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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

[Docket No. FWS-HQ-LE-2012-0091]

[FF09L00200-FX.LE12240900000G2]

RIN 1018-AZ18

Importation, Exportation, and Transportation of Wildlife; User Fee Exemption Program for Low-Risk Importations and Exportations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Interim rule.

SUMMARY: The Service is changing the inspection fees required for imports and exports of wildlife by certain licensed businesses. Our regulations set forth the fees that are required to be paid at the time of inspection of imports and exports of wildlife. In 2009, we implemented a new user fee system intended to recover the costs of the compliance portion of the wildlife inspection

program. Since that time, we have been made aware that we may have placed an undue economic burden on businesses that exclusively trade in small volumes of low-value, non-Federally protected wildlife parts and products. To address this issue, the Service is implementing a program that exempts certain businesses from the designated port base inspection fees as an interim measure while the Service reassesses its current user fee system.

DATES: This interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. However, we will accept comments on this interim rule and the information collection requirements contained in this interim rule received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

- Federal eRulemaking portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS–HQ–LE–2012–0091.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: Docket No. FWS–HQ–LE–2012–0091; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Mailstop 2042–PDM; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information that you provide to us (see the **Public Comments** section below for more information).

Send comments on the information collection requirements contained in this interim rule to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, MS 2042–PDM, Arlington, VA 22203 (mail); or *INFOCOL@fws.gov* (email).

FOR FURTHER INFORMATION CONTACT: Kevin Garlick, Special Agent in Charge, Branch of Investigations, Office of Law Enforcement, U.S. Fish and Wildlife Service, telephone (703) 358–1949, fax (703) 358–1947.

SUPPLEMENTARY INFORMATION:

Previous Federal Action

On December 9, 2008, we published a final rule to clarify the import/export license and fee requirements, adjust the user fee schedule, and update license and user fee exemptions (73 FR 74615). This final rule became effective on January 8, 2009.

Background

The U.S. Fish and Wildlife Service has oversight responsibilities under statutory and regulatory authority to regulate the importation, exportation, and transportation of wildlife. Consistent with this authority, we have established an inspection program to oversee the importation, exportation, and transportation of wildlife and wildlife products. In support of our program activities, we promulgated regulations contained in title 50 of the Code of Federal

Regulations in part 14 (50 CFR 14) to provide individuals and businesses with guidelines and procedures to follow when importing or exporting wildlife, including parts and products. These regulations explain the requirements for individuals or businesses importing or exporting wildlife for commercial purposes, or for people moving their household goods, personal items, or pets, as well as the exemptions provided for specific activities or types of wildlife. The regulations at 50 CFR 14 identify the specific ports and locations where these activities may be conducted and any fees that may be charged as a result of these activities.

On December 9, 2008, the Service published a final rule (73 FR 74615) implementing a new user fee system intended to recover the costs of the compliance portion of the wildlife inspection program. In developing the user fee system, the Service was guided by the Independent Offices Appropriations Act of 1952, codified at 31 U.S.C. 9701 (“the User Fee Statute”), which mandates that services provided by Federal agencies are to be “self-sustaining to the extent possible.” We were also guided by the Office of Management and Budget (OMB) Circular No. A–25, Federal user fee policy, which establishes Federal policy regarding fees assessed for government services. It provides that user fees will be sufficient to recover the full cost to the Federal Government of providing the service, will be based on market prices, and will be collected in advance of, or simultaneously with, the rendering of services. The policy requires Federal agencies to recoup the costs of “special services” that provide benefits to identifiable recipients. The Endangered Species Act (16 U.S.C. 1540(f)) also authorizes the Service to charge and retain reasonable fees for processing applications and for performing reasonable inspections of importation, exportation, and transportation of wildlife. The benefit of user fees is the shift in the payment for services from taxpayers as a whole to those persons who are receiving the government services.

