DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 10, 13, 17, and 23

RIN 1018–AD87

Revision of Regulations for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reproposal.

SUMMARY: We, the Fish and Wildlife Service, propose to revise the regulations that implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a treaty that regulates international trade in certain protected species. The United States was one of the original signatories to CITES, which has been in effect since July 1, 1975. CITES uses a system of permits and certificates to help ensure that international trade is legal and does not threaten the survival of wildlife or plant species in the wild. Since the existing regulations were finalized, the CITES Conference of the Parties (CoP) has held a number of meetings where resolutions have been adopted. The Parties adopt resolutions as a means of standardizing interpretation and implementation of the provisions of the Treaty. On May 8, 2000, we proposed a revision of the regulations to incorporate applicable resolutions, as appropriate, adopted through the tenth meeting of the Conference of the Parties to CITES (CoP10). This new proposal includes consideration of the comments received in response to the 2000 proposal and incorporates appropriate resolutions adopted at CoP11 through CoP13. Revised regulations will help us more effectively promote species conservation, continue to fulfill our responsibilities under the Treaty, and help those affected by CITES to understand how to conduct lawful international trade in CITES species.

DATES: In preparing the final decision on this proposed rule, we will consider all comments received by June 19, 2006.

Comments on the information collection aspects of this proposed rule will be considered if received by June 19, 2006. The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove information collection, but may respond after 30 days. Therefore, to ensure maximum consideration, your comments should be received by OMB by May 19, 2006.

ADDRESSES: You may send comments, identified by RIN 1018–AD87, by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *part23@fws.gov.*
- Fax: (703) 358–2280.
- Mail or hand delivery: Dr. Peter Thomas, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203.

See Public Comments Solicited at the end of **SUPPLEMENTARY INFORMATION** for further information about submitting comments. All comments received will be available for public inspection by appointment from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the above address.

Comments specific to the information collection aspects of this proposed rule should be submitted to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395–6566 (fax); *OIRA_DOCKET@omb.eop.gov* (e-mail). Please provide a copy of your comments to the U.S. Fish and Wildlife Service's Information Collection Officer, 4401 N. Fairfax Drive, MS 222 ARLSQ, Arlington, Virginia 22203; (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: Dr. Peter Thomas, at the above address (telephone, (703) 358–2093; fax, (703) 358–2280).

SUPPLEMENTARY INFORMATION:

What Acronyms and Abbreviations Are Used in This Rule?

AECA African Elephant Conservation Act
APHIS U.S. Department of Agriculture, Animal and Plant Health Inspection Service
CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora, also referred to as the Convention or Treaty
CBP Department of Homeland Security, U.S. Customs and Border Protection
CFR Code of Federal Regulations
CoP CITES Conference of the Parties or meeting of the Conference of the Parties
ESA Endangered Species Act
FOIA Freedom of Information Act
FWS U.S. Fish and Wildlife Service
IATA LAR International Air Transport Association Live Animals Regulations
ISO International Organization for Standardization
WBCA Wild Bird Conservation Act

Background

CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Treaty on September 13, 1973, and it entered into force on July 1, 1975, after the required 10 countries had ratified it. Section 8A of the ESA, as amended in 1982, designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. These authorities have been delegated to the FWS. The U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10465, February 22, 1977), after the first CoP was held. The CoP meets every 2 to 3 years to vote on proposed resolutions and decisions that interpret and implement the text of the Treaty and on amendments to the listing of species in the CITES Appendices. Currently 169 countries have ratified, accepted, approved, or acceded to CITES; these countries are known as Parties.

Previous proposed rule and comments received: We published a proposed rule on May 8, 2000 (65 FR 26664) (2000 proposal), to incorporate changes from CoP2 through CoP10. The 2000 proposal was never finalized, and we are here proposing a new rule, which includes consideration of the 206 comments we received on the 2000 proposal. A little over half of the comments were general comments. Most of these were submitted by orchid hobbyists, commercial orchid growers, or taxidermists. We also received 88 letters with specific comments from 42 individuals, 35 organizations, and 11 governmental agencies. We reviewed all of the comments on the 2000 proposal and addressed them where appropriate in this current proposed rule. We received conflicting recommendations, and not all comments were incorporated into this new proposal.

Current proposed rule: We propose to revise the current regulations contained in 50 CFR part 23 to incorporate, as appropriate, applicable resolutions adopted at CoP2 through CoP13 which continue to remain in effect. In this proposed rule, we retained most of the general information in the current 50 CFR part 23. We are reproposing the regulations to include certain resolutions adopted at CoP11 through CoP13, and to incorporate changes that resulted from public comment on the 2000 proposal. We retained the organizational structure set out in the 2000 proposal in this new proposed rule.

