

**1 Supporting Statement A for
Paperwork Reduction Act Submission**

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

OMB Control Number 1018-XXXX

Terms of Clearance. Not Applicable - New Collection.

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

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. 16 U.S.C. 1540(f) authorizes the U.S. Fish and Wildlife Service (we, Service) to charge and retain reasonable fees for processing applications and for performing reasonable inspections of importation, exportation, and transportation of wildlife. The regulations at 50 CFR 14.91 provide the requirements for obtaining an import/export license prior to engaging in business as an importer or exporter of certain fish or wildlife and the regulations at 50 CFR 14.94(k) provide the exemptions for user fees that would otherwise be assessed to importers or exporters of certain fish or 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, we are implementing a program that exempts certain businesses from the designated port base inspection fees as an interim measure while we reassess the current user fee system.

In order to participate in our **user** fee exemption program for low-risk importations and exportations, importers or exporters must certify in writing that they meet the criteria for inclusion in the program.

2. Indicate how, by whom, and for what purpose the information is to be used.

Businesses that require an import/export license under 50 CFR 14.93 may be exempt from the designated port base inspection fee as set forth in 50 CFR 14.94(k)(4)(i). To participate in this program, 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 the business must meet all of the criteria for participation.

Businesses may request to participate in the fee exemption program for low-risk importations and exportations using the Service's electronic declaration filing system (eDecs). Businesses must certify that they meet the following criteria:

- Each shipment does not contain live wildlife.
- Each shipment does not contain wildlife that requires a permit or certificate under 50 CFR 15, 17, 18, 20, 21, 22, or 23 or is listed under 50 CFR 16.
- Each shipment contains 25 or fewer wildlife parts and products containing wildlife.
- Each wildlife shipment is valued at \$5,000 or less.

- The importer/exporter 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.
- The business has had two or fewer wildlife shipments that were refused clearance in the 5 years prior to requesting participation in the fee exemption program.
- The business has not previously participated in the program and been removed for failure to meet the criteria.

Businesses must continue to meet the criteria while participating in the program. If the business fails to meet the criteria after approval, it 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. The certification must be renewed annually.

If approved to participate in the program, the business must file FWS Form 3–177 and all required accompanying documents electronically using eDecs for each shipment and must meet all other requirements of 50 CFR 14. Using subsequent submissions of electronic FWS Forms 3-177, we will confirm that the business exclusively imports or exports nonliving, non-Federally protected wildlife, and that each wildlife shipment contains 25 or fewer specimens valued at \$5,000 or less. OMB has approved FWS Form 3-177 and eDecs and assigned OMB Control Number 1018-0012, which expires March 31, 2013.

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

The certification will be collected electronically through eDecs.

4. Describe efforts to identify duplication.

The Service is the lead agency for enforcement on the importation and exportation of wildlife shipments under the ESA. The information that we collect for the certification is not collected by any other Government agency.

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

This certification will not significantly increase burden on small businesses. The criteria for participation in the fee exemption program are the minimum necessary to ensure that wildlife shipments pose a low risk to our conservation goals. Small businesses will not be required to provide any information in addition to the certification form to confirm that they meet the program criteria. This program will exempt certain businesses from the designated port base inspection fees as an interim measure while we reassess the current user fee system.

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

If this program is not established, small businesses will not be able to take advantage of the

exemption from the designated port base inspection fees. Collecting this information on an annual basis is a reasonable timeframe to ensure that these businesses are exclusively importing or exporting nonliving, non-Federally protected wildlife, and that each wildlife shipment will contain 25 or fewer specimens valued at \$5,000 or less.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**
- * requiring respondents to report information to the agency more often than quarterly;**
 - * requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
 - * requiring respondents to submit more than an original and two copies of any document;**
 - * requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
 - * in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
 - * requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
 - * that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
 - * requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no circumstances where a small business will be required to provide information that is inconsistent with OMB guidelines.

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

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

We request emergency approval for the certification statement for the User Fee Exemption Program for Low-Risk Importations and Exportations. We also request a waiver of the requirement to publish 60- and 30-day notices for this emergency approval.

