1Supporting Statement A for
Paperwork Reduction Act Submission
OMB Control Number 1018-NEW

Long-Term Eagle Take Programmatic Permits
50 CFR 13 and 22

Note: Information collection requirements for migratory bird permits are approved under OMB Control No. 1018-0022, which expires February 28, 2014. Five-year programmatic permits are included under this approval. We are proposing to change the requirements for eagle take programmatic permits and increase the application fees. This ICR contains only information collection requirements for the new longer term programmatic permits. We are requesting a new OMB control number for these changes. Once we issue the final rule, we will incorporate the new requirements into OMB Control Number 1018-0022 and discontinue the new number.

1. Explain the circumstances that make the collection of information necessary.

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) (Eagle Act) prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act regulations at Title 50, part 22, § 22.3, of the Code of Federal Regulations (CFR), define the "take" of an eagle to include the following broad range of actions: "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. The Secretary is authorized to prescribe regulations permitting the "taking, possession, and transportation of [bald eagles or golden eagles] . . . for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or . . . for the protection of wildlife or of agricultural or other interests in any particular locality," provided such permits are "compatible with the preservation of the bald eagle or the golden eagle" (16 U.S.C. 668a).

Regulations at 50 CFR 22.26 provide for permits to take bald eagles and golden eagles, where the taking is associated with, but not the purpose of, an activity. The regulations provide for both standard permits and programmatic permits. Standard permits authorize individual instances of take that cannot practicably be avoided. Programmatic permits authorize recurring take that is unavoidable even after implementation of advanced conservation practices.

"Programmatic take" is defined at 50 CFR 22.3 as "take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified." This definition distinguishes programmatic take from any other take that has indirect effects that continue to cause take after the initial action. We can issue programmatic permits for disturbance as well as take resulting in mortalities, based on implementation of "advanced conservation practices" developed in coordination with the Service. "Advanced conservation practices" (ACPs) are defined at 50 CFR 22.3 as "scientifically supportable measures that are approved by the Service and represent the best available techniques to reduce eagle disturbance and ongoing mortalities to a level where remaining take is unavoidable." Most take authorized under section 22.26 has been in the form of disturbance; however, permits may authorize lethal take that is incidental to an otherwise lawful activity, such as mortalities caused by collisions with rotating wind turbines.

We have been approached by numerous proponents of renewable energy projects, such as wind and solar power facilities, interested in obtaining programmatic permits to authorize eagle take that may result from both the construction and ongoing operations of renewable energy projects. It has become evident that the 5-year term limit imposed by 50 CFR 22.26(h) is not long enough to enable many such project proponents to secure the funding, lease agreements, and other necessary assurances to move forward with their projects.

We propose to amend the regulations to provide for terms of up to 30 years for programmatic permits that incorporate judiciously developed, adaptive conservation measures the permittee will implement in the event that take exceeds predicted levels or new information indicates that such measures are necessary to protect eagles. Permits for periods longer than 5 years would be available only to applicants who commit to implementing such adaptive measures if monitoring shows that the measures are both needed and likely to be effective. Any such required "adaptive management measures" would be negotiated with the permittee and specified in the terms and conditions of the permit.

We also propose changes to regulations at 50 CFR 13.24 (Right of succession by certain persons) and 13.25 (Transfer of permits and scope of permit authorization) to allow programmatic permits to be transferable to new owners of projects, and to ensure that any successors to the permit are qualified and committed to carrying out the conditions of the permit. We will negotiate such permits recognizing that a succession of owners may purchase or resell the affected company or land during the term of the permit, as long as successive owners agree to the terms of the permit.

Regulations at 50 CFR sections 13.25 impose restrictions on the transferability of Service permits. These restrictions are appropriate for most wildlife permitting situations, but they impose inappropriate and unnecessary limitations for nonpurposeful eagle take permits where the term of the permit may be decades and the permittees foresee the desirability of simplifying subpermitting and permit transference from one property owner or company to the next.

