agency plan is not required.

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

Takings (E.O. 12630)

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

Federalism (E.O. 13132)

This rule will 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 does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

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

This rule contains existing and new information collections. All information collections require approval by the Office of Management and Budget (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. The OMB has reviewed and approved the information collection requirements associated with eagle permits and fees and assigned the OMB Control Number 1018–0167.

In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on our proposal to revise OMB Control Number 1018–0167. This input will help us assess the impact of our information collection requirements and minimize the public's reporting burden. It will also help the public understand our information collection requirements and provide the requested data in the desired format.

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 proposed 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 Bald and Golden Eagle Protection Act (Eagle Act; 16 U.S.C. 668–668d) prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act regulations at title 50, part 22 of the CFR define the "take" of an eagle to include the following broad range of actions: To "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb." The Eagle Act allows the Secretary of the Interior to authorize certain otherwise prohibited activities through regulations.

Service permit applications associated with eagles are each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits. The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity. Standardizing general information common to the application forms makes filing of applications easier for the public as well as expedites our review of applications. In accordance with Federal regulations at 50 CFR 13.12, we collect standard identifier information for all permits, including the following:

- Applicant's full name and address (street address, city, county, State, and

zip code; and mailing address if different from street address); home and work telephone numbers; and a fax number and e-mail address (if available), and

  - If the applicant resides or is located outside the United States, an address in the United States, and, if conducting commercial activities, the name and address of his or her agent that is located in the United States; and
  - If the applicant is an individual, the date of birth, occupation, and any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by the license or permit; or
  - If the applicant is a business, corporation, public agency, or institution, the tax identification number; description of the business type, corporation, agency, or institution; and the name and title of the person responsible for the permit (e.g., president, principal officer, or director);

- Location where the requested permitted activity is to occur;
- Reference to the part(s) and section(s) of subchapter B as listed in 50 CFR 13.11(b) under which the application is made for a permit or permits, together with any additional justification, including supporting documentation as required by the referenced part(s) and section(s);
- If the requested permitted activity involves the import or reexport of wildlife or plants from or to any foreign country, and the country of origin, or the country of export or re-export restricts the taking, possession, transportation, exportation, or sale of wildlife or plants,

documentation as indicated in 50 CFR 14.52(c);

- Certification containing the following language:
  - I hereby certify that I have read and am familiar with the regulations contained in title 50, part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of chapter I of title 50, Code of Federal Regulations, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to the criminal penalties of 18 U.S.C. 1001.
- Desired effective date of permit (except where issuance date is fixed by the part under which the permit is issued);
- Date;
- Signature of the applicant; and
- Other information that the Director determines relevant to the processing of the application, including, but not limited to, information on the environmental effects of the activity consistent with 40 CFR 1506.5 and Departmental procedures at 516 DM 8.

In addition to the general permitting requirements outlined in Federal regulations at 50 CFR 13.12, applications for any permit under 50 CFR part 22 must contain:

- Species of eagle and number of birds, nests, or eggs proposed to be taken, possessed, or transported;
- Specific locality in which taking is proposed, if any;
- Method of proposed take, if any;
- If not taken, the source of eagles and other circumstances surrounding

the proposed acquisition or transportation;

- Name and address of the public museum, public scientific society, or public zoological park for which they are intended; and
- Complete explanation and justification of the request, nature of project or study, number of specimens now at the institution, reason these are inadequate, and other appropriate explanations.

The proposed revisions to existing and new reporting and/or recordkeeping requirements identified below require approval by OMB:

(1) ***Administrative Updates***—On January 7, 2022, the Service published a final rule (87 FR 876) making administrative updates to 50 CFR parts 21 and 22. We captured the associated administrative updates to the CFR references for part 22 in the updated versions of the forms in this collection being submitted to OMB for approval with this renewal/revision request.

(2) ***Change in Administration Fees – State, Local, Tribal, or Federal Agencies (§ 13.11(d)(3)(i))***—This rule changes the Service's practice of not charging administration fees for eagle permits under 50 CFR part 22 to any State, local, Tribal, or Federal government agency, or to any individual or institution acting on behalf of the agency. Except as otherwise authorized or waived, if the agency fails to submit evidence of agency status with the application, we will require the submission of all processing fees prior to the acceptance of the application for processing.

(3) ***Revision to Form 3–200–71***—We split approved Form 3–200–71, "*Eagle Take Associated with but not the Purpose of an Activity (Incidental Take)*" into two separate forms* as follows:

a. *Form 3–200–71, "Eagle Incidental Take"–General and Specific*, and

b. *Form 3–200–91, "Eagle Disturbance Take"–General and Specific*.

*With this submission, we are no longer proposing Form 3–200–92, Eagle Incidental Take (Power Lines) – General and Specific."

We further describe the changes below:

a. ***(Revised Title) Form 3–200–71, "Eagle Incidental Take"–General and Specific***—The revision to Form 3–200–71 authorizes the incidental take of eagles where the take results from but is not the purpose of an activity. General permits are valid for 5 years from the date of registration. Specific permits may be valid for up to 30 years. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information:

i. Requested permit type;

ii. Infrastructure type;

iii. Description, duration, and location of the activity that is likely to cause eagle take;

iv. Justification of why there is no practicable alternative to the activity that would protect the interest to be served;

v. Description of eagle use and activity in the area, location of eagle nests or roosts, and distance of nests and other important eagle use areas from the project;

vi. Identification of subpermittees, if applicable;

vii. Records retention requirements;

viii. Certification of activity's compliance with all Federal, Tribal, State, and local laws and regulations applicable to eagles; and

ix. Permit disqualification factors, including information for any convictions, guilty pleas or nolo contendere, forfeited collateral, or pending charges for violations of laws cited in the permit application.

General permit applications must also include the compensatory mitigation requirement, requested permit tenure and effective date, and certification of general permit requirements. Additional information collected from specific permit applicants includes:

i. Requested duration of the permit;

ii. Requested eagle species for authorization;

iii. Additional project-specific information, including an eagle impacts assessment and pre- or post-construction monitoring methods;

iv. Description of implemented and proposed avoidance and minimization measures;

v. Description of implemented and proposed compensatory mitigation;

vi. Existing project general permit eligibility, if applicable; and

vii. Anticipated permit application fee tier.

Permit applications associated with eagle incidental take permits may require the following:

- *Post-Construction Monitoring*—Post-construction monitoring fatality estimation must be based on 2 or more years of eagle fatality monitoring that meet the Service's minimum fatality monitoring requirements for specific eagle permits.

- *Adaptive Management Plan*—Upon the discovery of the third and fourth bald eagle or golden eagle injuries or mortalities at a project, the permittee must provide the Service with their reporting data required by the permit conditions, adaptive management plan, and a description and justification of which adaptive management approaches will be implemented.
- *Annual Report*—Permittees must submit an annual report using Form 3–202–15. The annual report is due within 30 days of the expiration of the permit or prior to requesting renewal of the permit, whichever is first.
- *Compensatory Mitigation*—For wind energy specific permits, the permittee must implement the compensatory mitigation requirements on the face of their permit. For wind energy general permits, the permittee must obtain eagle credits from a Service-approved conservation bank or in-lieu fee program based on the hazardous volume of the project.

In addition, permit applications associated with incidental take permits by power lines may require the following:

- *Collision Response Strategy*—A plan that describes the process the permittee will follow to identify whether a collision-caused injury or morality has occurred, to evaluate factors that contributed to the collision, and to implement risk-reduction measures commensurate with the collision risk.

- *Proactive Retrofit Strategy*—A plan to convert existing infrastructure to avian-safe infrastructure within a set timeline. The strategy must identify a baseline of poles to be proactively retrofit. The existing-infrastructure baseline must include all poles that are not avian-safe for eagles located in areas identified by the applicant to be high risk to eagles and may also include other poles in the service area.
- *Reactive Retrofit Strategy*—A plan to respond to incidents where eagles are electrocuted or killed. The reactive retrofit strategy must include information on how eagle electrocutions are detected and identified. Determining which poles to retrofit must be based on the risk to eagles and not on other factors (e.g., convenience or cost). The pole that caused the electrocution must be retrofitted unless the pole is already avian-safe. A total of 13 poles or a half-mile segment must be retrofitted, whichever is less, prioritizing the highest risk poles closest to the electrocution event.
- *Shooting Response Strategy*—A plan that describes the process the permittee will follow when eagles are found killed or injured near power-line infrastructure to identify if shooting is suspected, to communicate with law enforcement, and to identify and implement appropriate shooting reduction measures.

The Service will use the information collected via the form to track whether the take level is exceeded or is likely to be exceeded, to determine

that the take is necessary, and that the take will be compatible with the preservation of eagles.

b. ***(NEW) Form 3–200–91, "Eagle Disturbance Take"—General and Specific***—Applicants may apply for an eagle disturbance take permit if their activity may result in incidental disturbance of bald eagles or golden eagles. General permits issued under this section are available only for certain activities that cause disturbance of bald eagles and are valid for a maximum of 1 year. General permits are not available for disturbance of nests located in Indian country (18 U.S.C. 1151), unless the Tribe is the applicant. Specific permits are intended for disturbance of a golden eagle nest, disturbance of a bald eagle nest by an activity not specified in paragraph (b) of § 22.280, or disturbance of eagles caused by physical or functional elimination of all foraging area within a territory. The tenure of specific permits is set forth on the face of the permit and may not exceed 5 years. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information:

   i. Requested permit type;
   ii. Description, duration, and location of the activity that is likely to cause disturbance to eagles;
   iii. Justification of why there is no practicable alternative to the activity that would protect the interest to be served;
   iv. Description of eagle use and activity in the area, location of eagle nests or roosts, and distance of nests and other important eagle use areas from the project;
   v. Identification of subpermittees, if applicable;

vi. Records retention requirements;

vii. Certification of activity's compliance with all Federal, Tribal, State, and local laws and regulations applicable to eagles; and

viii. Permit disqualification factors, including information for any convictions, guilty pleas or nolo contendere, forfeited collateral, or pending charges for violations of laws cited in the permit application.

