

adopted, or to suggest that a change should be made to the rule. Under the direct final rule process, FMCSA does not consider the following types of comments to be adverse:

(1) Comments recommending another rule change, unless the commenter states that the direct final rule will be ineffective without the change;

(2) Comments outside the scope of the rule and comments suggesting that the rule's policy or requirements should or should not be extended to other Agency programs outside the scope of the rule;

(3) Comments in support of the rule; or

(4) Comments requesting clarification.

(c) *Confirmation of effective date.*

FMCSA will publish a confirmation rule document in the **Federal Register**, if it has not received an adverse comment or notice of intent to file an adverse comment by the date specified in the direct final rule. The confirmation rule document tells the public the effective date of the rule.

(d) *Withdrawal of a direct final rule.*

(1) If FMCSA receives an adverse comment or a notice of intent to file an adverse comment within the comment period, it will publish a rule document in the **Federal Register**, before the effective date of the direct final rule, advising the public and withdrawing the direct final rule.

(2) If FMCSA withdraws a direct final rule because of an adverse comment, the Agency may issue a notice of proposed rulemaking if it decides to pursue the rulemaking.

Issued on: May 24, 2010.

Anne S. Ferro,
Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[FWS-R9-MB-2010-0020; 91200-1231-9BPP]

RIN 1018-AX09

Migratory Bird Permits; Changes in the Regulations Governing Migratory Bird Rehabilitation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, published a final rule in the **Federal Register** on October 27, 2003, to create regulations governing

migratory bird rehabilitation in the United States. Before creation of those regulations, rehabilitators were required to obtain a special purpose permit to engage in rehabilitation activities. The language in the final paragraph of the 2003 regulations dealt with the transition of special purpose permit holders to operation under the new rehabilitation permit regulations. This paragraph is no longer relevant, so we remove it from the regulation.

DATES: This regulations change will be effective on May 28, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703-358-1825.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 2003, we published a final rule in the **Federal Register** (68 FR 61123) to establish regulations for the issuance of permits to rehabilitate migratory birds in the United States. These regulations are at 50 CFR 21.31. Prior to issuance of the rehabilitation permit rule, migratory bird rehabilitators were required to obtain a special use permit to engage in rehabilitation activities. The last paragraph in the rehabilitation permit rule dealt with how we would handle issuing permits during the transition to the (then) new regulations. Since publication of that rule, all persons interested in having a permit to rehabilitate migratory birds must have transitioned from a special purpose permit to a rehabilitation permit. Because special purpose permits are valid for only 3 years, all of those permits in existence in 2003 have expired by now.

Therefore, the text in 50 CFR 21.31(i), "Will I need to apply for a new permit under this section if I already have a special purpose permit to rehabilitate birds, issued under § 21.27 (Special purpose permits)?" is no longer needed. With this final rule, our only change to the rehabilitation regulations is to remove all of the language under paragraph (i). This change is simply a ministerial administrative action to remove text that is no longer necessary from the Code of Federal Regulations and, therefore, will have no substantive effect on the general public.

Administrative Procedure

In accordance with section 553 (b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), we are issuing this final rule without prior opportunity for public comment because public notice and comment

procedures are unnecessary. We find that good cause exists to delete paragraph (i) of section 21.31 without going through the public-notice-and-comment procedure because the transition language is anachronistic and no public input received through an open comment period could justify retention of this paragraph. For the same reasons stated above, we find that there is good cause to have this final rule take effect immediately upon publication in the **Federal Register** (5 U.S.C. 553(d)(3)).

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866. OMB bases its determination upon the following four criteria:

a. Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

b. Whether the rule will create inconsistencies with other Federal agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

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

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

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

action will not have a significant economic impact on a substantial number of small entities because the change in the regulation is simply to eliminate language that is no longer needed. Consequently, we certify that because this rule will not have a significant economic effect on any entity, let alone a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). It will not have a significant economic impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of \$100 million or more. There are no costs to permittees or any other part of the economy associated with these regulation changes.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The practice of migratory bird rehabilitation does not significantly affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Neither regulation nor practice of migratory bird rehabilitation significantly affects business activities.

Unfunded Mandates Reform Act

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

a. This rule will not “significantly or uniquely” affect small governments. A small government agency plan is not required. Neither regulation nor practice of migratory bird rehabilitation affects small government activities.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year; *i.e.*, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. No revisions of State, tribal, or territorial regulations will be necessary.

Takings

In accordance with E.O. 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment

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 regulation of migratory bird rehabilitation.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the 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

We examined this rule under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of the Migratory Bird Permits Program and assigned OMB control number 1018–0022, which expires November 30, 2010. This rule does not change the approved information collection. Information from the collection is used to ensure that rehabilitation permit applicants are qualified and that their activities are documented. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We evaluated the environmental impacts of the change to the regulations, and determined that, within the spirit and intent of the Council on Environmental Quality’s regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, the regulatory change does not have a significant effect on the human environment. Under the guidance in Appendix 1 of the Department of the Interior Manual at 516 DM 8, we conclude that the regulatory change is categorically excluded because it has “no or minor potential environmental impact” (516 DM 8.5(A)(1)). No more comprehensive NEPA analysis of the regulations change is required.

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), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that this rule will not interfere with tribes’ ability to manage themselves or their funds or to regulate

migratory bird rehabilitation on tribal lands.

Energy Supply, Distribution, or Use

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects the practice of migratory bird rehabilitation in the United States, it is not a significant regulatory action under E.O. 12866, and will not significantly affect energy supplies, distribution, or use. No Statement of Energy Effects is required.

Environmental Consequences of the Proposed Action

This action has no environmental or socioeconomic impacts.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that “The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter” (16 U.S.C. 1536(a)(1)). It further states that the Secretary must “insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat” (16 U.S.C. 1536(a)(2)). This regulatory change will not affect threatened or endangered species or their habitats in the United States.

List of Subjects in 50 CFR Part 21

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

■ For the reasons stated in the preamble, we amend subpart C of part 21, subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

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

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703–12); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

§ 21.31 [Amended]

■ 2. Amend § 21.31 by removing paragraph (i).

Dated: May 17, 2010.

Thomas L. Strickland,

*Assistant Secretary for Fish and Wildlife and
Parks.*

[FR Doc. 2010-12882 Filed 5-27-10; 8:45 am]

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