Currently, 50 CFR 13.24 allows for certain persons to be successors to a permit: the surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; or a receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors. For most Service permits, with the exception of certain long-term permits issued under Endangered Species Act regulations, all the potential successor needs to do gain the privileges of the permit is to "furnish the permit for endorsement" to the permit office within 90 days from the date the successor begins to carry out the permitted activity. We are proposing that programmatic Eagle Act permits be subject to the same additional provisions that currently apply to long-term ESA permits. In such cases, the permit is subject to a determination by the Service that: the successor meets all of the qualifications under this part for holding a permit; the successor has provided adequate written assurances that it will provide sufficient funding for the conservation measures and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and the successor has provided such other information as the Service determines is relevant to the processing of the request.

The proposed rule also amends the schedule of permit fees set forth at 50 CFR 13.11 by substantially increasing the fees to be charged for programmatic permits authorizing the incidental take of bald or golden eagles. Experience to date has demonstrated that current fee amounts are significantly less than the actual cost to the Service of reviewing and processing programmatic permit applications, including the costs of monitoring the implementation of such permits. This would particularly be the case for programmatic permits that authorize the taking of eagles over a decade or more. The proposed increased fees reflect the estimated

cost to the Service of developing, and monitoring the effectiveness of, the terms and conditions of the permit. For programmatic permits with tenures of 5 years (the maximum period allowed under current regulations), the permit application fee is proposed to be $36,000. We also propose to collect permit administration fees, based on the duration of the permits, to recover the Service costs for monitoring and working with the permittees over the lives of the permits. We estimate those costs to be approximately $2,600 for each 5 years that the permit is valid. For all programmatic permits, regardless of duration, the proposed amendment processing fee is set at $1,000, and the fee for the transfer of programmatic permit is proposed to be $1,000. The proposed application processing fee for programmatic permits for small wind projects and other activities not expected to have significant effects on eagles is $5,000. We are also proposing a $1,000 permit amendment processing fee for those permits.

2. Indicate how, by whom, how frequently, and for what purpose the information is to be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, explain how the collection complies with all applicable Information Quality Guidelines.

All Service permit applications are in the 3-200 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits, such as the name of the applicant and the applicant's address, telephone and fax numbers, social security or tax identification number, and email address. Standardizing general information common to the application forms makes filing of applications easier for the public as well as expedites our review of applications.

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. Respondents submit application forms periodically, as necessary. Submission of reports is generally on an annual basis, although some are dependent on specific transactions.

Application (includes researching permit requirements, conducting preapplication surveys/studies, and completing the application form)

We will use FWS Form 3-200-71 (Eagle Take–Necessary to Protect Interests in a Particular Locality) as the application for long-term programmatic permits. The information we collect on FWS Form 3-200-71 allows us to assess the qualifications of applicants for permits. These permits allow nonpurposeful take of eagles that is incidental to otherwise lawful actions. This form is approved under OMB Control Number 1018-0022, which expires February 28, 2014. We are not making any changes to this form.

Monitoring and Reporting

Permittees must submit an annual report for every year the permit is valid and for up to 3 years after the activity is completed. Permit recipients will use FWS Form 3-202-15 (Eagle Take (50 CFR 22.26) – Annual Report) to meet the reporting requirements at 22.26(c)(3). This form is approved under OMB Control No. 1018-0022, which expires February 28, 2014. We are not proposing any changes to this form. We use this information to evaluate compliance with the terms and conditions of the permit, and results of measures to minimize and mitigate impacts on covered species. For long-term programmatic permits, we will also use the data to evaluate whether the permittee will implement adaptive management strategies set forth in the terms of the permit. We will use the results of these evaluations to:

- Determine if the conservation strategies are reaching the intended biological goals.
- Implement improved management strategies.
- Evaluate the success of the permit program.
- Gather information needed for future permit issuance determinations.

Permittees are also required to promptly notify the Service via email or phone when an injured or dead eagle is found in the vicinity of the permitted activity.

Recordkeeping

Holders of programmatic permits must keep records of the data gathered through surveys and monitoring.

Amendments

If the permitted activity changes in a manner that will increase the anticipated impacts to eagles, the permittee must apply for an amendment to the permit by submitting a description of the modified activity and the changed impacts to eagles. If the permitted activity changes in a manner that will decrease the anticipated impacts to eagles, the permittee may apply for an amendment to the permit in the same manner.