General permit applications must also include the requested permit tenure and effective date and certification of general permit requirements. Additional information collected from specific permit applicants includes:

i. Organization status (e.g., commercial or non-commercial);

ii. Requested duration of the permit;

iii. Assessment of impacts to eagles;

iv. Description of implemented and proposed avoidance and minimization measures;

v. Description of implemented and proposed compensatory mitigation for golden eagle nest disturbance, if applicable; and

vi. Description of efforts to monitor for impacts to eagles.

Permit applications associated with eagle disturbance take may require the following:

- *Monitoring*—The permittee must monitor the nest to determine whether nestlings have fledged from the nest. We updated the burden for monitoring requirements associated with

disturbance take in the separate monitoring information collection requirement.

- *Annual Report*—Permittees must submit an annual report using Form 3–202–15. The annual report is due within 30 days of the expiration of the permit or prior to requesting renewal of the permit, whichever is first.

The Service will use the information collected via the form to track whether the take level is exceeded or is likely to be exceeded, to determine that the take is necessary, and that the take will be compatible with the preservation of eagles.

(4) ***Revision to Form 3–200–72***—We are revising Form 3–200–72, "*Eagle Nest Take*" as described below:

Form 3–200–72 is used to apply for authorized take of bald eagle nests or golden eagle nests, including relocation, removal, and otherwise temporarily or permanently preventing eagles from using the nest structure for breeding under definitions in 50 CFR 22.300(b). General permits are available for bald eagle nest take for emergency, nest take for health and safety, or nest take for a human-engineered structure, or, if located in Alaska, other purposes. General permits may authorize bald eagle nest removal from the nesting substrate at the location requested and the location of any subsequent nesting attempts by the eagle pair within one-half mile of the location requested for the duration of the permit. Take of an additional eagle nest(s) more than one-half mile away requires additional permit(s). General permits are valid until the start of the next breeding season, not to exceed 1 year. General permits are not available for take of nests located in Indian country (18 U.S.C. 1151), unless the

Tribe is the applicant. Specific permits are required for take of a golden eagle nest for any purpose, take for species protection, and, except for Alaska, nest take for other purposes. The tenure of specific permits is set forth on the face of the permit and may not exceed 5 years.

In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information:

a. Requested permit type;
b. Description and location of the activity that will result in eagle nest take;
c. Selected purpose of nest take;
d. Justification of why there is no practicable alternative to the activity that would protect the interest to be served;
e. Description of the nest(s), including species, location, and historic and current nest status;
f. Description of nest removal, destruction, or relocation, including information related to re-nesting and donation of eagle nests and parts.
g. Identification of subpermittees, if applicable;
h. Records retention requirements;
i. Certification of activity's compliance with all Federal, Tribal, State, and local laws and regulations applicable to eagles; and
j. Permit disqualification factors, including information for any convictions, guilty pleas or nolo contendere, forfeited collateral, or pending charges for violations of laws cited in the permit application.

General permit applications must also include the requested permit tenure and effective date and certification of general permit requirements. Additional information collected from specific permit applicants includes:

i. Organization status (e.g., commercial or non-commercial);

ii. Requested duration of the permit;

iii. Assessment of impacts to eagles;

iv. Description of implemented and proposed avoidance and minimization measures;

v. Description of implemented and proposed compensatory mitigation for golden eagle nest take, if applicable;

vi. Description of efforts to monitor for impacts to eagles; and

vii. Description of method for removing nestlings or eggs and proposed disposition, if applicable.

Permit applications associated with eagle nest take may require the following:

- *Monitoring*—Permittees must remove chicks or eggs from an in-use nest for immediate transport to a foster nest, rehabilitation facility, or as otherwise directed by the Service. If nestlings or eggs are relocated with a nest or to a foster nest, the permittee must monitor the nest to ensure adults are tending to nestlings or eggs. We updated the burden for monitoring requirements associated with eagle nest take in the separate monitoring information collection requirement.
- *Annual Report*—Permittees must submit an annual report using Form 3–202–16. The annual report is due within 30

days of the expiration of the permit or prior to requesting renewal of the permit, whichever is first.

- *Species Protection*—If a Federal, State, or Tribal agency applies for a nest take permit for species protection, they must provide documentation that describes relevant management efforts to protect the species of concern; identifies and describes how the nesting eagles are a limiting factor to recovery of the species using the best available scientific information and data; and explains how take of eagle nests is likely to have a positive effect on recovery for the species of concern.

The Service will use the information collected via the form to track whether the take level is exceeded or is likely to be exceeded, to determine whether the take is necessary, and whether the take will be compatible with the preservation of eagles.

(5) Permit Reviews—The Service removed the regulatory requirement for specific permits to mandate an administrative check-in with the Service at least every 5 years during the permit tenure. The Service introduced these mandatory 5-year permit reviews as part of the 2016 Eagle Rule to ensure that the Service had an opportunity to ask for and review all existing data related to a long-term activity's impacts on eagles. The purpose of 5-year review is to update take estimates and related compensatory mitigation for the subsequent 5-year period. It also provides the Service with an opportunity to amend the permit to reduce or eliminate conservation measures or other permit conditions that prove to be ineffective or unnecessary. The purpose of these reviews does not change with this

rulemaking. However, the 5-year requirement has introduced unintended uncertainty which, according to public comment, has reduced participation in eagle take permitting under the 2016 regulations. It has also resulted in timing issues, where post-construction monitoring or other data is available off-cycle from the 5-year timing (e.g., year 3 or 4) but cannot be used until the scheduled check-in. Instead, check-ins may now be initiated by the permittee or the Service in response to events that warrant review, for example, updating fatality estimates and associated compensatory mitigation requirements or revising permit conditions to reflect the best available science.

(6) ***Reporting Requirements***—Submission of reports is generally on an annual basis, although some are dependent on specific transactions. Additional monitoring and report requirements exist for permits issued under 50 CFR part 22. Permittees must submit an annual report for every year the permit is valid and for up to 3 years after the activity is completed.

a. ***(New Reporting Requirement) Report Take of Eagles (3rd and 4th Eagles) (50 CFR 22.250(d)(2) and (d)(3))***—Permittees must notify the Service in writing within 2 weeks of discovering the take of a third or fourth bald eagle or a third or fourth golden eagle. The notification must include the reporting data required in their permit conditions, their adaptive management plan, and a description and justification of which adaptive management approaches they will be implementing. Upon notification of the take of the fourth bald eagle or fourth golden eagle, the project will remain authorized to incidentally take eagles through the term of the existing general permit but will not be eligible

for future general permits.

(7) ***(NEW) Audits***—The Service will conduct audits of general permits to ensure permittees are appropriately interpreting and applying eligibility criteria and complying with permit conditions. Audits may include reviewing application materials for completeness and general permit eligibility. Any required records, plans, or other documents will be requested of the permittee and reviewed. If there is a compliance concern, the applicant will be given the opportunity to submit additional information to address the concern. If, during an audit, the Service determines that the permittee is not eligible for a general permit or is out of compliance with general permit conditions, we will communicate to the permittee options for coming into compliance.

(8) ***(NEW – Existing In Use Without OMB Approval) Labeling Requirement***—Regulations at 50 CFR 22.4 require all shipments containing bald or golden eagles, alive or dead, their parts, nests, or eggs to be labeled. The shipments must be labeled with the name and address of the person the shipment is going to, the name and address of the person the shipment is coming from, an accurate list of contents by species, and the name of each species.

(9) ***(NEW – Existing In Use Without OMB Approval) Requests for Reconsideration Associated with Eagle Permits (Suspension and Revocation)***—Persons notified of the Service's intention to suspend or revoke their permit may request reconsideration by complying with the following:

- Within 45 calendar days of the date of notification, submit their request for reconsideration to the issuing officer in writing, signed

by the person requesting reconsideration or by the legal representative of that person.

- The request for reconsideration must state the decision for which reconsideration is being requested and shall state the reason(s) for the reconsideration, including presenting any new information or facts pertinent to the issue(s) raised by the request for reconsideration.
- The request for reconsideration must contain a certification in substantially the same form as that provided by 50 CFR 13.12(a)(5). If a request for reconsideration does not contain that certification, but is otherwise timely and appropriate, the Service will hold the request and give the person submitting the request written notice of the need to submit the certification within 15 calendar days. Failure to submit certification will result in the Service rejecting the request as insufficient in form and content.

(10) ***(NEW – Existing In Use Without OMB Approval) Compensatory Mitigation (§ 22.220)***—Any permit authorizing take that would exceed the applicable EMU take limit will require compensatory mitigation, except in circumstances where the action is considered in the best interest of an eagle. Compensatory mitigation for this purpose must ensure the preservation of the affected eagle species by mitigating an amount equal to or greater than the authorized or expected take. Compensatory mitigation must either reduce another ongoing form of mortality or increase the eagle population of the affected species. Compensatory mitigation for golden eagles must be performed at a 1.2:1 (mitigation: take) ratio. A permit may require compensatory mitigation when the Service determines, according

to the best available information, that the take authorized by the permitted activity is not consistent with maintaining the persistence of the local area population of an eagle species.

The Service must approve types of compensatory mitigation and may include conservation banks, in-lieu fee programs, or permittee-responsible mitigation as mitigation providers. General permittees meet this requirement by obtaining required credits from a Service-approved, third-party mitigation provider. Specific permittees can meet this requirement by obtaining required credits from a Service-approved, third-party mitigation provider or meeting the requirements to be a permittee-responsible mitigation provider as described in 50 CFR 22.220(c)(2). Third-party mitigation providers, such as in-lieu fee programs and conservation banks, obtain Service approval by meeting the requirements to be a mitigation provider as described in 50 CFR 22.220(c)(2).

To obtain approval as a mitigation provider, potential providers must submit a mitigation plan to the Service that demonstrates how the standards in 50 CFR 22.220(b) will be met. At a minimum, this must include a description of the mitigation, the benefit to eagles, the locations where projects will be implemented, the EMU and local area population affected, the number of credits provided, and an explanation of the rationale for the number of eagle credits provided. The Service must approve the mitigation plan prior to implementation.

(11) ***(NEW – Existing In Use Without OMB Approval) Single Application for Multiple Activities*** (50 CFR 13.11(d)(1))—If regulations require more than one type of permit for an activity and permits are issued by the same office, the issuing office may issue one consolidated permit. Applicants

may submit a single application in these cases, provided the single application contains all the information required by the separate applications for each permitted activity. In instances where the Service consolidates more than one permitted activity into one permit, the issuing office will charge the highest single fee for the activity permitted. Administration fees are not waived for single applications covering multiple activities.