The user fees currently apply primarily to commercial importers and exporters whose shipments of wildlife are declared to, and inspected and cleared by, Service wildlife inspectors, to ensure compliance with wildlife protection laws. These fees were not intended to fully fund the wildlife inspection program, which includes both a compliance monitoring function, involving services to the trade community, and a vital smuggling interdiction mission focused on detecting and disrupting illegal wildlife trade. The user fees appropriately focus only on recovering costs associated with services provided to importers and exporters engaged in legal wildlife trade. The inspection and clearance of wildlife imports and exports is a special service, provided to importers and exporters who are authorized to engage in activities not otherwise authorized for the general public. Our ability to effectively provide these inspection and clearance services and the necessary support for these services depends on inspection fees.

In developing the user fee rule, we analyzed the actual total costs of providing services to the legal wildlife trade community during fiscal year 2005, as compared to the actual total money that we collected for activities authorized by the wildlife inspection program during fiscal year 2005. The total costs include wildlife inspector salaries and benefits, the appropriate portion of our managers' salaries and benefits, direct costs such as vehicle operation and maintenance, equipment purchase and replacement, data entry and computer support for the Service's electronic filing system, communications costs, office supplies, uniforms, and administrative costs and indirect costs such as office space. It was readily apparent that total inspection fees collected in 2005 fell well below the total costs associated with the wildlife trade compliance program during fiscal year 2005. The user fee system was developed to recover costs over a 5-year period that ended in 2012 with the understanding that the 2012 fee schedule would continue

to be used until the Service could complete a new economic assessment. Unforeseen administrative delays have resulted in postponement of this effort.

However, since implementation of the new user fee system, we have been made aware that we might have placed an undue economic burden on businesses that exclusively trade in small volumes of low-value, non-Federally protected wildlife parts and products. The continued expansion of the internet as a tool for commerce has made it not only possible, but imperative, in recent years for more and more businesses—especially small businesses—to sell directly to individual consumers. In the context of this business model, costs such as wildlife import/export inspection fees can be the tipping factor in the profitability and resulting viability of such business transactions. Global consumers increasingly expect to be able to order whatever they want whenever they want it from anywhere in the world, but some businesses dealing in small volumes of low-value wildlife products have been stymied in their ability to capitalize on, and compete in, these growing overseas markets.

The Service conducted a review of import/export data in the Law Enforcement Management Information System (LEMIS) for shipments imported or exported between 2009 and 2011. Almost half of the more than 10,000 licensed businesses were exclusively importing or exporting wildlife that was not living, was not injurious, and did not require a permit or certificate under Federal wildlife laws. These businesses are required to pay the designated port base inspection fee, currently assessed at \$93, for each import or export. Because of the nature of the wildlife, they do not pay the higher premium inspection fees for live or protected species.

A further review of these nonliving, non-Federally protected wildlife shipments revealed that approximately 1,000 businesses exclusively imported or exported shipments the Service would consider to be small and of low value. The Service explored the value of shipments for which U.S. Customs and Border Protection currently allows informal declaration as part of the analysis of what could be considered a small shipment. The customs informal value is currently \$2,000 except for most textile shipments, which must be valued at \$250 or less. Based upon the review of the 2009–2011 LEMIS data, the Service decided to use a quantity of 25 as the upper limit on quantity of wildlife parts and products when a shipment was valued at \$5,000 or less. The 2009–2011 import/export data showed that shipment contents ranged in quantity from 1 to 25 wildlife items or specimens when the shipment had a total value of \$5,000 or less. Our analysis showed that increasing the number of specimens per shipment drives per-shipment value beyond a threshold that could reasonably be considered “low value.” The designated port base inspection fee of \$93 could be considered excessive compared to the value of shipments worth \$5,000 or less.

Service enforcement priorities establish that enforcement of Federal laws and regulations related to violations involving the import or export of non-Federal trust species of fish or wildlife is low priority. Because our analysis indicates an undue economic burden may have been placed on businesses importing or exporting small volumes of low-value wildlife parts and products that are considered to be low risk for the Service, we have created a user fee exemption program as an interim measure while we work on a new economic analysis and determine any changes needed to the current user fee structure.

