DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 22

[Docket No. FWS–HQ–MB–2020–0023; FF09M30000–223–FXMB12320900000]

RIN 1018–BE70

Permits for Incidental Take of Eagles and Eagle Nests

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), propose the following revisions to regulations authorizing 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, facilitate and improve compliance, and increase the conservation benefit for eagles. In addition to continuing to authorize specific permits, we propose the creation of general permits for certain activities under prescribed conditions. We propose a general permit option for qualifying wind-energy generation projects, power line infrastructure, activities that may disturb breeding bald eagles, and bald eagle nest take. We propose to remove the current third-party monitoring requirement from eagle incidental take permits. We also propose to update current permit fees and clarify definitions.

DATES: *Comment submission:* This proposed rule, draft environmental review, and accompanying documents in the docket are available for public review and comment through November 29, 2022.

Information sessions: We will hold four information sessions in webinar format: two for members of federally recognized Native American Tribes and two for the general public. See Public Comments below under **SUPPLEMENTARY INFORMATION** for details.

Information collection requirements: If you wish to comment on the information collection requirements in this proposed 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 proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, (see ''Information Collection'' section below under **ADDRESSES**) by November 29, 2022.

ADDRESSES: *Document availability:* Supplementary documents to this rulemaking action, including a draft environmental review and list of references cited, 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.*

Comment submission: You may submit written comments on this proposed rule and draft environmental review by one of the following methods:

- *Electronically at the Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–HQ–MB–2020–0023.
- *By hard copy via U.S. mail:* Public Comments Processing, Attn: FWS–HQ–MB–2020–0023; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will post all comments on *https://www.regulations.gov,* including any personal information you provide. See *Public Availability of Comments* below under **SUPPLEMENTARY INFORMATION** for further information.

Information collection requirements: Send your comments on the information collection request by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, by email to *Info_Coll@fws.gov;* or by mail to 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803. 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.

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, the activity. These regulations were originally located at 50 CFR 22.26 and 22.27 but were later moved to 50 CFR 22.80 and 22.85 during a general reorganization of our migratory bird and eagle permit regulations (87 FR 876, January 7, 2022).

In 2016, the Service finalized a rule (81 FR 91494, December 16, 2016 [hereinafter the ''2016 Eagle Rule'']) revising the 2009 Eagle Rule that, among other things:

(1) extended the maximum tenure of permits for the incidental take of eagles from 5 to 30 years;

(2) updated the boundaries to the Service's Eagle Management Units (EMUs) to better reflect regional populations and migration patterns of both eagle species;

(3) imposed preconstruction monitoring requirements for wind-energy projects applying for incidental take permits;

(4) amended the preservation standard (discussed below); and

(5) imposed a new requirement to analyze cumulative-authorized and known-unauthorized take at local scales to ensure compliance with the preservation standard. This rulemaking 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, as well as 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.

During the public comment period, we received 1,899 distinct comments on the ANPR. Many comments included additional attachments (*e.g.,* scanned letters and supporting documents). These comments represented the views of Native American Tribes, multiple Federal and State agencies, private industries, nongovernmental organizations, and private citizens. In addition to the individual comments received, multiple organizations submitted attachments representing individuals' comments, form letters, and signatories to petition-like letters representing 1,804 signers.

Many comments expressed concerns with the efficiency of the current permitting process, including the lack of capacity within the Service to review and issue permits and the extensive processing times. Similarly, most comments supported the idea of a general permit program to streamline the process and provide more timely and cost-effective coverage for industry. Concerns were also raised about monitoring and reporting requirements. Several comments expressed opposition to third-party or pooled monitoring approaches, while others suggested the Service require permittees to implement a regular, standardized monitoring protocol with annual reporting requirements.

In drafting this proposed rule, we considered the comments received on the ANPR.

Preservation Standard

For this proposed rulemaking, we do not propose any changes to the current preservation standard or management objectives. The Eagle Act requires 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). The timeframe the Service used for modeling and assessing eagle population demographics is 100 years (at least eight generations) for both eagle species relative to the baseline set in the 2009 Eagle Rule. ''Eagle management unit'' is defined as a geographically bounded region within which permitted take is regulated to meet the management goal of maintaining stable or increasing breeding populations of bald or golden eagles (see 2016 PEIS). The 2016 PEIS and 2016 Eagle Rule describe two management objectives for ensuring the Service's 2016 preservation standard is met for eagles. These management objectives are: (1) maintain stable or increasing populations of both eagle species within EMUs, and (2) maintain the persistence of local area populations of both eagle species. Both objectives continue to use 2009 as the baseline, for 100 years into the future.

Population Status of Bald Eagles and Golden Eagles

We propose 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. The Service recently updated population size estimates and allowable take limits for bald eagles (87 FR 5493, February 1, 2022). That document included data from 2019 estimating the population of bald eagles in the coterminous United States to be 316,708, a four-fold increase above our previously published estimate in 2016. Bald eagle populations in most EMUs have been growing at the rate of 10 percent per year. The current population size estimate for the coterminous United States is approximately 336,000, with a nationwide take limit of 19,623 bald eagles. Conversely, golden eagle population trends through 2016 appear relatively stable. However, information on anthropogenic mortality rates suggests unpermitted take likely exceeds what is compatible with long-term population stability of golden eagles. The estimated U.S. population size for golden eagles remains approximately 38,000, which is less than the bald eagle population of 336,000 by an order of magnitude. The golden eagle take limit remains set at zero, unless offset with compensatory mitigation, because available information indicates that additional take of golden eagles without offsetting compensatory mitigation is likely to decrease the population and not be compatible with the preservation of golden eagles (Analysis of the effects of potential general permit scenarios on bald and golden eagles, (2022). Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, DC, USA.).

This Rulemaking

Overview

The Service proposes 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 proposed new subpart includes revised provisions for processing specific permits (sometimes called individual permits) and adds a general-permit alternative for qualifying activities. General permits would be available to authorize incidental take by activities, consistent with the preservation standard, that occur frequently enough for the Service to have developed a standardized approach to permitting. The proposed regulations also restructure the existing specific permit regulations for eagle take that is associated with, but not the purpose of, an activity (50 CFR 22.80) and removal of eagle nests (50 CFR 22.85). We propose amendments to 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.

Since implementation of the 2016 Eagle Rule, it has become clear that the Service's amended permitting structure did not fully achieve the goals of the 2016 PEIS. For bald eagles, populations have continued to grow. While this is good news in terms of preserving the species, it also means that bald eagles are interacting more often with human activities and infrastructure, resulting in a higher demand for permits authorizing the disturbance take and nest take of bald eagles. The current permit framework places an administrative burden on the public and the Service that is not commensurate with what is

required to effectively preserve bald eagles. For golden eagles, a goal of the 2016 Eagle Rule was to increase compliance and improve consistency and efficiency relating to permitting golden eagle take at wind-energy projects. However, those goals have not been realized. While participation in the permit program by wind energy projects has increased since 2016, it still remains well below our expectations. Low application rates and permit-processing requirements that some have perceived as burdensome have resulted in few permits being issued for wind projects as compared to the number of operational wind projects in areas where golden eagles occur. As a result, golden eagles continue to be taken without implementation of conservation actions to offset that take.

In this rulemaking, we propose a new subpart E for regulations governing the permitting of eagle take for other interests. We propose two regulations for administering permitting: specific permits (proposed § 22.200) and general permits (proposed § 22.210). We further propose to 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 (proposed § 22.250),

□ incidental take for permitting power lines (proposed § 22.260),

□ disturbance take (proposed § 22.280), and

□ nest take (proposed § 22.300).

The specific permit and general permit regulations are the governing regulations and contain the information that is the same for all activities and types of take. Currently, multiple different activities are consolidated into one regulation. This has resulted in complex and potentially confusing regulations. To improve clarity and transparency, we propose four additional regulations for these activities that contain activity-specific provisions beyond the general requirements for administering specific permits and general permits. We incorporated most of the existing requirements currently authorized under §§ 22.80 and 22.85 in the proposed subpart E regulations—the notable exception being the third-party monitoring requirement, which is currently in § 22.80, which we are not carrying over for the reasons discussed below.

For clarity and consistency, we also propose to move regulatory content on permit conditions to a new section (§ 22.215) and to move content on compensatory mitigation standards to a new section (§ 22.220). We propose new definitions to define ''general permit'' and ''incidental take'' and clarifying modifications to the definitions of ''eagle management unit,'' ''eagle nest,'' and ''in-use nest'' (§ 22.6). We propose redesignation of related regulations pertaining to permit requirements for take of golden eagle nests (currently at § 22.75 and proposed to move to § 22.325) and permits for bald eagle take exempted under the Endangered Species Act (currently at § 22.90 and proposed to move to § 22.400) to a new subpart E, with only the modification of a non-substantive change to the section title for proposed § 22.325. Finally, we propose 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 proposed changes to the locations of current regulations are as follows:

Current regulations now in 50 CFR part 22	Regulatory subject matter	Proposed 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 development	§ 22.325
§ 22.90	Bald eagle take exempted under the Endangered Species Act	§ 22.400

Specific Permits and General Permits for Eagle Take

Specific permits are the current approach to permitting eagle take. An applicant prepares an application, which is submitted to the Service. The Service reviews the application and determines whether to issue a permit. If the Service issues a permit, it includes permit conditions specific to the project. The Service proposes to retain the specific-permit approach for situations that have high or uncertain risks to eagles, thus maintaining an administrative burden that is commensurate with meeting the preservation standard for eagles.

The Service proposes general permits as an alternative approach to authorization for projects that meet eligibility criteria. The purpose of general permits is to simplify and expedite the permitting process for activities that have relatively consistent and low effects on eagles and well-established avoidance, minimization, compensatory mitigation, monitoring, and other permit conditions where take may be authorized without site-specific analysis. General-permit applicants would self-identify eligibility and register with the Service, including providing required application information and fees, as well as certify that they meet eligibility criteria and will implement permit conditions and reporting requirements. We will continue to fine-tune, and consider public input on, eligibility criteria for all general-permit categories included in this proposed rule to ensure that general permits effectively simplify and expedite the permit process for eligible projects while meeting the Eagle Protection Act's preservation standard. Service review is not required prior to obtaining a permit. Instead, a general permit is generated using permit conditions and reporting requirements for the activity. The Service intends to conduct annual audits for a small percentage of all general permits to ensure applicants are appropriately interpreting and applying eligibility criteria. The general-permit approach to authorizing eagle take requires the same compliance with the Eagle Act's preservation standard as specific permits but reduces the administrative burden in obtaining a permit. The

Service proposes to make general-permit conditions publicly available, so applicants understand permit requirements prior to application.

The Service proposes using 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. We will use the following mechanisms to ensure that general permits remain consistent with the preservation of bald and golden eagles: eligibility criteria, program-scale monitoring, reporting, compensatory-mitigation requirements, and a program-suspension clause if concern arises regarding the preservation of eagles. We propose to include Service monitoring costs necessary to support implementation of the general permit framework as part of the proposed general permit application and administration fees. We would use those fees for program-scale monitoring (in place of current project-scale monitoring required of the permittee) to verify that the general-permit program is compatible with the preservation of eagles and to better understand program impacts. The Service intends to compile information on general permits issued on an annual basis. This information, in accordance with privacy laws, may be made available to Tribes, States, and other interested parties that wish to know more about general-permit activities occurring in their area. If monitoring or other information indicates that continuing implementation of a general permit is inconsistent with the preservation of bald eagles or golden eagles, the Service may suspend the general program temporarily or indefinitely. This suspension may apply to all or part of general-permit authorizations.

Consistency With 2016 PEIS

We would implement continued population and program-wide monitoring and require project-scale reporting conducted by permittees to ensure that the proposed general-permit program will be consistent with our eagle preservation standard. Consistent with our 2016 Eagle Rule and the 2016 PEIS, we will continue to require compensatory mitigation for any authorized take of eagles exceeding EMU take limits and assess whether additional compensatory mitigation is necessary to ensure authorized take in excess of local area population (LAP) thresholds is compatible with the preservation of eagles. The best available information indicates that, although golden eagle populations over much of the United States were stable through 2016, ongoing levels of human-caused mortality likely exceed levels compatible with maintaining population stability, potentially substantially. Further increases in mortality would very likely cause population decline and therefore not meet the Service's preservation goal of a stable or increasing breeding population. As a result, the Service will maintain take limits for golden eagles at zero throughout their U.S. range and require compensatory mitigation to offset any authorized take of golden eagles. We will continue to require the current minimum offset ratio of 1.2 to 1 for any authorized killing/injury of golden eagles. This baseline mitigation ratio appropriately balances our obligations under the Eagle Act with reasonable, fair, and practicable requirements for permittees.

The 2016 PEIS described how the Service would consider permitted take at the LAP scale and when compensatory mitigation might be appropriate. We will continue to track estimates of authorized take spatially under the general permits and use this information to identify potential LAPs of concern. In the event an LAP of concern is identified, the Service would direct Service-approved in-lieu fee programs to target investments in compensatory mitigation to the LAP of concern. LAP mitigation is built into the required mitigation cost under all general permits for wind facilities; thus, the cost of this mitigation is shared across general permittees. We propose to continue site-specific evaluation of a project's impacts on eagles for specific permits.

The 2016 Eagle Rule introduced a requirement that independent third parties must conduct monitoring associated with long-term permits for incidental take of eagles. In implementing the 2016 Eagle Rule, this requirement has proven impracticable 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. The Service proposes to remove this requirement. Instead, the Service would rely on the requirement in 50 CFR 13.12(a)(5) 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 under 18 U.S.C. 1001. All information submitted with applications for permits from the Federal Government or required reports is subject to this statutory provision. Any demonstration or finding of falsified reports or underreporting will result in general permit suspension or revocation and referral to the Service's Office of Law Enforcement. We anticipate reference to this criminal provision will ensure that permittees provide the Service with accurate monitoring information without the need to require third-party monitoring.

