

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 21**

RIN 1018-AE65

Migratory Bird Permits; Amended Certification of Compliance and Determination that the States of Vermont and West Virginia Meet Federal Falconry Standards

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We are adding the States of Vermont and West Virginia to the list of States whose falconry laws meet or exceed Federal falconry standards. These States will now be participants in the cooperative Federal/State permit application program, and falconry can now be practiced in those States. The list of States that meet Federal falconry standards, including Vermont and West Virginia, is included in this final rule. This rule also amends the regulations on State compliance to clarify the administrative procedure that States need to follow to comply with Federal falconry standards.

DATES: This rule is effective September 7, 1999.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Jonathon Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, telephone 703/358-1834.

SUPPLEMENTARY INFORMATION: Regulations in 50 CFR part 21 provide that we review and approve State falconry laws before falconry can be practiced in those States. A list of the States whose falconry laws have been approved is found in 50 CFR 21.29(k). In accordance with the requirements of 50 CFR 21.29(a) and (c), we reviewed certified copies of the falconry regulations adopted by the States of Vermont and West Virginia and determined that they meet or exceed our Federal falconry standards. Our standards, contained in 50 CFR 21.29(d) through (i), include permit requirements, classes of permits, examination procedures, facilities and equipment standards, raptor marking, and raptor taking restrictions. Both

Vermont and West Virginia regulations also meet or exceed all the restrictions or conditions found in 50 CFR 21.29(j), which include requirements on the number, species, acquisition, possession of feathers, and marking of raptors. Therefore, we have included them in the section 21.29(k) list of States that meet the Federal falconry standards. The listing eliminates the current restriction that prohibits falconry in Vermont and West Virginia.

We also are amending the regulatory language in 50 CFR 21.29(a) and (c) to clarify our procedures for approving State regulations for compliance with our falconry standards. This approval is contingent upon the respective State submitting its laws and regulations to us for review and us finding that the laws and regulations meet or exceed our falconry standards.

We are including in this rule the entire list of States that have met the Federal falconry standards, including Vermont and West Virginia. This should eliminate any confusion about which States have approval for falconry and which of those participate in a joint Federal/State permit system.

We also are making minor text revisions in 50 CFR 21.29 (j)(2) to comply with plain language mandates and to be gender neutral.

We are making this rulemaking effective immediately. This is allowed by the Administrative Procedure Act (5 U.S.C. 553(d)(1)) because this final rule relieves a restriction that prohibited the States of Vermont and West Virginia from allowing the practice of falconry.

Why Is This Rulemaking Needed?

The States of Vermont and West Virginia wanted to institute falconry programs so that citizens who wanted to practice the sport of falconry in their State could do so. Accordingly, they promulgated regulations that meet or exceed our Federal requirements protecting migratory birds. We needed to amend 50 CFR 21.29 to add them to the list of States that have Federal approval to practice falconry.

Were There Any Public Comments on the Proposal?

We received one comment. The proposal was published in the **Federal Register** on August 18, 1998 (63 FR 44229) and invited comments from any interested parties. The comment period closed on September 17, 1998. The comment was from the General Counsel, North American Falconers Association. NAFA supported adding Vermont and West Virginia to the list of States that meet our falconry standards. They asked that we provide guidance and

expeditious review of the falconry programs being instituted in Delaware and Connecticut so that they could be added to the list of States meeting our standards.

Service Response: Our non-game migratory bird coordinator from the Hadley, Massachusetts, Regional Office has provided Delaware and Connecticut with guidance documents to assist them in developing their falconry standards. We stand ready to provide any additional support these States may need in developing programs that meet our standards.

Is This Rule in Compliance With NEPA?

Yes. In accordance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500-1508), we prepared an Environmental Assessment (EA) in July 1988 to support establishment of simpler, less restrictive regulations governing the use of most raptors. You can obtain a copy of this EA by contacting us at the address in the **ADDRESSES** section. Adding Vermont and West Virginia to the list of States whose falconry laws meet or exceed Federal falconry standards, although covered by the general conditions addressed in the 1988 EA, is considered categorically excluded from further NEPA documentation by the Department of the Interior's NEPA procedures. The action is an " * * * amendment to an approved action when such changes have no or minor potential environmental impact" (516 DM 6, Appendix 1.4(1)).

Is This Rule in Compliance With Endangered Species Act Requirements?

Yes. 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 Act." 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 * * *." Our review pursuant to section 7 concluded that the addition of Vermont and West Virginia to the list of States approved to practice falconry is not likely to adversely affect any listed species. A copy of this determination is available by contacting

us at the address in the ADDRESSES section of this rule.

What About Other Required Determinations?