With this rule, businesses that possess a valid Service import/export license may request to participate in this fee exemption program through our electronic filing system (eDecs). Qualified licensees will need to create an eDecs filer account as an importer or exporter if they do not already have one and file their required documents electronically. In order to be an approved participating business in the program and receive an exemption from the designated port base inspection fee, the licensed business will need to certify that it will exclusively import or export nonliving wildlife that is not listed as injurious under 50 CFR part 16 and does not require a permit or certificate under 50 CFR parts 15 (Wild Bird Conservation Act), 17 (Endangered Species Act), 18 (Marine Mammal Protection Act), 20 (Migratory Bird Treaty Act), 21 (Migratory Bird Treaty Act), 22 (Bald and Golden Eagle Protection Act), or 23 (the Convention on International Trade in Endangered Species of Wild Fauna and Flora). The requesting business will also need to certify that it will exclusively import or export the above type of wildlife shipments where the quantity in each shipment of wildlife parts or products is 25 or fewer and the total value of each wildlife shipment is \$5,000 or less.

Any licensed business that has more than two wildlife shipments that were refused clearance in the 5 years prior to its request is not eligible for the program. In addition, any licensees that have been assessed a civil penalty, issued a Notice of Violation, or convicted of a misdemeanor or felony violation involving wildlife import or export will not be eligible to participate in the program. If an approved business fails to meet these criteria while participating in the program, the business will be removed from the program. While such a business would still be able to import or export wildlife, it would need to pay the applicable designated port base inspection fees for its shipments.

Need for an Interim Rule

The current wildlife inspection fee schedule, which went into place at the beginning of 2009, was developed under the premise that all commercial entities engaged in wildlife trade should pay the actual costs of inspection services received. While implemented in January 2009, these regulations had initially been developed over a multiyear period beginning in 2006. They were thus predicated upon economic conditions that were changing in dramatic ways as the rulemaking process came to fruition.

Changing economic conditions have created a situation that may have unfairly disadvantaged smaller businesses without serving the interests of wildlife conservation. This situation was magnified with each year of the established fee schedule since 2009 as planned fee adjustments occurred in order to meet the goal of recovering the full costs of the wildlife inspection program from the businesses that engage in wildlife trade.

Under that schedule, the minimum fee for the inspection of a “routine” shipment that contains nonliving products made from species that move freely in trade (i.e., do not require a permit under Federal wildlife regulations and are not listed as injurious) now stands at \$93. This cost must be paid regardless of the value or size of the shipment.

Some importers and exporters shipping small shipments (shipments containing 1 to 25 items made from wildlife) have been able to absorb this cost without undue hardship by consolidating shipments, passing on costs to consumers, and making other adjustments in

business practices. Other companies shipping small shipments have not readily been able to make such adjustments.

These businesses have seen their per-shipment inspection fee increase steadily as a percentage of the value of the commodity being shipped. This escalation has taken place at a time when—because of the global economic downturn that followed on the heels of the 2008 U.S. financial crisis—businesses have not been able to make concomitant increases in retail prices paid by the consumer. In some cases, the inspection fee may even exceed the value of the product being shipped. With these inspection fees, some of these companies may no longer find it profitable to market their products overseas.

The Service's inspection fee schedule may have resulted in inordinate and unsustainable inspection costs for imports and exports that have disproportionately undercut the ability of certain businesses to respond to growing pressure to deal directly with consumers via internet-based purchases and other small shipping practices and do so profitably.

In adopting the 2008–2012 inspection fee schedule, the Service had assumed that it would be able to conduct routine reanalysis and adjustment of wildlife inspection fees so as to implement new fees reflective of economic realities that would be in place at the end of that 5-year period. Unforeseen administrative delays have resulted in the postponement of this effort and made it impossible for the Service to adjust for any unforeseen impact of its fee structure on certain U.S. businesses through the standard rulemaking procedure. Moreover, any impacts to businesses engaged primarily in low-volume shipments of wildlife have been magnified by the economic downturn. Under the Administrative Procedure Act (5 U.S.C. 551–553), our normal

practice is to publish regulations with a 30-day delay in effective date. But in this case, the Service is taking immediate action to address this possible fee inequity in advance of a planned reassessment of its wildlife inspection user fee schedule. We are using the “good cause” exemptions under 5 U.S.C. 553(b) and (d)(3) to issue this rule without first invoking the usual notice and public comment procedure and to make this rule effective upon publication.