Resolution consolidation and incorporation: Since 1976, the Parties have adopted 256 resolutions or revisions to resolutions. In 1994, the Parties began an effort to consolidate some of these resolutions. Some resolutions were no longer relevant, and

others needed to be combined because several resolutions were adopted at different CoPs on the same or similar subjects. As a result of this process, there are currently 79 resolutions in effect. This proposed rule incorporates certain of these consolidated resolutions, as appropriate and relevant to U.S. implementation of the Treaty. We cite the current numbers of resolutions since previous resolutions have been renumbered. This allows the reader to easily access the documents currently in effect on the CITES Web site (*http://www.cites.org*).

One commenter thought we said in the 2000 proposal that we were incorporating the provisions of treaties other than CITES, such as the Convention on Biological Diversity, and questioned the legal basis for such inclusion. To clarify, these regulations are based on CITES and do not implement other treaties, including the Convention on Biological Diversity. Two commenters asked us to develop a plan to regularly review and update the regulations after each CoP. We plan to evaluate newly adopted decisions and resolutions after each CoP and will update the regulations when appropriate and necessary.

Stricter national measures: Article XIV of the Treaty explicitly recognizes the rights of Parties to adopt stricter national measures to restrict or prohibit trade, taking, possession, or transport of any wildlife or plant species. Resolution Conf. 11.3 (Rev. CoP13) recommends that Parties make use of stricter national measures if they have determined ''that an Appendix-II or -III species is being traded in a manner detrimental to the survival of that species' or is being ''traded in contravention of the laws of any country involved in the transaction.'' The United States has adopted stricter national measures, such as the ESA, Marine Mammal Protection Act, and Lacey Act.

One commenter pointed out that the adoption of a resolution endorsing stricter national measures does not in itself confer authority on a Party to undertake regulatory actions that are not otherwise provided for by national law. We acknowledge that it is the adoption of the stricter national measures by legislative or executive action that provides the legal basis for a country to take an action.

The same commenter considered this provision one of the major problems with CITES: Because each Party adopts its own set of requirements regarding imports and exports, the result is conflicting CITES requirements among Parties. The commenter also thought the imposition of more restrictive import requirements may be considered an intrusion on an exporting country's sovereignty. As outlined in the preamble to CITES, ''peoples and States are and should be the best protectors of their own wild fauna and flora.'' CITES recognizes the sovereign right of a country to regulate trade by passing stricter national measures to help in the conservation of species. Under CITES, an exporting country does not have a sovereign right to override an importing country's laws. When a Party sends information to the Secretariat on how its stricter national measures will affect trade in CITES species, the Secretariat provides that information to other Parties through a notification. These notifications are available to the public on the CITES Web site.

Plain language: We revised the text of the previous regulations using plain language to make the regulations clearer and easier to use. One commenter considered them to be written at too high a reading level, and thought we should have several members of the general public read the regulations for clarity. Several commenters, however, found the overall approach to be user friendly and easy to understand, and thought the use of charts and tables was helpful. We believe the regulations use an appropriate level of language to lay out the technical requirements of a multilateral treaty.

Section-by-Section Analysis

The following parts of the preamble explain the proposed rule and present a discussion of the substantive issues of each section and responses to public comments on the 2000 proposal.

What Are the Proposed Changes to 50 CFR Parts 10, 13, and 17?

Definitions (section 10.12): We propose to revise the definition of the ''United States'' to reflect changes in areas under U.S. jurisdiction.

General permit procedures (section 13.1): We propose to revise section 13.1 to reflect that, under very limited circumstances, permits for certain CITES shipments may be issued after the activity has occurred (see proposed section 23.53 on retrospective documents).

Application procedures (section 13.11): We propose to amend the paragraphs on permit processing fees (section 13.11(d)(1) and (4)) to clarify that the fee must be paid in U.S. dollars and to include requests to participate in the Plant Rescue Center Program and requests for approval of a CITES export program for American ginseng, certain furbearers, or American alligator by a State or Tribe as described in the proposed revision to 50 CFR part 23. We also propose to add Introduction from the Sea and Registration of Appendix-I Commercial Breeding Operations which were inadvertently left out of the fee schedule for all FWS permits published on April 11, 2005 (70 FR 18311). The proposed processing fees are to help defray the cost of administering the permit program. We based the fees on a number of factors, including the complexity of processing the permit type, whether the permittee stands to benefit commercially from the permit, and whether the permitted activity serves the public interest.

As noted in our final rule on FWS permit fees, we will not charge a fee to any Federal, tribal, State, or local government agency. Therefore, we propose not to charge a fee to a State or Tribe seeking to gain approval of a CITES export program. We also propose not to charge a fee to add an institution to the Plant Rescue Center Program because this is a voluntary program designed to place live plant specimens that have been confiscated upon import or export, and thereby helps the U.S. fulfill its CITES implementing responsibilities.

