

**ACTION:** Partial withdrawal of notice of proposed rulemaking.

**SUMMARY:** This document withdraws a portion of a notice of proposed rulemaking (REG-107592-00) published in the **Federal Register** on September 28, 2007 (72 FR 55139). The withdrawn portion relates to the treatment of transactions involving the provision of insurance between members of a consolidated group.

**FOR FURTHER INFORMATION CONTACT:** Frances L. Kelly, (202) 622-7770 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 28, 2007, the IRS and the Treasury Department published a notice of proposed rulemaking (REG-107592-00) in the **Federal Register** (72 FR 55139) which proposed to amend § 1.1502-13(g) (regarding the treatment of transactions involving obligations between members of a consolidated group) and to add § 1.1502-13(e)(2)(ii)(C) (regarding the treatment of certain transactions involving the provision of insurance between members of a consolidated group).

Under proposed § 1.1502-13(e)(2)(ii)(C), certain intercompany insurance transactions would be taken into account on a single entity basis. Written comments were received with respect to proposed § 1.1502-13(e)(2)(ii)(C). After consideration of these comments, the IRS and the Treasury Department have decided to withdraw proposed § 1.1502-13(e)(2)(ii)(C). However, the IRS and the Treasury Department continue to study whether revisions to the rules for intercompany transactions are necessary to clearly reflect the taxable income of consolidated groups.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Partial Withdrawal of a Notice of Proposed Rulemaking**

Accordingly, under the authority of 26 U.S.C. 7805 and 26 U.S.C. 1502, § 1.1502-13(e)(2)(ii)(C) of the notice of proposed rulemaking (REG-107592-00) that was published in the **Federal Register** on September 28, 2007 (72 FR 55139) is withdrawn.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-107592-00]

RIN 1545-BA11

**Consolidated Returns; Intercompany Obligations; Hearing**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document cancels a public hearing on proposed regulations regarding the treatment of transactions involving obligations between members of a consolidated group and the treatment of transactions involving the provision of insurance between members of a consolidated group.

**DATES:** The public hearing, originally scheduled for Friday, February 29, 2008, at 10 a.m. is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Funmi Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622-3628 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of public hearing that appeared in the **Federal Register** on Thursday, January 24, 2008 (73 FR 4131) announced that a public hearing was scheduled for Friday, February 29, 2008, at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing was the notice of proposed rulemaking (REG-107592-00) that was published in the **Federal Register** on Friday, September 28, 2007 (72 FR 55139). Specifically, the hearing was to address the addition of proposed § 1.1502-13(e)(2)(ii)(C). Proposed regulation § 1.1502-13(e)(2)(ii)(C), that was the subject of the hearing, has been withdrawn. Therefore the public hearing scheduled for February 29, 2008, is cancelled.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 08-822 Filed 2-20-08; 8:48 am]

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 14**

[FWS-R9-LE-2008-0024; 99011-1224-0000-9B]

RIN 1018-AV31

**Importation, Exportation, and Transportation of Wildlife; Inspection Fees, Import/Export Licenses, and Import/Export License Exemptions**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of meeting.

**SUMMARY:** We propose to revise subpart I—Import/Export Licenses, of title 50 of the Code of Federal Regulations, part 14, (50 CFR 14) to clarify the import/export license and fee requirements, adjust the user fee schedule and update license and user fee exemptions. We propose to clarify when an import/export license is required by persons who engage in the business of importing and exporting wildlife as well as change the license requirement exemptions. Revised regulations will help those importing and exporting wildlife better understand when an import/export license is required and will allow us to consistently apply these requirements. We also propose to change our user fee structure for the importation and exportation of wildlife and the fee exemptions. We propose to generally increase these fees and publish the changes for 2008 through 2012. We determined that these fees must be adjusted every year to cover the increased cost of providing these services. By publishing these user fee changes in advance, importers and exporters can accurately predict the costs of importing and exporting wildlife several years in advance.

**DATES:** We will accept comments received or postmarked on or before April 25, 2008. See the **SUPPLEMENTARY INFORMATION** section for information on the date of the public meeting.

**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.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: [RIN 1018-AV31]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; 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).

**Public Meeting:** A public meeting will be held on April 3, 2008, from 1 to 4 p.m. in Room 200, U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Arlington, Virginia, during which we will accept written comments.

**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:**

##### **Public Comments Requested**

We intend that any final action resulting from this proposed rule will be as accurate and effective as possible. The Service invites interested persons to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. Comments that will provide the most assistance to us in developing this rule will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support that recommended change. Therefore, we request comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments you send by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not accept anonymous comments; your comment must include your first and last name, city, State, country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, telephone number, or e-mail address, 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, 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, 4501 North Fairfax Drive, Suite 3000, Arlington, VA.

##### **Public Assistance for Import/Export Questions**

We highly recommend that you contact our wildlife inspectors about importing and exporting procedures and requirements before you import or export your wildlife. We have wildlife inspectors stationed at numerous ports throughout the country. You can find contact information for our wildlife inspectors on our Web site at: *http://www.fws.gov/le/ImpExp/inspectors.htm*. In addition, the Service has a telephone hotline that is staffed Monday through Friday, 8 a.m. through 8 p.m. Eastern time, that can provide assistance for any questions you may have regarding importing and exporting wildlife, at 1-800-344-WILD.

##### **Public Meeting**

A public meeting will be held on April 3, 2008, from 1 to 4 p.m. in Room 200, U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Arlington, Virginia. All interested persons wishing to present oral comments at this meeting must submit a written copy of their oral comments at the meeting. Oral comments may be limited based upon the number of persons wishing to speak at the meeting. We will accept written comments at the public meeting.

##### **Background**

The regulations contained in 50 CFR part 14 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, those moving their household goods, personal items, or pets, and the exemptions provided for specific activities or types of wildlife. The regulations at 50 CFR part 14 provide individuals and businesses with the specific ports and locations where these activities may be conducted and any fees that may be charged as a result of these activities.

The following parts of this preamble explain the proposed rule and present a discussion of the substantive issues of each section that we propose to change in subpart I of part 14. We retained the

current organizational structure of subpart I but propose changes to the requirements for an import/export license, how to apply for an import/export license, what user fees apply to importers and exporters, and what exemptions we apply to licenses and fees.

##### **Proposed Import/Export License Requirements**

We propose to remove the definition of “engage in business as an importer or exporter of wildlife” because the elements of the definition are already expressed in the current definition of “commercial,” and the broader definition of commercial more accurately reflects what we consider as “engaging in business.”

We propose to remove the section on certain persons required to be licensed and replace it with a table that provides examples of when we consider persons to be engaging in business as an importer or exporter of wildlife. We propose to limit who should be licensed to those persons directly involved with importing and exporting wildlife. Therefore, we propose to eliminate requirements for persons who are indirectly involved with a shipment either before or after our clearance of the shipment.