The “good cause” exemption is particularly relevant here because, as the Service begins the process for reexamining its fee structure, it needs to collect data regarding both the impact of changing the user fee structure on the business community and its ability to fully fund the wildlife inspection program. This interim rule will allow the Service to collect data with relatively low risk to the conservation goals of the Service and assist at least some businesses that may be currently experiencing an undue economic hardship. This interim rule does not add requirements on anyone; it merely relaxes fee requirements on as many as 1,000 licensees while more data are gathered. The Service is committed to finalizing this rule after careful consideration of both public comments and collection of additional data.¹

¹ Including, for example, *American Transfer & Storage Co. v. Interstate Commerce Com.*, 719 F.2d 1283, 1293-94 (5th Cir. 1983)(“...without interim rules before the final rules took effect, the Commission would have been deprived of useful knowledge and experience gained in observing how alternative procedures worked under the new MCA while considering other methods suggested by the public comments to the interim rules.); *National Customs Brokers & Forwarders Ass'n of Am. v. United States*, 18 C.I.T. 754 , see 764 and 765 (1994) (Customs' "good cause" exception argument pursuant to [§ 553\(b\)\(3\)\(B\)](#) is reasonable based on the context within which these regulations were promulgated. The "good cause" exception is fact or context-dependent. [Mid-Tex Elec. Coop., Inc. v. Federal Energy Regulatory Comm'n](#), 822 F.2d 1123, 1132 (D.C. Cir. 1987). The interim status of the challenged regulations is a significant factor in the Court's conclusion.).

Public Comments

You may submit your comments and materials concerning this interim rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying 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. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Office of Law Enforcement (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 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 (5 U.S.C. 601 et seq.)

Essentially all of the businesses that engage in commerce by importing or exporting wildlife or wildlife products would be considered small businesses according to the Small Business Administration. While this rule will have a beneficial economic effect on certain small businesses, we do not believe it will have a significant economic effect on a substantial number of small businesses as defined under the Regulatory Flexibility Act. Our data indicate that approximately 1,000 of more than 10,000 licensed businesses could take advantage of the economic benefits provided by this fee exemption program. We do not believe that a Small Entity Compliance Guide is required because we have developed a user-friendly process of self-certification to obtain the benefits of this program.

Service enforcement priorities establish that enforcement of Federal laws and regulations related to violations involving the import or export of non-Federal trust species of fish or wildlife

is low priority. Because an undue economic burden may have been placed on businesses importing or exporting small volumes of low-value wildlife parts and products that are considered to be low risk for the Service, we have created a fee exemption program for low-risk importations and exportations as an interim measure while we work on a new economic analysis and determine any changes needed to the current user fee structure.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

This interim rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act as it will not have an annual effect on the economy of \$100 million or more. Moreover, 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; in fact, it will decrease costs to certain businesses. This interim rule will reduce costs by creating a user fee exemption program for low-risk importations and exportations as an interim measure while we work on a new economic analysis and determine any changes needed to the current user fee structure.

Finally, this rule will not have significant negative effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies: It will have the opposite effect. The continued expansion of the internet as a tool for commerce has made it not only possible, but imperative, in recent years for more and more businesses—especially small businesses—to sell directly to individual consumers. In the context of this business model, costs such as wildlife import/export inspection fees can be a tipping factor in the profitability and resulting viability of such business

transactions. Global consumers increasingly expect to be able to order whatever they want whenever they want it from anywhere in the world, but some businesses dealing in wildlife products have been stymied in their ability to capitalize on, and compete in, these growing overseas markets.