We have renewed the existing reporting and recordkeeping requirements identified below:

(1) ***Form 3–200–14, "Eagle Exhibition"***—This form is used to apply for a permit to possess and use eagles and eagle specimens for educational purposes. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: type of eagle(s) or eagle specimens; status of other required authorizations (State, Tribal, local); description of the programs that will be offered and how the eagles will be displayed; experience of handlers; and information about enclosures, diet, and enrichment for the eagles. The Service uses the information collected via the form to determine whether the eagles are legally acquired and will be used for bona fide conservation education, and in the case of live eagles, will be housed and handled under safe and healthy conditions.

(2) ***Form 3–200–15a, "Eagle Parts for Native American Religious Purposes"***—This application form is used by enrolled members of federally recognized Tribes to obtain authorization to acquire and possess eagle feathers and parts from the Service's National Eagle Repository (NER). The permittee also uses the form to make additional requests for

eagle parts and feathers from the NER. The form collects the following information: name of the Tribe; Tribal enrollment number of the individual applicant; a signed Certification of Enrollment; inmate-specific information in cases where applicants are incarcerated (inmate number, institution, contact information for the institute's chaplain); and the specific eagle parts and/or feathers desired by the applicant. The Service uses the information collected via the form to verify that the applicant is an enrolled member of a federally recognized Tribe, and what parts and/or feathers the applicant is requesting.

(3) ***Form 3–200–16, "Take of Depredating Eagles & Eagles that Pose a Risk to Human or Eagle Health or Safety—Annual Report"***— Applicants use this form to obtain authorization to take (trap, collect, haze) eagles that depredate on wildlife or livestock, as well as eagles situated where they pose a threat to human or their own safety. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: status of other required authorizations (State, Tribal, local); the species and estimated number of eagles causing the problem; what the damage or risk consists of; location; method of take; alternatives taken that were not effective; and a description of the proposed long-term remedy. The Service uses the information collected via the form to determine whether the take is necessary to protect the relevant interests; other alternatives have been considered; and the method of take is humane and compatible with the preservation of eagles.

(4) ***Form 3–200–18, "Take of Golden Eagle Nests During Resource Development or Recovery"***—This application is used by commercial

entities engaged in resource development or recovery operations, such as mining or drilling, to obtain authorization to remove or destroy golden eagle nests. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: location of the property; the status of other required authorizations; the type of development or recovery operation; the number of nests to be taken; the activity that involves the take of the nest; the disposition of the nests once removed (or destroyed); the duration for which the authorization is requested; and a description of the mitigation measures that will be implemented. The Service uses the information collected via the form to determine whether the take is necessary and will be compatible with the preservation of eagles.

(5) ***Form 3–200–77, "Native American Eagle Take for Religious Purposes"***—Federally recognized Native American Tribes use this form to apply for authorization to take eagles from the wild for Tribal religious purposes. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: status of other required authorizations; location of proposed take; statement of consent by the land owner or land manager if not on Tribal land; species, number, and age class of eagles; whether the eagles will be collected alive and held in captivity; intended disposition of parts and feathers; and the reason why eagles obtained by other means do not meet the Tribe's religious needs. The Service uses the information obtained via the form to determine whether the take is necessary to meet the Tribe's religious needs, they received consent of the landowner, the take is compatible with the preservation of eagles, and any eagles kept

alive will be held under humane conditions.

(6) ***Form 3–200–78, "Native American Tribal Eagle Aviary"***—Federally recognized Native American Tribes use this form to apply for authorization to keep live eagles for Tribal religious purposes. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: descriptions, photographs and/or diagrams of the enclosures where the eagles will be housed, and number of eagles that will be kept in each; status of other required authorizations; names and eagle-handling experience of caretakers; veterinarian who will provide medical care; and description of the diet and enrichment the Tribe will provide the eagles. The Service uses the information collected via the form to ensure the Tribe has the appropriate facilities and experience to keep live eagles safely and humanely.

(7) ***Form 3–200–82, "Bald Eagle or Golden Eagle Transport into the United States for Scientific or Exhibition Purposes"***—This application is used by researchers and museums to obtain authorization to temporarily bring eagle specimens into, or take those specimens out of, the United States. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: documentation that the specimen was legally obtained; documentation that the applicant meets the definition of a "public" institution as required under statute; status of other required authorizations (State, Tribal, local); description of the specimen(s); country of origin; name of and contact information for the foreign institution; scientific or exhibition purposes for the transport of specimens; locations where the item will be exhibited (if

applicable); dates and ports of departure/arrival; and names of persons acting as agents for the applicant. The Service uses the information collected via the form to ensure the specimens were legally acquired and will be transported through U.S. ports that can legally authorize the transport, the transport will be temporary, as required by statute, and the specimens will be used for purposes authorized by statute.

(8) ***Form 3–1552 "Native American Tribal Eagle Retention"***—A Federal Eagle Remains Tribal Use permit authorizes a federally recognized Tribe to acquire, possess, and distribute to Tribal members whole eagle remains found by a Tribal member or employee on the Tribe's Tribal land for Indian religious use. The applicant must be a federally recognized Tribal entity under the Federally Recognized Tribal List Act of 1994, 25 U.S.C. 479a–1, 108 Stat. 4791 (1994). In addition to the standardized information required by 50 CFR 13.12, the form also collects the following information: name of the Tribe; name and contact information for the Tribal leader and primary contact person; whether the Tribe has already discovered an eagle to hold under the permit; and if different than what's listed for the primary contact, the address of the physical location where records will be kept. The Service uses the information collected via the form to identify which Tribe is applying for the permit and to inform the Service as to whether the Tribe is applying before or subsequent to finding the first eagle they want to retain, allowing the Service to choose the appropriate course of action.

(9) ***Form 3–1591, "Tribal Eagle Retention – Acquisition Form"***—This form provides the Service information needed to track the chain of custody of eagle remains and ensure the Tribe takes possession of them as authorized

under the permit. The first part of the form (completed by a Service Office of Law Enforcement (OLE) Officer) collects: species; sex; age class of eagle; date and location discovered; date the information was reported to track eagle mortalities; date the remains were transferred to the Tribe; name and contact information for the Tribe; and OLE officer name and contact information. The second part of the form (competed by the Tribe) collects: permit number; date the Tribe took possession of the eagle; and Principal Tribal Officer's name, title, and contact information.

(10) ***Form 3–2480, "Eagle Recovery Tag"***—The form is used to track dead eagles as they move through the process of laboratory examination to determine cause of death and are sent to the NER for distribution to Native Americans for use in religious ceremonies. In addition to the standardized information required by 50 CFR 13.12, the form also collects the following information: U.S. Geological Survey band data; unique ID number assigned; mortality date; species, age, and sex of the eagle; date recovered; name of person(s) who found and recovered the eagle; and names and contact information of persons who received the eagle throughout the chain of custody. The Service uses the information collected to maintain chain of custody for law enforcement and scientific purposes.

(11) ***Form 3–202–11, "Take of Depredating Eagles & Eagles that Pose a Risk to Human or Eagle Health or Safety – Annual Report"***—Permittees use this form to report the outcome of their action involving take of depredating eagles or eagles that pose a risk to human or eagle health or safety. The form collects the following information: species, location, date of take, number of eagles, method of take, and final disposition. The

Service uses the information reported via the form to ascertain whether the planned take was implemented, track how much authorized take occurred in the eagle management unit and local population area, and verify the disposition of any eagles taken under the permit.

(12) ***Form 3–202–13, "Eagle Exhibition – Annual Report"***—Permittees use this form to report activities conducted under an Eagle Exhibition Permit for both Live and Dead Eagles. The form collects the following information: list of eagles and eagle specimens held under the permit during the reporting year, and, for each, the date acquired or disposed of; from whom acquired or to whom transferred; total number of programs each eagle was used in, or if statically displayed (e.g., in a museum setting), the number of days the facility was open to the public. The Service uses the information reported through this form to verify that eagles held under the permit are used for conservation education.

(13) ***Form 3–202–14, "Native American Tribal Eagle Aviary – Annual Report"***—Permittees use this form to report activities conducted under a Native American Eagle Aviary Permit. The form collects the following information: a list of eagles held under the permit during the reporting year, and, for each, the date acquired or disposed of; from whom acquired or to whom transferred; or other disposition. The Service uses the information collected via the form to track the live eagles held by federally recognized Tribes for spiritual and cultural practices.

(14) ***Monitoring Requirements***—Most permits that authorize take of eagles or eagle nests require monitoring. We do not require monitoring for intentional take, including when Native American Tribes take an eagle as part of a religious ceremony or when falconers trap golden eagles that are

depredating on livestock. A fundamental purpose of monitoring under eagle take permits is to track levels of take for population management. For disturbance permits, monitoring also provides information about whether the permitted activity actually disturbed eagles, allowing the Service to better understand when these types of permits may not be needed.

In addition to tracking take at population management scales, the Service uses data from monitoring lethal take permits to adjust authorized take levels, compensatory mitigation requirements, and avoidance and minimization measures as spelled out under the terms of the permit. With regard to wind industry permits, these data also enable the Service to improve future fatality estimates through enhanced understanding of exposure and collision.

(15) ***Required Notifications***—Most permits that authorize take or possession of eagles require a timely notification to the Service by email or phone when an eagle possessed under a possession permit or taken under a permit to take eagles dies or is found dead. These fatalities are later recorded in reports submitted to the Service as described above. The timely notifications allow the Service to better track take and possession levels, and to ensure eagle remains are sent to either a forensics lab or the NER. Incidental take permittees are also required to notify the Service via email or phone if a threatened or endangered species is found in the vicinity of the activity for which take is permitted. There is no notification requirement for that beyond reporting each occurrence where take is discovered to have occurred. The Service tracks whether the take level is exceeded or is likely to be exceeded.

(16) ***Recordkeeping Requirements***—As required by 50 CFR 13.46, permittees must keep records of the activity as it relates to eagles and any data gathered through surveys and monitoring, including records associated with the required internal incident reporting system for bald eagle and golden eagle remains found and the disposition of the remains. This information retained by permittees is described above under reporting requirements.