The 2016 Eagle Rule, along with the availability of permits with a tenure up to 30 years, also introduced a requirement that permittees will participate in permit reviews with the Service at intervals not to exceed once every 5 years. The Service introduced these mandatory reviews to ensure that the Service had an opportunity to receive and review all existing data related to a long-term activity's impacts on eagles. It was intended that the Service would use this information to, if necessary, recalculate fatality estimates and authorization levels, and amend permit conditions such as mitigation requirements. Over the last several years, the Service has heard complaints from the regulated community that these scheduled reviews introduced uncertainty into project planning and funding and have discouraged potential applicants from participating or have influenced the permit tenure requested by the applicant. The Service proposes to remove this regulatory requirement. Removal of these administrative check-ins would increase certainty for applicants that are concerned about the potential for unknown amendments to permit conditions every 5 years and is intended to increase participation in eagle take permitting. The Service instead intends to hold the amount of take authorized under a long-term specific permit constant unless the permittee requests an amendment, or unless the Service determines that an amendment is necessary and required under 50 CFR 22.200(e). Third parties, including Tribes, States, and the general public, may contact the Service if they have concerns about compliance with permit terms at a particular project or new information that may bear on the conditions of the permit. The Service may initiate a permit review based on information received from third parties.

Eagle Incidental Take Permits for Wind Energy

Wind energy facilities incidentally take bald and golden eagles by injuring or killing eagles that collide with turbines. Applications for and issuance of permits authorizing incidental take of eagles at wind-energy projects has not

kept pace with this rapidly growing industry. While there are more than 1,000 wind-energy projects on the landscape, the Service has received fewer than 100 applications from those projects and has currently issued only 26 permits since promulgation of the 2016 Eagle Rule. We propose amendments to the current regulations to encourage broader participation in permitting by providing applicants with greater certainty and simplicity in applying for both general and specific permits. We anticipate in turn that eagle populations will benefit significantly from many more projects complying with avoidance, minimization, and mitigation requirements.

We propose new regulations at 50 CFR 22.250 to authorize the incidental take of eagles as part of wind-energy project operations. This proposed regulation would include the provisions of the regulations currently at 50 CFR 22.80 (permits for eagle take associated with, but not the purpose of, an activity) that apply to wind-energy generation activities with revisions. We also propose general permit eligibility criteria for projects located in areas where the risk to eagles is lower. We propose these changes to improve clarity and reduce complexity while retaining the core requirements of implementing practicable avoidance and minimization measures to reduce impacts, implementing appropriate compensatory mitigation, and ensuring the permitted take is compatible with the preservation of bald eagles and golden eagles. The Service will continue to consider revisions to our proposed general-permit eligibility criteria and other possible criteria that meet the preservation standard. With the creation of this new wind-energy regulation and other regulations described below, we also propose removal of 50 CFR 22.80.

The Service proposes to use relative eagle abundance as an eligibility standard for wind-energy general permits. Siting of wind energy projects in areas where fewer eagles occur remains the best method to avoid and minimize eagle take. The greater the abundance of eagles in the area where a project is located, the greater the likelihood of eagle take. The Service proposes the following relative abundance thresholds for golden eagles and for bald eagles, below which a project is eligible for a general permit (table 1). For a project to be eligible, seasonal eagle abundance at all existing or proposed turbine locations must be lower than all five thresholds listed. These relative abundance thresholds were derived using available data from eBird (eBird is an online database of bird distribution and abundance. Cornell Lab of Ornithology, *http://www.ebird.org*). These data are publicly available and geographically distributed and allow the Service to establish these eligibility criteria without the need for collecting site-specific information.

TABLE 1—RELATIVE ABUNDANCE THRESHOLDS FOR WIND ENERGY GENERAL PERMITS

Period	Date range	Bald eagle abundance
1	Feb 22–Apr 13	1.272
2	Apr 12–Sept 6	0.812
3	Sept 7–Dec 13	0.973
4	Dec 14–Feb 21	1.151
5	Average of period 1 and 3.	1.018

Period	Date range	Golden eagle abundance
1	Feb 15–May 16	0.206
2	May 17–Sep 27	0.118
3	Sep 28–Dec 13	0.168
4	Dec 14–Feb 14	0.229
5	Average of period 1 and 3.	0.145

The date ranges reflect the seasons where the species' population is generally moving or not moving. Periods 1 and 3 are the periods of movement between the breeding and non-breeding seasons (*i.e.,* spring and fall migration). Periods 2 and 4 are the periods when the species' population is generally static during breeding or wintering. Period 5 represents the spring and fall movement periods, pooled together. The pooled value is included to account for areas that may not experience the highest use by eagles in spring or fall but cumulatively represent relatively high use during the combined migration period. Migration paths and eagle destinations during migration may differ between the spring and fall. Including each migration period independently and the average of both by including ''migration'' is a conservative approach to ensure areas that experience high levels of eagle use across spring and fall migration cumulatively would be considered high eagle abundance areas.

We chose relative abundance thresholds during these periods as the basis for general-permit eligibility because the known life histories of both species suggest that the local presence of either species may change dramatically throughout the year as they breed, forage, migrate, or disperse. We define relative abundance as the average number of eagles of each species expected to be seen by a qualified person who observes for eagles for one hour at the optimal time of the day for detecting the species, and who travels no more than one kilometer during the observation session. Relative abundance values determined for a project must be based on publicly available eBird data for bald eagle and golden eagle abundance. To be eligible, the relative abundance of eagles at a project location must fall below all the relative abundance thresholds listed in the eligibility criteria for each species and season. The Service intends to review eagle thresholds as new eBird data become available and update thresholds when appropriate through rulemaking.

To assist project proponents in determining whether they qualify for general permits based on the relative abundance thresholds listed above, the Service will offer publicly available, online-mapping resources depicting areas that qualify (see *https://www.fws.gov/regulations/eagle*). Applicants that use the Service's published maps would not have to make the calculations described above. We estimate that nearly 80 percent of all existing wind-energy turbines in the coterminous United States are located in areas under the proposed relative abundance thresholds for both species and thus eligible for a general permit under this proposal. The Service proposes to not include Alaska in wind energy general permits at this time because existing data limit the ability to identify relative abundance thresholds for Alaska with confidence and there is currently limited wind development in Alaska and thus low demand for wind energy permits. Thus, at this time we propose that all wind energy projects in Alaska would have to apply for specific permits.

Because abundance is a coarse-scale measure for the potential impacts of a project on eagles, we propose pairing eagle abundance thresholds with a requirement that projects be sited greater than 660 feet from bald eagle nests and greater than 2 miles from golden eagle nests to be eligible for a general permit. This additional requirement provides a protective measure for eagles at a finer, project-level scale. Previous Service analysis found that breeding golden eagles regularly range 2 miles from their nest sites. Consequently, projects sited within 2 miles of a golden eagle nest have an elevated risk of taking breeding golden eagles or their young fledglings. A 2-mile buffer is required regardless of nest status because golden eagles commonly reuse nesting sites across years and can even reoccupy nests after decades of vacancy. Additionally, the presence of a nest site has been shown

to indicate good habitat for golden eagles and correlate with increased abundance, even if the nest is not in-use. If a new nest is constructed within 2 miles of project infrastructure after issuance of a general permit, the permit holder will no longer meet eligibility criteria for a general permit. The project may continue to operate under the general permit through the duration of the permit term. However, the project would no longer be eligible for obtaining future general permits.

We propose a 660-feet buffer from bald eagle nests to avoid disturbance of nests consistent with what is asked of other project construction and operation activities. We anticipate that our proposed relative-abundance threshold would exclude the highest density bald eagle nesting areas from eligibility for a general permit. We did not propose a larger buffer distance that would have reduced the likelihood of collision because of the overall increasing populations of bald eagles and the increasing number of nonbreeding adult eagles that are ready to assume vacant territories. Bald eagle populations can sustain occasional incidental take from wind-energy projects where we propose to authorize general permits. The Service will further ensure protection of bald eagles in lower density areas through tracking EMU and LAP take. To ensure the preservation of eagles, including the persistence of LAPs, for general permits that require compensatory mitigation, the Service proposes to require a portion of the eagle compensatory mitigation credit be pooled and directed to LAPs of concern.

The Service recognizes the need to address existing projects where not all turbines are located within an area of relative abundance below designated thresholds that qualify for a general permit. We propose defining existing projects to include all infrastructure that was operational prior to the effective date of the final rule 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 land agreements were already in place, site preparation was already underway, or infrastructure was partially constructed. We propose that when a portion of the turbines at an existing project does not qualify for a general permit, the project operator must apply for a specific permit, but may request consideration for a general permit in the specific permit application. The Service will review the project and will issue a letter of authorization if we determine it is appropriate to designate that project as eligible for a general permit. We may refund the specific-permit application fee, but we will not refund the administration fee. The Service anticipates issuing a letter of authorization for most existing projects where only a small percentage of existing turbines do not qualify under the relative-abundance thresholds or when an existing project has conducted and provides monitoring data demonstrating fatality rates consistent with those expected for general permits. The letter of authorization may require additional compensatory mitigation requirements if appropriate. During the rulemaking process, we will consider revisions to the proposed eligibility criteria, as well as other possible eligibility criteria, such as those analyzed in Alternative 2 of the draft environmental assessment (DEA). In Alternative 2, the wind energy general permit eligibility criteria would require all turbines be greater than one mile from a bald eagle nest and greater than two miles from a golden eagle nest. There would be no eligibility criteria based on eagle relative abundance. Our final rule may include eligibility criteria different from those proposed here, providing that those criteria are consistent with the Eagle Act and the current preservation standard.

For both general and specific permits, the Service proposes to 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. In developing the permit conditions and subsequent recommendations and guidance for complying with permit conditions, we will rely on our regional knowledge and expertise gained from processing and issuing previous programmatic (see the 2009 Eagle Rule) and long-term (see the 2016 Eagle Rule) eagle incidental take permits. General permit conditions will be nonnegotiable and fixed for the term of the permit. However, any Service revisions to the general-permit conditions for incidental take of eagles would supersede prior conditions if a project entity applied for a subsequent general permit. The Service proposes to continue standardizing certain elements of specific permit conditions for eagle take to improve transparency and efficiency while also adapting conditions to unique permit situations on a case-by-case basis.

The Service proposes retaining a maximum 30-year tenure for specific permits for wind projects, consistent with current regulations. This tenure is appropriate given the amount of time that wind-energy projects are expected to operate on the landscape. Specific permits may be requested and authorized for any duration (in one-year increments) up to 30 years. The Service proposes a maximum tenure of 5 years for general permits. Upon expiration, project applicants may reapply and obtain a new 5-year general permit. We propose that general permits for eagle take cannot be amended during each 5-year term.

The proposed general permit will require permittees to monitor eagle take. We propose that project proponents must train relevant employees to recognize and report eagle take as part of their regular duties. This monitoring requirement includes visually scanning for injured eagles and eagle remains during inspections, maintenance, repair, and vegetation management at and around project infrastructure. Scans must occur a minimum of once every three months corresponding to the highest eagle-use, seasonal periods to the maximum extent practicable. Any dead or injured eagle discovered within the project, regardless of cause, must be promptly reported to the Service (*i.e.,* within 2 weeks). All eagles must be reported, regardless of suspected cause of death, but may include explanatory information if alternate cause of death is suspected. The Service will determine whether a given eagle injury or mortality is attributable to a participating project. Disposal of eagles must be in accordance with Service instructions, which may include shipping eagles to the National Eagle Repository or other designated facility. If a project is located within Indian Country, the Service may direct eagle remains to be returned to the Tribe, in accordance with a Tribal Eagle Remains permit. These requirements are detailed in the general permit conditions under supplementary materials at *https://www.regulations.gov* in Docket No. FWS–HQ–MB–2020–0023.

The Service is aware that this proposed four-eagle threshold under general permits may not represent the same levels of realized fatality rates across all generally permitted projects; for instance, some permittees with projects in denser vegetation or rougher terrain may have a more difficult time spotting eagle fatalities, resulting in

fewer reported takes and a greater likelihood of remaining in the general-permit program. To overcome this, the Service could either (a) require more rigorous fatality monitoring for all general permits, or (b) attempt to classify projects based on assumptions about the probability of detection at each site and require different thresholds under each classification. The Service did not propose (a) because requiring such a rigorous level of site-specific monitoring would undermine the purpose of a general-permit program, or (b) because it would add significant complexity to the general-permitting process, which would also undermine the purpose of offering a general-permit option. Both options would also be much more costly. We encourage public comment on these proposed general-permit, detected-take thresholds.

If three bald-eagle injuries or mortalities, or three golden-eagle injuries or mortalities attributable to the project are discovered at a project during the 5-year general permit tenure, within 2 weeks of this discovery the permittee must provide the Service with an adaptive management plan. The permittee would specify which avoidance and minimization measures it will implement in the short term (after finding the remains of a third eagle of a species) and which it will implement if remains of a fourth eagle of that same species is found. If an injury or mortality of a fourth eagle of that species attributable to the project is discovered, the permittee must again notify the Service of that discovery within 2 weeks and confirm that it will implement the avoidance and minimization measures outlined in the adaptive management plan, including any modifications to the plan. The project may continue to operate under the general permit if the permittee implements its adaptive management plan through the duration of the permit term. However, the project would no longer be eligible for obtaining future general permits. The permittee may request reconsideration as authorized under 50 CFR 13.29, including a description of extenuating circumstances. Otherwise, the project proponent would have to apply for a specific permit for eagle take.

The purpose of including this discovered-eagles provision in general permits is so the Service can identify what should be the rare wind project that qualifies for a general permit but, based on realized take, ought to have gone through the more rigorous specific permit process. By requiring notification from projects operating under general permits if three and four eagles are found, we seek to 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 species' preservation. It is important to note that the finding of eagle remains at any project represents only the minimum number of eagles that may have been killed by a project. Depending on the probability of detection, which is determined by such factors as 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 than the number found. We anticipate that the operations and management staff conducting the monitoring as outlined in the proposed general permit conditions will detect approximately 15–20 percent of all eagles injured or killed at an average project. If four eagles are discovered at this detection rate, we estimate that as many as 16–23 eagles may have gone undiscovered. This estimate, based on a proposed detection rate of 15–20 percent and four eagles found, is comparable to the number of eagles we estimate (conservatively; see appendix A) will be taken at projects that are only eligible for specific permits over a 5-year period (because of the conservative nature of our take estimates, many projects will take substantially fewer than these projected numbers of eagles). For these reasons, discovered take of four golden eagles or four bald eagles appropriately distinguishes between projects that we intend to cover under general permits and higher risk projects that are better managed under specific permits.

