

*\*Normally insert 12 months as the period during which defective or otherwise nonconforming supplies must be replaced. However, when the supplies being bought have a shelf life of less than 1 year, you should use the shelf-life period, or in the instance where you reasonably expect a longer period to be available, you should use the longer period.*

*\*\*The rates to be inserted are established by the Commissioner of the Federal Acquisition Service or a designee.*

#### 552.246-71 [Amended]

11. Amend section 552.246-71 by—  
a. Revising the date of the clause to read “(Date)”;

b. Removing from paragraph (c)(3) “Virgin Islands” and adding “U.S. Virgin Islands” in its place; and

c. Removing from the end of the section, at the footnote, “Supply” and adding “Acquisition” in its place.

#### 552.246-72 through 552.246-76 [Reserved]

12. Remove and reserve sections 552.246-72 through 552.246-76.

13. Add sections 552.246-77 and 552.246-78 to read as follows:

#### 552.246-77 Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature.

As prescribed in 546.710(a), insert the following clause in solicitations and contracts that include FAR 52.246-17, Warranty of Supplies of a Noncomplex Nature.

#### Additional Contract Warranty Provisions For Supplies of a Noncomplex Nature (Date)

(a) *Definition.* Correction, as used in this clause, means the elimination of a defect.

(b) *Contractor's obligations.* When return, correction, or replacement is required, the Contractor shall be responsible for all costs attendant to the return, correction, or replacement of the nonconforming supplies. Any removal in connection with the above shall be done by the Contractor at its expense.

(c) *Remedies available to the Government.* When the nature of the defect in the nonconforming item is such that the defect affects an entire batch or lot of material, then the equitable price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.

(End of clause)

#### 552.246-78 Inspection at Destination.

As prescribed in 546.302-72 insert the following clause:

#### INSPECTION AT DESTINATION (DATE)

Inspection of all purchases under this contract will be made at destination by an authorized government representative.

(End of clause)

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R9-ES-2008-0063; 92300-1113-0000-9B]

RIN 1018-AU62

#### Endangered and Threatened Wildlife and Plants; Amending the Formats of the Lists of Endangered and Threatened Wildlife and Plants

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (FWS), propose to amend the formats of the Lists of Endangered and Threatened Wildlife and Plants to include current practices and standards that will make the regulations and Lists easier for the public to understand. When we finalize this proposed rule, we will publish the Lists of Endangered and Threatened Wildlife and Plants in their entirety in the new formats.

**DATES:** We must receive comments by September 4, 2008 in order to ensure their consideration in our final decision.

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R9-ES-2008-0063; 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 you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:**

Michael Franz, Office of Program Support, Endangered Species, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA, 22203; telephone 703-358-2079. If you use a

telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Lists of Endangered and Threatened Wildlife and Plants (Lists), found in the Code of Federal Regulations (CFR) at 50 CFR 17.11 for wildlife and 50 CFR 17.12 for plants, contain the names of species officially listed as endangered or threatened under the Endangered Species Act of 1973, as amended 16 U.S.C. §§1531 *et seq.* (ESA). The most recent compilation of Lists appears in the 2007 edition of title 50 CFR, which was issued in early 2008. That compilation included regulatory amendments effective as of October 1, 2007.

The species were placed on the Lists by FWS, by the National Marine Fisheries Service (NMFS) of the Department of Commerce's National Oceanic and Atmospheric Administration, or by both of these agencies in joint rulemaking actions. References to “Services” in the text of §17.11 and §17.12 refer to both of these agencies.

The Lists represent the official Government record of which species are listed and where they are considered listed under the ESA. Over time, we have noted numerous anomalies in the Lists, including ambiguous entries and confusing format and column titles. After detailed research on the origin, history, and purpose of the Lists, we determined that the format, references, and standards need to be updated. This rule is designed to address these observed problems and propose corrections to enhance the clarity of the lists.

#### History of the Lists of Endangered and Threatened Species

The first endangered species list was published March 8, 1969 (35 FR 5034) and included only two columns, Common Name and Scientific Name. In 1971, that list was added to title 50 CFR in the newly created section 17 and divided into two separate lists with appendix A being the “U.S. List of Endangered Foreign Fish and Wildlife” with three columns (Common Name, Scientific Name, and Where Found) and appendix D being the “United States’ List of Endangered Native Fish and Wildlife” with still only the original two columns (Common Name and Scientific Name).

In 1974, the two appendices were changed into the now familiar locations in §17.11 and §17.12 with the appendix A becoming §17.11 (Foreign) and





Figure 7 - Proposed §17.11 Column Title and Positions:

Species		Status	Where listed	Historic range	Citations	Special rules	Critical habitat
Common name [ESU or DPS]	Scientific name						

Figure 8 - Current §17.12 Column Titles and Positions:

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						

Figure 9 - Proposed §17.12 Column Title and Positions:

Species		Status	Where listed	Historic range	Citations	Special rules	Critical habitat
Scientific name	Common name						

We also propose to reorganize and update the text introducing the lists of wildlife and plants (§17.11(h) and §17.12(h), respectively) to reflect the proposed changes described above.