##### **Proposed Exemptions To Import/Export License Requirements**

We propose to remove two exemptions from our import/export license requirements for businesses that import or export products from several mammal species that have been bred and born in captivity and for circuses that import or export wildlife.

Our current regulations allow businesses that exclusively import or export chinchilla, fisher, fox, marten, mink, muskrat, and nutria that have been bred and born in captivity, and products of these animals, to conduct business without obtaining an import/export license. If a particular business chooses to import or export wild specimens of these species or species other than those listed above, they must obtain an import/export license.

We propose to remove the import/export license exemption in § 14.92 for businesses that exclusively import or export chinchilla, fisher, fox, marten, mink, muskrat, and nutria that have been bred and born in captivity or products of these animals. Our current import/export license regulations also exempt businesses that import or export products from the rabbit and karakul. The rabbit and karakul, which is a variety of the domestic sheep, are defined to be domesticated species and

are, therefore, already exempted from all Service import or export requirements.

Our import/export data shows that the majority of businesses that import or export mammals or products made from mammals do not deal exclusively in chinchilla, fisher, fox, marten, mink, muskrat, and nutria that have been bred and born in captivity. Rather, most businesses deal in a mixture of these species and other species that do not qualify for the import/export license exemption, or the trade is in wild-caught specimens. Only approximately 1.5 percent of the shipments declared to us in fiscal year 2005 consisted exclusively of captive-bred specimens of the above-listed species. Although many businesses have not taken advantage of the exemption, any exempted shipments still require our inspection and clearance.

All other wildlife types that are identified as being exempt from the import/export license, such as certain shellfish and nonliving fish products, are also wildlife that the Endangered Species Act (16 U.S.C. 1531 *et seq.*) or these regulations have exempted from inspection and clearance. No statutory or regulatory inspection or clearance exemptions are provided for captive-bred mammals or their products. This exemption has had the unfortunate consequence of creating a monetary incentive for the global trade community to falsely declare wild mammal specimens as captive-bred upon import into the United States. In addition, due to shipping and other business practices, importers of foreign-sourced mammal products imported into the United States are more likely to declare the products as captive-bred for purposes of claiming the exemption than exporters of U.S.-sourced mammal products.

Because these specific captive-bred mammal shipments are exempt from the import/export license, the corresponding importers or exporters are not required to maintain records of their imports or exports or any subsequent dispositions and do not have to provide the Service with access to these records or inventories of wildlife upon reasonable notice. The lack of recordkeeping requirements and access to these records hinders our ability to investigate instances of false declarations. These corresponding importers and exporters are also exempt from paying user fees and filing reports with the Service upon request. Based upon all the problems that have resulted with this exemption, we propose to remove the exemption to the import/export license for persons engaging in the business of importing or exporting

shipments containing only chinchilla, fisher, fox, marten, mink, muskrat, and nutria that have been bred and born in captivity or their products.

We also propose that circuses no longer qualify for the exemption from our import/export license requirements. Our current import/export regulations allow certain persons and businesses, including circuses, to import or export wildlife without obtaining an import/export license. However, with the exception of circuses, it is apparent that these exempt businesses or organizations, which include common carriers, custom house brokers, public museums, scientific or educational institutions, and government agencies, are not engaging in business as importers or exporters of wildlife. While circuses typically do not import or export wildlife for resale, they do import or export wildlife to stimulate additional business, through ticket sales or other promotions. We, therefore, consider circuses to be importing or exporting wildlife for commercial purposes and believe they should not be exempted from our import/export license requirements. Other shipments of wildlife imported or exported as part of commercial entertainment, such as magic acts or animal shows, are considered commercial as well and are not exempt from import/export license requirements.

#### **Proposed Import/Export License Application Requirements**

We propose to remove the specific additional information language from the current § 14.93(b) because the import/export license application form, FWS Form 3–200–3, is updated and contains this additional specific information. We also propose to reorganize the license conditions section for clarity and to add the requirement that importers and exporters are responsible for providing current contact information, including a mailing address, to be used for official notifications from the Service.

We propose to reorganize the section that outlines issuance, denial, suspension, revocation, or renewal of an import/export license for clarity. We also propose to add two new factors that are grounds for suspension, revocation, denial, or renewal of an import/export license. Although these factors are already generally covered by the regulations in part 13 of subchapter B of chapter I of title 50, we wish to bring these two factors to the attention of wildlife importers and exporters. We propose to consider repeated failure to provide the required prior notification for certain shipments as possible

grounds for action against an existing import/export license holder or during consideration of a new or renewal import/export license application. Failure by importers or exporters to provide this required notification risks the health or condition of live and perishable shipments because of clearance delays and requires us to accommodate last-minute inspection schedule changes that directly impact the schedules of other importers or exporters.

We also propose to add the repeated import or export of certain types of wildlife without following the requirements in this subpart as grounds for action against an existing import/export license holder or during consideration of a new or renewal import/export license application. This repeated failure to follow requirements for certain wildlife imports or exports may result in a restriction of the license to disallow engaging in business with those particular types of wildlife while still allowing the importer or exporter to continue to engage in business with other wildlife.

#### **Proposed Inspection Fees**

The regulations in 50 CFR part 14 contain a user fee schedule for inspections of wildlife shipments. We propose to change the user fee structure and generally increase fees to cover the increased cost of providing these services and the required support. 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 are 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 proposed fee increase will appropriately focus only on recovering costs associated with services provided to importers and exporters engaged in legal wildlife trade.

In developing this proposed rule, the Service is 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 are 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 of services from taxpayers as a whole to those persons who are receiving the government services. While taxes may not change by the same amount as the change in user fee collections, there is a related shift in the appropriations of taxes to government programs, which allows those tax dollars to be applied to other programs that benefit the general public. Therefore, there could be a relative savings to taxpayers as a result of the changes in user fees.

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 services and the necessary support for these services depends on inspection fees. Although the Service began collecting user fees in February 1986, we have been unable to achieve full cost recovery as several categories of importers and exporters have been exempt from paying fees, and fees were not established at levels that would cover all costs of the services provided to the trade community. Exempt business have included most noncommercial importers/exporters; companies dealing in specific captive-bred or personally trapped furs, meat from bison, ostrich, and emu, and aquacultured sturgeon food items; and circuses. The current fee schedule has been in place since 1996. These fees were calculated based solely upon the salary and benefits of a journeyman-level wildlife inspector and did not attempt to recover other costs of conducting compliance inspections and providing clearance services to the wildlife trade community. Commercial importers or exporters, entities that hold a Service import/export license, now pay a flat rate of \$55 per shipment for inspections at designated ports during normal working hours. Additional per-hour charges are applied when

inspections are conducted outside normal working hours; non-licensees receiving inspections outside normal working hours also pay these hourly charges.