Projects that receive general permits and reach the four-eagle threshold for either species will have shown evidence that they are taking eagles at a rate consistent with projects eligible for specific permits. We estimate that the average 100-turbine project that qualifies for a specific permit will take approximately 6.9 golden eagles per year (at the 80th quantile), or approximately 35 golden eagles over a 5-year period, and approximately 1.6 bald eagles per year (at the 60th quantile), or approximately 8 bald eagles over a 5-year period (see the DEA for additional information and methodology), Note that we expect the average wind project receiving a specific permit will take fewer bald eagles than golden eagles. Based on this, we considered making the detected-take threshold for general permit removal lower for bald eagles than it is for golden eagles. However, given the increasing and relatively robust nationwide populations of bald eagles, we concluded that it was not appropriate to make this threshold lower for bald eagles than for golden eagles. Thus, we set the threshold for general permit removal at the same level for bald eagles as we did for golden eagles.

We propose an administration fee for wind-energy general permits to cover the unique costs of implementing the general-permit program for wind-energy projects. The project-level monitoring required of general permittees is not adequate on its own to administer the program. The administration fee would be included in the application fee and cover the costs to the Service to perform more rigorous systematic fatality monitoring on a program-wide basis to ensure the preservation of eagles instead of individual applicants being required to fund and conduct more rigorous fatality monitoring on every project. By utilizing a systematic approach to fatality monitoring, not every site has to be surveyed every year, which reduces costs to the regulated community. The Service proposes a fee of $525 per turbine per year or $2,625 per turbine for a 5-year permit to cover the costs of this systematic monitoring.

To complete this systematic fatality monitoring program, the Service must have reasonable access to wind-energy projects. As part of their participation in the general permit program, project proponents will consent to allow systematic monitoring at their projects by Service staff or Service contractors. The Service would negotiate the logistics of access to project sites with the permittee. Service monitoring data will be used to inform EMU and national estimates of take rates and is not intended to assess project-by-project compliance under the general-permit program. To ensure the general accuracy of estimates and tracking of take over time, we may use project-scale monitoring with a standardized approach, such as randomized and stratified monitoring by relevant factors such as geography, project size, and eagle abundance. The Service will use the information collected through programmatic monitoring to (1) ensure the general-permit program is compatible with the preservation of eagles by assessing overall eagle mortality at the EMU and LAP scale and (2) inform all relevant aspects of the administration of the program to guide future regulatory and implementation policy revisions.

For general permits for wind-energy activities, the Service proposes

authorizing the incidental take of bald eagles and golden eagles without authorizing a specific number of eagles on the face of the permit. Wind energy activities pose risks to both species of eagles at large geographic scales and over long periods of time. To enable the development of an efficient general permit, we propose to authorize the take of both species for each general permit.

The Service will require offsetting compensatory mitigation at a fixed rate for each EMU. This rate will be in the form of eagle credits per cubic kilometer of hazardous volume (rounded to thousandths). The Service calculated the appropriate rates based on estimated take across all general permits, the Service's required 1.2:1 ratio for golden eagles, and a component designed to offset authorized take at the LAP scale should that be necessary. By scaling compensatory mitigation cost to hazardous volume, we would require compensatory mitigation that is proportionate to a project's potential impacts on eagles, which could also encourage broader participation in the program, particularly smaller projects. The Service considered a flat-fee approach where all projects are responsible for the same fee regardless of size; however, we were concerned about the cost disincentive to smaller projects. Wind-energy projects operating under a general permit must obtain eagle credits to the nearest tenth of an eagle for every cubic-kilometer of hazardous volume of the project from a Service-approved conservation bank or in-lieu fee program at the following rates:

☐ Atlantic/Mississippi EMUs: 6.56 eagles/km^3;

☐ Central EMU: 7.88 eagles/km^3; and

☐ Pacific EMU: 11.48 eagles/km^3.

These different rates reflect the different abundances and modeled fatality rates of golden eagles and bald eagles in each EMU. Records must be kept to document compliance with this requirement and provided to the Service upon request or upon submission of each annual report. In accordance with the 2016 PEIS, the Service-approved in-lieu fee programs must provide credits for authorized eagle take within the same EMU where the permitted take occurs, unless reliable data support that compensatory mitigation performed outside the EMU will similarly protect the affected population. Service-approved in-lieu fee programs may be directed by the Service to provide credits in a particular LAP if LAP concerns arise during periodic reviews of the general permit program.

For specific permits for eagle take by the wind industry, the Service will include a fatality estimate for each project based on the best available information and published procedures. From that fatality estimate, the Service will specify the number of eagle credits that must be obtained from a Service-approved conservation bank or in-lieu fee program or implemented by the permittee under a Service-approved mitigation plan.

Eagle Incidental Take Permits for Power Lines

The Service proposes a general-permit option for power lines at 50 CFR 22.260. Multiple power-line entities have expressed interest in obtaining an eagle incidental take permit, and we have sufficient understanding of how eagles interact with power lines to develop a general permit appropriate for this industry. We propose a general permit for eagle take resulting from power-line infrastructure. We would retain provisions for a specific permit for power-line entities that qualify but do not wish to obtain a general permit or have been notified by the Service to obtain a specific permit.

We propose that the general permit for power-line entities will require the following six conditions:

First, all new construction and reconstruction of pole infrastructure must be electrocution-safe for bald eagles and golden eagles, except as limited by human health and safety. ''Electrocution-safe'' means a pole configuration designed to minimize the risk of eagle electrocution (1) by providing sufficient separation between phases and between phases and grounds to accommodate the wrist-to-wrist or head-to-foot distance of eagles, or (2) by covering exposed parts with insulators to physically separate electricity from birds. If insulators are used, they must be in good condition and regularly maintained. Buried lines are considered ''electrocution-safe.'' We recommend buried lines when feasible because they completely eliminate the risks of electrocution, collision, and shooting.

Second, all new construction and reconstruction of transmission lines must consider eagle nesting, foraging, and roosting areas in siting and design, as limited by human health and safety. We recommend utility infrastructure siting at least 2 miles from golden eagle nests, 660 feet from a bald eagle nest, 660 feet from a bald eagle roost, and 1 mile from a bald eagle or golden eagle foraging area. Within each of these distance ranges, we expect elevated eagle use and increased risk of interaction with power and transmission line infrastructure.

Third, a reactive retrofit strategy must be developed that governs retrofitting of high-risk poles when an eagle electrocution is discovered. A reactive retrofit strategy responds to incidents in which eagles are killed or injured by electrocution. The reactive retrofit strategy must include how electrocutions are detected and identified. Poles selected for retrofits must be based only on risk to eagles, regardless of other factors, such as convenience to the permittee. The permittee must retrofit the pole that caused the electrocution, unless the pole already provides sufficient separation by design or is fully insulated by insulators in good condition. The permittee must retrofit a total of 11 poles or a half-mile segment of poles, whichever is less. The most typical pole selection would be the pole that caused the electrocution and five poles in each direction. However, if it is better for eagles for the project proponent to retrofit other poles in the circuit that are not electrocution-safe, those poles may be retrofit, prioritizing the least safe poles most adjacent to the electrocution. Poles outside of the circuit that caused the electrocution may be retrofit only if all poles in the circuit are already electrocution-safe. The Service estimates that retrofitting 11 power poles of high risk to eagles offsets the take of one eagle over 30 years at a ratio of 1.2:1. This estimate assumes that the permittee implements mitigation immediately and retrofits remain effective for 30 years.

Fourth, a proactive retrofit strategy must be developed and implemented to convert all existing infrastructure to be electrocution-safe, prioritizing poles that the permittee identifies as the highest risk to eagles. The permittee must establish annual targets for pole retrofits that result in the con version of one-tenth of non-electrocution-safe infrastructure to electrocution-safe by the expiration of the 5-year general permit term.

Fifth, a collision-response strategy must be implemented for all eagle collisions with power lines. If an eagle collision is detected, a strategy must outline the steps to identify and assess the collision, consider options for response, and implement a response. The assessment should include the species, habitat, daily, and seasonal migration patterns, concentration areas, and other local factors that might have contributed to the collision. The response options should consider eagle collisions in the engineering design (*e.g.,* burying the line, rerouting the line, or modifying the line to reduce the number of wires), habitat modification,

and marking the line. Sixth, an eagle-shooting-response strategy must be developed and implemented when an eagle shooting is discovered near power-line infrastructure. To be clear, it is not the fault of the power-line entity when eagles are illegally shot on power-line infrastructure. However, it benefits both eagles and the power-line entity to reduce shooting at eagles and other migratory birds on power-line infrastructure. Shooting eagles on power-line infrastructure can also reduce reliability of power delivery as stray ammunition can damage infrastructure. The strategy should outline the steps to determine whether discovered eagles have been shot or electrocuted and may include necropsying eagles at a qualified laboratory to determine the cause of death if necessary. If shooting is identified, the strategy would outline options for response. This response should include notifying the applicable Service Office of Law Enforcement. However, the Service also encourages power-line entities to develop other response options, such as offering incentives for information regarding eagle shooting incidents on power-line infrastructure, practicable access restrictions, or burying lines. This proposal would be a new request of the power-line industry, and the Service is seeking creativity and ingenuity as power-line entities and the Service work together to address this leading cause of eagle mortality.

If possible, applicants would create one plan with the strategies described above: incorporating eagles into new equipment design and siting, reactive and proactive retrofit strategies, a collision-response strategy, and an eagle-shooting-response strategy. For example, many power-line entities currently operate under avian protection plans (APPs), in which most of these elements already exist. For entities that currently have APPs, we expect applying for this general permit would require relatively minor additions and modifications. The Service would not require the applicant to submit this information when applying for a general permit, but it must be provided upon request.

We propose a tenure of 5 years for general permits. Applicants may apply for a new general permit at the end of the 5-year term. We propose a monitoring requirement that would require power-line entities to train relevant employees to recognize and report eagle take as part of their regular duties. This activity would include visually scanning for injured eagles and eagle remains during inspections, maintenance, repair, and vegetation management at permitted infrastructure. You must immediately notify the Service of any eagle discovered near power-line infrastructure, regardless of cause. We propose to require submission of an annual report of eagles discovered to the Service.

We propose a general-permit administration fee of $5,000 for each State for which the power-line entity is seeking authorization. We propose to use the number of States as the relevant factor to scale the administration fee to the size of the power-line entity's operations. The administration fee will be used to monitor the general-permit program. We do not propose requiring additional off-setting compensatory mitigation beyond reactive and proactive retrofits for general permits for power lines. Under the current PEIS, off-setting compensatory mitigation is required only for golden eagle mortality caused by infrastructure installed on or after the 2009 baseline conditions. Mortality on pre-2009 infrastructure is considered part of the baseline and is not applied to EMU take limits. With the wide availability of the guidelines developed by the Avian Power Line Interaction Committee (*Suggested Practices for Avian Protection on Power Lines* (2006) and *Reducing Avian Collisions with Power Lines* (2012)), the Service estimates that power-line infrastructure installed after 2009 takes relatively few eagles.

Conversely, the Service estimates significant benefits will accrue to golden eagles from implementing the measures required as part of the proposed general-permit conditions. The Service estimates that approximately 500 golden eagles are killed annually as a result of electrocutions. Approximately 600 more die from collisions, a portion of which are probably collisions with powerlines (USFWS 2016; Millsap et al. 2022 (in press)). We expect that the proposed combination of requiring new power lines to be electrocution-safe, reconstruction of old power lines to make poles electrocution-safe, the creation and implementation of a reactive retrofit strategy, and the creation and implementation of a proactive retrofit strategy will be an effective approach to reducing the take of eagles on power-line infrastructure across the landscape over time. We expect that these approaches to reduce take at older infrastructure will more than offset take occurring on non-electrocution-safe poles constructed after 2009—the baseline year after which we require compensatory mitigation for golden eagle take for new construction. Therefore, the Service anticipates a net benefit to eagles from utilities participating in the general permit program as proposed and is not proposing to require additional compensatory mitigation for this type of permit.

Furthermore, illegal shooting of eagles kills approximately 670 golden eagles per year (Millsap et al. 2022). We expect that power-line-industry assistance in reducing illegal shooting could significantly advance golden-eagle preservation, although we cannot currently quantify the expected magnitude of that benefit.

Eagle Disturbance Take Permits

More than two-thirds of the eagle take permits the Service currently issues are for incidental disturbance due to activities conducted near bald eagle nests. The current regulations at 50 CFR 22.80 govern both disturbance take and incidental killing of eagles. Accommodating the substantive difference in effects to eagles from these two different types of take has created an overly complex regulation. Therefore, we propose to authorize the incidental disturbance take of eagles in a new stand-alone regulatory section, 50 CFR 22.280. This proposed regulation extracts portions of the existing regulation (50 CFR 22.80) that relate to disturbance take. This proposed change will reduce the complexity of the current regulation, making permitting of incidental disturbance of eagles clearer and easier to understand. We also propose to clarify what does and does not constitute disturbance.

The Service proposes to retain the existing definition of ''disturb'' (50 CFR 22.6). We propose authorizing disturbance of bald eagles under general permits for most activities currently described in the 2007 Activity-Specific Guidelines of the National Bald Eagle Management Guidelines (hereinafter the ''Guidelines''). In 2009, following the delisting of the bald eagle from the Endangered Species Act, the Service published the Guidelines to help landowners and project proponents avoid disturbing breeding bald eagles when conducting activities near nest sites. The Guidelines created activity categories A–H, which we generally propose to adopt as eligibility criteria for general permits for eagle disturbance take. These categories include construction activities, linear utilities, alteration of shorelines, vegetation and timber practices, motorized recreational activities, nonmotorized recreational activities, aircraft operations, and blasting and other loud noises. At this time, disturbance caused by agriculture, mining, and oil and gas operations will

not be eligible for general permits, as requests for these activities have been received infrequently and standard avoidance and minimization measures have not yet been developed. Operators of these and other activities may apply for specific permits.

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. The demand for eagle-disturbance take permits has placed a significant administrative burden on the regulated public and the Service.

