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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

[Docket No. FWS–HQ–MB–2019–0105; FXMB12330900000//201//FF09M13200]

RIN 1018-BE20

Revision of Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose revising regulations governing the annual Migratory Bird Hunting and Conservation Stamp Contest (also known as the Federal Duck Stamp Contest (Contest)). Our proposed amendments would specify a permanent theme and the mandatory inclusion of an appropriate hunting element beginning with the 2020 Contest, make a permanent change to the qualifications of the judging panel, and remove references to the 2018 Contest.

DATES: We will accept comments that we receive on or before **[Insert date 45 days after date of *Federal Register* publication]**. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2019–0105.

- *U.S. Mail or Hand-Delivery:* Public Comments Processing, Attn: FWS–HQ–MB–2019–0105; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: JAO/1N; Falls Church, VA 22041.

We will not accept emailed or faxed comments. We will post all comments on <https://www.regulations.gov>. This generally means that your entire submission—including any personal identifying information—will be posted on the website. See the **Public Comments Procedures** and **Public Availability of Comments**, below, for more information.

FOR FURTHER INFORMATION CONTACT: Suzanne Fellows at: Federal Duck Stamp Office, U.S. Fish and Wildlife Service, Department of the Interior, MS:MB, 5275 Leesburg Pike, Falls Church, VA 22041; (703) 358-2145; suzanne_fellows@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

History of the Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Program

On March 16, 1934, Congress passed, and President Franklin D. Roosevelt signed, the Migratory Bird Hunting Stamp Act. Popularly known as the Duck Stamp Act, it required all waterfowl hunters 16 years or older to buy a stamp annually. The revenue generated was originally earmarked for the Department of Agriculture, but 5 years later was transferred to the Department of the Interior and the Service.

In the years since its enactment, the Federal Duck Stamp Program has become one of the most popular and successful conservation programs ever initiated. Today, some 1.5 million stamps are sold each year, and as of 2018, Federal Duck Stamps have

generated more than \$1 billion for the conservation of more than 6 million acres of waterfowl habitat in the United States. Numerous other birds, mammals, fish, reptiles, and amphibians have similarly prospered because of habitat protection made possible by the program. An estimated one-third of the Nation's endangered and threatened species find food or shelter in refuges conserved by Duck Stamp funds. Moreover, healthy wetlands help dissipate storms, purify water supplies, store flood water, and nourish fish hatchlings important for sport and commercial fishermen.

History of the Duck Stamp Contest

The first Federal Duck Stamp was designed at President Roosevelt's request by Jay N. "Ding" Darling, a nationally known political cartoonist for the *Des Moines Register* and a noted hunter and wildlife conservationist. In subsequent years, noted wildlife artists were asked to submit designs for the stamp. The first Federal Duck Stamp Contest was opened in 1949 to any U.S. artist who wished to enter; 65 artists submitted a total of 88 design entries. Since then, the Contest has attracted large numbers of entrants, and it remains the only art competition of its kind sponsored by the U.S. Government. The Secretary of the Interior appoints a panel of noted art, waterfowl, and philatelic authorities to select each year's winning design. Winners receive no compensation for the work, except a pane of their stamps, but winners may sell prints of their designs, which are sought by hunters, conservationists, and art collectors.

Throughout the history of the Federal Duck Stamp, there has been an effort to increase its messaging capabilities. For example, in 1959, the theme of the Contest was "Retrievers Save Game," and artists were required to produce a design which illustrated this theme. The resulting 1959-1960 stamp, the "King Buck," featuring a black Labrador

Retriever and a mallard, is arguably among the most identifiable Federal Duck Stamps. With the 1998-1999 stamp, the pressure-sensitive adhesive dollar-bill sized carrier was introduced. This gave stamp designers more area to work with to produce both visual and verbal messages. Additional opportunities exist for messages on the back of the carrier as well as on the appreciation certificates that are available to customers interested in the Duck Stamp Program.