All importers or exporters, whether licensed or not, pay a \$55 administrative fee for inspections at a staffed nondesignated port plus a 2-hour minimum of \$20 per hour for inspections during normal working hours. Higher hourly charges apply for inspections outside normal working hours. Inspections at nondesignated ports that are not staffed by Service inspectors are charged all costs associated with providing the inspection, including salary, travel, transportation, and per diem costs.

The proposed user fee structure will consist of a flat rate base inspection fee based upon the type of port: \$85.00 for designated ports or ports acting as designated ports; \$133.00 for staffed, nondesignated ports; and \$133.00 for nonstaffed, nondesignated ports, that reflects the recovery of specific direct and indirect costs; and two premium inspection fees, each \$19.00, reflecting additional labor costs associated with specific types of commodities. The proposed structure also provides for overtime fees. The proposed fees reflect the cost of the services provided for routine shipments, shipments that contain species that are protected by Federal or international law, and shipments that contain live specimens. We propose that routine shipments would be charged a base inspection fee based upon the type of port. We propose that shipments containing protected species or live specimens would be charged a premium inspection fee in addition to the base inspection fee. If a shipment contains both protected species and live specimens, we propose to charge two premium inspection fees in addition to the base inspection fee.

For commercial shipments at designated ports, our current regulations require an inspection fee of \$55. The proposed fee structure requires an \$85 base inspection fee for inspections at these ports. These shipments would result in an additional \$30 in inspection fees per shipment (\$85 - \$55) under the new fee structure. For fiscal year 2005, we inspected 83,203 shipments at designated ports that did not contain species that are protected by Federal or international law or live specimens.

In addition to the nonstaffed, nondesignated port base inspection fee, we propose that all importers or exporters who use these types of ports will be required to pay any associated travel and per diem expenses needed for our wildlife inspector to conduct an

inspection at these ports. Our current regulations require importers or exporters who use these types of ports to pay these travel and per diem expenses plus the salary of the wildlife inspector conducting the inspection in addition to a base hourly administrative fee. The proposed fee structure simplifies the fees for a nonstaffed, nondesignated port to include a flat rate base fee of \$133 to use these ports, which incorporates the salary of the wildlife inspector conducting the inspection, in addition to any travel and per diem costs. Importers and exporters using this type of port would also be responsible for payment of premium fees if their shipment includes live or protected specimens, as is the case at the other types of ports.

We propose to publish 5 years worth of fees and apply an inflation factor to the base fees, premium fees, and overtime fees. Throughout the 5-year period, we propose to increase the base inspection fees annually based upon inflation using the Gross Domestic Product (GDP) indices. We propose to increase the premium inspection fees gradually over the 5-year period, reflecting both inflation and a gradual move to 100 percent cost recovery. By publishing these user fee changes for the 5-year period, importers and exporters of wildlife can incorporate these fee increases into their budget planning.

#### **Calculation of the Proposed Inspection Fees**

For these proposed fee increases, we conducted an economic analysis of the costs associated with the services provided to the legal wildlife trade community, and we propose to create a user fee template that will form the basis for the determination of user fee increases for a 5-year period. The economic analysis uses data on shipment types and quantities, inspection times required for different types of shipments, and direct and indirect costs associated with the services provided to the legal wildlife trade community.

In order to recalculate these inspection fees, we began by analyzing 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. We calculated these costs using a Service-wide standard of 22 percent of direct costs. The total cost of providing services to the legal wildlife trade community during fiscal year 2005 was \$20,083,627.

The total amount of money that we collected for activities authorized by the wildlife inspection program during fiscal year 2005 was \$8,724,289. It must be noted that this total includes application fees for import/export licenses, designated port exception permits, and Convention on International Trade in Endangered Species (CITES) permits and certificates, as well as inspection and overtime fees. Currently, our data does not distinguish between license and permit fees and inspection fees. However, it is readily apparent that whatever portion of this total is derived from inspection fees, it falls well below the total costs associated with the wildlife trade compliance program during fiscal year 2005.

The inspection of shipments that contain species protected by Federal or international law, or live specimens, requires considerably more knowledge, time, and equipment than is required for a routine shipment. In addition to the increased time required for document inspection and handling of the shipment, the inspection of these "premium" shipments requires more thorough knowledge of Federal or international law or, in the case of shipments containing live specimens, the use of equipment that provides for the safety of the wildlife inspector conducting the inspection.

In addition, there are other costs associated with the inspection of premium shipments. In many instances, foreign documents that are presented for clearance of shipments containing protected species under CITES or foreign wildlife laws must be verified with foreign governments, a process that can be extremely time consuming. These foreign documents must be stored and recorded in our electronic database. Data on shipments containing wildlife protected under CITES must be analyzed for quality and reported internationally on an annual basis, as one of our obligations as a party nation to this international treaty.

Since the trade compliance portion of the wildlife inspection program is to be "self-sustaining to the extent possible," we propose a user fee structure that will provide 100 percent cost recovery by the

end of the 5-year period. If we had developed a user fee structure to provide 100 percent cost recovery immediately, the initial premium fees would have been substantially higher than the proposed premium fees described in this proposed rule.

During the development of the proposed fee structure, we estimated the inflation rate based upon the GDP. The GDP indices are obtained from the Economic Report of the President, which projects the growth of real GDP. For the 5-year period covered in this proposed rule, the GDP indices were as follows: 2.1 percent for 2008, 2009, and 2010 and 2.2 percent for 2011 and 2012. We decided to use inflation using the GDP indices as the only factor contributing to the increased costs by the end of the 5-year period. This is a conservative approach since wildlife inspector salaries and benefits could increase at a substantially greater rate than inflation by the end of the 5-year period. While salaries may increase consistent with inflation, promotions would increase salaries considerably more than inflation.

In order to recalculate these inspection fees, we estimated what the fiscal year 2005 base inspection fees and premium inspection fees would need to be to provide 100 percent cost recovery by the end of the 5-year period, and inflated those fees to 2008 dollars. We used this approach because this proposed rulemaking will not be finalized until 2008 and if, at that time, we used 2005 dollars consistent with actual total costs during fiscal year 2005, 100 percent cost recovery by the end of the 5-year period would not be possible.

It is extremely difficult to estimate what portion of the total amount of money that we collected for activities authorized by the wildlife inspection program was derived from travel and per diem expenses and overtime fees we received. Currently, our data does not distinguish between license and permit fees and inspection fees, which include travel and per diem expenses and overtime fees we received. However, it is readily apparent that these amounts are a very small portion of the total amount that is derived from inspection fees, and will have little impact on the total amount of money that we collect for activities authorized by the wildlife inspection program. Therefore, during the development of the proposed fee structure, we decided not to include overtime fees, or salary, travel, and per diem expenses collected at a nonstaffed, nondesignated port, which can be highly variable.