However, a recent analysis of monitoring reports submitted under nest-disturbance permits reveals that most bald eagles with breeding territories permitted for disturbance do not, in fact, end up being disturbed by permitted activities when avoidance and minimization measures are followed. Rather, the success rates of populations subject to a high prevalence of disturbance permits do not appear to differ significantly from bald eagle breeding populations subject to few or no disturbance permits. Therefore, the Service proposes reducing the administrative burden to the public and the Service by creating a general permit for common activities. We estimate that the general-permit-eligibility criteria proposed will address more than 85 percent of the demand for eagle disturbance permits. We propose standardized avoidance and minimization measures to reduce the disruptive impacts from these activities based on our experience since 2009 with permitting eagle disturbance. The Service proposes requiring specific permits for all other activities that may cause disturbance take of bald eagles and any activity that may cause disturbance take of golden eagles.

We propose to retain the tenure of 5 years for specific permits for incidental disturbance. However, we propose limiting the tenure of general permits for incidental disturbance to one year, expiring at the beginning of the regional breeding season. Permit conditions will include the applicable start dates. General permits could be renewed for subsequent years for activities conducted longer than 1 year. The Service proposes to continue to require monitoring as appropriate for both specific and general disturbance permits. Monitoring would be standardized for general permits and required as necessary to evaluate whether disturbance occurs by determining the effects of general permitted activities on eagle nest outcomes, such as a single report of whether the nest does or does not fledge young.

For both specific and general disturbance permits, we propose to 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 both specific and general permits, we propose permit conditions that include implementation of measures to avoid and minimize to the extent practicable the risk that authorized activities disturb breeding bald eagles. To determine practicability, the Service will consider eagle population status, the known efficacy of the measure, and the potential burden to the permittee. For specific permits, applicants will have the opportunity to provide input into these permit conditions; however, conditions for general permits will be standardized for all disturbance take of that type of activity and designed to achieve compliance with the standard conditions in these proposed regulations. General permit conditions include effective techniques that have been consistently and successfully used in specific permits for the past 10 years or more.

The Service expects the streamlined general-permit-application process for authorizing disturbance will significantly reduce compliance burdens for project proponents. The application process for disturbance permits has often challenged the capacity and means of some project proponents, particularly homeowners who cannot afford the services of environmental consultants. A general permit will also increase transparency and certainty for project proponents and the public. With standardized authorizations and requirements for disturbance, proponents will know precisely what restrictions may apply to their activity allowing greater certainty during project planning. The public, too, will have a greater understanding of the responsibilities and obligations of permitted projects in their area. Through this general permit process, the Service will continue to sustainably manage bald eagles and potentially benefit populations through the agency's ability to redirect resources to other, more significant, conservation concerns.

As part of this rulemaking, the Service proposes clarifying when disturbance is likely to occur and when obtaining a permit is advisable. The topic of when a permit is necessary for disturbance of breeding eagles has generated confusion among the regulated community and the public in general. Based on its experience in processing disturbance permits since 2009, the Service has determined that certain activities are unlikely to result in disturbance.

We propose to clarify that using non-lethal methods to disperse eagles away from a site, known as hazing, does not constitute eagle disturbance in most circumstances and does not require a permit. Eagle hazing is most often necessary at airfields, landfills, and livestock or poultry farms. The intent of hazing is to deter eagle depredation (*i.e.,* substantial injury to wildlife or agriculture) or reduce threats to human or eagle health and safety by temporarily displacing individual eagles from a location. In over a decade of annual reports from eagle depredation permits authorizing hazing of eagles, the Service has found no evidence that hazing results in disturbance of eagles, as defined. In other words, hazing is not known to cause injury to eagles, nest abandonment, or a decrease in productivity at eagle nests when conducted away from in-use eagle nests. In the several national and regional GPS telemetry studies of golden eagles, we are aware of no golden eagle injury or mortality arising from hazing. Therefore, we propose that eagle hazing does not constitute disturbance unless it is adjacent to an in-use nest sufficient to disrupt eagle breeding activity. The Service will continue to recommend a buffer distance for hazing activities conducted near in-use nests that reflects the latest information available. We currently recommend a buffer distance of 660 feet.

We also propose to clarify that activities 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). In our 2007 Guidelines, we stated that human activity near communal roost sites or foraging areas could prevent eagles from feeding or taking shelter, thus resulting in disturbance take. However, since publication of the Guidelines, we have received little to no documentation that confirms take from activities near roosts, particularly bald eagle roosts.

Temporary or permanent impacts to an individual communal roost site may displace eagles but are unlikely to cause death of or injury to eagles or affect the breeding, feeding, or sheltering of eagles to a degree that qualifies as disturbance. Therefore, we propose to clarify that activities adjacent to communal roosts do not constitute disturbance. Removal of a foraging area has greater potential to cause disturbance; therefore, we propose to clarify that activities that fully prevent use of a foraging area may cause disturbance and the project proponent should apply for a specific permit, particularly if the activity will remove all foraging opportunities within one mile of an in-use nest.

We may deny permit applications for disturbance take of eagles where we determine that disturbance is unlikely to occur. The Service also proposes to clarify that activities in compliance with the Service's current guidance are unlikely to result in disturbance and do not require a permit. As bald eagle populations continue to grow, the Service will focus permitting for nest disturbance on activities that are moderately to highly likely to result in disruption of breeding activity to the degree that it is likely to result in disturbance.

Eagle Nest Take Permits

We propose eagle nest take regulations at 50 CFR 22.300 to authorize the take of eagle nests. This proposed section would update the existing regulations pertaining to removal of eagle nests (50 CFR 22.85) to include a general permit option. We also propose the following modifications to these regulations: (1) clarify that obstruction of a nest constitutes nest take; (2) establish a 1-year maximum tenure for general permits for nest take; and (3) add a justification for authorizing the take of eagle nests to protect threatened or endangered species.

We propose the eagle nest take regulation to include relocation or obstruction of nests. Relocation of all or part of an eagle nest to a new location can be an appropriate alternative to destroying the nest, especially for bald eagles. Placement of an obstruction in an eagle nest, such as a traffic cone, can be an effective technique to prevent use of a nest. Obstructions can be used permanently if a nest is unsafe or otherwise difficult to remove. Obstructions can also be used temporarily to prevent the use of a nest adjacent to a temporary activity, allowing eagles to return in future years after completion of the activity.

Currently, the Service authorizes eagle nest take for four purposes: emergency, health and safety, removal from human-engineered structures, and other purposes (50 CFR 22.85(a)(1)(i) through (iv)). The Service proposes authorizing general permits for nest take only for bald eagles and only for the first three of the current justifications (50 CFR 22.85(a)(1)(i) through (iii): emergency, health and safety, and human-engineered structures). As described above, bald eagle populations have grown significantly since publication of the 2009 Eagle Rule, and populations continue to grow. Additionally, 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. We will continue to require specific permits for any take of golden eagle nests because of the population status of golden eagles. We will also continue to require a specific permit for take of eagle nests under the ''other purposes'' justification (current regulation at § 22.85(a)(1)(iv)) because the Service must ensure that those permits provide a net benefit to eagles. This determination must be made on a case-by-case basis and depends on the circumstances of the other purpose requiring nest take. However, we propose to make one exception to this specific-permit requirement for other purposes by authorizing a general permit only in Alaska for bald eagle nest take for other purposes (currently 50 CFR 22.85(a)(1)(iv)). In Alaska, the Service has already developed and implemented standard conditions to meet these requirements considering the robust Alaska bald eagle population.

The Service proposes adding 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 (50 CFR 17.11) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544). This activity would require a specific permit. With expanding bald eagle populations, the Service foresees situations arising where the take of an eagle nest may be necessary for the recovery of a threatened or endangered species. Examples include transmitters from threatened marbled murrelets found in bald eagle nests and bald eagles attacking endangered whooping cranes. As many seabird and waterbird populations continue to decline and bald eagle populations continue to increase, the Service anticipates an increase in situations where bald eagle management may be a necessary part of implementing recovery plans. Moreover, nest take is an important tool that can reduce the need for other types of take, such as trap-and-relocate or lethal removal.

We propose to retain the tenure of 5 years for specific permits along with the ability to authorize the take of multiple nests. However, we propose limiting the tenure of general permits to a maximum of 1 year, expiring at the beginning of the regional breeding season. Permit conditions will include the applicable regional breeding season start date. Additionally, the general permit would authorize the removal of one specific nest. The general permit would also authorize removal of subsequent nesting attempts on the same nesting substrate and within one-half-mile of that location for the duration of the permit if the subsequent nests recreate the emergency, safety, or functional hazard that the permittee certified applied to the original nest. However, additional general permits would be required to remove subsequent nesting attempts more than one-half-mile away. We propose these reduced tenure and permit-per-nest requirements to better ensure general permits for nest take are compatible with the preservation of eagles.

For both specific and general nest-take permits, applicants must provide the coordinates of the nest(s) they are requesting to take. Precise location information is necessary for both the Service staff responsible for eagle population management and for law enforcement. To ensure consistency with the Eagle Act, applicants for both specific and general nest-take permits must certify which of the eligibility criteria they meet and certify that there is no practicable alternative to nest removal that would protect the interest to be served. Finally, applicants for both specific and general permits must agree to implement permit conditions. Specific-permit applicants may provide input into these permit conditions; however, general-permit conditions will be standardized for all general permits of that type. General-permit conditions represent effective techniques that have consistently and successfully been used in specific nest-take permits for the past 10 years or more.

Currently, the Service typically requires permittees to monitor the area near where the nest was removed for one or more seasons to determine whether the affected eagles relocate and successfully fledge young. We propose retaining the possibility of requiring monitoring under specific permits on a

case-by-case basis. However, given current knowledge and the population status of bald eagles, we do not propose to require monitoring for general permits. After more than a decade of annual monitoring reports, a one-year permit tenure is expected to better capture the necessary information to meet the preservation standard than requiring monitoring and is less burdensome to the applicant. However, by reducing the level of monitoring and reporting, the Service could lose the potential to make case-specific determinations on the likelihood of lost breeding productivity. Therefore, we will conservatively 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 does not propose compensatory mitigation for nest-take general permits. General permits for nest take are limited to bald eagle nests in the following circumstances: emergency or human or eagle safety situations, or when constructed on human-engineered structures. These situations are typically hazardous to eagles, so that eagles also benefit from resolving the situation. Compensatory mitigation is not considered warranted for this reason and because of the population status of bald eagles. The Service proposes to continue requiring compensatory mitigation for specific permits that authorize nest take for golden eagles or when needed to meet the net-benefit requirement. Compensatory mitigation for specific permits will be scaled to the permitted take and the population status of the species for which nest take is requested. A specific permit applicant may meet this requirement by obtaining the Service-approved amount 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.

Changes to Definitions

As part of this rulemaking, we propose narrowing the definition of ''eagle nest'' to exclude nest structures on failed nesting substrate. Currently, we define ''eagle nest'' to mean any assemblage of materials built, maintained, or used by bald eagles or golden eagles for the purpose of reproduction. We propose adding the 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. We propose revising 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. Individuals and organizations may destroy and remove, without a permit, materials that formerly held the designation of an eagle nest but no longer meet the definition based on utility. However, individuals and organizations may not possess or collect these materials 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.

This proposed definition of ''eagle nest'' does not allow for modification of alternate (unused) nest substrate to a degree that prevents future breeding activity. Such activities will continue to constitute nest take.

We also propose revising 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 proposed revision of the definition for ''eagle nest,'' we intend this change to ensure 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 have no promise of hatching. Under current definitions, permittees have been prevented from removing what is otherwise an alternate nest because of the presence of nonviable eggs. In implementing the revised definition, we would presume that eggs are viable unless documented evidence (*e.g.,* absence of adults for several days, presence out of season) indicates otherwise.

For clarity, we propose adding 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 proposed in this document as well as the more typical individual or specific permits (see 16 U.S.C. 668a).

We propose clarifying 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 propose updating the definition of ''eagle management unit'' to include the current boundaries for those units to improve transparency to the public and general permit applicants. We also propose adding a definition of ''incidental take,'' as this term is used throughout these regulations and not defined.

Changes to Fees

The Service proposes to retain the existing fees for specific permits with the following exceptions (proposed § 13.11(d)(4)). The administration fee will be charged at the same time as the application fee. Thus, the cost of the Specific Permit, Eagle Incidental Take, is adjusted from $36,000 in the application fee column to a $28,000 application fee and $8,000 administration fee. Additional $8,000 administration fees are currently required every 5 years as part of a 5-year permit reviews. We propose replacing 5-year permit reviews with as-needed permit reviews and requiring the $8,000 administration fee if significant changes are required as a result. Potential modifications that are likely to require this administration fee include updates to authorized take, reevaluation of compensatory mitigation requirements, evaluation of impacts of a new project size or arrangement (*e.g.,* increased hazardous volume), or additional environmental review. The $500 amendment fee would be charged for substantive amendments to permit conditions that do not result in the significant changes that require an administration fee. Otherwise, permitting fees for specific permits remain unchanged.

The Service proposes to create a fee structure for general permits (proposed § 13.11(d)(4)). The application fee and administration fee would be charged at the time of application. We do not propose amendment fees as the automated nature of general permits would make substantive amendments unnecessary. We separate application and administration fees due to the different functions these fees serve.

Application fees pertain to processing a particular application whereas administration fees pertain to administering the permitting program as a whole. Consistent with this distinction, we propose not to waive administration fees when multiple permits are consolidated into a single permit (50 CFR 13.11(d)(2)) or for government agencies (50 CFR 13.11(d)(3)). Pooled administration fees are necessary for us to administer the program as a whole and loss of those fees would jeopardize our ability to implement the proposed general-permit structure.

Administrative Changes

Finally, the Service proposes the following administrative changes to the organizational structure of our eagle-take-authorization regulations to improve clarity. To reduce confusion, we propose redesignating the current subpart C ''Specific Eagle Permit Provisions'' as ''Eagle Possession Permits.'' We propose creating a new subpart E pertaining to ''Take of Eagles for Other Interests.'' This subpart will house regulations that authorize permits for the taking of eagles for the protection of other interests in any particular locality. We propose relocating the current regulations at § 22.75 (What are the requirements concerning permits to take golden eagle nests?) to § 22.325 in subpart E and giving the section a new heading pertaining to golden eagle nest take for resource development. We also propose relocating 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.