With this interim rule, businesses that possess a valid Service import/export license may request to participate in a fee exemption program through our electronic filing system, thereby stimulating competition, employment, investment, productivity, innovation, and the ability for U.S.-based companies to compete with foreign-based companies.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

Under the Unfunded Mandates Reform Act:

a. This interim rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. We are the lead Federal agency for implementing regulations that govern and monitor the importation and exportation of wildlife. Therefore, this interim rule has no effect on small governments' responsibilities.

b. This interim rule will not produce a Federal requirement that may result in the combined expenditure by State, local, or tribal governments of \$100 million or greater in any year, so it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This interim rule will not result in any combined expenditure by State, local, or tribal

governments. The inspection program for imported and exported wildlife products is solely a Federal responsibility.

Executive Order 12630 (Takings)

Under Executive Order 12630, this interim rule does not have significant takings implications. A takings implication evaluation is not required. Under Executive Order 12630, this interim rule does not affect any constitutionally protected property rights. This interim rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

Executive Order 13132 (Federalism)

Under Executive Order 13132, this interim rule does not have significant Federalism effects. A Federalism impact summary statement is not required. This interim rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The inspection program for imported and exported wildlife products is solely a Federal responsibility.

Executive Order 12988 (Civil Justice Reform)

Under Executive Order 12988, the Office of the Solicitor has determined that this interim rule does not overly burden the judicial system and meets the requirements of sections 3(a) and

3(b)(2) of the Order. Specifically, this interim rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize disagreements, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. The Office of Management and Budget (OMB) has approved the information collection requirements regarding the submission of FWS Form 3–177 electronically through our eDecs system, and assigned OMB Control Number 1018–0012, which expires on March 31, 2013. On October 3, 2012, we published in the Federal Register (77 FR 60454) a notice of our intent to request that OMB renew approval for that information collection. In that notice, we solicited comments for 60 days, ending on December 3, 2012.

This interim rule contains a new collection of information that we submitted to OMB for emergency review and approval under Sec. 3507(d) of the Paperwork Reduction Act (PRA). Because our analysis indicates an undue economic burden may have been placed on businesses importing or exporting small volumes of low-value wildlife parts and products that are considered to be low risk for the Service, we have created a user fee exemption program as an interim measure while we work on a new economic analysis and determine any changes needed to the current user fee structure.

With this interim rule, businesses that possess a valid Service import/export license may request to participate in this fee exemption program through our electronic filing system (eDecs). Qualified licensees will need to create an eDecs filer account as an importer or exporter if they do not already have one and file their required documents electronically. To be an approved participating business in the program and receive an exemption from the designated port base inspection fee, the licensed business will need to certify that it will exclusively import or export nonliving wildlife that is not listed as injurious under 50 CFR part 16 and does not require a permit or certificate under 50 CFR parts 15 (Wild Bird Conservation Act), 17 (Endangered Species Act), 18 (Marine Mammal Protection Act), 20 (Migratory Bird Treaty Act), 21 (Migratory Bird Treaty Act), 22 (Bald and Golden Eagle Protection Act), or 23 (the Convention on International Trade in Endangered Species of Wild Fauna and Flora). The requesting business will also need to certify that it will exclusively import or export the above type of wildlife shipments where the quantity in each shipment of wildlife parts or products is 25 or fewer and the total value of each wildlife shipment is \$5,000 or less. Any licensed business that has more than two wildlife shipments that were refused clearance in the 5 years prior to its request is not eligible for the program. In addition, any licensees that have been assessed a civil penalty, issued a Notice of Violation, or convicted of a misdemeanor or felony violation involving wildlife import or export will not be eligible to participate in the program.

We requested that OMB assign a new number for the fee exemption program. OMB approved our request for emergency approval and assigned OMB Control No. 1018–0152, which expires April 30, 2013.

OMB Control No.: 1018–0152.

Title: User Fee Exemption Program for Low-Risk Importations and Exportations, 50 CFR 14.94(k)(4)

Service Form Number: None.