During the development of the user fee template, we considered the impact that increased user fees would have on small businesses. Essentially all of the businesses that engage in commerce by importing or exporting wildlife would be considered small businesses according to the Small Business Administration (SBA). Examples of some of these businesses can be placed in the following SBA categories: "Zoos and Botanical Gardens," with an SBA size standard of \$6.0 million in average annual receipts; "Merchant wholesalers, nondurable goods," with an SBA size standard of 100 employees; "Leather and allied product manufacturers," with an SBA size standard of 500 employees; and "Clothing and Clothing Accessories Stores," with an SBA size standard ranging from \$6.0 million to \$7.5 million in average annual receipts.

Since essentially all of these businesses are small, we believe that those companies who deal with more complex shipments that require additional services from us, such as those containing species that are protected by Federal or international law, or live specimens, should assume a greater share of the costs associated with the additional services, rather than us spreading these additional costs out among all importers and exporters.

To help determine how realistic our proposed fee increases were, we decided to calculate what the user fees in place since 1996 would be equal to in the beginning of and by the end of the 5-year period, based only on inflation using the GDP indices. This calculation yielded an inspection fee of \$70 for 2008, and an inspection fee of \$76 by the end of the 5-year period in 2012. Both of these projected fees are quite close to the proposed base inspection fee of \$85.00. Recognizing that the 1996 user fees were based only on the salary and benefits of a journeyman-level wildlife inspector and did not take into account all of the other costs associated with the services provided to the legal trade community, the proposed \$85.00 base inspection fee, which is based on all of the associated costs of the wildlife inspection program, is reasonable.

#### **Exemptions to the Proposed Inspection Fees**

During the development of the user fee template, we decided that some individuals, organizations, or certain commodities should be exempt from the proposed inspection fees. Governments agencies at the Federal, State, local, or tribal level have been exempt from inspection fees in the past and will continue to be exempt from the

proposed inspection fees, including overtime fees.

Individuals who import or export shipments of 100 or fewer raw furs or, raw, salted, or crusted mammal hides or skins between the United States, Canada, or Mexico, have been exempt from inspection fees in the past and will continue to be exempt from the proposed designated port base inspection fees. However, this exemption applies only to shipments of mammal furs, hides, or skins lawfully taken from the wild by those individuals or their family members in the United States, Canada, or Mexico, from species that are not protected under parts 17, 18, or 23 of title 50. These individuals will still require an import/export license and be responsible for overtime fees for any shipments inspected outside normal working hours.

Individuals or organizations who import or export shipments of wildlife for noncommercial purposes at designated ports that do not contain species that are protected by Federal or international law, or live specimens, will continue to be exempt from the proposed designated port inspection fees. These individuals will still be responsible for overtime fees for any shipments inspected outside normal working hours and all fees for import or export through a nondesignated port.

We propose that individuals or organizations who import or export shipments of wildlife for noncommercial purposes at designated ports, that do contain species that are protected by Federal or international law, or live specimens, will pay proposed premium inspection fees when importing or exporting via air, ocean, rail, or truck cargo. However, these shipments will continue to be exempt from the proposed base inspection fees. Examples of these individuals or organizations would include but not be limited to: individuals importing or exporting personal pets that may or may not be protected species; hunters importing or exporting protected game species; and public museums, zoos, and scientific or educational institutions importing or exporting protected species or live specimens. These shipments require considerably more knowledge, time, and equipment than is required for a routine shipment. It should be noted that the Service does not consider these individuals or organizations to be exempt from paying for other services that provide benefits. Our regulations in part 13 already require these individuals or organizations to pay application fees for permits that authorize them to

engage in activities not otherwise authorized for the general public. In our review of other agencies' user fees for import and export, we note that other agencies do not make a distinction between commercial and noncommercial individuals or organizations. Based upon these findings, we decided to charge premium fees but exempt these shipments from base inspection fees as long as the shipments are imported or exported through a designated port. These shipments will continue to be subject to overtime fees and all fees for import or export through a nondesignated port.

Individuals or organizations who import or export shipments of wildlife for noncommercial purposes at designated ports, using the mail, as passengers, or by personal vehicle, that contain species that are protected by Federal or international law, or live specimens, will be exempt from designated port base inspection fees and premium inspection fees. However, they will still be responsible for overtime fees for any inspections that take place outside normal working hours. We decided to provide this exemption under these circumstances because we do not consistently provide inspection services at mail facilities, passenger terminals, or for personal vehicles.

Our current regulations exempt certain captive-bred mammals from designated port user fees as part of an exemption from the import/export license requirements. We propose to reinstate the import/export license requirement for these types of shipments as previously indicated. Although most businesses have not taken advantage of the exemption as discussed earlier, any exempted shipments still require inspection and clearance by us. This exemption has also had the unintended consequence of creating a monetary incentive to falsely declare certain mammals and their products as captive-bred.

By policy, we currently exempt the export of sturgeon and paddlefish that are captive-bred in aquaculture facilities from user fees, including nondesignated port fees if the shipments are for immediate human or animal consumption. This exemption applies to caviar, meat, and other food items, but does not cover live fish. By policy, we also currently exempt the export of American bison, ostrich, and emu meat produced in ranching operations in the United States from user fees if the meat is intended for human consumption. All of these shipments still require inspection and clearance by us.

Our ability to effectively provide inspection and clearance services and

the necessary support for these services depends on user fees. By exempting these types of shipments from user fees, the costs associated with inspection and clearance are borne either by the taxpayers through appropriated funds or by other importers and exporters. The services provided to these exempt businesses are specialized services that do not benefit the public as a whole and, as such, the costs should not be borne by the taxpayer. As discussed earlier, the majority of importers and exporters of wildlife are small businesses. We do not find it equitable that nonexempt businesses must pay more than their share of the costs in order for us to recover the costs not paid by exempt businesses. We, therefore, propose to remove the user fee exemption for businesses that import or export certain captive-bred mammals or their products and circuses. We also propose to remove the user fee exemption for businesses that export food items derived from aquacultured sturgeon and paddlefish, American bison meat, and ostrich and emu meat.

#### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: [Execsec@ios.doi.gov](mailto:Execsec@ios.doi.gov).

#### Required Determinations

##### Executive Order 12866 (Regulatory Planning and Review)

Under the criteria in Executive Order 12866, OMB has determined that this proposed rule is not a significant regulatory action.

a. This proposed rule will not have an annual economic effect of \$100 million

or negatively affect a part of the economy, productivity, jobs, the environment, or other units of the government. A cost benefit and economic analysis is not required.

This proposed rule will not have an annual economic effect of \$100 million.

The proposed removal of two exemptions from our import/export license requirements for businesses that import or export certain captive-bred mammals or their products and circuses that import or export wildlife will not adversely affect those businesses.