Public Comments

The public comment period begins with the publication of this document in the **Federal Register** and will continue through the date set forth above in **DATES**. We will consider all comments on the proposed rulemaking and draft environmental review that are received or postmarked by that date. Comments received or postmarked after that date will be considered to the extent practicable. Federally recognized Native American Tribes can request government-to-government consultation via letter submitted at any time during this rulemaking process.

The Service is interested in public comments on all aspects of the proposed rule. Comments that were submitted on the ANPR were considered in the preparation of this proposed rule, are included in the rulemaking docket, and do not need to be resubmitted. In addition, the Service is specifically seeking information on the following:

1. Are the anticipated number of annual permits to be issued for each permit type a reasonable estimate?
2. Are the costs associated with each permit type reasonable estimates?
3. For electric utilities, at what rate are power poles and other infrastructure planned for regular maintenance, rehabilitation, or reconstruction? What is the assumed life cycle of a typical power pole? How many utilities have an avian protection plan in place? At what rate do utilities schedule retrofits specifically of non-electrocution-safe equipment? Are the estimated costs associated with power-pole-retrofit strategies reasonable?
4. We propose the use of abundance criteria as a threshold qualification for a wind energy general permit. Are there other eligibility criteria for wind-energy general permits, either based solely on population abundance or beyond population abundance, we should consider adopting that would provide certainty and simplicity in the permit process for eligible projects while still meeting the Eagle Protection Act's preservation standard, including the criteria analyzed in Alternative 2 of the DEA?
5. Should the relative abundance thresholds for wind energy general permits (listed in table 1) be updated automatically based on new data, and if so, how often?
6. Should the Service consider different thresholds for when a project is disqualified from general-permit eligibility, such as creating categories based on the generalized probability of detection?
7. Is the amount of compensatory mitigation required under this proposed rule sufficient to meet the preservation standard, considering risk, and uncertainty?
8. How should the Service analyze the potential cost savings to industry from this rulemaking, and does the public have data to bolster this analysis in the final rule?
9. Are there estimates or projections of the spatial distribution of anticipated wind energy industry growth that are relevant to this proposed rulemaking?
10. In the DEA, the Service estimates that retrofitting 11 power poles is required to offset one eagle. Assuming a retrofit costs $7,500, each credit is therefore assumed to cost $82,500 in the marketplace. Are these assumptions, the retrofit cost, and the market price of an ''eagle credit'' reasonable?
11. How should the Service implement the proposed audit program? Are there costs we should consider that ensure accuracy of the results while reducing the burden to the public?

Information Sessions

The Service will present information explaining this action in virtual information sessions during the public comment period. The purpose of each of these sessions is to provide the public with a general understanding of the background for this proposed rulemaking action, activities it would cover, alternative proposals under consideration, and the draft environmental documents for the proposed action. Unlike a public hearing, a public information session is not a forum for the submission of public comments.

We will hold the following information sessions in webinar format. Sessions will start at the time noted. Sessions will last for up to 2 hours but may end early if there are no further comments.

Sessions for federally recognized Native American Tribes:

☐ On October 19, 2022, at 2 p.m. Eastern Time.

☐ On November 2, 2022, at 12 p.m. Eastern Time.

Sessions for the general public:

☐ On October 20, 2022, at 12 p.m. Eastern Time.

☐ On November 3, 2022, at 2 p.m. Eastern Time.

Registration instructions and updated session information can be accessed on the Service web page at *https://www.fws.gov/regulations/eagle* or may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. Please note that the Service will ensure that the information sessions will be accessible to members of the public with disabilities.

To promulgate a final rule and prepare a final environmental assessment pursuant to the National Environmental Policy Act, we will take into consideration all comments and any additional information received. Please note that submissions merely stating support for or opposition to the proposed action and alternatives under consideration, without providing supporting information, will be noted but not considered by the Service in the final rule and environmental analysis. Please consider the following when preparing your comments:

(a) Be as succinct as possible.

(b) Be specific. Comments supported by logic, rationale, and citations are more useful than opinions.

(c) State suggestions and recommendations clearly with an expectation of what you would like the Service to do.

(d) If you propose an additional alternative for consideration, please provide supporting rationale and why you believe it to be a reasonable alternative that would meet the purpose and need for our proposed action.

(e) If you provide alternate interpretations of science, please support your analysis with appropriate citations.

Public Availability of Comments

Written comments we receive become part of the public record associated with

this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the 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. Comments and materials we receive, as well as supporting documentation we use in preparing the environmental analysis, will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Headquarters (see **FOR FURTHER INFORMATION CONTACT**, above).

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this proposed rule is significant.

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Table 2 below shows the permit count and cost for the current permitting program, the expected number of permits and average permit costs under the proposed rule, and the estimated marginal costs and impacts between the existing and the proposed rule. Additional analysis is available in the supporting environmental assessment.

TABLE 2—AVERAGE ANNUAL COST AND PERMIT COUNT COMPARISON BETWEEN EXISTING PROGRAM AND PROPOSED RULE

Type of permit	Factors	Current program		Proposed Rule		Marginal cost change from existing program to proposed rule
		Number of annual permits	Fees and costs per permit	Number of annual permits	Fees and costs per permit	
Wind Energy Project (General) [1].	Permit Application Costs.	0	$0	74	$500	$500
	Average Compensatory Mitigation Costs.		0		42,000	42,000
	Average Administration (Monitoring) Costs.		0		97,500	97,500
	Average Cost Per Permit.		0		140,000	140,000
	Average Annual Cost to Industry.		0		10,360,000	10,360,000
Wind Energy Project (Specific).	Permit Application Costs.	6	36,000	6	36,000	0
	Average Compensatory Mitigation Costs.		578,000		1,000,000	422,000
	Average Administration (Monitoring) Costs.		2,100,000		2,100,000	0
	Average Cost Per Permit.		2,714,000		3,136,000	422,000
	Average Annual Cost to Industry.		16,284,000		18,816,000	2,532,000
Power Line Entities [2]	Permit Application Costs.	0	0	4	500	500
	Average Administration (Monitoring) Costs.		0		5,000–25,000	5,000–25,000
	Average Power Pole Retrofit Costs.		0		1,100,000 (if no existing retrofit strategy exists, to be paid over 5 years).	0–275,000
	Average Cost Per Permit.		0		5,500–300,500	5,500–300,500
	Average Annual Cost to Industry.		0		22,000–1,202,000	22,000–1,202,000
Nest Disturbance [3]	Permit Application Costs.	96	100–500	96	100	0–(400)
	Compensatory Mitigation Costs.		0		0	0
	Administration (Monitoring) Fee.		0		0	0
	Average Cost Per Permit.		100–$500		100	0–($400)
	Average Annual Cost to Industry.		9,600–$48,000		9,600	0–(38,400)
Nest Take [3]	Permit Application Costs.	40	100–500	40	100	0–(400)

TABLE 2—AVERAGE ANNUAL COST AND PERMIT COUNT COMPARISON BETWEEN EXISTING PROGRAM AND PROPOSED RULE—Continued

Type of permit	Factors	Current program		Proposed Rule		Marginal cost change from existing program to proposed rule
		Number of annual permits	Fees and costs per permit	Number of annual permits	Fees and costs per permit	
	Compensatory Mitigation Costs.		0		0	0
	Administration (Monitoring) Costs.		0		0	0
	Average Cost Per Permit.		100–500		100	0–(400)
	Average Annual Cost to Industry.		4,000–20,000		4,000	0–(16,000)
Average Annual Permits Counts and Costs[4].		142	16,297,600–16,352,000	220	29,211,600–30,391,600	12,859,600–14,094,000

1. There are no general permits for wind energy projects under the existing rule. For our analysis, we used a 36-turbine project example to calculate the fees and costs.
2. There are permits designed for power line entities under the existing rule. Under the proposed rule, these entities will not be required to pay compensatory mitigation costs but will be required to pay costs associated with retrofitting power poles. We estimate that 25% of power line entities will not have an existing retrofit strategy and will therefore be required to pay this cost
3. Compensatory mitigation rates for Nest Disturbance and Nest Take for golden eagles are required at a 1.2:1 ratio, however the take limit is zero.
4. Total costs for the existing and the marginal cost difference is expressed as a range of values based on estimating the total number of nest take and nest disturbance permits as either non-commercial or commercial. The actual value is likely somewhere between these figures.

The maximum total estimated annual cost to industry for the proposed rule is $30,391,600. The maximum total estimated cost over 5 years for all permits is $151,958,000. The average annual equivalent cost is $24,922,312 with a total net present value cost of $124,611,560 using a 7% discount rate. The average annual equivalent cost is $27,836,926 with a total net present value of $139,184,629 at a 3% discount rate. These discount rates represent a range of values that the Office of Management and Budget recommend as a Federal program discount rate for benefit cost analysis for most Federal programs. The above costs represent the total gross cost of the proposed rule and do not reflect the costs associated with the existing regulations. The proposed rule is expected to create an estimated maximum $14,094,000 dollars in new costs annually and $70,470,000 in new marginal costs over 5 years, as compared to the existing regulations. However, these new marginal costs are more than offset by savings to both industry and the Service in terms of reduced Eagle Protection Act enforcement costs and removed requirements for preconstruction monitoring and third-party monitoring. 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 Protection 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 such savings exceeds the total new costs associated with the proposed rule. The costs of the proposed rule are also offset by the ecosystem-services benefits associated with potential decreased take and increased populations of eagles. The Service requests specific public comment and data on the specific costs associated with existing enforcement frameworks and the ecosystem-services values associated with 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 have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act and determined 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 the rule.

To assess the effects of the proposed rule on small entities, we focus on home-construction companies, wind-energy facilities, and electric-transmission companies. Although small, noncommercial, wind-energy facilities such as single turbine facilities tied to public buildings could seek permits, we anticipate that most of the applications for wind-energy facilities will be for those that are commercial or utility in scale. Although businesses in other sectors, such as railroads, timber companies, and pipeline companies, could also apply for permits, we anticipate the number of permit applicants in such sectors would be very small, on the order of one to thirteen per year for each sector.

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, which is:

□ 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 3 below indicates the number of businesses within each industry and the estimated percentage of small businesses impacted by this rule.

TABLE 3—DISTRIBUTION AND POTENTIAL IMPACT TO BUSINESSES [1]

NAICS code	Description	Total firms/establishments		Small businesses potentially impacted by 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 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 only applied for 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-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 over the first 5 years may be higher or lower than the existing permit program due to the creation of general permits and the remaining complexity associated with specific permits. General permits would allow the regulated community to apply for and obtain a permit more easily, particularly when projects are designed to comply with general-permit eligibility criteria. Specific permits would be available to wind energy project applicants that do not meet general permit eligibility criteria. Based on these assumptions, we are estimating that the number of specific permits under the proposed rule will be similar to the number of existing permits over the last 5 years, which is close to 30 permits.

Businesses that apply for nest take and nest disturbance permits typically include home construction, road construction, and various other construction projects. We are assuming 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 have applied for permits historically, with the exception of Gold Ore Mining, which has historically only applied for 1 to 2 permits annually. As a result, less than 1 to 2.5 percent of small businesses in NAICS sectors 236115, 236116, 236117, 236118, 236210, 236220, 237310, 237990, 488210, 212221 will be impacted by this rule. The cost per entity for nest take and nest disturbance permitting under the proposed rule is minimal, totaling $100 per eagle/nest, per year. The minimal permit 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.

The largest expected impacts to small businesses under the proposed rule would be an increase in the number of permits issued to wind-generation facilities due to the changes being made in the application requirements and processes and the inclusion of power-line entities as eligible recipients of permits. It is expected that 16 percent of wind generation small businesses would be impacted by this rule, with the expected breakdown of permits by enterprise size category shown below in Table 5.

Table 4 below shows the expected difference between 5-year costs for existing permits and 5-year costs for the proposed general permits for wind generation facilities. Wind generation facilities will pay less for a general permit under the proposed rule when

compared to the current costs associated with a standard permit under the existing regulations. The permit application fee would be reduced from $36,000 to $500 for a general permit. For our analysis, we used a 36-turbine project as an example to calculate the fees and costs. The fees in the tables below are not flat fees but averages based on the turbine count. Section 5.2.5 in the Environmental Assessment found in the docket associated with this rule explains how these costs were calculated. Compensatory mitigation costs for general permits for a wind energy project with 36 turbines would average $42,000, a significant decrease from the existing specific permit cost of $578,000 (assuming mitigation for 1.4 golden eagles per year, using our calculation from the EA of $82,500 as the cost of an eagle credit). The average costs for non-compensatory mitigation, monitoring, and other administrative tasks (permit application, record keeping, auditing, etc.) for a wind-energy project will average $97,500, a cost savings of nearly $2,000,000 from the existing specific permit cost of $2,100,000. The total estimated cost savings between an existing permit and proposed general permit is approximately $2,500,000. The total number of estimated permits shows an estimated overall increase in industry costs associated with permitting under this proposed 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 4—WIND GENERAL PERMIT COSTS AND SAVINGS

Cost category	Existing specific (average)	New general (average)	Cost savings (average)
Permit Application Costs	$36,000	$500	$35,500
Compensatory Mitigation Costs	578,000	42,000	536,000
Administration (Monitoring) Costs	2,100,000	97,500	2,002,500
Total Cost	2,714,000	140,000	2,574,000

Table 5 below displays the proposed new cost for specific permits under the proposed rule compared to the existing cost for specific permits under current regulations. Under the proposed rule, entities will pay $1,000,000 for compensatory mitigation, an increase of $422,000 from the existing $578,000 cost. These costs have increased due to updates in the estimated amount of required mitigation for projects in the specific permit category, which equate to 2.5 golden eagles annually. Using the calculation described in the EA that uses $82,500 as the cost of an eagle credit, this results in an average total of approximately $1,000,000 per project over a 5-year period for compensatory mitigation. There are no proposed changes to the permit application fee and entities will continue to pay their own monitoring costs estimated at $2.1 million over life of the permit. The total cost increase to entities getting a specific permit is $422,000.