(17) ***Amendments***—Amendments to a permit may be requested by the permittee, or the Service may amend a permit for just cause upon a written finding of necessity. Amendments comprise changes to the permit authorization or conditions. Those changes may include an increase or decrease in the authorized take or possession of eagles, proposed adjustment of permit conditions, or changes to the activity involving eagles. The permit will specify circumstances under which the Service will require modifications to avoidance, minimization, or compensatory mitigation measures or monitoring protocols, which may include, but are not limited to take levels, location of take, and/or changes in eagle use of the activity area.

At a minimum, the permit must specify actions to be taken if take approaches or reaches the amount authorized and anticipated within a given timeframe. The permittee applies for amendments to the permit by submitting a description of the modified activity and the changed conditions affecting eagles. Substantive amendments incur a processing fee. A permittee is not required to pay a processing fee for minor changes, such as the legal individual or business name or mailing address of the

permittee. A permittee is required to notify the issuing office within 10 calendar days of minor changes.

(18) ***Transfers***—In general, permits issued under 50 CFR part 22 are not transferable. However, when authorized, permits issued under § 22.80 may be transferred by the transferee providing written assurances of sufficient funding of the avoidance and minimization measures and commitment to carry out the terms and conditions of the permit.

Copies of the draft forms are available to the public by submitting a request to the Service Information Collection Clearance Officer using one of the methods identified in **ADDRESSES**.

Title of Collection: Eagle Permits and Fees, 50 CFR parts 10, 13, and 22.

OMB Control Number: 1018–0167

Form Numbers: FWS Forms 3–200–14, 3–200–15a, 3–200–16, 3–200–18, 3–200–71, 3–200–72, 3–200–77, 3–200–78, 3–200–82, 3–202–11, 3–202–13, 3–202–14, 3–202–15, 3–202–16, 3–1552, 3–1591, 3–2480, 3–202–91 (New).

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals, businesses, and State/local/Tribal governments. We expect the majority of applicants seeking permits will be in the energy production and electrical distribution business.

Total Estimated Number of Annual Respondents: 8,406.

Total Estimated Number of Annual Responses: 8,406.

Estimated Completion Time per Response: Varies from 15 minutes to 200 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 32, 882.

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

Frequency of Collection: On occasion for applications; annually or on occasion for reports.

Total Estimated Annual Non-hour Burden Cost: $1,737,460 (primarily associated with application processing and administrative fees).

On September 30, 2022, we published in the *Federal Register* (87 FR 59598) a proposed rule (RIN 1018–BE70) that announced our intention to request OMB approval of the revisions to this collection explained above and the simultaneous renewal of OMB Control No. 1018–0167. In that proposed rule, we solicited comments for 60 days on the information collections in this submission, ending on November 29, 2022. 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/*).

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of 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) How the agency might 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.

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to *https://www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting "Currently under 30-day 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, 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 1018–0167 in the subject line of your comments.

National Environmental Policy Act (42 U.S.C. 4321 *et seq*.)

We evaluated the environmental impacts of the changes to the regulations and completed an environmental assessment and finding of no significant impact. The FONSI is the final step in the NEPA process for this eagle rule revision process. The FONSI and final environmental assessment are available in Docket No. FWS-HQ-MB-2020-0023 (available at *https://www.regulations.gov*).

Endangered and Threatened Species

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–43), requires Federal agencies to "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)). Intra-Service consultations and conferences consider the effects of the Service's actions on listed species, species proposed for listing, and candidate species. Our final action of issuing our regulations regarding take of non-ESA-listed eagles does not authorize, fund, or carry out any activity that may affect—directly or indirectly—any ESA-listed species or their critical habitat. *See, e.g., Sierra Club v. Bureau of Land Mgmt.*, 786 F.3d 1219 (9th Cir. 2015). Indeed, the Eagle Act does not

empower us to authorize, fund, or carry out project activities by third parties. The Eagle Act empowers us to authorize take of bald and golden eagles. Thus, we have determined these revisions have no effect on any listed species, species proposed for listing, or candidate species or their critical habitat. As a result, section 7 consultation is not required on this rulemaking action. As appropriate, we will conduct project-specific, intra-Service section 7 consultations in the future if our proposed act of issuing a permit for take of eagles may affect ESA-listed species or critical habitat.

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 the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. Although we do not consider this rulemaking as having Tribal implications according to E.O. 13175 because it is not likely to have "substantial direct effects" on any particular Tribe, we conducted Tribal outreach and invited government-to-government consultation as if it does.

The Service provided written notification to Tribes about the ANPR and the proposed rule and offered government-to-government consultation. The Service conducted Tribal informational webinars on October 14 and 21, 2021, during the ANPR public comment period as well as prior to publication of the proposed rule. Seven Tribal

representatives provided written comments. The Service conducted two additional Tribal informational webinars on October 19 and November 2, 2022, during the proposed rule public comment period as well as bilateral information sessions when requested by Tribes. Tribal consulation was requested by one Tribe, which was conducted in September 2023. No other Tribes requested consultation with the Service. The Service conducted a final Tribal informational webinar on December 12, 2023, regarding the changes the Service made in developing the final rule. Eleven Tribal representatives provided written comments. As described earlier in this preamble, we have revised the proposed regulations in response to these comments.

The Service acknowledges our Federal Tribal trust responsibilities and deeply honors our sovereign nation-to-nation relationship with Tribes. Throughout all phases of the rulemaking process, the Service has encouraged and welcomed Tribal engagement, including government-to-government consultation. To date, we have conducted one government-to-government consultation. We invite further bilateral government-to-government consultation at any time.

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

E.O. 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This rule is a significant regulatory action under E.O. 12866; however, it will not significantly affect energy supplies, distribution, or use. The permitting process streamlines permitting for wind energy and power distribution; therefore, the rule is intended to ease any administrative burden on energy development and will not impact it negatively. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

List of Subjects

50 CFR Part 13

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

50 CFR Part 22

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

Regulation Promulgation

Accordingly, we hereby amend parts 13 and 22 of subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

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

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

2. Revise § 13.5 to read as follows:

§ 13.5 Information collection requirements.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in part 13 and assigned OMB Control Numbers 1018–0022, 1018–0070, 1018–0092, 1018–0093, or 1018–0167 (unless otherwise indicated). Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Direct comments regarding the burden estimates or any other aspect of the information collection to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

3. Amend § 13.11 by:

a. Revising paragraphs (d)(2) and (d)(3)(i); and

b. In the table in paragraph (d)(4):

i. Removing the 15 entries under “Bald and Golden Eagle Protection Act” and adding 17 new entries in their place; and

ii. Revising the footnote 1.

The revisions and additions read as follows:

§ 13.11 Application procedures.

* * * * *

(d) * * *

(2) If regulations in this subchapter require more than one type of permit for an activity and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing take caused by the activity in accordance with § 13.1. You may submit a single application in these cases, provided that the single application contains all the information required by the separate applications for each activity. Where more than one activity is consolidated into one permit, the issuing office will charge the highest single fee for the activity for which take is permitted. Administration fees are not waived.

(3) * * *

(i) We will not charge a permit application fee to any Federal, Tribal, State, or local government agency or to any individual or institution acting on behalf of that agency, except administration fees for permits issued under subpart E of part 22 of this subchapter will not be waived. If you fail to submit evidence of agency status with your application, we will require the submission of all processing fees prior to the acceptance of the application for processing, unless otherwise authorized or waived.

* * * * *

(4) * * *

Type of Permit	CFR Citation	Permit Application Fee[1]	Administration Fee[2]	Amendment Fee
* * * * * * *				

Bald and Golden Eagle Protection Act				
Eagle Scientific Collecting	50 CFR part 22	100		
Eagle Exhibition	50 CFR part 22	75		
Eagle—Native American Religious Purposes	50 CFR part 22	No fee		
Eagle Depredation Permit	50 CFR part 22	100		
Golden Eagle Nest Take	50 CFR part 22	100		50
Eagle Transport—Scientific or Exhibition	50 CFR part 22	75		
Eagle Transport—Native American Religious Purposes	50 CFR part 22	No fee		
General Eagle Permit—Disturbance Take	50 CFR part 22	100		
Specific Eagle Permit—Disturbance Take	50 CFR part 22	Commercial–2,500 Noncommercial–500		Commercial–500 Noncommercial–150
General Eagle Permit—Nest Take	50 CFR part 22	100		
Specific Eagle Permit—Nest Take (Single nest)	50 CFR part 22	Commercial–2,500 Noncommercial–500		Commercial–500 Noncommercial–150
Specific Eagle Permit Eagle—Nest Take (Multiple nests)	50 CFR part 22	5,000		500
General Eagle Permit—Incidental Take (Power lines)	50 CFR part 22	1,000	Non-Investor Owned–2,500 Investor Owned–10,000	
General Eagle Permit—Incidental Take (Wind energy)	50 CFR part 22	1,000	Distributed and Community Scale–2,500 Utility Scale–10,000	
Specific Eagle Permit—Incidental Take	50 CFR part 22	Tier 1–18,000 Tier 2–26,000	10,000	500
Eagle Take—Exempted under ESA	50 CFR part 22		No fee	
Transfer of a Subpart E Eagle Permit	50 CFR part 22	1,000		
* * * * * * *				

[1] A reimbursable agreement may be required for specific eagle permits to cover the costs above estimated staff-hours.

[2] An administration fee will be assessed at the time of application, in addition to the application fee.

* * * * *

4. Amend § 13.12 by:

a. Revising paragraph (a)(1)(ii); and

b. In table 1 to paragraph (b), removing the 8 entries under "Eagle Permits" and adding in their place 10 new entries.

The revisions and additions read as follows:

§ 13.12 General information requirements on applications for permits.

(a) * * *

(1) * * *

(ii) If the applicant is an individual, the date of birth, occupation, and any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by the license or permit; or

* * * * *

(b) * * *

Table 1 to Paragraph (b)

Type of permit	Section
* * * * * * *	
Eagle permits:	
Scientific or exhibition	22.50
Indian religious use	22.60
Falconry purposes	22.70
Depredation and protection of health and safety	22.100
Permits for incidental take of eagles	22.200 or 22.210
Permits for incidental take of eagles by power lines	22.200 or 22.210
Permits for disturbance take of eagles	22.200 or 22.210
Permits for nest take of eagle	22.200 or 22.210
Permits for golden eagle nest take for resource recovery operations	22.325
Permits for bald eagle take exempted under the Endangered Species Act	22.400

§ 13.24 [Amended]

5. Amend § 13.24 in paragraph (c) introductory text by removing "§ 22.80 of this subchapter B" and adding in its place "part 22, subpart E, of this subchapter".

