

**1Billing Code 4333-15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 14**

**[Docket No. FWS-HQ-LE-2016-0142; FF09L00200-FX-LE18110900000]**

**RIN 1018-BB93**

**Importation, Exportation, and Transportation of Wildlife; Electronic Submission of Documents**

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

**ACTION:** Interim rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are adding two definitions to the general importation and exportation regulations regarding electronic transmission of the Declaration for Importation or Exportation of Fish or Wildlife (Form 3-177) and associated documents, licenses, and permits. This action clarifies that electronic submission is an acceptable

method for importers and exporters to use to meet their reporting requirements to the Service and allows the Service to move forward with implementation of the International Trade Data System (ITDS). ITDS provide importers and exporters the ability to submit Service data and documents through U.S. Customs and Border Protection's (CBP) Automated Commercial Environment (ACE) and Census's Automated Export System, as appropriate. This rule does not impose new requirements affecting the general importing or exporting process, but instead simply codifies automation of this process.

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

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

- Electronically: Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS–HQ–LE–2016–0142, which is the docket number for this rulemaking. You may submit a comment by clicking on “Comment Now!”
- By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–HQ–LE–2016–0142; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC; Falls Church, VA 22041.

We will not accept email or faxes. We will post all comments on <http://www.regulations.gov>.

This generally means that we will post any personal information you provide us (see the **Public**

**Comments** section below in **SUPPLEMENTARY INFORMATION** for further information about submitting comments).

Send comments on the information collection requirements contained in this interim rule to the Service Information Clearance Officer, U.S. Fish and Wildlife Service, Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC; Falls Church, VA 22041; madonna\_baucum@fws.gov.

**FOR FURTHER INFORMATION CONTACT:** Paul Beiriger, Special Agent in Charge, Investigations Unit, Office of Law Enforcement; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: LE; Falls Church, VA 22041 (telephone (703) 358–1949).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The U.S. Fish and Wildlife Service has oversight responsibilities under statutory and regulatory authority to regulate the importation, exportation, and transportation of wildlife. The Service’s inspection program is framed by the Endangered Species Act (ESA), 16 U.S.C. 1531–1544, and the Lacey Act Amendments of 1981, 16 U.S.C. 3371–3378. “Many endangered-species statutes take into account interests other than preservation of species, and authorize federal authorities to issue permits so that people can legally take, possess, and import various categories of protected wildlife.... Each of these [laws] represents an attempt to balance the goal of species protection against competing societal and economic interests; the limitation on the importation of [wildlife] under CITES is no different.” *United States v. Koczuk*, 252 F.3d 91, 99 (2d Cir. 2001) (referencing the Bald and Golden Eagle Protection Act, 16 U.S.C. 668a; the Migratory Bird Treaty Act, 16 U.S.C. 704(a); the Fur Seal Act, 16 U.S.C. 1153; the Marine

Mammal Protection Act, 16 U.S.C. 1374(a); and the ESA, 16 U.S.C. 1539). Thus, it is unlawful to import or export fish, wildlife, or plants without filing a declaration or report deemed necessary for enforcing the ESA or upholding the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (see 16 U.S.C. 1538(e)). To achieve the balance between species protection and economic interest, section 11(e)(3) of the ESA, 16 U.S.C. 1540(e)(3), and section 6(b) of the Lacey Act, 16 U.S.C. 3375(b), grant the Service broad enforcement and inspection authorities on both imports and exports. Consistent with this authority, we have established an inspection program to oversee the importation, exportation, and transportation of wildlife and wildlife products.

The strict liability nature of the ESA also lays out a framework for imports and exports that (1) defines “import” to mean to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States; (2) defines “fish or wildlife” as any member of the animal kingdom, including without limitation any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof; (3) requires prior permission from the Secretary of the Interior to engage in business as an importer or exporter of wildlife and wildlife products, with the exception of certain shellfish and fishery products; (4) establishes a system of designated ports to facilitate enforcement; and (5) places the burden of proof on any person claiming the benefit of an exemption or permit.