Description of Respondents: Businesses that exclusively trade in small volumes of low-value, non-Federally protected wildlife parts and products.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Annual Number of Responses: 1,000.

Completion Time per Response: 1 minute.

Total Annual Burden Hours: 17 hours.

We will incorporate the burden associated with the fee exemption program into our renewal of OMB Control No. 1018–0012. When OMB approves our renewal, we will discontinue the new OMB control number.

As part of our continuing efforts to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of the reporting burden associated with the user fee exemption program. We specifically invite comments concerning:

- Whether or not the collection of information is necessary for the proper performance of our management functions involving CITES, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and

- Ways to minimize the burden of the collection of information on respondents.

If you wish to comment on the information collection requirements of this interim rule, send your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, MS 2042–PDM, Arlington, VA 22203 (mail); or INFOCOL@fws.gov (email).

National Environmental Policy Act

This interim rule has been analyzed under the criteria of the National Environmental Policy Act (NEPA). This interim rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/evaluation is not required. This interim rule is categorically excluded from further NEPA requirements under part 516 of the Departmental Manual, Chapter 2, Appendix 1.10. This categorical exclusion addresses policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis under NEPA.

Executive Order 13175 (Tribal Consultation) and 512 DM 2 (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), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have

determined that there are no adverse effects. Individual tribal members must meet the same regulatory requirements as other individuals who import or export wildlife.

Executive Order 13211 (Energy Supply, Distribution, or Use)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking actions that significantly affect energy supply, distribution, and use. This interim rule will create a user fee exemption program for certain low-risk importations and exportations as an interim measure while we work on a new economic analysis and determine any changes needed to the current user fee structure. This interim rule is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 14

Animal welfare, Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons described above, we amend part 14, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below.

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for part 14 continues to read as follows:

Authority: 16 U.S.C. 668, 704, 712, 1382, 1538(d)–(f), 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 9701.

2. Amend § 14.94 by adding paragraph (k)(4) to read as follows:

§ 14.94 What fees apply to me?

* * * * *

(k) * * *

(4) *Fee exemption program for low-risk importations and exportations -- (i) Program criteria.* Businesses that require an import/export license under § 14.93 may be exempt from the designated port base inspection fee as set forth in this paragraph (k)(4)(i). To participate in this program, you, the U.S. importer or exporter, must continue to pay the overtime fees, the nondesignated port base fees, or the import/export license and nondesignated port application fees, and your business must meet all of the following conditions:

- (A) Each shipment does not contain live wildlife.

(B) Each shipment does not contain wildlife that requires a permit or certificate under parts 15, 17, 18, 20, 21, 22, or 23 of this chapter or is listed under part 16 of this chapter.

(C) Each shipment contains 25 or fewer wildlife parts and products containing wildlife.

(D) Each wildlife shipment is valued at \$5,000 or less.

(E) Your business has not been assessed a civil penalty, issued a violation notice, or convicted of any misdemeanor or felony violations involving the import or export of wildlife.

(F) Your business has had two or fewer wildlife shipments that were refused clearance in the 5 years prior to the receipt of your request by the Service.

(G) Your business has not previously participated in the program and been removed for failure to meet the criteria.

(ii) *Program participation.* To participate in the fee exemption program for low-risk importations and exportations, you must use the Service's electronic declaration filing system (eDecs) and take the following actions:

(A) You must certify that you will exclusively import and export wildlife shipments that meet all the criteria in paragraph (k)(4)(i) of this section and renew this certification annually.

Upon completion of the certification and review of the criteria by the Service, eDecs will notify you if you have been approved to participate in the program.

(B) You must continue to meet the criteria in paragraph (k)(4)(i) of this section while participating in the program. If you fail to meet the criteria after approval, you will be removed from the program and must pay all applicable fees.

(C) If approved to participate in the program you must file FWS Form 3-177 and all required accompanying documents electronically using eDecs for each shipment and meet all other requirements of this part.

Dated: **October 23, 2012**

Rachel Jacobson

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 2012-26504 Filed 10/25/2012 at 8:45 am; Publication Date: 10/26/2012]