TABLE 5—WIND ENERGY SPECIFIC PERMIT COSTS AND SAVINGS

Cost category	Existing specific (average)	New specific (average)	Cost savings (average)
Permit Application Costs	$36,000	$36,000	$0
Compensatory Mitigation Costs	578,000	1,000,000	(422,000)
Administration (Monitoring) Costs	2,100,000	2,100,000	0
Total Cost	2,714,000	3,136,000	(422,000)

Businesses in the ''wind electric power generation industry'' are defined as small if they have less than 250 employees. 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 establishments under 250 employees, the closest reporting range is less than 500 employees. The table below shows a range of receipts by enterprise size and establishment count as well as the projected percentage of receipts impacted by the proposed rule both at the individual establishments level and the total for that enterprise size. The wind energy project general permit cost is assumed to be paid in full at the time of the permit application, therefore the 5-year cost of $131,000 is assessed in the first year. This cost would then be assessed again at the renewal of their permit in 5 years. Due to this being a one-time cost that covers a 5-year period, this equates to at most one percent of total annual receipts by enterprise size (Table 6). As a result, this 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 current 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.

TABLE 6—RANGE OF RECEIPTS IMPACTED BY PROPOSED RULE: WIND ELECTRIC POWER GENERATION
[Using 2017 SUSB Annual Data Table]

Enterprise size [1]	Establishments	Annual receipts ($1,000)	Average receipt for size (= receipt/ establishments) ($1,000)	Annual cost per permit for establishment ($1,000)	Number of establishments impacted annually [2]	Total annual % of receipts impacted by proposed rule	Annual % of receipts for impacted establishments
01: Total	459	8,001,761	17,433	130	74	0.12	0.75
02: <5 employees	45	80,905	1,798	130	7	1.12	7.23
03: 5–9 employees	8	14,478	1,810	130	1	0.90	7.18
04:10–14 employees	7	15,873	2,268	130	1	0.82	5.73
05: 15–19 employees	8	39,960	4,995	130	1	0.33	2.60
06: <20 employees	68	151,216	2,224	130	11	0.95	5.85
12: 50–74 employees	9	98,897	10,989	130	1	0.13	1.18
19: <500 employees	135	1,469,292	10,884	130	22	0.19	1.19
24: 2,000–2,499 employees	12	75,879	6,323	130	2	0.34	2.06
25: 2,500–4,999 employees	11	91,973	8,361	130	2	0.28	1.55
26: 5,000+ employees	240	5,368,670	22,369	130	39	0.09	0.58

[1] 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 the proposed rule these entities will become eligible to apply for general permits. The permit application fee for these general permits is $500 and the monitoring fee is $5000 per State within which the utility operates. The costs for power pole retrofits called for under the pro-active retrofit strategy are estimated to average $1.1 million over the 5-year permit period and would be evenly distributed annually for an average annual total of $220,000. Many larger utilities have existing avian protection and retrofit strategies in place, and we expect that the retrofit requirement for a general permit will not create substantial new costs for those entities. However, the Service does not have data on the number of utilities that have avian protection or retrofit strategies. For our analysis, we are assuming that 25% of entities do not have an avian protection/retrofit strategy in place. The total assessed cost per entity is expected to range from $5,500 to $225,100 within the first year of the permit term based on whether a retrofit strategy is required. Costs would be further ameliorated by completing required retrofits during regularly scheduled maintenance, reconstruction, and rehabilitation of infrastructure. The marginal costs of making power poles electrocution-safe when work is already planned on those poles is relatively low. 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 would benefit from a permit authorizing that take. No existing special-purpose-utility permit holder is a small business, and therefore there would not be a substantial impact to small businesses from this proposed rule.

Table 7 below shows the difference between existing permit program and the 5-year costs under the proposed rule which does incorporate power line entities.

TABLE 7—POWER LINE ENTITIES PERMIT COSTS AND SAVINGS

Cost category	Existing permit program	Proposed rule	Cost savings
Permit Application Costs	$36,000	$500	$35,500
Power Pole Retrofit Costs [1]	0	1,100,000	(1,100,000)
Administration (Monitoring) Costs	0	5,000–$25,000	
Total	36,000	5,500–1,125,500	30,500–(1,089,500)

[1] We are assuming 25% of permittees will not have a retrofit strategy in place, and therefore will be required to pay this cost.

There is no change in the amount homeowners would pay per nest per year. Commercial businesses would pay the same fees as homeowners under this rule. A commercial business applying for what is currently termed a standard permit would have to pay $100 per nest per year (a decrease of $400). 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 would represent less than one percent of revenue for this size of business. Thus, the changes in standard permit fees would not have a significant economic effect on a substantial number of small businesses in the construction sectors. The changes in permit application fees are shown in tables 8 and 9.

Table 8 shows the expected difference between the existing nest disturbance permit annual costs and the proposed specific permit annual costs.

TABLE 8—ANNUAL NEST DISTURBANCE PERMIT COSTS AND SAVINGS

Cost category	Existing nest disturbance	New nest disturbance	Cost savings
Permit Application Costs	$100–500	$100	$0–$400

Table 9 shows the expected difference between the existing nest take permit annual costs and the proposed specific permit annual costs.

TABLE 9—NEST TAKE PERMIT COSTS AND SAVINGS

Cost category	Existing nest take	New nest take	Cost savings
Permit Application Costs	$100–500	$100	$0–$400

The proposed rule is expected to create an overall savings due to reduced costs for general permits compared to existing individual permits. The proposed 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 the proposed rule.

For these reasons, we certify that this rule will not have a significant impact on a substantial number of small entities. The proposed rule impacts a substantial number of small businesses in NAICS sector 221115, ''Wind Electric Power Generation''; however, the financial impacts to individual businesses are not significant. The number of businesses belonging to other industries impacted is not substantial and the magnitude of those impacts is not significant. For these reasons, we certify that this rule will not have a significant impact on a substantial number of small entities. Based on the available information, we certify that this proposed rule would 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, an initial 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 proposed rule will not ''significantly or uniquely'' affect small governments in a negative way. A small government agency plan is not required.

b. This proposed 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, the 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 proposed regulations changes.

In accordance with E.O. 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and 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 proposed 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 proposed 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, such as:

☐ 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 email 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 (such as president, principal officer, or director);

☐ Location where the requested permitted activity is to occur;

☐ 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

☐ Such other information as 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 Department Manual (DM) 6, appendix 1.3A.

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

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

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

c. *Form 3–200–92,* ''*Eagle Incidental Take (Power Lines)*''*—General*.

We further describe the proposed changes below:

a. *(Revised Title) Form 3–200–71,* ''*Eagle Incidental Take*''*—General and Specific*—The revision to Form 3–200–71 would authorize the incidental killing or injury of bald eagles and golden eagles associated with the operation of wind energy projects. General eagle permits are valid for 5 years from the date of registration. Specific eagle 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: requested permit duration; description of the activity that will incidentally take eagles; justification for why the take is necessary; location; description of eagle activity in the area and location and history of eagle use of known nests, foraging areas, and roost sites; factors that may contribute to the disturbance of eagles (if applicable); measures to minimize impacts to eagles; and names of persons that may be carrying out the activity that will incidentally take eagles.

In addition, permit applications associated with wind energy 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 three golden eagle injuries or mortalities at a project, the permittee must provide the Service with their adaptive management plan and a description and justification of which adaptive management approaches will be implemented.

☐ *Annual Report*—Permit conditions may require the submission of annual reports to the Service.

☐ *Compensatory Mitigation*—For wind energy specific eagle permits, the permittee must implement the compensatory mitigation requirements on the face of their permit. For wind energy general eagle permits, the permittee must obtain eagle credits to the nearest tenth of an eagle for every cubic-meter of hazardous volume of their project from a Service-approved conservation bank or in-lieu fee program.

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. *(Proposed Title—NEW) Form 3–200–91, ''Eagle Disturbance Take''—General and Specific*—Applicants may apply for an Eagle Disturbance Permit if their activity may result in incidental disturbance of a golden eagle nest, incidental disturbance of a bald eagle nest, or disturbance to a foraging area. Disturbance General Eagle Permits issued under this section are valid for a maximum of 1 year. The tenure of Disturbance Specific Eagle 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: the species of eagle sought to be covered by the permit, as well as the method of take (such as kill/injure, disturbance, alternate nest, or in-use nest take); a description of the activity to be authorized, including the location, seasonality, and duration of the activity; the description must include a justification of why there is no practicable alternative to take that would protect the interest to be served; duration of the permit requested; payment of required application and administration fee(s) (see § 13.11(d)(4)); and, if required, implementation of eagle credits by a Service-approved in-lieu fee program.

The Service will use the information 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.

c. *(Proposed Title—NEW) Form 3–200–92, ''Eagle Incidental Take (Power Lines)''—General*—The purpose of this new permit application is to authorize the incidental killing or injury of bald eagles and golden eagles associated with power line activities. Power line general eagle permits are valid for 5 years. Specific eagle 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: the species of eagle sought to be covered by the permit, as well as the method of take; a description of the activity for which take of eagles is to be authorized, including the location, seasonality, and duration of the activity, and a justification of why there is no practicable alternative to take that would protect the interest to be served; duration of the permit requested; payment of required application and administration fee(s) (see 50 CFR 13.11(d)(4)); and, if required, implementation of eagle credits by a Service-approved in-lieu fee program.

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

☐ *Avian Protection Plan*—An Avian Protection Plan (APP) is developed through a cooperative partnership between power companies and the Service. The Service does not review or approve the APP, but we will reference it if there is enforcement action or in cases in which we use discretion and do not enforce the take issue. The APP delineates a program designed to reduce the operational and avian risks that result from avian interactions with power line infrastructure with the overall goal of reducing avian mortality. The four strategies defined below (collision response, eagle shooting response, proactive retrofit, and reactive retrofit) may be components of an avian protection plan:

☐ *Collision Response Strategy*—A plan that describes the steps the permittee will take to identify, assess, and respond to eagle collisions with power line infrastructure. The assessment should include the species, habitat, daily and seasonal migration patterns, eagle concentration areas, and other local factors that might be contributing to eagle collisions. The response options should consider eagle collisions in the engineering design (*e.g.,* burying the line, rerouting the line, or modifying the line to reduce the number of wires), habitat modification, and marking the line.

☐ *Eagle Shooting Response Strategy*—A plan to respond to eagle shooting events where one or more eagles are discovered near power line infrastructure and the cause of death is shooting. The strategy must outline the steps to identify eagle shooting, options for response, and implementation of response.

☐ *Proactive Retrofit Strategy*—A plan to convert existing infrastructure to electrocution-safe. The proactive retrofit strategy must include how poles are identified as not electrocution-safe, prioritized for retrofit, designed, and implemented. The proactive retrofit strategy must identify annual targets for retrofitting.

☐ *Reactive Retrofit Strategy*—A plan to respond to incidents where eagles are electrocuted or killed. The reactive retrofit strategy must include how electrocutions are detected and identified. Reactive-retrofit poles must be based on risk to eagles and not other factors, such as convenience. The pole that caused the electrocution must be retrofit, unless the pole already provides sufficient separation by design or is fully insulated by insulators in good condition. A total of 11 poles or a ½-mile segment must be retrofit, whichever is less. The most typical pole selection is the pole that caused the electrocution and five poles in each direction. However, if it is better for eagles for the project proponent to retrofit other poles in the circuit that are not electrocution-safe, those poles may be retrofit, prioritizing the least safe poles most adjacent to the electrocution. Poles outside of the circuit that caused the electrocution may be retrofit only if all poles in the circuit are already electrocution-safe.

☐ Annual Report—Permit conditions may require the submission of annual reports to the Service.

The Service will use the information 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.

(3) *Revision to Form 3–200–72*—We are proposing to revise 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 under definitions in proposed 50 CFR 22.300(b). General permits are available for bald eagle nest take for emergency, health and safety, or a human-engineered structure, or, if located in Alaska, bald eagle nest take for other purposes. General permits authorize bald eagle nest removal as well as subsequent nesting attempts on the same nesting substrate and within ½ mile of that substrate for the duration of

the permit. Take of an additional eagle nest(s) more than a ½ mile away requires additional permit(s). General permits issued under this proposed 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.

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

☐ Apply as Federal, State, or Tribal agency responsible for implementing actions for species protection.

☐ Include documentation demonstrating the following:

☐ Describe relevant management efforts to protect the species of concern.

☐ Identify how eagles are a limiting factor to survival of the species using the best available scientific information and data. Include a description of the mechanism of that threat.

☐ Explain how take of eagle nest(s) is likely to have a positive outcome on recovery for the species.

☐ Arborist reports (in the case of hazard tree removal).

In addition, permit applications associated with eagle nest take may require the following:

☐ *Monitoring*—If a foster nest is used, the permittee may be required to monitor the nest to ensure nestlings or eggs are accepted by the foster eagles. We updated the burden for monitoring requirements associated with eagle nest take in the separate monitoring information collection requirement.

Proposed Changes—We propose changes in the general permit questions as follows:

☐ The species of eagle sought to be covered by the permit, as well as the method of take (such as kill/injure, disturbance, alternate nest, or in-use nest take).

☐ A description of the activity for which take of eagles is to be authorized, including the location, seasonality, and duration of the activity. The description must include a justification of why there is no practicable alternative to take that would protect the interest to be served.

☐ Duration of the permit requested.

☐ Payment of required application and administration fee(s) (see 50 CFR 13.11(d)(4)); and

☐ If required, implementation of eagle credits by a Service-approved in-lieu fee program.

The Service will use the information 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) *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 (3))*—Permittees must notify the Service in writing within 2 weeks of discovering the take of a third or fourth eagle of either species. 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 eagle of either species, the project may continue to operate through the term of the existing general permit, but the project proponent is denied from obtaining future general permits for incidental take for that project.

(5) *Change in Administration Fees* (State, Local, Tribal, or Federal Agencies)—State, local, Tribal, and Federal government agencies, and those acting on their behalf, are exempt from processing fees.

Proposed Change—This rule proposes a change to 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 such agency. With this proposed rule, these government agencies would be required to pay administrative fees to cover the costs associated with Service-led program monitoring.

(6) *(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.

(7) *(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 shall 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 such certification, but is otherwise timely and appropriate, it shall be held and the person submitting the request shall be given written notice of the need to submit the certification within 15 calendar days. Failure to submit certification shall result in the request being rejected as insufficient in form and content.