**Updating Standards References**

For species' nomenclature (scientific and common names), we propose to change the primary source upon which we rely. The current text introducing the lists in §17.11 and §17.12 references two standards for scientific nomenclature: The International Code of Zoological Nomenclature and The International Code of Botanical Nomenclature. Respectfully, instead of referencing those International Codes, we propose that the Service now rely to the extent practicable on the Integrated Taxonomic Information System (ITIS) which incorporates both of the International Code standards and the standard references adopted for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

In addition to incorporating the standards the service has already been using, ITIS is an authoritative taxonomic database (<http://www.itis.gov>) maintained by a partnership of U.S., Canadian, and Mexican agencies; other organizations; and taxonomic specialists. The U.S. partners include the National Oceanic and Atmospheric Administration of the Department of Commerce; the U.S. Geological Survey and National Park

Service of the Department of the Interior; the Environmental Protection Agency; the Agricultural Research Service and Natural Resources Conservation Service of the Department of Agriculture; the National Biological Information Infrastructure (NBII); the Smithsonian Institution; and NatureServe (a nonprofit organization representing the Natural Heritage programs in the States). The NBII is a broad-based, collaborative program among Federal, State, international, nongovernmental, academic, and private industry partners. Its Federal partners include the FWS and the Bureau of Land Management of the Department of the Interior; the National Aeronautics and Space Administration; the National Science Foundation; the Tennessee Valley Authority; the Forest Service of the Department of Agriculture; the Federal Geographic Data Committee; and the Gap Analysis Program.

CITES is an international convention among 173 signatory countries (Parties) to ensure that international trade in specimens of wild animals and plants does not threaten their survival (50 CFR part 23). The CITES Parties have adopted standard nomenclatural and taxonomic references for species included in the CITES Appendices, which are listed in the most recent CITES resolution on standard nomenclature. (<http://www.cites.org/eng/res/index.shtml>)

**Public Comments**

You may submit your comments and materials concerning our proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hard copy comment 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 hard copy comments on <http://www.regulations.gov>.

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> [FDMS Docket Number: FWS-R9-ES-2008-0063], or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Office of Program Support, Endangered Species Program (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule by mail from the U.S. Fish and Wildlife Service, Office of Program Support, Endangered Species Program (see **FOR FURTHER INFORMATION CONTACT**), or by visiting the *Federal*

eRulemaking Portal at <http://www.regulations.gov>.

### Required Determinations

#### *Regulatory Planning and Review (E.O. 12866)*

This proposed rule is not significant and is not subject to review by the Office of Management and Budget under Executive Order (E.O.) 12866. The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB based its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The changes we are proposing to make are intended primarily to update the standards of scientific naming used in the Lists of Endangered and Threatened Wildlife and Plants and to clarify language in our regulations. These changes would not have a substantive impact on the scope of the regulation, and thus would not affect businesses or other small entities as defined in the RFA.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

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

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

3. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. Our proposal would simply reorganize and clarify existing regulations and provide new standard references for species' nomenclature. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### *Takings (E.O. 12630)*

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. We are proposing only to reorganize and clarify existing regulations and provide new standard references for species' nomenclature. This action would therefore not interfere with constitutionally protected private property rights. A takings implication assessment is not required.

#### *Federalism (E.O. 13132)*

In accordance with E.O. 13132, this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. As our proposal involves reorganizing and clarifying existing regulations, and providing new standard references for species' nomenclature, we do not expect it would have any effect on State or local governments or their activities. A Federalism Assessment is not required.

#### *Civil Justice Reform (E.O. 12988)*

In accordance with E.O. 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *Paperwork Reduction Act*

This proposed rule does not contain any new or revised information collections for which Office of Management and Budget approval is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor and a person is 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.

#### *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), and the Department of the Interior's Manual at 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. Our proposal would simply reorganize and clarify existing regulations and provide new standard references for species' nomenclature.

#### *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 revise the formats of the Lists of Endangered and Threatened Wildlife and Plants. This rule 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.

#### **Author**

Michael Franz, Office of Program Support, compiled this document.