Transfers

Programmatic permits may be transferred to new owners of facilities, provided that the new owners have never had a permit issued by U.S. Fish and Wildlife Service suspended or revoked, and have not been convicted of violating a Federal wildlife law in the last 10 years. The successor must meet all of the qualifications under this part for holding a permit; must provide adequate written assurances that the successor will provide sufficient funding for the conservation plan or agreement; and must agree to implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements. The successor also must provide such other information as the Service determines is relevant to the processing of the request.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements.].

FWS Forms 3-200-71 and 3-202-15 are available in fillable format on our forms and permits websites, by mail, or by fax. Applicants may complete the fillable application online, but must send the application form with an original signature and the processing fee to the Service by mail. At this time, we do not have a system for electronic submission of permit application forms or report forms; however, we are actively developing the system and are pilot testing two Service application forms that have current OMB approval. Applicants may send us any supporting documentation or information missing from the application, other than original signature, via electronic mail or fax. Some Regional permit offices accept annual reports via email.

4. Describe efforts to identify duplication.

The information that we collect is unique to the applicant and is not available from any other source. We keep application and reporting information in office files to eliminate repeat or duplicate requests in the case of renewals, extensions, or repeat applications. We developed an electronic permit issuance and tracking system that greatly improves retrieval of file information, therefore further reducing duplicate information requests for use in renewals, extensions, and repeat applications. Since only the Service may issue this type of permit for species under our jurisdiction, there is no duplication of other agencies' efforts. Ongoing development of our permit issuance and tracking system will ensure that no duplication arises among Service offices.

5. If the collection of information impacts small businesses or other small entities, describe the methods used to minimize burden.

The information requested on the application form is limited to the minimum necessary to establish eligibility and the information requested on the reporting requirements is the minimum necessary to enable us to assess the effect of the permit program on eagles.

The proposed rule includes a significantly reduced permit application processing fee of $5,000 for projects that will have relatively small impacts to eagles (while still taking some eagles over the duration of the operation). The reduced fee reflects the smaller workload to the Service from providing technical assistance, developing adaptive management measures and other permit conditions, and administering the permits over time. While there is not an exact correlation between small entities and small impact; the proposed reduced fee for small-impact projects will benefit many small entities. It is possible for small entities to have large impacts on eagles, particularly if operations that are potentially injurious to eagles are sited within or near eagle-use areas, and in such situations, the reduced permit application procession fee would not be available. It is also possible for large companies to design and implement projects that have little or no impacts on eagles. Nevertheless, the proposed reduced fees for small-impact projects will reduce costs for many small entities that seek programmatic eagle take permits.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If we do not collect the information or if we collect the information less frequently, we could not issue applicants a permit since the collected information is either required on the permit or authorization itself or is needed to make the necessary biological and legal findings under applicable statutes and treaties. If we were not able to satisfy the information requirements necessary to issue a permit, the public would not be able to conduct otherwise prohibited activities. Furthermore, the timely submission of data on the effects to eagles of permitted activities will enable the Service to determine when adaptive management measures must be implemented by the permittee to ensure the activity remains compatible with the preservation of the eagle.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- *** requiring respondents to report information to the agency more often than quarterly;**
- *** requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**

* **requiring respondents to submit more than an original and two copies of any document;**
* **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
* **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
* **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
* **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
* **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

Federal regulations governing fish and wildlife permits at 50 CFR 13.46 require permittees to maintain records for 5 years from the date of expiration of the permit. Other than that requirement, there are no special circumstances that would cause us to conduct this information collection in a manner inconsistent with OMB guidelines.

8. Provide the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice (or in response to a PRA statement) and describe actions taken by the agency in response to these comments.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. [Please list the names, titles, addresses, and phone numbers of persons contacted.]

We have prepared proposed regulations at 50 CFR parts 13 and 22 to change the duration of programmatic permits; allow for the transfer of permits to new owners of facilities, and to increase the fees associated with the permits. A copy of the proposed rule is attached. The proposed rule solicits public comment for a period of 30 days on the information collection and recordkeeping requirements described in this supporting statement.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

We do not provide any payment or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

We do not provide any assurance of confidentiality. Information collected on permit applications is subject to the Privacy Act and Freedom of Information Act.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

We do not ask questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information.

We estimate a total of 16,210 annual burden hours (see table below) for this information collection. We estimate that the dollar value of the annual burden hours is $935,966 (rounded).