As the only ones required to purchase a Federal Duck Stamp, waterfowl hunters have been the primary supporters of the Federal Duck Stamp program and have enabled the purchase of wetland habitats that support both hunted and nonhunted species, assist in flood control and water purification, and provide communities with an economic stimulus. To address Executive Order 13443 (Facilitation of Hunting Heritage and Wildlife Conservation; 72 FR 46537, August 20, 2007) and Secretarial Order 3356 (Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes, and Territories; September 15, 2017), it was determined that the theme of the 2019-2020 Federal Duck Stamp would be “celebrating our waterfowl hunting heritage.” To accomplish this, the 2018 Contest regulations required the mandatory inclusion of “appropriate hunting-related accessories and/or scenes.” An image of a drake wood duck with an old decoy was chosen as the winner of the 2018 Federal Duck Stamp Contest, and that image appears on the 2019-2020 Federal Duck Stamp. Text and special stamp products were developed to highlight the theme and to provide visual and verbal recognition to the contributions waterfowl hunters make to habitat conservation. By celebrating our waterfowl hunting heritage and showing hunters in a positive light as active wildlife conservationists on the 2019-2020 stamp, we

celebrate their contributions to providing public lands and robust wildlife populations.

Proposed Changes to the Regulations at 50 CFR part 91

The regulations governing the Contest are at 50 CFR part 91. On March 21, 2018, we published a final rule (83 FR 12275) that revised the regulations at 50 CFR part 91 governing the annual Federal Duck Stamp Contest. Of specific interest to this proposal, we set forth the 2018 Contest regulations regarding the theme, the mandatory elements, and an additional requirement for judges which we stated we would remove at a later date. In this proposed rule, we propose to specify a permanent “celebrating our waterfowl hunting heritage” theme and the mandatory inclusion of an appropriate hunting element beginning with the 2020 Contest, make a permanent change to the qualifications of the judging panel, and remove references to the 2018 Contest.

Removing Language Specific to 2018 Contest and Instituting a Permanent Theme and Mandatory Hunting Element Requirement

Currently, § 91.14 explains that a live portrayal of any bird(s) of the five or fewer identified eligible waterfowl species must be the dominant feature of the design, but that the design may depict other appropriate elements, such as hunting dogs, as long as an eligible waterfowl species is in the foreground and clearly the focus of attention. In the March 21, 2018, final rule, we added § 91.14(b) with additional requirements specified for the 2018 Contest only. In this proposed rule, we propose to make it a permanent requirement that Contest entries must include one or more elements that reflect the theme “celebrating our waterfowl hunting heritage.”

Section 91.21(b) outlines the qualification of the judging panel. In the March 21, 2018, final rule, we added § 91.21(b)(2) with additional requirements specified for the

2018 Contest only. In this proposed rule, we propose to revise § 91.21(b) to remove reference to the 2018 Contest and make it a permanent requirement that all selected contest judges have an understanding and appreciation of the waterfowl hunting heritage and be able to recognize waterfowl hunting accessories.

Finally, § 91.23 sets forth the scoring criteria for the contest. In the March 21, 2018, final rule, we added § 91.23(b) with an additional scoring criterion specified for the 2018 Contest only. In this proposed rule, we propose to revise § 91.23 to remove reference to the 2018 Contest and specify that entries will also be judged on how well they illustrate the theme of “celebrating our waterfowl hunting heritage.”

Public Comments Procedures

To ensure that any final action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. We will accept public comments we receive on or before the date listed above in **DATES**. We are striving to ensure that any final rule resulting from this proposed rule would be in effect with sufficient time for artists to prepare submissions by the June opening of the 2020 Contest. The comments that will be most useful are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in **ADDRESSES**. We will not accept comments sent by

e-mail or fax or to an address not listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information, such as your address, telephone number, or e-mail address—will be posted on the website. Please note that comments submitted to this website are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publically viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on <http://www.regulations.gov>.

In addition, comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on <http://www.regulations.gov>. In the Search box, enter FWS–HQ–MB–2019–0105, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, select the type of documents you want to view under the Document Type heading.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT**.

Public Availability of Comments

As stated above in more detail, before including your address, phone number, e-mail 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 publically 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.

Required Determinations

National Environmental Policy Act

This proposed rule is categorically excluded. It reflects an administrative modification of procedures and the impacts are limited to administrative effects (516 DM 8.5(a)(3)). A detailed statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is therefore not required.

Endangered Species Act (ESA) Consideration

Of the species on our List of Eligible Species, only two species are currently listed as endangered or threatened under section 4 of the ESA of 1973, as amended (16 U.S.C. 1531 et seq.). No legal complications arise from the dual listing, as the two lists are developed under separate authorities and for different purposes. Because this proposed rule is strictly administrative in nature, it has no effect on endangered or threatened species. Thus, it does not require consultation under section 7 of the ESA.