§ 13.25 [Amended]

6. Amend § 13.25 in paragraphs (b) introductory text and (f) by removing "§ 22.80 of this subchapter B" and adding in its place "part 22, subpart E, of this subchapter".

PART 22—EAGLE PERMITS

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

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

8. Amend § 22.6 by:

a. Revising the definitions of "Eagle management unit (EMU)" and "Eagle nest";

b. Adding in alphabetic order a definition for "General permit";

c. Revising the definition of "In-use nest"; and

d. Adding in alphabetic order a definition of "Incidental take".

The revisions and additions read as follows:

§ 22.6 Definitions.

* * * * *

Eagle management unit (EMU) means a geographically bounded region within which permitted take is regulated to meet the management goal of maintaining stable or increasing breeding populations of bald eagles or golden eagles.

(1) The Atlantic EMU is Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

(2) The Mississippi EMU is Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

(3) The Central EMU is Kansas, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, and Texas; portions of Colorado, New Mexico, and Wyoming

east of the Continental Divide; and portions of Montana east of Hill, Chouteau, Cascade, Meagher, and Park Counties.

(4) The Pacific EMU is Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington; portions of Colorado, New Mexico, and Wyoming west of the Continental Divide; and in Montana Hill, Chouteau, Cascade, Meagher, and Park Counties and all counties west of those counties.

(5) An EMU may be further divided between north and south along the 40th Parallel.

Eagle nest means any assemblage of materials built, maintained, or used by bald eagles or golden eagles for the purpose of reproduction. An eagle nest remains an eagle nest until it becomes so diminished, or the nest substrate upon which it is built fails, that the nest is no longer usable and is not likely to become usable to eagles, as determined by a Federal, Tribal, or State eagle biologist.

* * * * *

General permit means a permit that has nationwide or regional standard conditions for a category, or categories, of activities that are substantially similar in nature.

* * * * *

In-use nest means a bald eagle or golden eagle nest that contains one or more viable eggs or dependent young, or, for golden eagles only, has had adult eagles on the nest within the past 10 days during the breeding season.

Incidental take means take that is foreseeable and results from, but is not the purpose of, an activity.

* * * * *

9. Amend § 22.12 by adding paragraph (c) to read as follows:

§ 22.12 Illegal activities.

* * * * *

(c) Application for a permit does not release you from liability for any take that occurs prior to issuance of, or outside the terms of, a permit.

10. Revise the heading of subpart C to read as follows:

Subpart C—Eagle Possession Permit Provisions

§ 22.80 [Removed and Reserved]

11. Remove and reserve § 22.80.

§ 22.85 [Removed and Reserved]

12. Remove and reserve § 22.85.

13. Add subpart E to read as follows:

Subpart E—Take of Eagles for Other Interests

Sec.
22.200 Specific permits.
22.210 General permits.
22.215 Conditions of permits.
22.220 Compensatory mitigation.
22.250 Permits for incidental take of eagles by wind energy projects.
22.260 Permits for incidental take of eagles by power lines.
22.280 Permits for disturbance take of eagles.
22.300 Permits for take of eagle nests.

§ 22.200 Specific permits.

(a) *Purpose.* Specific permits authorize the take of bald eagles or golden eagles for other interests by activities that are described in the regulations in this subpart. Proponents of projects may apply for a specific permit if they do not meet eligibility criteria for general permits described in—or are conducting an activity not identified in—§ 22.250, § 22.260, § 22.280, or § 22.300. Specific permits may be recommended by the Service or requested by entities that are eligible for but do not want to obtain a general permit.

(b) *Eligibility.* To qualify for a specific permit, you must be conducting an activity identified in § 22.250, § 22.260, § 22.280, or § 22.300. You must also meet any eligibility requirements identified in the relevant section.

(1) Permits are issued to the individual or entity conducting the activity, such as the owner or manager of the entity conducting the activity. The applicant is responsible for compliance with the permit and must have the authority to implement the required permit conditions.

(2) Contractors or consultants may assist in completing applications or conducting work as a subpermittee but may not be a permit holder.

(3) Applicants may not break down a project into small parts to minimize the activity.

(4) Applicants may not combine projects if the activities are not readily identifiable as being part of the same project. If you want to obtain a consolidated permit for multiple activities, you must first submit a separate application for each project and request the Service determine if it is appropriate to consolidate permits.

(5) Specific permits are issued to a single permit holder. If multiple entities operate a joint project and want to obtain joint authorization, the application must designate one entity as the permit holder and that entity must accept the legal liability for the other entities. The other entities must grant sufficient authority to the permit holder to carry out any activities required under the permit.

(6) Upon receipt of your application for a specific permit, the Service may direct you to apply for a general permit or determine that a permit is not required. The Service will provide a letter of authorization to keep in your records.

(7) For existing wind energy projects only, projects that are not eligible for a general permit for incidental take of eagles (§ 22.250) may request a Letter of Authorization from the Service to apply for a general permit. The Service will review and

determine if eagle risk at the project is consistent with the risk expected for general permits. To request review, you must submit a specific permit application and request a determination for general permit eligibility. Your administration fee will not be refunded to cover the cost of conducting this review. The application fee may be refunded (50 CFR 13.11(d)(1)).

(c) *How to apply for a specific permit.* (1) Submit a completed application form as specified in § 22.250(a), § 22.260(a), § 22.280(a), or § 22.300(a), as applicable, or Form 3–200–71 if the activity does not correspond with a particular permit type. Submit forms to the Regional Director of the region where you will conduct your activity. If your activity spans multiple regions, submit your application to the region of your U.S. mailing address, and the Service will assign the appropriate administering region. You can find the current contact information for Regional Directors in § 2.2 of subchapter A of this chapter.

(2) Your application must include:

(i) A description of the activity that will cause the take to be authorized, including the location, seasonality, and duration of the activity.

(A) If applying under § 22.250 for wind energy projects, that description must include the number of turbines, rotor diameter, hub height, location coordinates of each turbine, and the datum of these coordinates.

(B) If applying under § 22.260 for power lines, include the State and county(ies) of coverage and total miles of transmission and distribution lines. To the extent known, include the number of miles or number of poles in eagle-risk areas that are not avian-safe.

(C) If applying under § 22.280 or § 22.300, include the location of known nest(s) and nest status (e.g., in-use or alternate).

(ii) Justification of why there is no practicable alternative to take that would protect the interest to be served.

(iii) An eagle impacts assessment, including eagle activity and eagle use in the project area and a description of methods used to conduct this assessment. If the Service has officially issued or endorsed survey, modeling, take-estimation, or other standards for the activity that will take eagles, you must follow them and include in your application all the information thereby obtained, unless the Service waives this requirement for your application.

(iv) Implemented and proposed steps to avoid and minimize to the maximum degree practicable, compensate for, and monitor impacts on eagles.

(v) Alternative actions considered and the reasons why those alternatives are not practicable.

(vi) Any supplemental information necessary for the Service to make an adequate determination on the application (see § 13.21 of this subchapter).

(vii) Payment of the required application and administration fees (see § 13.11(d)(4) of this subchapter) for the appropriate fee tier, and, if required, proposed compensatory mitigation plan or eagle credits to be obtained from a Service-approved conservation bank or in-lieu fee program. All compensatory mitigation must comply with the provisions of § 22.220. For incidental take permits issued under §§ 22.250 and 22.260:

(A) The Tier 1 application fee is assessed when standardized permit conditions require negligible modifications, additional environmental compliance review is not required, and, if required, fatality estimates require minimal data manipulation.

(B) The Tier 2 application fee is assessed for all other specific permit incidental take applications that require 275 staff-hours or fewer for review, including compliance with the procedural requirements of NEPA. The Service may require applicants to enter into a reimbursable agreement to cover the costs above 275 staff-hours.

(d) *Issuance criteria.* Upon receiving a complete application, the Regional Director will decide whether to issue a permit based on the general criteria of § 13.21 of this subchapter and whether the application meets the following requirements:

(1) The applicant is eligible for a specific permit.

(2) The take:

(i) Is necessary to protect a legitimate interest in a particular locality;

(ii) Results from, but is not the purpose of, the activity; and

(iii) Cannot practicably be avoided.

(3) The amount of take the Service authorizes under the permit is compatible with the preservation of the bald eagle and the golden eagle, including consideration of the effects of other permitted take and other factors affecting bald eagle and golden eagle populations.

(4) The applicant has proposed avoidance and minimization measures to reduce the take to the maximum degree practicable relative to the magnitude of the activity's impacts on eagles. These measures must meet or exceed the requirements of the general permit regulation (§ 22.210), except where not practicable.

(5) If compensatory mitigation is required, the applicant has proposed either to implement compensatory mitigation measures that comply with the standards in § 22.220 or secure required eagle credits from a Service-approved conservation bank or in-lieu fee program. Compensatory mitigation must meet or exceed the requirements of the general permit regulation (§ 22.210), except when the Service's evaluation of site-specific data indicates a lower mitigation rate is appropriate.

(6) The applicant has proposed monitoring plans that are sufficient to determine the effects on eagle(s) of the proposed activity.

(7) The proposed reporting is sufficient for the Service to determine the effects on eagle(s).

(8) Any additional factors that may be relevant to our decision whether to issue the permit, including, but not limited to, the cultural significance of a local eagle population and whether issuance of a permit would preclude the Service from authorizing take necessary to protect an interest of higher priority. The Service will prioritize safety emergencies, Native American Tribal religious use, and public health and safety.

(e) *Modifications to your permit.* If the permittee requests substantive amendments (see § 13.11(d)(5) of this subchapter) during the permit tenure, the Service will charge an amendment fee. The Service will charge an amendment fee and an administration fee for permittee-requested substantive amendments that require new analysis, such as modifications that result in re-estimating take, re-evaluating compensatory mitigation requirements, or requiring additional environmental review to comply with procedural requirements under NEPA.