In 2013, the President issued Executive Order 13648 on Combatting Wildlife Trafficking (78 FR 40621, July 5, 2013). In the past decade, wildlife trafficking—the poaching or other taking of protected or managed species and the illegal trade in wildlife and their related parts and

products—has escalated into an international crisis. Wildlife trafficking is both a critical conservation concern and a threat to global security with significant effects on the national interests of the United States and the interests of our partners around the world, and the United States is one of the world’s largest markets for illegally trafficked wildlife. E.O. 13648 mandates, among other things, that the Government increase domestic and global law enforcement to interdict illegal wildlife trade. The Service’s inspection program is the front line to detect and deter wildlife traffickers. This program requires our trade partners to be vigilant in understanding and monitoring their supply chains, as well as to work with us to declare all regulated commodities with fish, or wildlife, or parts thereof. With dedicated trade partners doing their part, the Service can effectively meet its enforcement obligations to combat wildlife trafficking while ensuring an efficient trade environment.

In support of our program activities, we promulgated regulations contained in title 50 of the Code of Federal Regulations in part 14 (50 CFR part 14) to provide individuals and businesses with guidelines and procedures to follow when importing or exporting wildlife, including parts and products. These regulations explain the requirements for individuals or businesses importing or exporting wildlife for commercial purposes, or for people moving their household goods, personal items, or pets, as well as the exemptions provided for specific activities or types of wildlife. These requirements include the filing of the Declaration for the Importation or Exportation of Fish or Wildlife (Form 3–177) and the availability of shipping documents, permits, licenses, or other documents required by the laws and regulations of the United States, permits or other documents required by the laws or regulations of any foreign country, and any documents and permits required by the country of export or re-export. These regulations also contain certain exceptions to the filing of Form 3–177 for which the importer bears the burden of proof under the ESA.

## **Need for an Interim Rule**

Since 2000, the Service has allowed for the electronic transmission of data elements representing Form 3–177 and the upload of electronic images of documents, including licenses and permits where appropriate, via the Service’s electronic declaration filing system (eDecs). Certain licenses and permits must be submitted in original paper as required under other regulations even if uploaded in eDecs for review prior to importation or exportation.

As the Service moves forward with implementation of the International Trade Data System (ITDS), under Executive Order 13659, Streamlining the Export/Import Process for America’s Businesses (79 FR 10657, February 25, 2014), we wish to ensure that the public is aware of their ability to submit Form 3–177 as a set of electronic data elements and certain documents as electronic data sets or images in lieu of filing a paper form or paper documents and to provide information electronically to demonstrate any exemptions to filing of Form 3–177. As part of this electronic filing ability, we wish to notify the importing public of their ability to file Service import data and documents electronically through CBP’s ACE system as a CBP authorized importer or by using a customs broker, in lieu of using eDecs. Exporters also may provide their eDec confirmation number in Census’s Automated Export System (AES) as needed to provide evidence of the permission granted by the Service to export wildlife shipments. This electronic ability will facilitate the movement of imports and exports under the Service’s broad inspection authority.

In accordance with the Administrative Procedure Act (5 U.S.C. 551–553), our normal practice is to publish regulations with a 30-day delay in effective date. But in this case, the Service is taking immediate action to address this situation as we have become aware that some importers and exporters may not be aware of the option to submit certain forms and documents

electronically, thereby adding unnecessary administrative burdens to their importation and exportation processes. Under the exemptions provided by 5 U.S.C. 553(b)(3)(a), we are issuing this rule without prior opportunity for public comment as this rulemaking action is a rule “of agency organization, procedure, or practice,” and, according to 5 U.S.C. 553(d)(3), we are making this rule effective upon publication. We believe this immediate action is necessary to counter perceived restrictions on our Nation’s importers and exporters of wildlife and wildlife products.