(8) *(NEW—Existing In Use Without OMB Approval) Compensatory Mitigation*—Compensatory mitigation will be required for any permit authorizing take that would exceed the applicable eagle management unit take limits. Compensatory mitigation for this purpose must ensure the preservation of the affected eagle species by reducing another ongoing form of mortality by an amount equal to or greater than the unavoidable mortality or increasing the eagle population by an equal or greater amount. Compensatory mitigation may also be required when there is concern regarding the persistence of the local-area population of the project area, based on publicly available information. Except as restricted otherwise, compensatory mitigation may include in-lieu fee programs, conservation banks, other third-party mitigation projects, or arrangements and permittee-responsible mitigation. Except as restricted otherwise, compensatory mitigation may include in-lieu fee programs, conservation banks, other third-party mitigation projects, or arrangements and permittee-responsible mitigation.

Compensatory mitigation must be approved by the Service and may include conservation banks, in-lieu fee programs, other third-party mitigation projects, or arrangements and permittee-responsible mitigation. To obtain approval, the permittee must submit a mitigation plan to the Service sufficient to demonstrate that the standards set

forth in proposed § 22.220(b) can be met, including a description of the number of credits to be provided, the Service's Eagle Management Units (EMU's) that will be implemented, and an explanation of the rationale for this determination. The Service must approve the mitigation plan before credits can be issued.

(9) *(NEW—Existing In Use Without OMB Approval) Single Application for Multiple Activities* (50 CFR 13.11(d)(1))—When regulations require more than one type of permit, applicants may submit a single application, provided the single application contains all of the information required by the separate applications for each permitted activity. In instances where more than one permitted activity is consolidated into one permit, the issuing office will charge the highest single fee for the activity permitted. If the activity spans multiple regions, applications should be submitted to the region of the applicant's U.S. mailing address. Administration fees are not waived for single applications covering multiple activities.

We also propose to renew the existing reporting and/or 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, local, Tribal); 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 that 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 provide them 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, local, Tribal); 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 the take is necessary to protect the interest; 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 in requested; and a description of the mitigation measures that will be implemented. The Service uses the information collected via the form to determine that 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 the take is necessary to meet the Tribe's religious needs, that 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 such 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, local, Tribal); 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 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 3–202–11, ''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 that 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.

(9) *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, such as 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.

(10) *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.

(11) *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 informs the Service as to whether the Tribe is applying before or subsequent to finding the first eagle they wish to retain, allowing the Service to choose the appropriate course of action.

(12) *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.

(13) *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.

(14) *Monitoring Requirements*—Most permits that authorize take of eagles or eagle nests require monitoring. We do not require monitoring for intentional take such as 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 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 conservation 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) Permit Reviews—We propose to remove the regulatory requirement for long-term specific permits to mandate an administrative check-in with the Service at least every 5 years during the permit tenure (termed 5-year Permit Review, above). 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. It was intended that the Service would use this information to, if necessary, re-calculate fatality estimates and authorization levels, and amend permit conditions such as mitigation requirements. However, over the last several years the Service has heard complaints from wind companies, and comments were submitted in response to the ANPR, that these scheduled reviews introduced uncertainty into project planning and funding and has discouraged participating or influenced the permit tenure that is requested by the applicant.

Removal of these administrative check-ins would increase certainty for applicants that are concerned about amendments to permit conditions every 5 years, and is intended to increase participating in eagle take permitting. The Service instead intends to hold the amount of take authorized under a long-term specific permit constant unless the permittee requests an amendment, or unless the Service determines that an amendment is necessary and required under 50 CFR 22.200(e). Such a change replaces scheduled check-ins and potential amendments resulting from those check-ins with unscheduled check-ins and amendments that the permittee or Service could initiate at any time as situations arise that may warrant them.

(17) *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, to include 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.

(18) *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. Such 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 modifications to avoidance, minimization, or compensatory mitigation measures or monitoring protocols will be required, 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 such change.

(19) *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 conservation 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), and 3–202–92 (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 long-term permits will be in the energy production and electrical distribution business.

Total Estimated Number of Annual Respondents: 8,469.

Total Estimated Number of Annual Responses: 8,469.

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

Total Estimated Number of Annual Burden Hours: 38,991.

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: $7,249,980 (primarily associated with application processing and administrative fees).

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0167 in the subject line of your comments.

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

We are evaluating the environmental impacts of the changes to the regulations and are accepting public comments on a draft environmental review document, as described above in **DATES** and **ADDRESSES**.

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)). Before issuance of the final regulations and final environmental assessment (EA), the Service will comply with provisions of the Endangered Species Act to ensure that the rulemaking has no effect on or is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species.

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 Secretarial 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. We continue to seek information from Tribes to determine whether the proposed rule will have effects on Tribes or Tribal lands, sacred sites, or resources may be affected by the proposed changes in this rule. Federally recognized Native American Tribes can request government-to-government consultation via letter submitted at any time during this rulemaking process. The Service conducted a Tribal webinar on September 22, 2021, during the ANPR public comment period as well as prior to publication of this proposed rule. SevenTribal representatives provided written comments.

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

E.O. 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This proposed rule is a significant regulatory action under E.O. 12866; however, it will not significantly affect energy supplies, distribution, or use. The proposed permitting process streamlines permitting for wind energy and power distribution; therefore, the rule is intended to ease 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.

Signing Authority

On September 23, 2022, Shannon Estenoz, Assistant Secretary for Fish and Wildlife and Parks, approved this action for publication. On September 23, 2022, Shannon Estenoz also authorized the undersigned to sign this document electronically and submit it to the Office of the Federal Register for publication as an official document of the Department of the Interior.

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.

Proposed Regulation Promulgation

Accordingly, we hereby propose to 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 this part and assigned OMB Control Number 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 19 entries in their place; and

■ ii. Revising 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 such 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 such agency, except that administration fees for permits issued under subpart E of part 22 of this subchapter will not be waived. Except as otherwise authorized or waived, if you fail to submit evidence of such status with your application, we will require the submission of all processing fees prior to the acceptance of the application for processing.

* * * * *

(4) * * *

Type of permit	CFR citation	Permit application fee	Administration fee [1]	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 Religion	50 CFR part 22	No fee		
Eagle Take Permits—Depredation and Protection of Health and Safety.	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		
Specific Permit Eagle Disturbance Take—Commercial	50 CFR part 22	2,500		500
Specific Permit Eagle Disturbance Take—Noncommercial	50 CFR part 22	500		150
Specific Permit Eagle Incidental Take	50 CFR part 22	28,000	8,000	500
Transfer of a Subpart E Eagle Permit	50 CFR part 22	1,000		
Specific Permit Eagle Nest Take—Single nest, Commercial.	50 CFR part 22	2,500		500

Type of permit	CFR citation	Permit application fee	Administration fee [1]	Amendment fee
Specific Permit Eagle Nest Take—Single nest, Non-commercial.	50 CFR part 22	500		150
Specific Permit Eagle Nest Take—Multiple nests	50 CFR part 22	5,000		500
General Permit—1 year	50 CFR part 22	100		
General Permit—5 years	50 CFR part 22	500		
General Permit—Power lines incidental take	50 CFR part 22	500	5,000 per State	
General Permit—Wind incidental take	50 CFR part 22	500	2,625 per turbine	500
Eagle Take—Exempted under ESA	50 CFR part 22		No fee	
* * * * * * *				

[1] An additional Administration Fee will be assessed at the time of application.

* * * * *

■ 4. Amend § 13.12 by:

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

■ b. Removing the 8 entries in table 1 to paragraph (b) under ''Eagle permits'' and adding in their place 10 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 from resource development	22.325
Permits for bald eagle take exempted under the Endangered Species Act	22.400

§ 13.24 [Amended]

■ 5. Amend § 13.24 in the introductory text of paragraph (c) 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'' wherever it appears 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 alphabetical 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 or golden eagles. The Atlantic EMU is CT, DE, FL, GA, MA, MD, ME, NH, NJ, NY, NC, PA, RI, SC, VA, VT, and WV. The Mississippi EMU is AL, AR, IL, IN, IA, KY, LA, MI, MN, MO, MS, OH, TN, and WI. The Central EMU is KS, ND, NE, NM, OK, SD, and TX; portions of CO, NM, and WY east of the Continental Divide; and portions of MT east of Hill, Chouteau, Cascade, Meagher, and Park Counties. The Pacific EMU is AK, AZ, CA, ID, NV, OR, UT, WA; portions of CO, NM, and WY west of the Continental Divide; and in MT Hill, Chouteau, Cascade, Meagher, and Park Counties and all counties west of those counties. 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, such that the nest is no longer usable and is not likely to become usable to eagles, as determined by a Federal, State, or Tribal eagle biologist.

* * * * *

General permit means a permit that is issued to an individual or entity with nationwide or regional standard conditions for a category or categories of

activities that are substantially similar in nature.

* * * * *

In-use nest means a bald or golden eagle nest characterized by the presence of one or more viable eggs or dependent young in the nest, or, for golden eagles only, adult eagles on the nest in the past 10 days during the breeding season.

Incidental take means take that 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, consisting of §§ 22.200 through 22.300, to read as follows:

Subpart E—Take of Eagles for Other Interests

Sec.

§ 22.200 Specific permits.

(a) *Purpose.* Specific permits authorize the take of bald eagles or golden eagles for other interests that do not meet general permit eligibility requirements or for entities that do not wish to obtain a general permit if applicable.

(b) *Eligibility.* To qualify for a specific permit, you must meet the following eligibility requirements. If 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 operator of a project.

(2) Upon receipt of a specific permit application, the Service may direct you to apply for a general permit if applicable. If so, the Service will provide a letter of authorization to keep in your records stating the conditions under which the activity qualifies for a general permit.

(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. 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, and location coordinates of each turbine.

(B) If applying under § 22.260 for power lines, include the State and county(ies) of coverage, total miles of transmission and distribution line, number of distribution poles, and the number of distribution poles that are not electrocution-safe at time of application.

(C) If applying under § 22.280 or § 22.300, include the location of known nest(s) and nest status (such as 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 the species affected, an estimate of the number of eagles using the project area, projected take, and a description of methods used to make the required findings. If the Service has officially issued or endorsed, through rulemaking procedures, 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, minimize, compensate for, and monitor impacts on eagles.

(v) Alternative actions considered and the reasons why such 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 fee(s) (see § 13.11(d)(4) of this subchapter), and, if required, proposed compensatory mitigation or eagle credits to be obtained from a Service-approved or in-lieu fee program. All compensatory mitigation must comply with the provisions of § 22.220.

(3) The applicant must be the entity conducting the activity. The applicant is responsible for compliance with the permit and must have the authority to implement the required beneficial practices. Applicants are most commonly the owner or manager of the entity conducting the activity. Contractors or consultants may assist in completing applications and/or conducting work as a subpermittee but may not be a permit holder.

(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. However:

(i) The Service may deny applications for specific permits if we determine the project does not require a permit.

(ii) The Service may grant a letter of authorization to apply for a general permit if the Service determines the project is consistent with fatality estimates for general permits even though it does not otherwise meet general-permit eligibility criteria. This paragraph (d)(1)(ii) applies only to existing projects applying for incidental take of eagles by wind energy projects (§ 22.250). You must submit a specific permit application and request a determination for general permit eligibility. Your specific permit application fee may be refunded (§ 13.11(d)(1) of this subchapter); however, the administration fee will not be refunded.

(2) The take:

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

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

(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 to eagles. These measures must meet or exceed the requirements of the general permit (§ 22.210), except where not practicable.

(5) The applicant has proposed to either: 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.

(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.

(e) *Modifications to your permit.* An amendment fee is required to make substantive amendments to the permit during the permit tenure (see § 13.11(d)(5) of this subchapter). The Service will also charge an administration fee for permittee- or Service-initiated amendments (see § 13.23 of this subchapter) that the Service determines to be significant, such as modifications that result in recalculating estimated take, reevaluating compensatory mitigation requirements, evaluating impacts of a new project size or arrangement, or requiring additional environmental review.

(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 operator of a project. The applicant is responsible for compliance with the permit and must have the authority to implement the required beneficial practices. Contractors or consultants may assist in completing applications and/or conducting work as a subpermittee but may not be a permit holder.

(2) Even if you are otherwise eligible for a general permit, the Service may notify you that you must apply for a specific permit if:

(i) The Service finds that the project does not comply with the requirements for a general permit; or

(ii) For wind projects authorized under § 22.250, four eagle mortalities of either species have been discovered at the project.

(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), as applicable, to the Regional Director of the region in which your activity will be conducted. If your activity spans multiple regions, submit your application to the region of your U.S. mailing address. 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, and location coordinates of each turbine.

(B) If applying under § 22.260 for power lines, include the State and county(ies) of coverage, total miles of transmission and distribution line, number of distribution poles, and the number of distribution poles that are not electrocution-safe at time of application.

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

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

(iii) Duration of the permit requested.

(iv) Certification that the activity 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 (SHPO) or Tribal Historic Preservation Officer (THPO) 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 fee(s) (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 in-lieu fee program within 90 days of the effective date of the permit.

(d) *Issuance criteria.* Upon 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; and

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

(3) The activity is consistent with the specific requirements applicable to that activity as described 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 implement the 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 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 a notice in the **Federal Register**. The Service may reinstate issuance of general permits after publishing another notice 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 unless you are notified otherwise.

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

§ 22.215 Conditions of permits.

(a) In addition to meeting the conditions set forth in part 13 of this subchapter, you must comply with the terms of your permit. Your authorization is subject to the following additional permit terms and conditions:

(1) Your permit will specify the type of take authorized (*i.e.,* incidental take, disturbance take, or nest take) and may specify the amount, location, or other restrictions on the take authorized. You are not authorized for any additional types of 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.

(3) For permits that authorize the incidental take of eagles, you are required to implement methods for discovering eagles at your project.

(i) Onsite personnel, such as staff, contractors, and volunteers, must be trained how to visually scan for eagle remains and must conduct visual scans when onsite.

(ii) You must promptly notify the Service of any eagle(s) found injured or dead at the activity site, regardless of whether the injury or death resulted from your activity. Your notification must include species, condition, discovery date, location, and other relevant information.

(iii) Dispose of 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 in this subpart. You must annually report incidental take and disturbance take using Form 3–202–15. You must report nest take using Form 3–202–16.

(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 if applicable.