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 not 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. The executive order 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 rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal 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 (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 et seq.). However, no regulatory flexibility analysis is required if the head of an agency certifies that the 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). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. The changes we propose are intended primarily to clarify the requirements for the Contest. These changes would affect individuals, not businesses or other small entities as defined in the Regulatory Flexibility Act. Currently, stamp sales average approximately 1.5 million each year. Active waterfowl hunters, the only people required to purchase an annual stamp, number approximately 1.1 million each year. Stamps are also purchased by stamp and wildlife art collectors, bird watchers, and other conservationists, and a current stamp can be used for access at any of the national wildlife refuges that have an entry fee. Many hunters also purchase multiple stamps for different purposes. We are currently unable to quantify numbers of stamps purchased by each user group; we do not anticipate being able to attribute any increase or decrease in sales due to the proposed changes. In recent years, we have received an average of 200 entries per year to our annual contest. We received approximately 190 Contest entries in 2019; in the 2018 Contest, we had approximately 150 eligible entries under the temporary mandatory hunting theme rule. We do not believe that the number of entries in 2020 or beyond will fall below 150 entries.

We therefore certify that, if adopted, this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Clarity of This Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rulemaking, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rulemaking is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

- a. Would not have an annual effect on the economy of \$100 million or more.
- b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.
- c. Would 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.

Paperwork Reduction Act of 1995 (PRA)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). OMB has previously approved the information collection requirements associated with the Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest and assigned OMB Control Number 1018-0172. You may view the information collection request(s) at <http://www.reginfo.gov/public/do/PRAMain>. An 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.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rulemaking does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

Civil Justice Reform

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 that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Takings

In accordance with E.O. 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This proposed rule would revise the current regulations at 50 CFR part 91 that govern the Federal Duck Stamp Contest. This rule would not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship with Tribes

Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. Individual tribal members must meet the same regulatory requirements as other individuals who enter the Federal Duck Stamp Contest.

Federalism

These proposed revisions to part 91 do not contain significant Federalism implications. A federalism summary impact statement under Executive Order 13132 is not required.

Executive Order 13771

This rule is not an Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) regulatory action because this rule is not significant under E.O. 12866.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 91, subchapter G of chapter I, title 50 of the Code of Federal Regulations as follows:

**PART 91—MIGRATORY BIRD HUNTING AND CONSERVATION STAMP
CONTEST**

1. The authority citation for part 91 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

2. Revise §91.14(b) to read as follows:

§ 91.14 Restrictions on subject matter for entry.

* * * * *

(b) *Mandatory waterfowl hunting components.* In addition to the restrictions set forth in paragraph (a) of this section, designs will also be required to include appropriate waterfowl hunting-related accessories or elements celebrating the Federal Duck Stamp’s long-standing connection as part of our Nation’s waterfowl hunting heritage and the contributions to conservation made by waterfowl hunters. Designs may include, but are not limited to, hunting dogs, hunting scenes, hunting equipment, waterfowl decoys, managed waterfowl areas as the background of habitat scenes, or other designs that represent our waterfowl hunting heritage. The design chosen will clearly meet the theme of “celebrating our waterfowl hunting heritage.”

3. Revise §91.21(b) to read as follows:

§ 91.21 Selection and qualification of contest judges.

* * * * *

(b) *Qualifications.* The panel of five judges will be made up of individuals, all of whom have one or more of the following prerequisites: recognized art credentials, knowledge of the anatomical makeup and the natural habitat of the eligible waterfowl species, an understanding of the wildlife sporting world in which the Duck Stamp is used, an awareness of philately and the role the Duck Stamp plays in stamp collecting, demonstrated support for the conservation of waterfowl and wetlands through active involvement in the conservation community, an understanding and appreciation of waterfowl hunting heritage, and the ability to recognize waterfowl hunting accessories.

* * * * *

4. Revise §91.23 to read as follows:

§ 91.23 Scoring criteria for contest.

Entries will be judged on the basis of anatomical accuracy, artistic composition, suitability for reduction in the production of a stamp, and how well they illustrate the theme of “celebrating our waterfowl hunting heritage.”

Date: _____

Rob Wallace,

Assistant Secretary for Fish and Wildlife and Parks.