#### **List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### **Proposed Regulation Promulgation**

For the reasons set forth in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend §17.11 by revising paragraphs (a) through (g), and the introductory text and the column headings in the List of Endangered and Threatened Wildlife in paragraph (h), to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

(a) The list in paragraph (h) of this section contains the wildlife species determined by the Services to be endangered or threatened. It also contains the wildlife species treated as endangered or threatened because they are similar in appearance to and may be confused with endangered or threatened species (see §17.50 *et seq.*). The “Common name,” “Scientific name,” “Status,” and “Where listed” columns provide regulatory information; together, they define the wildlife species within the meaning of the Act. When a taxon has more than one entry, the “Status” or “Where listed” column will identify its status in each relevant geographic area. The listing of a particular taxon includes all lower taxonomic units. For example, the genus *Hylobates* (gibbons) is listed as endangered throughout its entire range; consequently, all species, subspecies, and populations of that genus, wherever found, are considered listed as endangered for the purposes of the Act.

(b) “Common name” column: Although common names are included, they cannot be relied upon for identification of any specimen, since they may vary greatly in local usage. In cases where confusion might arise, one or more synonyms are provided in parentheses within the “Common name” column. If a species has been listed under the Evolutionary Significant Unit (ESU) policy or the Distinct Population Segment (DPS) policy (<http://www.fws.gov/endangered/policy>), the ESU or DPS names will be provided in brackets “[ ]” following the common name.

(c) “Scientific name” column: The Services use the most recently accepted scientific name. In cases where confusion might arise, one or more synonyms are provided in parentheses within the “Scientific name” column. The Services will rely to the extent practicable on the Integrated Taxonomic Information System (ITIS) to determine a species’ scientific name. ITIS incorporates the naming principles

established by the International Code of Zoological Nomenclature. For details, see paragraph (g) of this section. If the scientific name in ITIS differs from the scientific name adopted for use under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the CITES nomenclature will be provided in brackets “[ ]” within the “Scientific name” column following the ITIS nomenclature.

(d) “Status” column: Within the “Status” column, the following abbreviations are used:

Abbreviation	Regulatory Status the Abbreviation Represents
E	Endangered
T	Threatened
E (S/A)	Endangered based on similarity of appearance to an existing endangered species
T (S/A)	Threatened based on similarity of appearance to an existing threatened species
XE	Essential experimental population
XN	Nonessential experimental population

(e) “Where listed” column: The “Where listed” column sets forth the geographic area where the species is listed for purposes of the Act. This column incorporates the “Vertebrate population where endangered or threatened” column used in the tables in pre-2008 publications of this list. The term “Entire” is defined as “Wherever found.”

(f) The “Historic range,” “Citations,” “Special rules,” and “Critical habitat” columns are for informational purposes only.

(1) “Historic range” column: The “Historic range” column indicates the known general distribution of the species or subspecies as reported in the current scientific literature. The present distribution may be greatly reduced from this historic range. The “Historic range” column is nonregulatory and does not imply any application, or limitation of application, of the prohibitions of the Act or implementing regulations. Such prohibitions apply to all individuals of the listed species, as defined by the regulatory columns.

(2) “Citations” column: The “Citations” column contains the

volume, document starting page number, and publication date of the **Federal Register** publication(s) in which a species was listed or reclassified, a rule was promulgated under section 4(d) of the Act, or an experimental population was established under section 10(j) of the Act. At least since 1973, these documents have included a statement indicating the basis for the listing, as well as the effective date(s) of the listing or other rules that changed how the species was identified in the list in paragraph (h) of this section. The “Citations” column replaces the “When listed” column and its footnotes used in the tables in pre-2008 publications of this list.

(3) “Special rules” and “Critical habitat” columns: The “Special rules” and “Critical habitat” columns provide cross-references to other sections in part 17 or parts 222, 223, or 226 of chapter II of this title where critical habitat and special rules are found. The “Special rules” column also describes experimental populations and indicates whether they are essential or nonessential. Experimental populations are a separate listing, with one of the following symbols in the “Status” column: “XE” for an essential experimental population and “XN” for a nonessential experimental population. The term “NA” (not applicable) appearing in the “Special rules” or “Critical habitat” column indicates that there are no special rules or critical habitat for that particular species. However, all other appropriate rules in part 17, parts 217–226 of chapter II, and part 402 of chapter IV of this title still apply to that species. In addition, other rules in this title could relate to such species (for example, port-of-entry requirements). We make no claim that the “Special rules” column includes references to all the regulations of the Services that might apply to the species, or that it includes applicable regulations of other Federal agencies or State or local governments.

(g) The Services will rely to the extent practicable on ITIS and standard references adopted for CITES. ITIS is an authoritative taxonomic database (<http://www.itis.gov>) maintained by a partnership of U.S., Canadian, and Mexican agencies; other organizations; and taxonomic specialists. CITES is an international agreement among member countries to ensure that international trade in specimens of wild animals and plants does not threaten their survival (see also 50 CFR part 23).