(6) You must keep records of all activities conducted under this permit, including any subpermittee activities carried out under the authority of this permit (see § 13.46 of this subchapter). Your records must include an internal, discovered-eagle reporting system for bald eagle and golden eagle remains found at the site of the activity.

(7) By accepting this permit, you are authorizing the Service to inspect the location and records relating to the activity (see § 13.21(e) of this subchapter). The Service may require you to participate in the Service's program-wide monitoring, such as providing access to Service staff or contractors. 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 address physical, logistical, or legal constraints.

(8) You are responsible for ensuring that the activity for which take is authorized complies with all Federal, Tribal, State, and local laws and regulations applicable to eagles.

(9) You may designate subpermittees to conduct some or all of your permitted activities. Subpermittees must be at least 18 years of age. You must designate subpermittees in writing, including the name and contact information of the individual or entity and the date(s), location(s), and activitie(s) for which take is authorized. Subpermittees must have a copy of their subpermittee designation and the permit when conducting activities and display them upon request whenever exercising the permit authority. You are responsible for ensuring that your subpermittees are qualified to perform the work and comply with the terms of your permit. You are also responsible for maintaining current records of designated subpermittees. As the permittee, you are ultimately legally responsible for compliance with the terms and conditions of this permit, and that responsibility may not be delegated.

(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. The provision in this paragraph (b) 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, in which case that requirement will be specified on the face of your permit.

(1) Any permit authorizing take that would exceed the applicable EMU take limit will require compensatory mitigation. Compensatory mitigation for this purpose must ensure the preservation of the affected eagle species by reducing another ongoing form of mortality by an amount equal to or greater than the unavoidable mortality or by increasing the eagle population of the affected species by an equal or greater amount.

(2) A permit may require compensatory mitigation when the Service determines from the best available information that the persistence of the local area population of an eagle species in the project area may not be maintained.

(3) Compensatory mitigation will be calculated to account for both the project's impacts and the population status of the species for which incidental take is requested.

(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, but only 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) Be sited within the same local area population where the permitted take will occur if required by the Service due to concern regarding the persistence of a particular 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 the impacts of the authorized take persist.

(7) Include mechanisms to account for and address uncertainty and risk of

failure of a compensatory mitigation measure, including financial assurances.

(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, such as 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 permittee-responsible mitigation provider, providers must submit a mitigation plan to the Service sufficient to demonstrate that the standards set forth in paragraph (b) of this section can be met. At a minimum, this must include a description of the mitigation, the benefit to eagles, the location(s) where projects will be implemented, the EMU and local area population served, the number of credits provided, and an explanation of the rationale for this determination. 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) *Definitions.* The following terms used in this section have the meanings set forth in this paragraph (b):

Existing project. Infrastructure that was operational prior to [EFFECTIVE DATE OF THE FINAL RULE], 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).

Relative abundance. The average number of eagles of each species expected to be seen by a qualified person who observes for eagles for one hour at the optimal time of the day for detecting the species, and who travels no more than one kilometer during the observation session. Relative abundance values determined for a project must be based on publicly available eBird relative abundance products (eBird is an online database of bird distribution and abundance. Cornell Lab of Ornithology, Ithaca, New York. Available at: *https://science.ebird.org/en/status-and-trends/faq#mean-relative-abundance*). You may use the relative abundance map produced by the Service (available at: *https://fws.gov/*) in lieu of calculating relative abundance values yourself.

(c) *Eligibility for a general permit.* To qualify for a general permit, you must meet the requirements of § 22.210, not be denied eligibility per paragraph (d)(3) of this section, be located in the contiguous 48 States, and:

(1) To be eligible, all turbines associated with a project must be located in areas characterized by seasonal relative abundance values that are less than the relative abundance values for the date range for each species listed in paragraphs (c)(1)(i) and (ii) of this section. Additionally, golden eagle nests must be at least 2 miles and bald eagle nests must be at least 660 feet from any turbines.

(i) Relative abundance value thresholds for bald eagles throughout the year are as follows:

TABLE 1 TO PARAGRAPH (c)(1)(i)

Date range	Bald eagle relative abundance
1. Feb 22–Apr 11	1.272
2. Apr 12–Sep 6	0.812
3. Sep 7–Dec 13	0.973
4. Dec 14–Feb 21	1.151
Average of periods 1 and 3	1.018

(ii) Relative abundance value thresholds for golden eagles throughout the year are as follows:

TABLE 2 TO PARAGRAPH (c)(1)(ii)

Date range	Golden eagle relative abundance
1. Feb 15–May 16	0.206
2. May 17–Sep 27	0.118
3. Sep 28–Dec 13	0.168
4. Dec 14–Feb 14	0.229
Average of periods 1 and 3	0.145

(2) For existing projects only, if you have received a letter of authorization from the Service (see § 22.200(d)(1)(ii)), the project is eligible for a general permit.

(d) *Discovered eagle provisions for general permits.* You must implement procedures to discover eagles in accordance with the provisions set forth in § 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 found.

(2) If you discover the take of three eagles of any one species during the tenure of the general permit, you must notify the Service in writing within 2 weeks of discovering the take of a third eagle and implement an adaptive management measure(s). Your notification must include the reporting data required in your permit conditions, your adaptive management plan, and a description and justification of which adaptive management approaches you will be implementing.

(3) If you discover the take of four eagles of any one species during the tenure of the general permit, you must notify the Service in writing within 2 weeks of discovering the take of the fourth eagle. Your notification must include the reporting data required in your permit conditions, your adaptive management plan, and a description and justification of which adaptive management approaches you will be implementing. The project may continue to be authorized to incidentally take eagles through the term of the existing general permit but will be denied eligibility for future general permits for incidental take. You may apply for a specific permit for incidental take at that project. You may request reconsideration of this denial 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, eagles discovered by the Service may be attributed to the wind project. To adjust for potential differences in detection rate for Service-monitoring, the number of eagles attributed to the project as ''discovered'' in accordance with this paragraph (d) will be adjusted based on the Service-monitoring detection rate.

(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 use the best available data to estimate the take of eagles that will result from 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 an adaptive management plan, including circumstances that

trigger implementation and management measures to be considered.

(2) Remove anthropogenic hazardous attractants to eagles and avoid creating new anthropogenic eagle attractants throughout the project, including resources that could attract foraging, roosting, and/or nesting behavior.

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

(4) Comply with all of the regulations and permit conditions in part 21 of this subchapter, including any provisions specific to authorizing incidental take of migratory birds.

(5) Submit required reports to the Service.

(6) Pay the required application and administration fee(s) (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 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 $0.200\pi(d/2)\wedge 2$ where d is the diameter of the blades in kilometers. You must obtain eagle credits at the following rates: Atlantic/Mississippi EMUs: 6.56 eagles/km^3, Central EMU: 7.88 eagles/km^3, and Pacific EMU: 11.48 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 3–200–92.

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

Collision response strategy. A plan that describes the steps the permittee will take to identify, assess, and respond to eagle collisions with power-line infrastructure. The assessment should include the species, habitat, daily and seasonal migration patterns, eagle concentration areas, and other local factors that might be contributing to eagle collisions. The response options should consider eagle collisions in the engineering design (*e.g.,* burying the line, rerouting the line, or modifying the line to reduce the number of wires), when modifying habitat, and when marking the power line.

Eagle-shooting response strategy. A plan to respond to eagle-shooting events where one or more eagles are discovered near power-line infrastructure and the cause of death is shooting. The plan must outline the steps to identify when eagle shooting occurs, options for response, and implementation of the response.

Electrocution-safe. A power-pole configuration that minimizes eagle electrocution risk by using a design that provides sufficient separation between phases and between phases and grounds to accommodate the wrist-to-wrist or head-to-foot distance of an eagle or by covering exposed parts with insulators to physically separate electricity from eagles. If insulators are used, they must be in good condition and regularly maintained. For conversions from an above-ground line to a buried line, the buried portion is considered ''electrocution-safe.''

Proactive retrofit strategy. A plan to convert existing infrastructure to electrocution-safe infrastructure. The proactive retrofit strategy must include information on how poles are identified as not electrocution-safe, how poles are prioritized for retrofit, what retrofit designs are used, and how the strategy is to be implemented. The proactive retrofit strategy must identify annual targets for the number of poles to be retrofitted.

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, such as convenience or cost. The pole that caused the electrocution must be retrofitted, unless the pole is already electrocution-safe. A total of 11 poles or a half-mile segment must be retrofitted, whichever is less. The typical pole selection will be the pole that caused the electrocution and five 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 least-safe 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 electrocution-safe.

(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) Ensure that all new construction and reconstruction of poles is electrocution-safe, as limited by the need to ensure human health and safety.

(2) Implement a reactive retrofit strategy following all electrocutions of eagles.

(3) Implement a proactive retrofit strategy to convert all existing infrastructure to electrocution-safe. You must convert one-tenth of infrastructure that is not electrocution-safe as of the effective date of the general permit to electrocution-safe during the duration of the permit. If you renew your general permit, the same number of poles must be retrofit, such that all poles are retrofit within 50 years or by the expiration of the tenth, 5-year general permit.

(4) Implement an eagle collision response strategy.

(5) For new construction and reconstruction, incorporate information on eagles (population status of the species) into siting and design considerations as practicable, such as siting power lines a safe distance from nests, foraging areas, and roosts, subject to human health and safety, and/or significant adverse effects to biological, cultural, or historical resources.

(6) Implement an eagle-shooting response strategy.

(7) Comply with all of the regulations and permit conditions of part 21 of this subchapter, including any provisions specific to authorizing incidental take of migratory birds.

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

(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) *Eligibility for a specific permit for incidental take.* To qualify for a specific permit, you must meet the requirements of § 22.200.

(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 incidental take of bald eagles or golden eagles by

disturbance, as defined in § 22.6. Purposeful disturbance of nests is not authorized under this section. Apply using Form 3–200–91.

(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 (8) of this section. Activities occurring farther than the distances specified do not require a permit because they are unlikely to cause disturbance. The following activities are eligible for a general permit:

(1) Building construction and maintenance within 660 feet of an in-use bald eagle nest or within 330 feet of any bald eagle nest.

(2) Linear infrastructure construction and maintenance (*e.g.,* roads, rail, trails, power lines, and other utilities) within 660 feet of an in-use bald eagle nest or within 330 feet of any bald eagle nest.

(3) Alteration of shorelines and water bodies (*e.g.,* shorelines, wetlands, docks, moorings, marinas, and water impoundment) within 660 feet of an in-use bald eagle nest or within 330 feet of any bald eagle nest.

(4) Alteration of vegetation (*e.g.,* mowing, timber operations, and forestry practices) within 660 feet of an in-use bald eagle nest or within 330 feet of any 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) Loud, intermittent noises (*e.g.,* blasting) within one-half-mile of an in-use bald eagle nest, where the noise is intermittent or otherwise not present when the nest is initiated. Noise that is present prior to nest initiation and sufficiently consistent that eagles demonstrate tolerance to the activity does not require a permit.

(c) *Eligibility for a specific permit for disturbance.* To qualify for a specific permit, you must meet the requirements of § 22.200. You may apply for a specific permit if your activity may result in incidental disturbance of a golden eagle nest, incidental disturbance of a bald eagle nest for an activity not specified in paragraph (b) of this section, or disturbance to a foraging area.

(d) *Disturbance permit conditions.* (1) Implement measures to avoid and minimize nest disturbance, including disturbance due to noise from human activities, visibility of human activities, proximity to nest, habitat alteration, and indirect stressors.

(2) Avoid activities that may negatively affect the nesting substrate, such as the survivability of the nest tree.

(3) Implement monitoring of in-use nests that is sufficient to determine whether nestlings have fledged from the nest and submit this information on your annual report.

(e) *Reporting.* You must submit an annual report using Form 3–202–15. The annual report is due within 30 days of the expiration of 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.* The regulations in this section authorize 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. 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 where necessary to alleviate an existing safety emergency, or to prevent a rapidly developing safety emergency that is otherwise likely to result in bodily harm to humans or eagles while the nest is still in use by eagles for breeding purposes.

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

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

Nest take for species protection. Take of an in-use eagle nest prior to egg-laying or an alternate eagle nest, when the 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).

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. General permits are available for bald eagle nest take for emergency, health and safety, or a human-engineered structure, or, if located in Alaska, bald eagle nest take for other purposes. General permits are not available for take of golden eagle nests. General permits 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 an additional permit(s) if the subsequent nest(s) re-create the emergency, safety, or functional hazard of the original nest. The general permit application will require supporting documentation for certain types of requests, such as an arborist report in the case of hazard-tree removal.

(d) *Eligibility for a specific permit for nest take.* To qualify for a specific permit, you must meet the requirements of § 22.200. You may apply for a specific permit if you are requesting take of a golden eagle nest or requesting take of a bald eagle nest for species protection or other purposes. As part of your specific permit application, you may be required to provide supporting documentation, such as an arborist report in the case of hazard-tree removal.

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

(1) You must apply as the Federal, State, or Tribal agency responsible for implementing actions for the protection of the species of concern.

(2) You must include documentation that:

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

(ii) Identifies how eagles are a limiting factor to survival of the species using the best available scientific information and data. Include a description of the mechanism of that threat.

(iii) Explains how take of eagle nest(s) is likely to have a positive outcome on recovery for the species.

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

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

(2) Obstruct nest(s) or nest substrate.

(3) Minimize renesting 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 and/or eggs from an in-use nest for immediate transport to a foster nest, rehabilitation facility, or as otherwise directed by the Service.

(6) Monitor in-use nests that are relocated with nestlings or eggs present or foster nests 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) Submission of an annual report using Form 3–202–16.

(g) *Tenure of permits.* General permits issued under the regulations in 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 § 22.325]

■ 14. Redesignate § 22.75 as § 22.325.

■ 15. Newly redesignated § 22.325 is amended by:

■ a. Revising the section heading; and

■ b. In the introductory text, removing the three sentences following the first sentence.

The revision reads as follows:

§ 22.325 Permits for golden eagle nest take from resource development.

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§ 22.90 [Redesignated as § 22.400]

■ 16. Redesignate § 22.90 as § 22.400.

Maureen D. Foster,

Chief of Staff, Office of the Assistant Secretary for Fish and Wildlife and Parks.

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