U.S. address for permit applicants (section 13.12): We propose to revise this section to require an applicant to provide an address within the United States when applying for a permit. In a number of situations, a business or an individual in a foreign country has requested a CITES document from us for a shipment the entity owned, but that is being shipped out of the United States. We cannot issue the CITES document showing the exporter's foreign address for items that are leaving the United States.

For commercial activities conducted by applicants that reside or are located outside of the United States, the name and address of the commercial entity's agent in the United States must be included. One commenter questioned whether the agent must formally agree to accept service for the foreign entity. We note that an applicant may select any agent as long as the agent is authorized to receive service. Another commenter suggested that we define what constitutes ''conducting commercial activities'' to clarify whether the import of a personal sport-hunted trophy would be considered conducting a commercial activity. We do not believe it is necessary to define ''conducting commercial activities'' because we have defined ''commercial.'' We consider any transaction involving a seller and a buyer, or any retail or wholesale transaction that provides a valuable consideration in exchange for

the transfer of a wildlife or plant specimen as conducting a commercial activity. However, a hunter who exports his or her personal sport-hunted trophy would not be involved in a commercial activity that would require an agent under this section.

Two commenters questioned what U.S. address should be used for an individual staying at a hotel or for tourists visiting the United States. For these individuals, we would accept a U.S. address where the individual is temporarily residing, including a hotel. Another commenter was concerned that foreign individuals may not have a social security number and another that some applicants do not have fax or e-mail information. We clarify that this information is only required if available.

Continuation of permitted activity during renewal (section 13.22(c)): We propose to revise this paragraph that sets out the general permit procedures that allow continuation of the permitted activity after application for renewal. One commenter suggested all businesses should be required to renew permits before they expire. The regulations in 50 CFR part 13 follow the Administrative Procedure Act (5 U.S.C. 558(c)). When a permittee has made timely and sufficient application for renewal of a permit for an activity of a continuing nature, the permit does not expire until the agency has made a final determination on the application.

CITES documents do not cover an activity of a continuing nature and are considered void upon expiration. Therefore, we propose to revise this section to clarify that a permittee may not use a CITES document once it has expired. For other permits of a continuing nature, however, we propose to retain the process that allows the permittee to conduct permitted activities during renewal if the conditions outlined in 50 CFR part 13 are met.

Another commenter suggested that the FWS include a 60-day time limit to respond to an applicant. We refer the commenter to the current regulations that already provide a general expectation of processing times in section 13.11(c). We process applications as quickly as possible taking into account the number and complexity of applications received and our resources.

Maintenance of records (section 13.46): Permittees are required to maintain records. However, our authority to inspect records is limited to areas within the United States. Therefore, to ensure that we are able to carry out our responsibility to inspect records when necessary, we propose to revise section 13.46 to require permittees who reside or are located in the United States and permittees who reside or are located outside the United States and are conducting commercial activities within the United States to maintain records in this country.

Import exemption for threatened, Appendix-II wildlife (section 17.8): We propose to add this new section to 50 CFR part 17. The ESA in Section 9(c)(2) sets out an exemption to the import prohibition for threatened, Appendix-II wildlife when the taking and export meet the provisions of CITES and the import is not made in the course of a commercial activity. This ESA provision only exempts import; it does not exempt acquisition in foreign commerce in the course of a commercial activity. Therefore, we require both the acquisition and import to be noncommercial because we consider any transfer of a specimen in pursuit of gain or profit to be a commercial activity. Thus, we are proposing that a person who is importing a specimen under this provision must provide documentation to the FWS at the time of import that shows the specimen was not acquired in foreign commerce in the course of a commercial activity.

One commenter stated that this section violates the ESA and should be deleted because a regulation permitting import of sport-hunted trophies of threatened species is not consistent with the duty to conserve such species. We disagree with the commenter because we believe that this section faithfully implements section 9(c)(2) of the ESA, and the Congress has stated on frequent occasions that scientifically based hunting programs can be conducted for threatened species in foreign countries consistent with the conservation of those species.

Some commenters seemed to think that this section only applied to sport-hunted trophies, which is not the case. The proposed rule clarifies that section 17.8 applies to live and dead wildlife.

Two commenters suggested that the exemption for ''personally taken trophies'' should not allow trophies taken ''for the importer,'' but only allow trophies taken ''by the importer.'' We agree, but note that this proposed section no longer defines ''sport-hunted trophy.'' Instead, it requires that a specimen meet the provisions of 50 CFR part 23, which defines the term, including the requirement that the trophy must be taken by the importer, exporter, or re-exporter.