For fiscal year 2005, our records indicate that 2,628 shipments of captive-bred chinchilla, fisher, fox, marten, mink, muskrat, and nutria were imported or exported by 351 businesses. However, 296 of these businesses already have import/export licenses because they also trade in species other than these captive-bred mammals. We are proposing that the remainder of these businesses must obtain an import/export license, at a cost of \$100.00 per year. These proposed changes will result in an additional cost to these businesses of \$5,500.00 as importers or exporters of these captive-bred mammals or their products ( $351 - 296 = 55$  businesses  $\times$  \$100.00 = \$5,500.00). We estimate that approximately 30 circuses will import or export animals during a given year. We are proposing that these circuses must obtain an import/export license. These proposed changes will result in an additional cost to these circuses of \$3,000.00 as importers or exporters of circus animals.

The total cost to businesses and circuses based upon the proposed removal of two exemptions from our import/export license requirements will be approximately \$8,500.00.

We propose that routine shipments be charged a base inspection fee based upon the type of port. Shipments containing protected species or live specimens would be charged a premium inspection fee in addition to the base inspection fee. If a shipment contains both protected species and live specimens, we propose to charge two premium inspection fees in addition to the base inspection fee. The proposed fee structure requires an \$85 base inspection fee for inspections at designated ports and a \$19 premium inspection fee.

The greatest increased costs contained in the proposed fee structure would apply to wildlife shipments imported or exported at nonstaffed, nondesignated ports. Assuming that every shipment we inspect occurs at one of these ports, the total net annual economic effect in the worst-case scenario would be approximately \$20 million.

For inspections at these ports, our current regulations require an administrative fee of \$55 plus all costs associated with the inspection and clearance including salary, travel, and per diem for the wildlife inspector conducting the inspection. The proposed fee structure requires a \$133 base inspection fee for inspections at these ports. Assuming that every shipment at these ports contained species that are protected by Federal or international law and live specimens, these shipments would require an additional \$38 in premium inspection fees, for a total of \$171 per shipment.

The worst-case scenario for inspections at nonstaffed, nondesignated ports, as described above, and not including travel and per diem, would result in an additional \$116 in inspection fees per shipment ( $\$171 - \$55$ ) under the new fee structure. We estimate that we inspect approximately 170,000 shipments per year nation-wide. Assuming that all of these shipments were inspected at nonstaffed, nondesignated ports, the net annual economic effect would equal \$19,720,000 under the new fee structure. While the proposed fee structure of \$133 to use these ports does require the additional payment of travel and per diem expenses, it does not require the additional payment of the salary of the wildlife inspector conducting the inspection. In many cases, the base fee of \$133 will be considerably less than the salary of the wildlife inspector conducting the inspection.

In reality, nearly one-half of our inspections are conducted at designated ports for shipments that do not contain species that are protected by Federal or international law or live specimens, so the net annual economic effect of the proposed fee structure is considerably less than \$19,720,000. For commercial shipments at designated ports, our current regulations require an inspection fee of \$55. The proposed fee structure requires an \$85 base inspection fee for inspections at designated ports. These shipments would result in an additional \$30 in inspection fees per shipment ( $\$85 - \$55$ ) under the new fee structure. For fiscal year 2005, we inspected 83,203 shipments at designated ports that did not contain species that are protected by Federal or international law or live specimens. The net annual economic effect for inspections of these shipments would equal \$2,496,090 under the new fee structure.

As described above, the proposed removal of two exemptions from our import/export license requirements for

businesses that import or export certain captive-bred mammals or their products and circuses means that these entities must pay inspection fees authorized under their import/export license.

For fiscal year 2005, our records indicate that 2,628 shipments of certain captive-bred mammals or their products were imported or exported by 351 businesses. These proposed changes will result in an additional cost to these businesses of \$223,380.00 when they import or export shipments of certain captive bred mammals or their products at designated ports (2,628 shipments  $\times$  \$85 base inspection fee at designated ports).

Our records indicate that, at most, there would be 75 shipments of circus animals imported or exported during a given year by approximately 30 circuses. Circuses will likely be assessed two premium inspection fees per shipment since most of their shipments will contain live specimens that are protected by Federal or international law. Under the worst-case scenario, these proposed changes will result in an additional cost to these circuses of \$9,225.00, when they import or export circus animals at designated ports (75 shipments  $\times$  \$85 base inspection fee at designated ports + 75 shipments  $\times$  \$38 premium inspection fee).

For fiscal year 2005, our records indicate that 7,800 shipments that contained species that are protected by Federal or international law or live specimens were imported or exported for noncommercial purposes at designated ports via air, ocean, rail, or truck cargo. We are proposing that these persons must pay premium inspection fees for these shipments. In many cases these shipments will contain species that are protected by Federal or international law and live specimens. Under the worst-case scenario, these proposed changes will result in an additional cost to these persons of \$296,400.00, when they import or export these shipments at designated ports (7,800 shipments  $\times$  \$38 premium inspection fee).

For fiscal year 2005, our records indicate that 145 shipments of American bison, ostrich, emu, or sturgeon and paddlefish products were exported. These proposed changes will result in an additional cost to these businesses of \$12,325.00 when they export shipments of American bison, ostrich, or emu meat at designated ports (145 shipments  $\times$  \$85 base inspection fee at designated ports).

The total cost to businesses, circuses, and persons importing or exporting species that are protected by Federal or international law or live specimens for



noncommercial purposes, based upon the proposed removal of license fee exemptions will be approximately \$541,330.00.

Considering that nearly one-half of the shipments that we inspect account for an annual economic effect of just under \$2.5 million, it is safe to assume that all of the other types of shipments that we inspect at all of our other ports, when combined with this amount, will total far less than \$100 million. The proposed removal of import/export license exemptions and inspection fee exemptions accounts for an additional \$549,830.00. To summarize, this proposed rule will have an annual economic effect of far less than \$100 million.

Though it is apparent that this proposed rule will not have an annual economic effect of \$100 million, we recognize that these fee increases will have a negative effect on small entities. Since essentially all of the businesses that engage in commerce by importing or exporting wildlife would be considered small businesses, and considering that the wildlife trade compliance program is to be “self-sustaining to the extent possible,” we have no option but to raise inspection fees to cover the increasing costs associated with the wildlife trade compliance program. It would not be appropriate to pass these increased costs on to the general public, who are not the primary beneficiaries of these services.

b. This proposed rule will not create inconsistencies with other agencies’ actions.