(f) *Tenure.* The tenure of each permit will be designated on the face of the permit. Specific permits may be valid for a maximum of 30 years. Permit tenure may be less, as restricted by the provisions for specific activities set forth in § 22.250, § 22.260, § 22.280, or § 22.300 or as appropriate to the duration and nature of the proposed activity, including mitigation requirements.

§ 22.210 General permits.

(a) *Purpose.* General permits authorize the take of bald eagles or golden eagles for other interests that meet the eligibility requirements for general permits set forth in § 22.250, § 22.260, § 22.280, or § 22.300.

(b) *Eligibility.* To qualify for a general permit, you must be conducting an activity identified in § 22.250, § 22.260, § 22.280, or § 22.300 and meet any additional eligibility requirements identified in the relevant section.

(1) Permits are issued to the individual or entity conducting the activity, such as the owner or manager of the entity conducting the activity. The applicant is responsible

for compliance with the permit and must have the authority to implement the required permit conditions.

(2) Contractors or consultants may assist in completing applications or conducting work as a subpermittee but may not be a permit holder.

(3) Applicants may not break a project into parts to meet general permit eligibility criteria when the entire project would not be eligible.

(4) Applicants may not combine projects if the activities are not readily identifiable as being part of the same project. If you want to obtain a consolidated permit for multiple activities, you must apply for a specific permit.

(5) General permits are issued to a single permit holder. If multiple entities operate a joint project and want to obtain joint authorization, the application must designate one entity as the permit holder and that entity must accept the legal liability for the other entities. The other entities must grant sufficient authority to the permit holder to carry out any activities required under the permit.

(6) The Service may notify you in writing that you must apply for a specific permit if the Service finds that the project does not comply with the requirements for a general permit.

(c) *How to apply.* (1) Register with the Service by submitting the appropriate application form specified in § 22.250(a), § 22.260(a), § 22.280(a), or § 22.300(a) to Headquarters. You can find the current contact information for Migratory Birds in § 2.1 of subchapter A of this chapter.

(2) Your application must include:

(i) A description of the activity that will cause the take of bald eagles or golden eagles, including the location, and seasonality.

(A) If applying under § 22.250 for wind energy projects, include the number of turbines, rotor diameter, hub height, location coordinates of each turbine, and the datum of these coordinates.

(B) If applying under § 22.260 for power lines, include the State and county(ies) of coverage and total miles of transmission and distribution lines. To the extent known, include the number of miles or number of poles in eagle-risk areas that are not avian-safe.

(C) If applying under § 22.280 or § 22.300, include the location of known nests and nest status (i.e., in-use or alternate).

(ii) Justification of why there is no practicable alternative to take that would protect the interest to be served.

(iii) Description of eagle activity and eagle use in the project area.

(iv) Certification that the activity involving the take of eagles authorized by the general permit complies with all other applicable Federal, State, Tribal, and local laws. This includes certifying that the activity for which take is to be authorized by the general permit either does not affect a property that is listed, or is eligible for listing, in the National Register of Historic Places as maintained by the Secretary of the Interior; or that the applicant has obtained, and is in compliance with, a written agreement with the relevant State Historic Preservation Officer or Tribal Historic Preservation Officer that outlines all measures the applicant will undertake to mitigate or prevent adverse effects to the historic property.

(v) Payment of required application and administration fees (see § 13.11(d)(4) of this subchapter).

(vi) A certification that the applicant agrees to acquire eagle credits, if required, from a Service-approved conservation bank or in-lieu fee program within 90 days of the effective date of the permit.

(d) *Issuance criteria*. Upon an applicant registering by submitting an application under paragraph (c) of this section, the Service will automatically issue a general permit to authorize the take requested in the application. In registering, you must certify that you meet the general criteria of § 13.21 of this subchapter and the following issuance criteria:

(1) You are conducting an activity that qualifies for a general permit.

(2) The take:

(i) Is necessary to protect a legitimate interest in a particular locality;

(ii) Results from, but is not the purpose of, the activity; and

(iii) Cannot practicably be avoided.

(3) The activity is consistent with the requirements applicable to that activity as specified in § 22.250, § 22.260, § 22.280, or § 22.300.

(4) You will implement the general permit conditions applicable to your activity, including required avoidance, minimization, monitoring, and reporting requirements.

(5) You will obtain any required eagle credits from a Service-approved conservation bank or in-lieu fee program within 90 days of the effective date of your permit.

(e) *Program continuation*. The Service will regularly evaluate whether the take of bald eagles and golden eagles under general permits remains compatible with the preservation of eagles. If the Service finds, through analysis of the best available information, that the general permit program is not compatible with the preservation of bald eagles or golden eagles, the Service may suspend issuing general permits in all or in part after publishing notification in the *Federal Register*. The Service may reinstate issuance of general permits after publishing another notification in the *Federal Register* or by promulgating additional rulemaking. If the Service suspends general permitting, take currently authorized under a general permit remains authorized until expiration of that general permit, unless you are notified otherwise.

(f) *Tenure.* The tenure of each permit will be designated on the face of the permit. General permits have a maximum tenure of 5 years. Permit tenure may be less, as restricted by the applicable provisions in § 22.250, § 22.260, § 22.280, or § 22.300.

§ 22.215 Conditions of permits.

(a) Anyone conducting activities under a specific permit (§ 22.200) or general permit (§ 22.210) is subject to the conditions set forth in this section. You must also comply with the relevant conditions set forth in subpart D of part 13 of this subchapter and the conditions of your general or specific permit.

(1) Your permit will specify the type of take authorized (e.g., incidental take, disturbance, nest take) and may specify the amount, location, or other restrictions on the take authorized. You are not authorized for any take not specified on the face of your permit.

(2) Your permit will require implementation of avoidance, minimization, monitoring, and adaptive management measures consistent with the relevant regulations in this subpart E. This may include requirements to:

(i) Modify the seasonality, frequency, timing, duration, or other aspects of your activity.

(ii) Implement measures to avoid and minimize the take or effects of take on eagles.

(iii) Monitor to determine the effects of the activity on eagles according to Service-approved protocols.

(iv) Implement an adaptive management plan.

(3) Your permits will specify requirements for reporting and disposing of any discovered eagle remains or injured eagles. Requirements may include:

(i) Training onsite personnel and requiring personnel to scan for discovered eagle remains or injured eagles;

(ii) Collecting information on discovered eagle remains or injured eagles, including species, condition, discovery date, location, and other information relevant to eagle identification and determining the cause of death or injury;

(iii) Reporting discovered eagle remains or injured eagles, including immediate notification and annual reporting; and

(iv) Disposition of any discovered eagle remains or injured eagles in accordance with Service instructions, which may include shipping eagles to the National Eagle Repository or other designated facility.

(4) You must comply with all Service reporting requirements. You must annually report incidental take and disturbance take using Form 3–202–15. You must report nest take using Form 3–202–16. You must submit accurate reports within the required timeline.

(5) You must comply with all compensatory mitigation requirements in accordance with § 22.220, including any additional requirements contained in § 22.250, § 22.260, § 22.280, or § 22.300.

(6) You must keep records of all activities conducted under this permit, including those of subpermittees carried out under the authority of this permit (see § 13.46 of this subchapter). You must provide records to the Service upon request.

(7) By accepting this permit, you are authorizing the Service to:

(i) Publish the following information in a public list of permittees: permittee name, permit type, county and State of activity, and effective date range.

(ii) Inspect the location and records relating to the activity at the location where those records are kept. Any inspections will occur during regular business hours (see § 13.21(e) of this subchapter).

(iii) Provide access to Service staff or contractors as part of participation in the Service's program-wide monitoring. The Service will provide reasonable notice for

requests to access sites and negotiate with the permittee about practicable and appropriate access conditions to protect human health and safety and comply with any physical, logistical, or legal constraints.

(8) You are responsible for ensuring that the activity for which take is authorized complies with all applicable Federal, Tribal, State, and local laws, regulations, and permits. You must comply with all label instructions for handling controlled substances and chemicals, including pesticides.

(9) Permits are issued to the entity or individual conducting the action.

(i) The Principal Officer is the chief operating officer responsible for the permit application and any permitted activities. The Principal Officer is responsible for compliance with all conditions of authorization, including the conditions listed here and any permit conditions. The Principal Officer must have the authority to implement all conditions and is legally liable for any subpermittee conducting activities under the permit.

(ii) The authority of this authorization may be exercised by subpermittees. A subpermittee is any person who is employed by the authorized entity to conduct the activities specified or any person designated as a subpermittee in writing by the Principal Officer. Subpermittee-designation letters must identify who can conduct what activities and list any restrictions on the dates, locations, or types of activities the subpermittee may conduct.

(iii) The Principal Officer is responsible for any subpermittee who is conducting authorized activities. Subpermittees must have the conditions of authorization and, if applicable, a copy of the permit readily available. Subpermittees who are not employees must also have a subpermittee-designation letter.

(b) The Service may amend, suspend, or revoke a permit issued under this subpart if new information indicates that revised permit conditions are necessary, or that

suspension or revocation is necessary, to safeguard local or regional eagle populations. This provision is in addition to the general criteria for amendment, suspension, and revocation of Federal permits set forth in §§ 13.23, 13.27, and 13.28 of this subchapter.

(c) Notwithstanding the provisions of § 13.26 of this subchapter, you remain responsible for all outstanding monitoring requirements and mitigation measures required under the terms of the permit for take that occurs prior to cancellation, expiration, suspension, or revocation of the permit.

§ 22.220 Compensatory mitigation.

(a) Your permit conditions may include a requirement to compensate for the take of eagles.

(1) Any permit authorizing take that would exceed the applicable EMU take limit will require compensatory mitigation, except in circumstances where the action is considered in the best interest of an eagle. Compensatory mitigation for this purpose must ensure the preservation of the affected eagle species by mitigating an amount equal to or greater than the authorized or expected take. Compensatory mitigation must either reduce another ongoing form of mortality or increase the eagle population of the affected species. Compensatory mitigation for golden eagles must be performed at a 1.2:1 (mitigation:take) ratio.

(2) A permit may require compensatory mitigation when the Service determines, according to the best available information, that the take authorized by the permitted activity is not consistent with maintaining the persistence of the local area population of an eagle species.