### **Public Comments**

You may submit your comments and materials concerning this interim rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

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

### **Required Determinations**

#### **Regulatory Planning and Review (Executive Orders 12866 and 13563)**

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

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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

Essentially all of the businesses that engage in commerce by importing or exporting wildlife or wildlife products would be considered small businesses according to the Small Business Administration. Since the Service already allows for electronic filing of both Form 3-177 and certain documents, this rule will not have a significant economic effect on a substantial number of small businesses as defined under the Regulatory Flexibility Act. Therefore, we certify that an initial regulatory flexibility analysis is not required.

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

This interim rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act as it will not have an annual effect on the economy of \$100 million or more.



Moreover, since the Service already allows for electronic filing of both Form 3–177 and certain documents, this rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

Finally, this rule will not have significant negative effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies because the effect of this rule is simply to codify an existing electronic practice.

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

Under the Unfunded Mandates Reform Act:

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

b. This interim rule will not produce a Federal requirement that may result in the combined expenditure by State, local, or tribal governments of \$100 million or greater in any year, so it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. This interim rule will not result in any combined expenditure by State, local, or tribal governments. The inspection program for imported and exported wildlife products is solely a Federal responsibility.

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

Under Executive Order 12630, this interim rule does not have significant takings implications. A takings implication evaluation is not required. Under Executive Order 12630,

this interim rule does not affect any constitutionally protected property rights. This interim rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

### **Executive Order 13132 (Federalism)**

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

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

Under Executive Order 12988, the Office of the Solicitor has determined that this interim rule does not overly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this interim rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize disagreements, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

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

We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements regarding the submission of FWS Form 3-177 electronically through our eDecs system, and assigned OMB Control Number 1018-0012, which expires on

September 30, 2019.

This interim rule contains information submitted to OMB for approval under the Paperwork Reduction Act (PRA) as follows:

OMB Control No: 1018-0012.

Title: Declaration for Importation or Exportation of Fish or Wildlife, 50 CFR 14.61-14.64 and 14.94(k)(4)..

Service Form Number: Form 3-177/3-177a.

Description of Respondents: Entities including museums, zoos, universities, businesses, individuals, or government agencies.

Respondent's Obligations: Required to comply with statutes and regulations.

Frequency of Collection: On import or export.

<b>Requirement</b>	<b>Annual No. of Respondents</b>	<b>Total Annual Responses</b>	<b>Completion Time per Response</b>	<b>Total Annual Burden Hours*</b>
<b>3-177 Hard Copy – Upon Import (and accompanying documents)</b>				
Individuals	5,405	6,485	15 minutes	1,621.25
Private Sector	193	746	15 minutes	186.50
Government	0	0	15 minutes	0.00
<i>Subtotals:</i>	<i>5,598</i>	<i>7,231</i>		<i>1,807.75</i>
<b>3-177 Hard Copy – Upon Export (and accompanying documents)</b>				
Individuals	442	523	15 minutes	130.75
Private Sector	96	731	15 minutes	182.75
Government	0	0	15 minutes	0.00
<i>Subtotals:</i>	<i>538</i>	<i>1,254</i>		<i>313.50</i>
<b>3-177 eDecs/ACE - Upon Import (and Accompanying Documents)</b>				
Individuals	1,054	22,455	10 minutes	3,742.50
Private Sector	5,968	114,812	10 minutes	19,135.33
Government	2	139	10 minutes	23.17
<i>Subtotals:</i>	<i>7,024</i>	<i>137,406</i>		<i>22,901.00</i>
<b>3-177 eDecs - Upon Export (and Accompanying Documents)</b>				
Individuals	449	2,114	10 minutes	352.33
Private Sector	1,373	32,952	10 minutes	5,492.00
Government	2	109	10 minutes	18.17
<i>Subtotals:</i>	<i>1,824</i>	<i>35,175</i>		<i>5,862.50</i>
<b>eDecs Confirmation Number (AES)</b>				
Private Sector	1,824	35,175	1 minute	586.25
<b>3-177 ACE/AES Disclaimer (and Accompanying Documents)</b>				