We are the lead Federal agency for implementing regulations that govern and monitor the importation and exportation of wildlife and carrying out the United States’ obligations under CITES. Therefore, this proposed rule has no effect on other agencies’ responsibilities and will not create inconsistencies with other agencies’ actions.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

This proposed rule will materially affect user fees, however, because the wildlife trade compliance program is to be “self-sustaining to the extent possible,” we have no option but to raise inspection fees to cover the increasing costs associated with the wildlife trade compliance program. If we do not increase user fees, funds will not be available to continue to provide these services at a level sufficient to meet customer demand.

d. This proposed rule will not raise novel legal or policy issues.

This proposed rule will not raise novel legal or policy issues because we are required to charge fees for inspections to meet the mandate in 31 U.S.C. 9701, which states that services provided by Federal agencies are to be “self-sustaining to the extent possible,” and to comply with OMB Circular No. A-25, Federal user fee policy, which requires Federal agencies to recoup the costs of “special services” that provide benefits to identifiable recipients. The inspection and clearance of wildlife imports and exports are special services 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 services depends on inspection fees. Since the wildlife trade compliance program is to be “self-sustaining to the extent possible,” we propose a user fee structure that will provide 100 percent cost recovery of the wildlife trade compliance program by the end of the 5-year period.

#### **Regulatory Flexibility Act (5 U.S.C. 601 et seq.)**

This proposed rule will not have a significant economic effect on a substantial number of small businesses as defined under the Regulatory Flexibility Act. An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

During the development of the user fee template, we considered the impact that increased user fees would have on small businesses. 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 (SBA). Examples of some of these businesses can be placed in the following SBA categories: “Zoos and Botanical Gardens,” with an SBA size standard of \$6.0 million in average annual receipts; “Merchant wholesalers, nondurable goods,” with an SBA size standard of 100 employees; “Leather and allied product manufacturers,” with an SBA size standard of 500 employees and; “Clothing and Clothing Accessories Stores,” with an SBA size standard ranging from \$6.0 million to \$7.5 million in average annual receipts.

This proposed rule will not have a significant economic effect on these businesses. In most cases, the increased user fees will represent a small fraction of the value of the affected wildlife shipment. In addition, the small entities directly affected by this proposed rule are not likely to bear the full burden of

the proposed user fee increases because some or most of the proposed cost increases will be passed on to the purchasers of the wildlife.

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

This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of \$100 million or more.

As described above, nearly one-half of the shipments that we inspect account for an annual economic effect of just under \$2.5 million, and it is safe to assume that all of the other types of shipments that we inspect at all of our other ports, when combined with this amount, will total far less than \$100 million. The proposed removal of import/export license exemptions and inspection fee exemptions accounts for an additional \$549,915.00. To summarize, this proposed rule will have an annual economic effect of far less than \$100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

This proposed rule will increase costs for individual industries and potentially consumers, however, because the wildlife trade compliance program is to be “self-sustaining to the extent possible,” we have no option but to raise inspection fees to cover the increasing costs associated with the wildlife trade compliance program. If we do not increase user fees, funds will not be available to continue to provide these services at a level sufficient to meet customer demand.

c. Does 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.

This proposed rule will not have significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises because foreign-based enterprises that are subject to U.S. jurisdiction must comply with the same regulatory requirements as U.S.-based enterprises who import or export wildlife. In addition, this rule proposes to remove the exemption from an import/export license requirements and payment of user fees for shipments of certain captive-bred mammals or their products. Due to shipping and other business practices, foreign-sourced mammals or their products imported into the United States are more likely to be declared as captive-



bred and appropriate for the current exemption than exports of U.S.-sourced mammals or their products. The removal of the exemption will result in equal treatment of foreign-sourced and U.S.-sourced mammals or their products.

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

Under the Unfunded Mandates Reform Act:

a. This proposed 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 and carrying out the United States' obligations under CITES. Therefore, this proposed rule has no effect on small government's responsibilities.

b. This proposed 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 rule will not result in any combined expenditure by State, local, or tribal governments.

#### **Executive Order 12630 (Takings)**

Under Executive Order 12630, this proposed rule does not have significant takings implications. A takings implication evaluation is not required. Under Executive Order 12630, this proposed rule does not affect any constitutionally protected property rights. This proposed 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 proposed rule does not have significant Federalism effects. A Federalism evaluation is not required. This proposed 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.

#### **Executive Order 12988 (Civil Justice Reform)**

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed 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 proposed 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.*)**

This proposed rule does not contain any new information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has approved the information collection requirements contained in this subpart I and assigned OMB Control Number 1018-0092, which expires on September 30, 2007. The Service 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.

#### **National Environmental Policy Act**

This proposed rule has been analyzed under the criteria of the National Environmental Policy Act and 318 DM 2.2 (g) and 6.3 (D). This proposed 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 proposed rule is categorically excluded from further National Environmental Policy Act 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)**

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule proposes to clarify the import/export license and fee requirements, adjust the user fee schedule, and update license and user fee exemptions. This proposed 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.

#### **Proposed Regulation Promulgation**

For the reasons described above, we propose to 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. Revise subpart I to read as follows:

#### **Subpart I—Import/Export Licenses and User Fees**

Sec.

- 14.91 When do I need an import/export license?  
 14.92 What are the exemptions to the import/export license requirement?  
 14.93 How do I apply for an import/export license?  
 14.94 What fees apply to me?

#### **Subpart I—Import/Export Licenses and User Fees**

##### **§ 14.91 When do I need an import/export license?**

(a) The Endangered Species Act (16 U.S.C. 1538(d)(1)) makes it unlawful for any person to engage in business as an importer or exporter of certain fish or wildlife without first having obtained permission from the Secretary. For the purposes of this subchapter, engage in business means to import or export wildlife for commercial purposes.

(b) Except as provided in § 14.92, if you engage in the business of importing or exporting wildlife for commercial purposes (see § 14.4), you must obtain

an import/export license prior to importing or exporting your wildlife shipment.

(c) The following table includes some examples of when an import/export license is required:

If I import into the United States or export from the United States	* * * do I need an import/export license?
(1) Wildlife in the form of products such as garments, bags, shoes, boots, jewelry, rugs, trophies, or curios for commercial purposes.	Yes.
(2) Wildlife in the form of hides, furs, or skins for commercial purposes	Yes.
(3) Wildlife in the form of food for commercial purposes	Yes.
(4) As an animal dealer, animal broker, pet dealer, or pet supplier	Yes.
(5) As an individual pet owner for personal use	No.
(6) As a collector or hobbyist for personal use	No.
(7) As a laboratory researcher or biomedical supplier for commercial purposes	Yes.
(8) As a customs broker or freight forwarder engaged in business as a dispatcher handler, consolidator, or transporter of wildlife or filing documents with the Service on behalf of others.	No.
(9) As a common carrier when engaged in business as a transporter of wildlife	No.
(10) As a taxidermist, outfitter, or guide importing or exporting my own hunting trophies for commercial purposes	Yes.
(11) As a taxidermist, outfitter, or guide transporting or shipping hunting trophies for clients or customers	No.
(12) As a U.S. taxidermist importing wildlife from or exporting wildlife to foreign owners who are requesting my services.	Yes.
(13) As a foreign owner of wildlife exporting my personal hunting trophies to my home	No.
(14) As a circus for exhibition or resale purposes	Yes.
(15) As a Federal, State, municipal, or tribal agency	No.
(16) As a public museum, or public scientific or educational institution for noncommercial research or educational purposes.	No.