Two commenters stated that threatened wildlife species that have been transferred from Appendix-I to Appendix-II subject to a substantive annotation under CITES should qualify for the import exemption in section 9(c)(2) of the ESA, especially in the case of sport-hunted trophies of African elephants in Botswana, Namibia, South Africa, and Zimbabwe. They expressed concern that the apparent effect of proposed section 17.8 would be to require the issuance of threatened species import permits for personal sport-hunted trophies of Appendix-II African elephants, regardless of the statutory exemption in section 9(c)(2) of the ESA. We agree that no ESA import permits are required for trophies of Appendix-II species that are imported for personal use and that are properly declared in accordance with paragraphs (d), (e), and (f) of section 9 of the ESA. Appropriate corrections have been made in the new proposed rule. However, it is important to note that if a threatened species, such as the African elephant, has a special rule, proposed section 17.8 does not apply; the provisions of the special rule apply.

One commenter questioned the legality of proposed section 17.8 because any special rule promulgated by the FWS that imposes restrictions on the import of threatened, Appendix-II fish or wildlife specimens that are tighter than the requirements imposed by CITES is not authorized except in ''very narrow and limited circumstances'' under section 9(c)(2). The commenter argued further that existing import restrictions in special rules for threatened species ''become inapplicable by operation of law'' when such species are transferred from Appendix-I to Appendix-II. We disagree. Import restrictions adopted by special rule for threatened species are based upon an explicit determination that such measures are ''necessary and advisable to provide for the conservation'' of such species. See section 4(d) of the ESA. Once that determination is made, the protective regulations that set out those measures must be promulgated and enforced to carry out the conservation purposes of the ESA for threatened species. Any presumption of lawful import that otherwise would result from the operation of section 9(c)(2) of the ESA is rebutted on the basis of the rulemaking record and our administrative finding. As noted by the United States District Court for the Western District of Texas in *Safari Club International* v. *Babbitt* (Aug. 12, 1993), no provision of the ESA indicates that ''the Secretary's duty and authority to issue protective regulations [special rules] is preempted, circumscribed, or modified by section 9(c)(2).'' See slip

op. at 29–30. The exemption, therefore, would not apply to species that have a special rule in 50 CFR part 17, such as the argali in section 17.40(j).

Special rule for American alligator (section 17.42(a)): We propose to revise the special rule for American alligator for clarity, to renumber the paragraphs, and to delete outdated information. We propose to change the term ''hides'' to ''skins'' to be consistent with the language in 50 CFR part 23 and in the special rule for threatened crocodilians. For consistency, we also propose to apply the definitions of ''crocodilian skins'' and ''crocodilian parts'' proposed in 50 CFR part 23 to the American alligator special rule. In addition, we clarify that marking and tagging requirements for American alligator meat and skulls are different from those for other threatened crocodilians. We also propose to remove specific tagging language and instead direct the public to the CITES tagging requirements in 50 CFR part 23.

Special rules for threatened crocodilians and caiman (sections 17.42(c) and (g)): We propose to delete section 17.42(g) for threatened caiman, and add the requirements of that special rule into section 17.42(c) for threatened crocodilians. We propose to combine these special rules to bring them up-to-date and harmonize them with the proposed language in Subpart E of 50 CFR part 23 regarding crocodilian tagging and import and export requirements. This results in one special rule that covers all threatened crocodilians except the American alligator.

We propose to harmonize the definitions of ''skins'' and ''parts'' and clarify that skins of sport-hunted trophies are included in the definition of ''skins.'' The proposed revisions would move the definitions of ''crocodilian skins'' and ''crocodilian parts'' to 50 CFR part 23 and incorporate them by reference in the special rule to avoid redundancy. We propose to not define ''caiman product'' currently in section 17.42(g). We think the definition is unnecessary since the common usage of the term is clear, *i.e.,* products include processed or manufactured items, including curios and souvenirs. In addition, the use of the phrase ''that are ready for retail sale'' currently found in the definition of ''caiman product'' is misleading and appears to narrow the definition of what caiman products are regulated by the special rule. We propose to remove the specific CITES tagging language and instead direct the public to 50 CFR part 23 for CITES tagging requirements. We propose to make the following technical corrections: (a) Delete the definition of ''country of export'' because the rule references 50 CFR part 23, which defines ''export;'' (b) delete the phrase ''or present for export or re-export'' currently found in the threatened caiman special rule and instead use the phrase ''to attempt to'' found in the ESA regulations; and (c) delete the definition of and references to the CITES ''tagging resolution'' and instead refer simply to the Convention.