On December 9, 2008, we 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. Since implementation of the user fee system, 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. 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. 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.

We are taking immediate action to address this possible fee inequity in advance of a planned reassessment of our wildlife inspection user fee schedule. We are using the "good cause" exemptions under 5 U.S.C. 553(b) and (d)(3) to issue an interim rule establishing the fee exemption program, without first invoking the usual notice and public comment procedure. The interim rule will be effective upon publication, but we will accept comments on the program for 60 days. As we begin the process to reexamine our fee structure, we need 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 us to collect data with relatively low risk to our conservation goals and assist at least some businesses that may be currently experiencing an undue economic hardship. We are committed to finalizing this rule after careful consideration of both public comments and collection of additional data. It is important to note that this proposed collection of data will only involve the analysis of FWS Form 3-177s submitted electronically after businesses have been included in the user fee exemption program, and that those businesses will not be required to produce any documentation to justify their inclusion in the user fee exemption program.

We request approval of the emergency request by October 31, 2012. If you approve this request, we will publish the interim rule and solicit comments on the certification form for 60 days. We will then include the burden associated with the certification statement in our renewal of 1018-0012 later this year.

Since this is a request for emergency approval of this information collection, we have not consulted with persons outside of the Service. We will conduct outreach during the regular approval process.

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

We do not provide any gifts or payments to respondents.

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

We do not provide any assurance of confidentiality. All records made available under this information collection are subject to the Privacy Act and we will maintain them in a secure system of records (Interior-FWS 20, 48 FR 54719) accessible only by authorized Service employees. These records may be subject to disclosure under the Freedom of Information Act.

If there is an indication of a violation of a statute, regulation, rule, order, or license, whether civil, criminal, or regulatory in nature, we may transfer the information to the appropriate Federal, State, local, or foreign agency charged with investigating or prosecuting those violations. In the event of litigation, we may transfer the information to the U.S. Department of Justice.

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

We do not ask questions of a sensitive nature.

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

We estimate that approximately 1,000 respondents will complete the certification form annually to request participation in the User Fee Exemption Program. The certification form in our eDecs system should take no more than 1 minute to complete.

The total dollar value of the annual burden hours is approximately \$790.33. We used the Bureau of Labor Statistics May 2011 National Occupational Employment and Wage Estimates data at: http://www.bls.gov/oes/current/oes_nat.htm#13-0000, to estimate average hourly wages and calculate benefits :

- Private Sector - We used the wage and salary cost table for all business operations specialists, which states a mean hourly rate of \$33.21. To calculate benefits, we multiplied the hourly rate by 1.4, in accordance with BLS News Release USDL-12-1830, September 11, 2012. The hourly rate including benefits is \$46.49.

Requirement	Annual No. of Respondents	Total Annual Responses	Completion Time per Response	Total Annual Burden Hours*	Hourly Labor Costs including benefits	Total Dollar Value of Annual Burden Hours*
Certification Form	1,000	1,000	1 minute	17	46.49	\$790.33
Total	1,000	1,000		17		\$790.33

*rounded

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

There is no nonhour cost burden to respondents.

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

We estimate that the total annual cost to the Federal Government for this information collection is \$864.96. Wildlife inspectors (GS-11) are the primary staff persons who will process these certifications. Wildlife inspectors are located across the United States, many in large cities. Therefore, we used Office of Personnel Management Salary Table 2012-DCB (http://www.opm.gov/flsa/oca/12tables/html/dcb_h.asp) to determine an average hourly wage (\$33.92). We multiplied the hourly rate by 1.5 to account for benefits in accordance with BLS News Release USDL-12-1830, September 11, 2012, resulting in a total hourly cost factor of \$50.88. We estimate that it will take approximately 1 minute to process each certification, form, or a total of 17 hours.

15. Explain the reasons for any program changes or adjustments in hour or cost burden.

This is a new information collection.

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

We will not publish the information collected in our eDecs system.

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

We will display the OMB control number and expiration date.

18. Explain each exception to the certification statement.

There are no exceptions to the certification statement.