**§ 14.92 What are the exemptions to the import/export license requirement?**

(a) *Certain wildlife.* Any person may engage in business as an importer or exporter of the following types of wildlife without an import/export license:

(1) Shellfish and nonliving fish products that do not require a permit under parts 16, 17, or 23 of this subchapter, and are imported or exported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes;

(2) Live farm-raised fish and farm-raised fish eggs of species that do not require a permit under parts 16, 17, or 23 of this subchapter, that meet the definition of bred-in-captivity as stated in § 17.3 of this subchapter that are for export only; and

(3) Live aquatic invertebrates of the Class Pelecypoda, commonly known as oysters, clams, mussels, and scallops, and their eggs, larvae, or juvenile forms, that do not require a permit under parts 16, 17, or 23 of this subchapter, and are exported only for the purposes of propagation or research related to propagation; and

(4) Pearls that do not require a permit under parts 16, 17, or 23 of this subchapter.

(b) *Certain persons.* (1) The following persons may import or export wildlife without an import/export license provided that these persons keep records that will fully and correctly describe each importation or

exportation of wildlife made by them and the subsequent disposition made by them with respect to the wildlife.

(i) Public museums, or other public, scientific or educational institutions, importing or exporting wildlife for noncommercial research or educational purposes; and

(ii) Federal, State, tribal, or municipal agencies.

(2) Subject to applicable limitations of law, duly authorized Service officers at all reasonable times will, upon notice, be given access to these persons' places of business, an opportunity to examine their inventory of imported wildlife or the wildlife to be exported, the records described above, and an opportunity to copy those records.

**§ 14.93 How do I apply for an import/export license?**

(a) *Application form.* You must submit a completed FWS Form 3-200-3, including the certification found on the form and in § 13.12(a) of this subchapter, to the appropriate regional Special Agent in Charge under the provisions of this subpart and part 13 of this subchapter.

(b) *Import/export license conditions.* In addition to the general permit conditions in part 13 of this subchapter, you must comply with the following conditions:

(1) You must comply with all requirements of this part, all other applicable parts of this subchapter, and any specific conditions or authorizations described on the face of,

or on an annex to, the import/export license;

(2) You must pay all applicable license and inspection fees as required in § 14.94;

(3) You are responsible for providing current contact information to us, including a mailing address where you will accept all official notices sent by the Service;

(4) You must keep, in a U.S. location, the following records that completely and correctly describe each import or export of wildlife that you made under the import/export license and if applicable, any subsequent disposition that you made with the wildlife, for a period of 5 years:

(i) A general description of the wildlife, such as "live," "raw hides," "fur garments," "leather goods," "footwear," or "jewelry";

(ii) The quantity of the wildlife, in numbers, weight, or other appropriate measure;

(iii) The common and scientific names of the wildlife;

(iv) The country of origin of the wildlife, if known, as defined in § 10.12 of this subchapter;

(v) The date and place the wildlife was imported or exported;

(vi) The date of the subsequent disposition, if applicable, of the wildlife and the manner of the subsequent disposition, whether by sale, barter, consignment, loan, delivery, destruction, or other means;

(vii) The name, address, telephone, and e-mail address if known, of the

person or business who received the wildlife;

(viii) Copies of all permits required by the laws and regulations of the United States; and

(ix) Copies of all permits required by the laws of any country of export, re-export, or origin of the wildlife;

(5) You must, upon notice, provide authorized Service officers with access to your place(s) of business at all reasonable times and give us an opportunity to examine your inventory of imported wildlife or the wildlife to be exported, the records required to be kept by paragraph (b)(4) of this section, and an opportunity to copy these records subject to applicable limitations of the law;

(6) You must submit a report containing the information required to be kept in paragraph (b)(4) of this section within 30 days of receipt of a written request from us; and

(7) An import/export license gives you permission to engage in business as an importer or exporter of wildlife only in general terms. An import/export license is in addition to, and does not supersede, any other license, permit, or requirement established by Federal, State, or tribal law for the import or export of wildlife.

(c) *Duration of import/export license.* Any import/export license issued under this section expires on the date designated on the face of the import/export license. In no case will the import/export license be valid for more than 1 year from the date of issuance.

(d) *Issuance, denial, suspension, revocation, or renewal of import/export license.* We may deny, suspend, revoke, restrict, or deny renewal of an import/export license to any person named as the holder, or a principal officer or agent of the holder, under any of the criteria described in part 13 of this subchapter or under the following criteria:

(1) Fees, penalties, or costs are owed to us;

(2) You repeatedly fail to notify our Service officers at the appropriate port at least 48 hours prior to the estimated time of arrival of a live or perishable wildlife shipment under § 14.54 (a) or at least 48 hours prior to the estimated time of exportation of any wildlife under § 14.54(f);

(3) You repeatedly import or export certain types of wildlife without meeting the requirements of this part or other applicable parts of this subchapter.

#### § 14.94 What fees apply to me?

(a) *Import/export license application fees.* You must pay the application and amendment fees, as defined in

§ 13.11(d)(4), for any required import/export license issued under § 14.93 and part 13 of this subchapter.

(b) *Designated port exception permit application fees.* You must pay the application and amendment fees, as defined in § 13.11(d)(4), for any required designated port exception permit issued under subpart C of this part.

(c) *Designated port base inspection fees.* Except as provided in paragraph (k) of this section, an import/export license holder must pay a base inspection fee, as defined in paragraph (h)(1) of this section, for each wildlife shipment imported or exported at a designated port or a port acting as a designated port. You can find a list of designated ports in § 14.12 and the criteria that allow certain ports to act as designated ports in §§ 14.16–14.19, § 14.22, and § 14.24 of this part.

(d) *Staffed nondesignated port base inspection fees.* You must pay a nondesignated port base inspection fee, as defined in paragraph (h)(2) of this section, for each wildlife shipment imported or exported at a staffed nondesignated port using a designated port exception permit issued under subpart C of this part. This fee is in place of, not in addition to, the designated port base fee.

(e) *Nonstaffed, nondesignated port base inspection fees.* You must pay a nondesignated port base inspection fee, as defined in paragraph (h)(3) of this section, for each wildlife shipment imported or exported at a nonstaffed, nondesignated port using a designated port exception permit issued under subpart C of this part. You must also pay all travel, transportation, and per diem costs associated with inspection of the shipment. These fees are in place of, not in addition to, the designated port base fee.