We also propose to allow meat of saltwater crocodiles originating in Australia and Appendix-II Nile crocodiles to be traded without tags as is currently allowed for threatened caiman. We clarify that this includes all forms of meat by not using the phrase ''processed meat.'' We do not believe that international trade in crocodilian meat poses a significant conservation risk, but we note that CITES documents still would be required for any meat shipments. The proposed revisions to the special rule also would prohibit import into the United States of live specimens and viable eggs of any threatened crocodilians without an ESA import permit. Currently this provision applies only to threatened caiman. This revision is necessary and advisable for the conservation of all listed crocodilians which cannot withstand pressure from non-native crocodilians.

We are also proposing to amend this combined special rule to include yacare caiman status reporting requirements for range countries. In our final rule (65 FR 25867) published on May 4, 2000, we noted that the Service depends primarily on range countries to monitor yacare caiman. We also said that to monitor the status of yacare caiman, governments of the range countries (Argentina, Bolivia, Brazil, and Paraguay) wishing to export such specimens to the United States for commercial purposes must provide us every two years, for the following 10 years, with the most recent information available on the status of the species, gathered by the respective range countries to fulfill their CITES scientific and management requirements. The first submission of status reports was due December 31, 2001. We provided a list of information that must be included in the range country status report. However, we unintentionally excluded from the regulatory language the reporting requirements as discussed in the preamble. We propose to add these reporting requirements to correct that error. We also propose to not limit the submission of biannual status reports to 10 years beyond the publication of the final rule. The collection of this information is important in determining the most current conservation status of the species. Indeed, it would be used to consider whether the species is recovering and may warrant delisting. We have also added a section describing conditions under which trade restrictions can be applied to the import of yacare caiman from range countries, including the failure to submit the reports or failure to respond to requests for additional information. These conditions are necessary and advisable for the conservation of the species, and are similar to conditions for other threatened species with special rules such as the *Vicugna vicugna* in section17.40(m)(4)(ii).

What Are the Proposed Changes to Subpart A of 50 CFR Part 23—Introduction?

We propose to expand this subpart to give a clearer picture of our responsibilities under CITES. We also propose to delete some information from the current regulations, such as the list of countries (section 23.4) that are Parties. To keep this list of Parties up to date, we would need to continually revise it when new countries join or when a Party's contact information changes. The list of Parties (including addresses and telephone and fax numbers) is available from us or on the CITES Web site (see proposed section 23.7). As changes occur, these sources can be more quickly and easily updated than issuing a revised rule.

Purposes (section 23.1): This proposed section outlines the aim of CITES as stated in the preamble to the Treaty. The Parties acknowledge that wildlife and plants have aesthetic, scientific, cultural, recreational, and other nonconsumptive values as well as economic importance. One commenter stated that the ESA is different from CITES and did not understand the reference to the ESA in this section. We agree that CITES and the ESA are different. However, the ESA is the U.S. law that provides the authority for the United States to carry out its responsibilities under CITES.

Scope (section 23.2): This proposed section consists of a table with a series of questions and answers to help people determine if CITES regulations apply to their proposed activities. Decisions involve whether a specimen is listed by CITES, is exempt from CITES, is involved in a type of international trade regulated by CITES, and was illegally acquired or traded in contravention of CITES.

The possession and domestic trade of legal specimens are not regulated by CITES unless the specimens had been traded internationally under specific

conditions of a CITES document and the conditions still apply. The possession and domestic or international trade of illegally imported specimens, however, are prohibited. Further, any possession of offspring of illegal specimens is also considered illegal. Two commenters considered this statement concerning offspring to be unacceptable, with one of the commenters suggesting that we establish a grace period for illegal offspring. We do not agree with this suggestion since we treat specimens traded contrary to CITES the same as other forms of illegally acquired goods. A specimen that has been traded contrary to CITES becomes contraband at the time it enters the jurisdiction of the United States. If such a specimen makes its way into the United States, the individual or business holding or having control of the specimen has no custodial or property rights to the specimen and, therefore, no right to possess, transfer, breed, or propagate such specimens.

One commenter expressed confusion as to why we had included intrastate and interstate trade if this regulation applies only to international trade. Although CITES regulates international trade, we wanted to ensure that the public knows that it is unlawful under section 9(c)(1) of the ESA to possess any CITES specimen that was traded contrary to CITES. We clarify that intrastate or interstate movement of specimens traded contrary to CITES involves possession of unlawfully traded specimens and is, therefore, prohibited.

We further note that these prohibitions are not new with this proposed rule. The regulatory requirements for CITES specimens, including possession, have been in place since 1977, and the statutory prohibition has been in effect since July 1975.