(b) All required compensatory mitigation actions must:

(1) Be contingent upon application of avoidance and minimization measures to reduce the take to the maximum degree practicable relative to the magnitude of the project’s impacts on eagles.

(2) Be sited within:

(i) The same EMU where the permitted take will occur; or

(ii) Another EMU if the Service has reliable data showing that the population affected by the take includes individuals that are reasonably likely to use that EMU during part of their seasonal migration.

(3) If required by the Service, be sited within a specified local area population.

(4) Use the best available science in formulating, crediting, and monitoring the long-term effectiveness of mitigation measures.

(5) Be additional to and improve upon the baseline conditions for the affected eagle species in a manner that is demonstrably new and would not have occurred without the compensatory mitigation.

(6) Be durable and, at a minimum, maintain its intended purpose for as long as required by the mitigation conditions in the permit.

(7) Include mechanisms to account for and address uncertainty and risk of failure of a compensatory mitigation measure.

(8) Include financial assurances that the required compensatory mitigation measures will be implemented in full.

(c) Compensatory mitigation must be approved by the Service and may include conservation banks, in-lieu fee programs, or permittee-responsible mitigation as mitigation providers.

(1) General permittees meet this requirement by obtaining required credits from a Service-approved, third-party mitigation provider. Specific permittees can meet this requirement by obtaining required credits from a Service-approved, third-party mitigation provider or meeting the requirements to be a permittee-responsible mitigation provider as described in paragraph (c)(2) of this section. Third-party mitigation providers (e.g., in-

lieu fee programs and conservation banks) obtain Service approval by meeting the requirements to be a mitigation provider as described in paragraph (c)(2) of this section.

(2) To obtain approval as a mitigation provider, potential providers must submit a mitigation plan to the Service that demonstrates how the standards set forth in paragraph (b) of this section will be met. At a minimum, this must include a description of the mitigation, the benefit to eagles, the locations where projects will be implemented, the EMU and local area population affected, the number of credits provided, and an explanation of the rationale for the number of eagle credits provided. The Service must approve the mitigation plan prior to implementation.

§ 22.250 Permits for incidental take of eagles by wind energy projects.

(a) *Purpose.* The regulations in this section authorize the incidental killing or injury of bald eagles and golden eagles associated with the operation of wind energy projects. Apply using Form 3–200–71.

(b) *Definition.* The following term used in this section has the meaning set forth in this paragraph (b):

Existing project. Infrastructure that was operational prior to [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], as well as infrastructure that was sufficiently far along in the planning process on that date that complying with new requirements would be impracticable, including if an irreversible or irretrievable commitment of resources has been made (e.g., site preparation was already underway or infrastructure was partially constructed).

(c) *Eligibility for a general permit.* To qualify for a general permit, you must meet the requirements of § 22.210, be located in the contiguous 48 States, not have discovered four or more eagles of one species in the previous 5 years per paragraph (d)(3) of this section, and:

(1) Be a project applying for a general permit for the first time, and all turbines associated with the project are:

(i) At least 2 miles from a golden eagle nest and at least 660 feet from a bald eagle nest; and

(ii) Located in areas characterized by seasonal relative abundance values that are less than the relative abundance values for the date range for each species in tables 1 and 2:

Table 1 to Paragraph (c)(1)(ii)

Relative Abundance Value Thresholds for Bald Eagles Throughout the Year

Date Range	Bald Eagle Relative Abundance
1. February 15 – May 23	0.821
2. May 24 – July 19	0.686
3. July 20 – December 20	0.705
4. December 21 – February 14	1.357

Table 2 to Paragraph (c)(1)(ii)

Relative Abundance Value Thresholds for Golden Eagles Throughout the Year

Date Range	Golden Eagle Relative Abundance
1. February 8 – June 6	0.081
2. June 7 – August 30	0.065
3. August 31 – December 6	0.091
4. December 7 – February 7	0.091

(2) Be a project currently authorized under a general permit that:

(i) Has discovered fewer than four eagles (either eagle remains or injured eagles) of any one species during the previous general permit tenure;

(ii) Had no lapse in general-permit coverage; and

(iii) Ensures that any turbines not authorized on the previous general permit meet the issuance criteria in paragraph (c)(1) of this section.

(3) Be an existing project that has received a letter of authorization from the Service (see § 22.200(b)(7)).

(d) *Discovered eagle provisions for general permits.* You must implement procedures to discover eagle remains and injured eagles in accordance with § 22.215(a)(3) and as required by your permit conditions. In following those protocols:

(1) You must include in your annual report the discovery of any eagle remains or injured eagles.

(2) If you discover eagle remains or injured eagles of three eagles of any one species during the tenure of a general permit, you must notify the Service in writing within 2 weeks of discovering the take of a third eagle and implement adaptive management measures. When notifying the Service, you must include the reporting data required by your permit conditions, your adaptive management plan, and a description and justification of the adaptive management approaches you will implement for the remaining duration of your general permit.

(3) If you discover eagle remains or injured eagles of four eagles of any one species during the tenure of a general permit, you must notify the Service in writing within 2 weeks of discovering the take of the fourth eagle. When notifying the Service, you must include the reporting data required by your permit conditions, your adaptive management plan, and a description and justification of the adaptive management approaches you will implement for the remaining duration of your general permit term. The project will remain authorized to incidentally take eagles through the term of the existing general permit but will not be eligible for future general permits. You may instead apply for a specific permit for incidental take at that project. You may request reconsideration of general-permit eligibility by following the review procedures set forth at § 13.29 of this subchapter, including providing the information required in § 13.29(b)(3).

(4) If the Service conducts monitoring at a wind project, eagle remains or injured eagles discovered by the Service, or Service contractor, are not attributed to the project

for the purposes of this paragraph (d), unless the Service determines the eagles were also discovered, or were likely to have been discovered, by required monitoring efforts at the project.

(e) *Eligibility for a wind energy specific permit.* To qualify for a specific permit, you must meet the requirements of § 22.200. In determining whether to issue a permit, the Service will review the application materials provided, including the eagle impacts assessment. The Service will determine, using the best available data, the expected take of eagles by the proposed activity.

(f) *Wind energy permit conditions.* The following conditions apply to all general and specific permits. Specific permits may include additional project-specific permit conditions.

(1) Develop and implement an adaptive management plan. An adaptive management plan applies the best available science and monitoring to refine project operations and practices. Plans identify criteria for implementation of the mitigation hierarchy, including avoidance, minimization, and compensation to remain consistent with permit conditions and the preservation of eagles.

(2) Remove and avoid creating anthropogenic features that increase the risk of eagle take by attracting eagles to the project site or encouraging foraging, roosting, or nesting behaviors.

(3) Minimize collision and electrocution risks, including collisions with turbines, vehicles, towers, and power lines.

(4) Comply with all relevant regulations and permit conditions in part 21 of this subchapter.

(5) Submit required reports to the Service by the applicable deadline.

(6) Pay the required application and administration fees (see § 13.11(d)(4) of this subchapter).

(7) Implement required compensatory mitigation. You must keep records to document compliance with this requirement and provide them to the Service with your annual report.

(i) For wind energy specific permits, you must submit a plan to the Service in accordance with § 22.200(c) and implement the compensatory-mitigation requirements included on the face of your permit.

(ii) For wind energy general permits, you must obtain eagle credits from a Service-approved conservation bank or in-lieu fee program based on the hazardous volume of the project (in cubic kilometers). The hazardous volume of a project is calculated as the number of turbines multiplied by $0.200\pi(d/2)^2$ where d is the diameter of the blades in kilometers. You must obtain eagle credits at the following rates: Atlantic/Mississippi EMUs: 6.02 eagles/km^3, Central EMU: 7.46 eagles/km^3, and Pacific EMU: 11.12 eagles/km^3.

(g) *Tenure of permits*. General permits are valid for 5 years from the date of registration. Specific permits may be valid for up to 30 years.

§ 22.260 Permits for incidental take of eagles by power lines.

(a) *Purpose.* The regulations in this section authorize the incidental killing or injury of bald eagles and golden eagles associated with power line activities. Apply using Form 3–200–71.

(b) *Definitions.* The following terms used in this section have the meanings set forth in this paragraph (b):

Avian-safe. A power-pole configuration designed to minimize avian electrocution risk by providing sufficient separation between phases and between phases and grounds to accommodate the wrist-to-wrist or head-to-foot distance of the bird. For eagles, this is 150 centimeters of horizontal separation and 100 centimeters of vertical separation. If sufficient separation cannot be provided, exposed parts that conduct electricity must be

covered to reduce electrocution risk. If covers are used, they must be maintained in good condition. For conversions from an above-ground line to a buried line, the buried portion is considered "avian-safe." For purposes of the regulations in this section, "avian-safe" means safe for eagles.

Collision response strategy. A plan that describes the process the permittee will follow to identify whether a collision-caused injury or mortality has occurred, to evaluate factors that contributed to the collision, and to implement risk-reduction measures commensurate with the collision risk.

Proactive retrofit strategy. A plan to convert existing infrastructure to avian-safe infrastructure within a set timeline. The strategy must identify a baseline of poles to be proactively retrofit. The existing-infrastructure baseline must include all poles that are not avian-safe for eagles located in areas identified as high risk to eagles and may also include other poles in the service area.

Reactive retrofit strategy. A plan to respond to incidents where eagles are electrocuted or killed. The reactive retrofit strategy must include information on how eagle electrocutions are detected and identified. Determining which poles to retrofit must be based on the risk to eagles and not on other factors (e.g., convenience or cost). The pole that caused the electrocution must be retrofitted unless the pole is already avian-safe. A total of 13 poles or a half-mile segment must be retrofitted, whichever is less, prioritizing the highest risk poles closest to the electrocution event.

Shooting response strategy. A plan that describes the process the permittee will follow when eagles are found killed or injured near power-line infrastructure to identify if shooting is suspected, to communicate with law enforcement, and to identify and implement appropriate shooting reduction measures.

(c) *Eligibility for a general permit for incidental take*. To qualify for a general permit, you must meet the requirements of § 22.210.

(d) *General permit conditions for power lines*. Project permittees must:

(1) Develop a reactive retrofit strategy and implement that strategy following each discovery of an electrocuted eagle. The investigation, documentation, and retrofit design selection must be completed within 90 days of the incident. The retrofit must be implemented within 1 year of the incident and remain effective for 30 years.