For purposes of this collection, we determined the hourly rate, including benefits, to be $57.74. We are using this rate for all respondent groups. We base this labor cost on a mean environmental engineer salary of $83,160 (2010, U.S. Bureau of Labor Statistics): http://www.bls.gov/oes/current/oes172081.htm#nat.), National mean wage was adjusted to 2011 dollars based on U.S. Bureau of Labor Statistics CPI Inflation Calculator (http://www.bls.gov/data/inflation_calculator.htm.) and further adjusted using a multiplier of 1.4 to include the full cost of employing the individual to the company (benefits and incidentals)).

ACTIVITY	NUMBER OF RESPONDENTS (non-Federal)	NUMBER OF RESPONSES	COMPLETION TIME PER RESPONSE	TOTAL ANNUAL BURDEN HOURS	TOTAL DOLLAR VALUE OF BURDEN HOURS ($57.74/hr)* rounded
Application **	20	20	452	9,040	$521,970
Monitoring and Reporting	20	20	312	6,240	360,298
Recordkeeping	20	20	30	600	34,644
Amendments	3	3	70	210	12,125
Transfers	3	3	40	120	6,929
TOTALS	66	66		16,210	$935,966

*rounded

**Includes researching permit requirements, conducting surveys/studies, and completing the application form.

13. Provide an estimate of the total annual [nonhour] cost burden to respondents or recordkeepers resulting from the collection of information.

We estimate the total annual nonhour cost burden to be $688,000. We propose a fee of $36,000 per application for long-term programmatic permits. This fee reflects the cost to the Service of developing and monitoring the effectiveness of the terms and conditions of the permit as well as the cost for processing the application. In addition, we are proposing a $1,000 fee for each amendment or transfer. States, local governments, and tribal governments are exempt from paying fees.

14. Provide estimates of annualized costs to the Federal Government.

We estimate the total annual cost to the Federal Government to administer this information collection will be $1,025,180 ($51,259 X 20 applications/permits). The table below shows the tasks and staff hours associated with an application and permit for a 30-year permit. Most of the costs to the Service arise during the development and initiation of projects, so the costs of shorter-term permits are not significantly lower.

	Grade Level and Hours				
Service biologist and examiner tasks	**GS 9**	**GS 11**	**GS 12**	**GS 13**	**GS 14**
Participate in preapplication communication with a potential applicant.		12	12	10	
Participate in preapplication technical assistance with a potential permit applicant.		10	20	10	
Coordinate regionally and nationally on permit preapplication/permit application.		25	25		
Review and determine the adequacy of the information an applicant provides.		12	12	1	
Conduct any internal research necessary to verify information in the application or evaluate the biological impact of the proposed activity.		12	2	1	
Coordinate internally, regionally on application (tribal, SHPO, biological, etc).		20	2	4	2
Evaluate whether the proposed activity meets the issuance criteria.		8	4		
Prepare or review NEPA documentation.		80	80	80	
Prepare either a permit or a denial letter for the applicant.		12	4		
When necessary to evaluate the impact of the proposed activity, visit the location to examine site-specific conditions.		16	16	3	
Monitor reports over 30 years.		*60*	*40*	*40*	
5-year evaluations for adaptive management, to include coordination with permittee if minimization or mitigation measures are not adequate.	*12*	*20*	*20*	*20*	*4*
Total hours	**0**	**0**	**0**	**169**	**6**
Cost per hour (Step 5 × 1.5 × 1.25)[2]	$50.92	$61.61	$73.85	$87.82	$103.78
Total cost per grade level	$611	$17,682	$17,502	$14,841	$623
Total Cost per Permit	**$51,259**				

[1] Labor cost based on Office of Personnel Management Salary Table 2012-POR, http://www.opm.gov/oca/12tables/html/por_h.asp . We used these wages as an average wage rate for the administration of permits nationwide.

[2] 1.5 for employee benefits and other Government costs, 1.25 for overhead for Service Field Offices.

15. Explain the reasons for any program changes or adjustments.

This is a new information collection.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

We do not publish the results of these information collections.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

We will display the OMB control number and expiration date.

18. Explain each exception to the certification statement.

There are no exceptions to the certification statement.