Other applicable regulations (section 23.3): We reference in this proposed section applicable regulations in other parts of subchapter B and title 50 since many CITES species are covered by one or more other laws. One commenter suggested that we include other Federal laws, such as the Marine Mammal Protection Act (MMPA) Amendments of 1994, the Rhinoceros and Tiger Conservation Act (RTCA), and the African Elephant Conservation Act (AECA). We did not adopt this suggestion. The MMPA regulations contained in 50 CFR part 18 are already referenced, and permit requirements are administered consistent with the 1994 Amendments to the MMPA. The AECA contains prohibitions that affect the trade in African elephant ivory, and the RTCA contains prohibitions regarding the import, export, and sale of products containing or labeled or advertised as containing products derived from rhinoceros and tiger, but these laws have no separate implementing regulations. This section refers readers to other regulations that might apply to CITES species and is not the appropriate place to cross-reference all laws that may have an impact on trade.

Another commenter suggested that we include a reference to State and local regulations. Since all CITES documents issued by us are conditioned such that all applicable State, tribal, and local requirements must be met, we propose to add a new paragraph (d) to notify the public about the possible application of these laws. Under Article XIV(1)(a) of the Treaty, each Party retains the right to adopt stricter national measures that regulate or prohibit the import, export, taking, possession, or transport of CITES species. More restrictive State or local laws that regulate or prohibit the import, export, or re-export of such species, or their parts, products, or derivatives, must be observed for CITES species that are not listed under the ESA. See *H.J. Justin & Sons, Inc.* v. *Deukmejian,* 702 F.2d 758 (9th Cir. 1983), *cert denied,* 464 U.S. 823. However, in instances where a CITES species is also listed as endangered or threatened under the ESA, any State or local law that would effectively prohibit the import or export of, or interstate or foreign commerce in, specimens of such species is void to the extent that such trade is authorized under the ESA, its implementing regulations, or any ESA permit or exemption. *See* 16 U.S.C. section 1535(f); *Man Hing Ivory & Imports, Inc.* v. *Deukmejian,* 702 F.2d 760 (9th Cir. 1983).

Appendices I, II, and III (section 23.4): Species are listed in one of three Appendices that provide for different levels of regulation and have different requirements for permits and certificates (CITES documents). This section briefly defines Appendices I, II, and III. One commenter stated that all exemptions should be included in this section. We revised this section to provide the basic definitions for the Appendices based on those in the Convention rather than discuss exemptions in this section. Exemptions that may apply are discussed in proposed section 23.20(d).

Definitions (section 23.5): We propose to add a number of definitions. Whenever possible we have defined terms using the wording of the Treaty and the resolutions. Most defined terms are included in this section, but some less frequently used terms are defined in the section that applies to a specific situation. For example, ''caviar'' is defined in section 23.71 on trade in sturgeon caviar, not in the general definition section.

Definition of applicant: One commenter suggested that we define ''applicant'' to exclude any person acting solely as a freight broker, freight consolidator, customhouse broker, or carrier. The commenter suggested that we should not issue permits to these entities because they are not the owners of the specimen and are not required to have import/export licenses. Although in most instances the applicant is the owner of the specimen, we decline to make ownership a requirement for obtaining a permit. We believe that an entity, such as a broker, is not precluded from being an applicant just because he or she is not required to obtain an import/export license under 50 CFR part 14.

We are not proposing to define ''applicant'' in this part since the general permit regulations in 50 CFR 13.1 provide sufficient guidance concerning the applicant. An applicant must have a valid connection to the transaction and be the person who is responsible for meeting the terms and conditions of the permit. When a broker, attorney, taxidermist, or other person applies for a permit on behalf of the owner of the specimen, he or she must establish a connection to the transaction through a contract or power of attorney and, along with the person represented, becomes the responsible party to meet the terms and conditions of the permit.

Definitions of bred for commercial purposes and bred for noncommercial purposes: We propose to define these two terms as they relate to the export and re-export of Appendix-I wildlife specimens. These definitions are the result of in-depth discussions by the Parties over the registration of commercial breeding facilities, which resulted in the adoption of Resolution Conf. 12.10 (Rev. CoP13). The Treaty provides in Article VII(4) that specimens of Appendix-I species bred-in-captivity for commercial purposes shall be deemed to be in Appendix II (see proposed section 23.46). It also provides in Article VII(5) that specimens that are bred-in-captivity may be issued an exemption certificate (see proposed section 23.41). Although the Treaty does not use the term ''bred for noncommercial purposes'' in this paragraph, the Parties have agreed to use this term as the intended meaning of Article VII(5) because Article VII(4) addresses bred for commercial purposes. In Resolution Conf. 12.10 (Rev. CoP13), the Parties agreed to strict definitions for these two terms.

Facilities that are breeding for commercial purposes must be registered to export specimens. Facilities that are breeding for noncommercial purposes must be participating in a cooperative conservation program with one or more of the range countries for that species.