(2) Implement a proactive retrofit strategy to convert all existing-infrastructure-baseline poles to avian-safe. Retrofits must remain effective for 30 years.

(i) Investor-owned utilities must retrofit all existing-infrastructure-baseline poles within 50 years. Ten percent of baseline poles must be converted to avian-safe during each permit tenure unless extenuating circumstances apply.

(ii) Non-investor-owned utilities must retrofit all existing-infrastructure-baseline poles within 75 years. Seven percent of baseline poles must be converted to avian-safe during each permit tenure unless extenuating circumstances apply.

(3) Implement an eagle collision response strategy. Within 90 days of a collision, you must complete an investigation where the collision occurred by documenting the factors contributing to the collision and identifying appropriate risk-reduction measures. You must implement selected risk-reduction measures at the location of the collision within 1 year of the incident.

(4) Implement an eagle shooting response strategy. The strategy must include a protocol for immediately contacting the Office of Law Enforcement (in no case more than 72 hours from discovery) when finding eagle remains or an injured eagle near power line infrastructure in circumstances that suggest the eagle may have been shot. If multiple shooting events occur in the service area during the permit tenure, the strategy should describe and provide for the implementation of reasonable shooting-reduction measures.

(5) Train personnel to scan for eagle remains when onsite and implement internal reporting and recordkeeping procedures for discovered eagles.

(6) Ensure that all new construction and rebuild or replacement of poles in areas of high risk for eagles is avian-safe unless this requirement would unduly impact human health and safety, require overly burdensome engineering, or have significant adverse effects on biological, cultural, or historical resources.

(7) For new construction and rebuild, reconstruction, or replacement projects, incorporate information on eagles into siting and design considerations. Minimize eagle risk by siting away from eagle-use areas (e.g., nests and winter roosts), accounting for the risk to and population status of the species, unless this requirement would unduly impact human health and safety; require overly burdensome engineering; or have significant adverse effects on biological, cultural, or historical resources.

(8) Comply with all relevant regulations and permit conditions of part 21 of this subchapter.

(9) Submit required reports to the Service using Form 3–202–15.

(10) Pay the required application and administration fee as set forth in § 13.11(d)(4) of this subchapter.

(e) *Specific permit for incidental take*—(1) *Eligibility.* Any entity conducting power line activities that meet the requirements of § 22.200 may apply for a specific permit.

(2) *Conditions.* You must comply with the conditions required in § 22.200. Your permit conditions will include the relevant general-permit conditions from paragraph (d) of this section. Compensatory mitigation may be required when appropriate, including if general permit conditions cannot be met.

(f) *Tenure of permits.* Power line general permits are valid for 5 years. Specific permits may be valid for up to 30 years.

§ 22.280 Permits for disturbance take of eagles.

(a) *Purpose.* The regulations in this section authorize the take of bald eagles or golden eagles by disturbance, as defined in § 22.6. Apply using Form 3–200–91. Permits to authorize disturbance associated with hazing eagles or eagle nest take are not authorized under this section. A permit is not required when an activity that may ordinarily disturb eagles is ongoing at the time an eagle pair initiates nesting because the nesting eagles are presumed to tolerate the activity.

(b) *Eligibility for a general permit for disturbance.* To qualify for a general permit, you must meet the requirements of § 22.210, and your activities must comply with the provisions set forth in paragraphs (b)(1) through (9) of this section. If permanent loss of a territory may occur, a specific permit is recommended because general permits for disturbance do not authorize the permanent loss of a territory. General permits are not available if the nest is located in Indian country (18 U.S.C. 1151), unless the Tribe is the applicant. The following activities are eligible for a general permit:

(1) Building construction and maintenance within 660 feet of a bald eagle nest.

(2) Linear infrastructure construction and maintenance (e.g., roads, rail, trails, power lines, and other utilities) within 660 feet of a bald eagle nest.

(3) Alteration of shorelines and water bodies (e.g., shorelines, wetlands, docks, moorings, marinas, and water impoundment) within 660 feet of a bald eagle nest.

(4) Alteration of vegetation (e.g., mowing, timber operations, and forestry practices) within 660 feet of a bald eagle nest.

(5) Motorized recreation (e.g., snowmobiles, motorized watercraft, etc.) within 330 feet of an in-use bald eagle nest.

(6) Nonmotorized recreation (e.g., hiking, camping, fishing, hunting, canoeing, etc.) within 330 feet of an in-use bald eagle nest.

(7) Aircraft operation (e.g., helicopters and fixed-wing aircraft) within 1,000 feet of an in-use bald eagle nest.

(8) Prescribed burn operations within 660 feet of a bald eagle nest.

(9) Loud, intermittent noises (e.g., blasting) within one-half-mile of an in-use bald eagle nest.

(c) *Eligibility for a specific permit for disturbance.* To qualify for a specific permit, you must meet the requirements of § 22.200. Specific permits are for disturbance of a golden eagle nest, disturbance of a bald eagle nest by an activity not specified in paragraph (b) of this section, or disturbance of eagles caused by physical or functional elimination of all foraging area within a territory.

(d) *Disturbance permit conditions.* (1) To the maximum degree practicable, implement measures to avoid and minimize nest disturbance, including disturbance due to noise from human activities, visibility of human activities, proximity of activities to the nest, habitat alteration, and any indirect stressors.

(2) Avoid activities that may negatively affect the nesting substrate, including the survival of the nest tree.

(3) Monitor in-use nests sufficiently to determine whether nestlings have fledged from the nest. Include this information in your annual report.

(e) *Reporting*. You must submit an annual report using Form 3–202–15. The annual report is due on the date specified on your permit or prior to requesting renewal of your permit, whichever is first.

(f) *Tenure of permits*. General permits for disturbance issued under the regulations in this section are valid for a maximum of 1 year. The tenure of specific permits for disturbance is set forth on the face of the permit and may not exceed 5 years.

§ 22.300 Permits for take of eagle nests.

(a) *Purpose.* This section authorizes the take of a bald eagle nest or a golden eagle nest, including relocation, removal, and otherwise temporarily or permanently preventing eagles from using the nest structure for breeding, when there is no practicable alternative that would protect the interest to be served. Apply using Form 3–200–72.

(b) *Definitions.* The following terms used in this section have the meanings set forth in this paragraph (b):

Nest take for emergency. Take of an in-use or alternate eagle nest when necessary to alleviate an existing safety emergency for humans or eagles or to prevent a rapidly developing situation that is likely to result in a safety emergency for humans or eagles.

Nest take for health and safety. Take of an eagle nest when the removal is necessary to ensure public health and safety. Nest take for health and safety is limited to in-use nests prior to egg laying or alternate nests.

Nest take for human-engineered structure. Take of an eagle nest built on a human-engineered structure that creates, or is likely to create, a functional hazard that renders the structure inoperable for its intended use. Take is limited to in-use nests prior to egg-laying or alternate nests.

Nest take for species protection. Take of an eagle nest when nest removal is necessary to protect a species federally protected under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544) and included on the List of Endangered and Threatened Wildlife (at § 17.11 of this subchapter). Take is limited to in-use nests prior to egg laying or alternate nests.

Other purposes. Take of an alternate eagle nest, provided the take is necessary to protect an interest in a particular locality and the activity necessitating the take or the mitigation for the take will, with reasonable certainty, provide a net benefit to eagles.

(c) *Eligibility for a general permit for nest take.* To qualify for a general permit, you must meet the requirements of § 22.210.

(1) General permits are available for bald eagle nest take for emergency, nest take for health and safety, or nest take for a human-engineered structure, or, if located in Alaska, other purposes.

(2) General permits are not available for take of golden eagle nests. General permits are not available for bald eagle nests if removal may result in the complete loss of a territory.

(3) General permits are not available if the nest is located in Indian country (18 U.S.C. 1151), unless the Tribe is the applicant.

(d) *Eligibility for a specific permit for nest take.* To qualify for a specific permit, you must meet the requirements of § 22.200. Specific permits are required for take of a golden eagle nest for any purpose, nest take for species protection, and, except in Alaska, nest take for other purposes.

(e) *Permits for species protection.* If you are applying for a nest-take permit for species protection, you must:

(1) Be a Federal, State, or Tribal agency responsible for implementing actions for the protection of the species of concern.

(2) Include documentation that:

(i) Describes relevant management efforts to protect the species of concern.

(ii) Identifies and describes how the nesting eagles are a limiting factor to recovery of the species using the best available scientific information and data.

(iii) Explains how take of eagle nests is likely to have a positive effect on recovery for the species of concern.

(f) *Permit conditions for nest take.* Permit conditions may include requirements to:

(1) Adjust the timing of your activity to minimize the effects of nest take on eagles.

(2) Place an obstruction in the nest or nest substrate.

(3) Minimize or deter renesting attempts that would cause the same emergency, safety, or functional hazard.

(4) Relocate the nest or provide suitable nesting substrate within the same territory.

(5) Remove chicks or eggs from an in-use nest for immediate transport to a foster nest, rehabilitation facility, or as otherwise directed by the Service.

(6) If nestlings or eggs are relocated with a nest or to a foster nest, monitor the nest to ensure adults are tending to nestlings or eggs.

(7) Monitor the area near the nest removal for one or more seasons to determine the effect on eagles.

(8) Submit an annual report using Form 3–202–16.

(g) *Tenure of permits.* General permits issued under this section are valid until the start of the next breeding season, not to exceed 1 year. The tenure of specific permits is set forth on the face of the permit and may not exceed 5 years.

§ 22.75 [Redesignated as § 22.235]

14. Redesignate § 22.75 as § 22.325 and transfer to subpart E.

15. Amend newly designated § 22.325 by:

a. Revising the section heading; and

b. In the introductory text, removing the three sentences that follow the first sentence.

The revision reads as follows:

§ 22.325 Permits for golden eagle nest take for resource recovery operations.

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§ 22.90 [Redesignated as § 22.400]

16. Redesignate § 22.90 as § 22.400 and transfer to subpart E.

§ 22.400 [Amended]

17. Amend newly designated § 22.400 in paragraphs (a) and (b) by removing the words “the effective date of 50 CFR 22.80” and adding in their place the words “November 10, 2009”.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

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