(f) *Premium inspection fees.* You must pay a premium inspection fee in addition to any base inspection fees required in paragraphs (c), (d), and (e) of this section, as defined in paragraph (h)(4) of this section, for the following types of shipments:

(1) Except as provided in paragraph (k) of this section, any shipment containing live or protected species, as defined in paragraph (h)(4) of this section, imported or exported by an import/export license holder at a designated port or a port acting as a designated port. You can find a list of designated ports in § 14.12 and the criteria that allow certain ports to act as designated ports in §§ 14.16–14.19, § 14.22, and § 14.24 of this part;

(2) Any shipment containing live or protected species, as defined in § 14.94(h)(4), imported or exported via

air, ocean, rail, or truck cargo, by persons not requiring an import/export license under § 14.91, at a designated port or a port acting as a designated port. You can find a list of designated ports in § 14.12 and the criteria that allow certain ports to act as designated ports in §§ 14.16–14.19, § 14.22, and § 14.24 of this part;

(3) Any shipment containing live or protected species, as defined in paragraph (h)(4) of this section, imported or exported at a nondesignated port using a designated port exception permit issued under subpart C of this part.

(4) You must pay two premium inspection fees in addition to any base inspection fees required in paragraphs (c), (d), and (e) of this section, as defined in paragraph (h)(4) of this section, if your wildlife shipment contains live and protected species.

(g) *Overtime fees.* You must pay fees for any inspections that begin before normal working hours, that extend beyond normal working hours, or are on a Federal holiday, Saturday, or Sunday.

(1) Overtime fees are in addition to any base inspection fees or premium inspection fees required for each shipment and will be charged regardless of whether or not you have an import/export license.

(2) Our ability to perform inspections during overtime hours will depend upon the availability of Service personnel. If we cannot perform an inspection during normal working hours, we may give you the option of requesting an overtime inspection.

(3) The overtime fee is calculated using a 2-hour minimum plus any actual time in excess of the minimum and incorporates the actual time to conduct an inspection and the travel time to and from the inspection location.

(4) The Service will charge any overtime, including travel time, in excess of the minimum in quarter-hour increments of the hourly rate. The Service will round up an inspection time of 10 minutes or more beyond a quarter-hour increment to the next quarter-hour and will disregard any time over a quarter-hour increment that is less than 10 minutes.

(5) The Service will charge only one overtime fee when multiple shipments are consigned to or are to be exported by the same importer or exporter and are all inspected at the same time at one location. The overtime fee will consist of one 2-hour minimum or the actual time for inspection of all the applicable shipments, whichever is greater. All applicable base and premium fees will apply to each shipment.

(6) We will charge 1 hour of time at 1½ times the hourly labor rate for inspections beginning less than 1 hour before normal working hours.

(7) We will charge a minimum of 2 hours of time at an hourly rate of 1½

times the average hourly labor rate for inspections outside normal working hours except for inspections performed on a Federal holiday.

(8) We will charge a minimum of 2 hours of time at an hourly rate of 2

times the average hourly labor rate for inspections performed on a Federal holiday.

(h) *Fee schedule.*

Inspection fee schedule	Fee cost per year				
	2008	2009	2010	2011	2012
(1) Designated port base inspection fee (see § 14.94(c)).	\$85 .....	\$87 .....	\$89 .....	\$91 .....	\$93
(2) Staffed nondesignated port base inspection fee (§ 14.94(d)).	\$133 .....	\$136 .....	\$139 .....	\$142 .....	\$145
(3) Nonstaffed nondesignated port base inspection fee (§ 14.94(e)).	\$133 .....	\$136 .....	\$139 .....	\$142 .....	\$145
(4) Premium inspection fee at any port (see § 14.94(f)):					
(i) <i>Protected species.</i> Any species that requires a permit under 50 CFR parts 15, 16, 17, 18, 21, 22, or 23;	\$19 .....	\$37 .....	\$56 .....	\$74 .....	\$93
(ii) <i>Live species.</i> Any live wildlife, including live viable eggs and live pupae.	\$19 .....	\$37 .....	\$56 .....	\$74 .....	\$93
(5) Overtime inspection fee (see § 14.94(g)):					
(i) Inspections beginning less than 1 hour before normal work hours.	\$48 .....	\$49 .....	\$51 .....	\$52 .....	\$53
(ii) Inspections after normal work hours, including Saturday and Sunday.	\$96 min. + \$48/hr	\$98 min. + \$49/hr	\$101 min.+ \$51/hr.	\$103 min.+ \$52/hr.	\$105 min. + \$53/hr.
(iii) Inspections on Federal holidays .....	\$128 min. + \$64/hr.	\$131 min. + \$65/hr.	\$133 min. + \$67/hr.	\$136 min.+ \$68/hr.	\$139 min. + \$70/hr.

(i) The Service will not refund any fee or any portion of any license or inspection fee or excuse payment of any fee because importation, exportation, or clearance of a wildlife shipment is refused for any reason.

(j) All base inspection fees, premium inspection fees, and overtime fees will apply regardless of whether or not a physical inspection of your wildlife shipment is performed, and no fees will be prorated except as provided in paragraph (g)(5) of this section.

(k) *Exemptions to inspection fees.*

(l) *Certain North American origin wild mammal furs or skins.* Wildlife shipments that meet all of the following criteria are exempt from the designated port base inspection fee (These shipments are not exempt from the designated port overtime fees or the import/export license application fee.):

(i) The wildlife is a raw fur, raw, salted, or crusted hide or skin, or a separate fur or skin part, lawfully taken

from the wild in the United States, Canada, or Mexico that does not require permits under parts 17, 18, or 23 of this subchapter; and

(ii) You, as the importer or exporter, or a member of your immediate family, such as your spouse, parents, siblings, and children, took the wildlife from the wild and are shipping the wildlife between the United States and Canada or Mexico; and

(iii) You have not previously bought or sold the wildlife described in paragraph (k)(1)(i) of this section, and the shipment does not exceed 100 raw furs, raw, salted, or crusted hides or skins, or fur or skin parts; and

(iv) You certify on Form 3-177, Declaration for Importation or Exportation of Fish or Wildlife, that your shipment meets all the criteria in this section.

(2) You do not have to pay base inspection fees, premium inspection fees, or overtime fees if you are

importing or exporting wildlife that is exempt from import/export license requirements as defined in § 14.92(a) or you are importing or exporting wildlife as a government agency as defined in § 14.92(b)(1)(ii).

(3) You do not have to pay base inspection fees, premium inspection fees, or overtime fees if you are importing or exporting wildlife that meets the criteria for “domesticated animals” as defined in § 14.4 of this part.

Dated: December 14, 2007.

**Lyle Laverty,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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