This rule was not subject to the Office of Management and Budget (OMB) review under Executive Order 12866. The Department of the Interior has determined that it will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of \$100 million or more, will not cause a major increase in costs or prices, and will not adversely affect competition, employment, investment, productivity, or innovation. We estimate that 25 individuals will obtain falconry permits as a result of this rule and many of the expenditures of those permittees will accrue to small businesses. The maximum number of birds allowed by a falconer is three, so the maximum number of birds likely to be possessed is 75. Some birds will be taken from the wild, but others may be purchased. Using one of the more expensive birds, the northern goshawk, as an estimate, the cost to procure a single bird is less than \$5,000, which, with an upper limit of 75 birds, translates into \$375,000. Expenditures for building facilities would be less than \$40,000 for 75 birds and care and feeding less than \$75,000. These expenditures, totaling less than \$500,000, represent an upper limit of potential economic impact from the addition of Vermont and West Virginia to the list of approved States.

This rule has no potential takings implications for private property as defined in Executive Order 12630. The only effect of this rule on the constituent community will be to allow falconers in the States of Vermont and West Virginia to apply for falconry permits. It is estimated that no more than 25 people would apply for falconry permits in both Vermont and West Virginia combined. This rule does contain information collection requirements that are approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection is covered by an existing OMB approval for licenses/permit applications, number 1018-0022. For further details concerning the information collection approval see 50 CFR part 21.4.

We have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of

\$100 million or more in any given year on local or State governments or private entities. The rule does not have significant Federalism effects pursuant to Executive Order 12612. We also have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988 for civil justice reform, and 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.

Regarding Government-to-Government relationships with Tribes, this rulemaking will have no effect on federally recognized Tribes. There are no federally recognized Indian tribes in the States of Vermont or West Virginia. Furthermore, the revisions to the existing regulations are of a purely administrative nature affecting no Tribal trust resources.

Author: The primary author of this rulemaking is Cyndi Perry, U.S. Fish and Wildlife Service, Office of Migratory Bird Management, 1849 C Street, NW., MS 634 ARLSQ, Washington, DC 20240.

List of Subjects in 50 CFR Part 21

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

Regulation Promulgation

Accordingly, we amend Part 21, subchapter B of chapter 29, 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: Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Amend section 21.29 by revising paragraphs (a), (c), (j)(2) and (k) to read as follows:

§ 21.29 Federal falconry standards.

(a) *Before you can practice falconry in any State.* You cannot take, possess, transport, sell, purchase, barter, or offer to sell, purchase, or barter any raptor for falconry purposes, in any State unless the State allows the practice of falconry, and the State has submitted copies of its laws and regulations governing the practice of falconry to us (Director), and we have determined that they meet or exceed the Federal falconry standards established in this section. If you are a Federal falconry permittee, you can possess and transport for falconry purposes a lawfully possessed raptor through States that do not allow falconry or meet Federal falconry

standards so long as the raptors remain in transit in interstate commerce. The States that are in compliance with Federal falconry standards are listed in paragraph (k) of this section.

* * * * *

(c) *What is the process for Federal approval of a State program?* Any State that wishes to allow the practice of falconry must submit to the Director of the Service a copy of the laws and regulations that govern the practice of falconry in the State. If we determine that they meet or exceed the Federal standards, which are established by this section, we will publish a notice in the **Federal Register** adding the State to the list of approved States in paragraph (k) of this section. Any State that was listed in paragraph (k) prior to September 14, 1989, is considered to be in compliance with our standards.

* * * * *

(j) *What other restrictions must a State have?*

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(2) If you possessed raptors before January 15, 1976, the date these regulations were enacted, and you had more than the number allowed under your permit, you may retain the extra raptors. However, each of those birds must be identified with markers we supplied, and you cannot replace any birds, nor can you obtain any additional raptors, until the number in your possession is at least one fewer than the total number authorized by the class of permit you hold.

* * * * *

(k) *List of States meeting Federal falconry standards.* We have determined that the following States meet or exceed the minimum Federal standards established in this section for regulating the taking, possession, and transportation of raptors for the purpose of falconry. The States that are participants in a joint Federal/State permit system are designated by an asterisk (*).

- *Alabama
- *Alaska
- Arizona
- *Arkansas
- *California
- *Colorado
- *Florida
- *Georgia
- *Idaho
- *Illinois
- *Indiana
- *Iowa
- *Kansas
- *Kentucky
- *Louisiana
- Maine
- Maryland

Massachusetts
*Michigan
*Minnesota
*Mississippi
Missouri
*Montana
*Nebraska
*Nevada
*New Hampshire
*New Jersey
*North Dakota
New York
New Mexico

*North Carolina
*Ohio
Oklahoma
*Oregon
Pennsylvania
Rhode Island
*South Carolina
*South Dakota
*Tennessee
Texas
Utah
Vermont
*Virginia

*Washington
West Virginia
*Wisconsin
*Wyoming

Dated: August 6, 1999.

Donald Barry,

*Assistant Secretary for Fish and Wildlife and
Parks.*

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