Definition of captive-bred: We propose to define this term to help distinguish wildlife bred and born in captivity from the CITES definition of ''bred-in-captivity.''

Definitions of coral (dead, fragments, live, coral rock, and coral sand): The Parties agreed at CoP11 to a number of definitions of coral because of its unique nature, namely that coral skeletons are persistent and that coral forms the foundations of reefs. The definitions provide the basis of whether CITES regulates a specific form of coral and what scientific name must appear on CITES documents.

Definition of country of origin: The term ''country of origin'' is defined in 50 CFR 10.12. We are proposing to define the term in section 23.5 for CITES purposes to include plants. At CoP13, the Parties agreed that, in the case of a plant specimen that ceases to qualify for an exemption under CITES (*e.g.*, plants grown from exempt seeds), the country of origin would be the country in which the specimen ceased to qualify for the exemption. One commenter opposed the inclusion of plants in the definition of ''country of origin'' because a person cannot determine country of origin for artificially propagated species or parental stock of orchid hybrids. We propose to adopt the definition to include plants since CITES requires us to obtain and report information on country of origin for specimens in international trade. The country of origin is an important piece of information used to evaluate the impact of trade and to track the legal movement of wildlife and plants. We note that the United States would be the country of origin for plants artificially propagated in the United States.

Definitions of import, export, re-export, international trade, and shipment: We use these basic terms throughout the regulations and define them to reflect the way the terms are used by the Parties. These definitions refer to international movement of wildlife and plant specimens, whether the purpose is commercial or noncommercial. ''Import'' and ''export'' are further defined in 50 CFR part 14. We have also defined the term ''shipment'' to eliminate confusion.

Definition of introduction from the sea: In 2000, we proposed to define this term. One commenter wanted us to re-examine the proposed definition since considerable discussion of the term occurred at CoP11. We believe, however, that it is important to define the term in the regulations at this time with the language in Article I(e) of the Treaty. We recognize that the Parties may decide on an interpretation of this term in the future, but in the meantime the regulations need to clarify when the prohibition applies and when and what types of CITES documents are needed for international trade. Over the last few years, a number of important events have occurred related to introduction from the sea. At CoP11 and CoP13, the Parties considered proposed resolutions on introduction from the sea and were unable to reach consensus on a definition. At CoP12, the Parties agreed to look at marine issues, including introduction from the sea, in consultation with the Food and Agriculture Organization of the United Nations (FAO). In May and June of 2004, FAO convened two Expert Consultations to consider introduction from the sea and other issues related to marine species covered by CITES. At CoP13, the Parties agreed to convene a workshop on introduction from the sea, taking into account the work done through FAO and the relevant documents and discussions from previous CoPs. The workshop was held in November–December 2005. The CITES Secretariat will prepare a document on introduction from the sea, based on discussions at the workshop, for consideration by the Parties at CoP14.

Definitions of Management and Scientific Authorities: The current regulations (section 23.3) define the Management Authority in terms of Parties only and do not define Scientific Authority. We propose to define both and to include non-Parties in the definitions. If non-Parties wish to trade with Parties, they must have entities officially designated that fulfill the roles of Management and Scientific Authorities to make the required findings and to issue comparable CITES documents. One commenter stated that including non-Parties in the definition of Management and Scientific Authorities is incorrect under the Convention, has no basis in current law, and would violate the Administrative Procedure Act. We do not agree, and we endorse the steps taken by the CITES Secretariat to ask non-Parties that wish to trade with Parties to provide information on what authority is competent to provide comparable findings and documentation. See the discussion in the preamble on non-Party documents (section 23.25).

Definition of parental stock: In 2000, we proposed to define the terms ''founder stock'' and ''parental stock.'' However, we now propose no longer to use the term ''founder stock'' in these regulations because the term is not used in the resolutions adopted by the CITES Parties. Thus, based on the language in Conf. 9.19 (Rev. CoP13) on nursery registration and Conf. 12.10 (Rev. CoP13) on registration of operations that breed Appendix–I wildlife for commercial purposes, we are proposing to use the term ''parental stock'' to mean the original breeding or propagating specimens that produced subsequent generations of captive specimens.

Definitions of permit, certificate, CITES document, and CITES exemption document: The text of the Treaty uses the terms ''permits'' (for import and export) and ''certificates'' (for re-export, exemptions, certificates of origin, and introduction from the sea) in referring to documents issued by a CITES Management Authority. However, some Parties refer to all CITES documents as ''permits.'' For this reason, we propose to define the term ''CITES documents'' to refer to all permits and certificates that are issued by a Management Authority. We also propose to expand the definition of ''permit'' in this section from the definition of ''permits'' in 50 CFR 10.12 to include documents issued by any Management Authority, not just documents ''issued by the FWS.''