(h) The “List of Endangered and Threatened Wildlife” is provided below:

Species		Status	Where listed	Historic range	Citations	Special rules	Critical habitat
Common name [ESU or DPS]	Scientific name						

\* \* \* \* \*

3. Amend §17.12 by revising paragraphs (a) through (g), and the introductory text and the column headings in the List of Endangered and Threatened Plants in paragraph (h), to read as follows:

**§ 17.12 Endangered and threatened plants.**

(a) The list in paragraph (h) of this section contains the names of all plant species determined by the Services to be endangered or threatened. It also contains the names of plant species treated as endangered or threatened because they are similar in appearance to and may be confused with endangered or threatened species (see § 17.50 *et seq.*). The “Common name,” “Scientific name,” and “Status” columns provide regulatory information; together, they define the plant species within the meaning of the Act. The listing of a particular taxon includes all lower taxonomic units (see §17.11(a) for an example).

(b) “Scientific name” column: The Services use the most recently accepted scientific name. In cases where confusion might arise, one or more synonyms are provided in parentheses within the “Scientific name” column. The Services will rely to the extent practicable on the Integrated Taxonomic Information System (ITIS) to determine a species’ scientific name. ITIS incorporates the naming principles established by the International Code of Botanical Nomenclature. For details, see paragraph (g) of this section. If the scientific name in ITIS differs from the scientific name adopted for use under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the CITES nomenclature will be provided in brackets “[ ]” within the “Scientific name” column following the ITIS nomenclature.

(c) “Common name” column: Although common names are included, they cannot be relied upon for identification of any specimen, since they may vary greatly in local usage. In cases where confusion might arise, one or more synonyms are provided in parentheses within the “Common name” column.

(d) “Status” column: Within the “Status” column, the following abbreviations are used:

Abbreviation	Regulatory Status the Abbreviation Represents
E	Endangered
T	Threatened
E (S/A)	Endangered based on similarity of appearance to an existing endangered species
T (S/A)	Threatened based on similarity of appearance to an existing threatened species
XE	Essential experimental population
XN	Nonessential experimental population

(e) “Where listed” column: The “Where listed” column sets forth the geographic area where the species is listed for purposes of the Act. The term “Entire” is defined as “Wherever found.”

(f) The “Historic range”, “Citations”, “Special rules”, and “Critical habitat” columns are for informational purposes only.

(1) “Historic range” column: The “Historic range” column indicates the known general distribution of the species or subspecies as reported in the current scientific literature. The present distribution may be greatly reduced from this historic range. The “Historic range” column is nonregulatory and does not imply any application, or limitation of application, of the prohibitions in the Act or implementing regulations. Such prohibitions apply to all individuals of the listed species, wherever found.

(2) “Citations” column: The “Citations” column contains the volume, document starting page number, and publication date of the **Federal Register** publication(s) in which a species was listed or reclassified, a rule was promulgated under section 4(d) of the Act, or an experimental population was established under section 10(j) of the Act. At least since

1973, these documents have included a statement indicating the basis for the listing, as well as the effective date(s) of the listing or other rules that changed how the species was identified in the list in paragraph (h) of this section. The “Citations” column replaces the “When listed” column and its footnotes used in the tables in pre-2008 publications of this list.

(3) “Special rules” and “Critical habitat” columns: The “Special rules” and “Critical habitat” columns provide cross-references to other sections in part 17 or parts 222, 223, or 226 of chapter II of this title where critical habitat and special rules are found. The “Special rules” column also describes experimental populations and indicates whether they are essential or nonessential. Experimental populations are a separate listing, with one of the following symbols in the “Status” column: “XE” for an essential experimental population and “XN” for a nonessential experimental population. The term “NA” (not applicable) appearing in the “Special rules” or “Critical habitat” column indicates that there are no special rules or critical habitat for that particular species. However, all other appropriate rules in parts 17, parts 217–226 of chapter II, and part 402 of chapter IV of this title still apply to that species. In addition, there may be other rules in this title that relate to such species (for example, port-of-entry requirements). We make no claim that the “Special rules” column includes references to all the regulations of the two Services that might apply to the species, or that it includes applicable regulations of other Federal agencies or State or local governments.

(g) The Services will rely to the extent practicable on ITIS and standard references adopted for CITES. ITIS is an authoritative taxonomic database (<http://www.itis.gov>) maintained by a partnership of U.S., Canadian, and Mexican agencies; other organizations; and taxonomic specialists. CITES is an international agreement among member countries to ensure that international trade in specimens of wild animals and plants does not threaten their survival (see also 50 CFR part 23).

(h) The “List of Endangered and Threatened Plants” is provided below:

Species		Status	Where listed	Historic range	Citations	Special rules	Critical habitat
Scientific name	Common name						

\* \* \* \* \*

Dated: July 16, 2008.  
**Kenneth Stansell,**  
*Acting Director, Fish and Wildlife Service.*  
[FR Doc. E8-17533 Filed 8-4-08; 8:45 am]  
**BILLING CODE 4310-55-S**