

*Service Response:* Most people who commented on the facilities standards of the rule were not concerned that too much discretion was left to the Service. Rather, many commenters felt that the standards will not allow for enough flexibility. As written, the rule reflects the Service's intent to be as specific as possible, while at the same time ensuring we remain flexible in authorizing reasonable variation from the specifics.

*Comment:* The requirement that caging be large enough for the birds to fully extend their wings does not make sense for facilities that are used during the first stages of rehabilitation—when the birds' movement is intentionally restricted.

*Service Response:* We deleted this provision from the final rule, since cage dimensions are already addressed by reference to the MSWR, which provide for the different types of cages recommended for different stages of recovery.

*Comment:* The rule should not require permittees to dedicate one cage to just one species. People need to be able to "decorate" cages to suit different species. Will the Service have to approve every new cage to house a different species?

*Service Response:* The rule does not require that cages be dedicated to particular species. As long as the cage is adequate for any species that will be housed in it, it is acceptable. The permit will authorize categories of species, not individual species. Facilities generally can be built to house types of species (e.g., large raptors, small waterbirds), not individual species (e.g., Swainson's Hawk, American Avocet). When rehabilitators receive species for which they do not have adequate facilities, they must transfer the birds to rehabilitators with such facilities.

*Comment:* The prohibition against displaying birds to the public is unrealistic. Keeping the birds from hearing and seeing people (in particular hearing people) can be difficult. Also, rehabilitation birds are a good educational tool that generates public empathy and support for the facility.

*Service Response:* The Service issues a permit to hold and use birds for educational programs, but it is not the rehabilitation permit. The purpose of the rehabilitation permit is to rehabilitate birds for reintroduction to the wild. Proximity to people can cause stress that impedes recovery, and exposure to human activity can habituate birds to people to the degree that they lose natural instincts necessary to survive in the wild. For those reasons, use of rehabilitation birds in

educational formats remains prohibited in the rule. It is possible to insulate birds from the public. However, it is also true that some birds enter rehabilitation facilities already somewhat habituated to humans. The rule continues to provide that rehabilitation birds not be exposed to the public or used in educational formats. However, in rare cases, birds enter rehabilitation facilities already somewhat habituated to humans. Accordingly, the language of the rule has been revised to state that birds may not be displayed to the public "unless you use video equipment, barriers, or other methods to reduce noise and exposure to humans to levels *the birds would normally encounter in their habitat*." (emphasis added).

*Comment:* The rule should provide that facilities currently approved under the existing Special Purpose Rehabilitation permit will not fall out of compliance under the new rule.

*Service Response:* The final rule contains a "grandfather clause," which states, in part, "If your facilities have already been approved on the basis of photographs and diagrams, and authorized under a valid § 21.27 special purpose permit, then they are preapproved to be authorized under your new permit issued under this section, unless those facilities have materially diminished in size or quality from what was authorized when you last renewed your permit, or unless you wish to expand the authorizations granted by your permit (e.g., the number or types of birds you rehabilitate)."

*Subpermittees § 21.31(e)(3).*

*Comment:* The rule should not authorize subpermittees, because their lack of experience results in higher mortality rates and imprinting. People should be encouraged to volunteer with permitted rehabilitators, but volunteers should not be allowed to take birds home to facilities outside those of the rehabilitator.

*Service Response:* Volunteers are often critical to migratory bird rehabilitation. Few rehabilitators can afford to pay staff to do the work that volunteers do. In addition to the valuable services subpermittees provide to rehabilitators, the subpermittee system serves as a training and recruitment program for bringing new rehabilitators into the field. We do not believe that allowing subpermittees to take birds to off-site facilities endangers migratory birds, because the permittee is responsible for ensuring that subpermittees are qualified to provide adequate care. Off-site subpermittee facilities must meet the same standards as the permittee's facilities. For these

reasons, we believe that allowing subpermittees to take birds to authorized off-site facilities ensures better care for migratory birds by increasing the availability of round-the-clock care.

*Comment:* Subpermittees should not have to be 18 or older. Many younger people can provide valuable services while gaining valuable knowledge and experience.

*Service Response:* The rule requires that a person who will be performing activities that require permit authorization in the absence of the permittee or subpermittee must be a subpermittee, and it also requires that subpermittees be 18 or older. However, minors would be allowed to help in all other situations except those that involve actions for which a permit is required (handling the birds, basically) when the permittee or a subpermittee is not present. Since we would not issue a rehabilitation permit to minors, we will not authorize minors to perform activities that require a permit without supervision.

*Comment:* Subpermittees' names should be on file, but including all their qualifications could be difficult for big facilities, where large numbers of subpermittees change frequently.

*Service Response:* The application requirement to list the qualifications of the subpermittees has been deleted from the rule. However, this information is still requested on the permit application form 3-200-10b. We intend to drop this requirement from the form when our application forms are revised and reauthorized. Meanwhile, new subpermittees need only be named in writing to the issuing office without an accompanying description of their qualifications.

*Comment:* Large facilities should not have to immediately submit the names of new subpermittees. This requirement is too burdensome with so much turnover amongst volunteers at large facilities. Instead, there should be a requirement to send in amendments every quarter listing the current subpermittees.

*Service Response:* Not everyone who works under a rehabilitation permit needs to be on file with the Service as a subpermittee under that permit. Numerous people may be assisting at large rehabilitation centers. However, only those who will be conducting activities that require a permit in the absence of the permittee or a named subpermittee must be on file with the permit office. For instance, a facility may have 25 volunteers, but only four who conduct activities that require permit authority when the permittee is