Private Sector	5,000	500,000	1 minute	8,333.33
<b>eDecs - Fee Exemption Certification</b>				
Private Sector	33	2,221	1 minute	37.02
<b>Total</b>	<b>21,841</b>	<b>718,462</b>		<b>39,841.35</b>

The above stated burden information in this request lays out three categories of collection. First, we provide collection burdens and costs for collecting Form 3-177 and the accompanying documents in paper, and electronically in eDecs and ACE, broken down by imports and exports which reflect 2016 figures. Second, we provide the burden of collecting the eDecs confirmation number in AES for exports. Third, we provide the burden of collecting a disclaimer of “no wildlife” as part of automation efforts under ACE and AES.

In order to automate the current Service process for clearing importations and exportations of wildlife within the Automated Commercial Environment (ACE)/Automated Export System (AES) and operate in a single-window filing environment driven by harmonized tariff codes and schedule B tariff classifications, the Service requests an update our collection of Form 3-177 through paper and eDecs to reflect 2016 shipment figures. It also breaks down collection by imports and exports rather than total collections as previously reported in order to provide a better correlation to other electronic systems. Primarily, however, we are requesting approval for electronic collection of data through ACE as an alternative electronic option for importers and exporters to eDecs. The Safe Port Act requires the Service to participate in the International Trade Data System and the Executive Order on Streamlining Exports and Imports establishes U.S. Customs and Border Protection’s Automated Commercial Environment (ACE) as the primary means for collection of international trade data by the government. The latter includes the use of Census’s Automated Export System (AES) to collect agency licenses and other permissions for exports. Although importers or exporters are not mandated to use ACE and AES to file Service data at this time, the Service will begin collection of data in ACE as an

alternative to eDecs. If importers file in ACE, they will not file in eDecs. The above estimates of burden and costs include those for the new electronic systems, although collection in ACE or AES has not yet begun.

As part of our continuing efforts to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of the reporting burden associated with the use of ACE for collection of FWS Form 3-177 data elements and collection of document images using the ACE Document Image System. We specifically invite comments concerning:

- Whether or not the collection of information is necessary for the proper performance of our management functions involving the detection and deterrence of illegal wildlife trafficking, monitoring of species trade for conservation purposes, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

The public may comment, at any time, on the accuracy of the information collection burden in this interim rule and may submit any comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS:BPHC, 5275 Leesburg Pike, Falls Church, VA 22041 (mail).

This interim rule has been analyzed under the criteria of the National Environmental Policy Act of 1969, as amended (NEPA, 42 U.S.C. 4321 et seq.), and the Department of the Interior's implementing regulations in 43 CFR part 46. This interim rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/evaluation is not required. This interim rule is categorically excluded from further NEPA requirements, under 43 CFR 46.210. This categorical exclusion addresses policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis under NEPA.

**Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes)**

Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no adverse effects. Individual tribal members must meet the same regulatory requirements as other individuals who import or export wildlife.

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

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking actions that significantly affect energy supply, distribution, and use. This interim rule is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

## List of Subjects in 50 CFR Part 14

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

## Regulation Promulgation

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

## PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

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

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

2. Amend § 14.4 by adding the following definitions in alphabetical order to read as follows:

### § 14.4 What terms do I have to understand?

\* \* \* \* \*

*Declaration for the Importation or Exportation of Fish or Wildlife (Form 3–177)* means the actual paper form or the equivalent set of electronic data elements submitted to a Service-approved electronic data interface.

*Document* means any shipping document, permit, license, document required by U.S. law or regulation, document required by foreign law or regulation, document required by the country of export or re-export, an authorized equivalent set of electronic data elements submitted to a

Service-approved electronic data interface, or an authorized electronic equivalent submitted to a  
Service-approved electronic document image system.

\* \* \* \* \*

Dated: \_\_\_\_\_.

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*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*