Definition of precautionary measures: When there is uncertainty regarding the status of a species or the impact of trade on the conservation of a species we are cautious and act in the best interest of the conservation of the species in making decisions on CITES listings and permit findings. We define and use the term ''precautionary measures'' to describe this approach. One commenter stated that the definition is ambiguous and appears to be a new policy. It is not a new policy. While the proposed definition is taken from the concept described in Annex 4 of Resolution Conf. 9.24 (Rev. CoP13), we use it in these regulations because it describes the way we have always approached non-detriment findings and species listing decisions when there is uncertainty regarding the status of a species or the impact of trade on the conservation of a species. The use of precautionary measures in these instances is consistent with the intent of the Treaty, which is to protect species against over-exploitation. We disagree that the definition is ambiguous and we believe the proposed definition represents an important concept in the effective implementation of CITES.

Definition of ranching: We are not proposing to define the term at this time. At CoP13, the Animals and Plants Committees (committees established by the Parties to provide administrative and technical support to the Parties and to the Secretariat) were tasked with looking at production systems, including the consideration of source codes, which include ''R'' for ranching.

Definition of readily recognizable: Although this term is used in Article I of the Treaty, it is not specifically defined. However, Resolution Conf. 9.6 (Rev.) defines the term, and we have based our proposed definition on the text of the resolution. Several commenters supported the inclusion of this definition in the regulations. Another commenter suggested that we use the CITES term ''derivatives'' in the definition. Although the term ''derivative'' is not commonly used in the United States, we accepted the commenter's suggestion since the term is used in the Treaty.

Based on questions we routinely receive from the public, we wish to clarify here that venom is considered a readily recognizable product, and that antivenin, which is either produced from non-CITES listed species or produced synthetically, is not subject to CITES.

Definition of specimen: We used the definition of ''specimen'' given in the Treaty to clarify that, under these regulations, the term refers only to species listed in any of the CITES Appendices.

Definition of sustainable use: We propose to define this term as the use of a species in a manner and at a level that maintains wild populations at biologically viable levels for the long term. It is essentially the same definition used in 50 CFR part 15 under the WBCA. The wording has been slightly edited to be consistent with language used in these regulations. One commenter thought it was inappropriate to use the definition from the WBCA because the CITES non-detriment finding is narrower than the WBCA finding. We point out that the WBCA's primary purpose is to encourage and support effective implementation of CITES. The non-detriment finding is the same under both, and the concept of sustainable use remains the same, regardless of context.

Two commenters argued that the definition of ''sustainable use'' is excessive for meeting the non-detriment finding for the issuance of permits. We believe that sustainable use is the essence of a CITES non-detriment finding, and these proposed regulations provide a clear, scientifically based definition of the term. An exporting country can make a finding of non-detriment only if it can show that a given level of harvest is consistent with the long-term viability of the species. This finding must be based on professionally recognized management practices and the best available biological information. The Parties adopted Resolution Conf. 12.8 (Rev. CoP13), which provides for review of significantly traded species, to ensure that countries exporting those species have made the appropriate findings and the export levels are sustainable. Countries with species subject to this review must demonstrate the scientific basis for the quantity of exports they are allowing.

One commenter stated that the terms ''ecosystem'' and ''role or function of a species in its ecosystem'' do not appear in the Treaty. We note these terms are used in Article IV(3) of the Convention, which specifically requires the Scientific Authority of each Party to determine whether exports of specimens of a species ''* * * should be limited in order to maintain the species throughout its range at a level consistent with its role in the ecosystems in which it occurs * * *'' Although the phrase ''or function'' does not appear in the text, it is implicit since a species' function relates to its role. Another commenter thought it was too burdensome to require an applicant to provide information on a species' role and function in the ecosystem. See the discussion in the preamble on non-detriment findings (section 23.61).

One commenter stated that the proposed definition precluded the use of adaptive management. We believe the use of adaptive management could fit under this definition in certain circumstances. Under adaptive management, production rates are monitored and the amount of harvest allowed is commensurate with increases and decreases in productivity of the species. Thus, Parties could use adaptive management in terms of changing decisions if new information becomes available. Adaptive management, however, does not imply that when there are gaps in information the assumption would be that trade would be sustainable.

Two commenters contended that the proposed definition will require range countries to undertake costly studies to demonstrate the productive capacity of the species and its ecosystem. The proposed definition does not dictate the type of studies a country needs to conduct, only that the use of a species must allow for the maintenance of viable population levels for the long term. Exporting countries must conduct some level of monitoring of productivity and impact of harvest to determine whether exports are detrimental to the survival of the species. Resources are needed for a country to manage species sustainably, and only a range country can determine whether the expenditure of resources is cost effective relative to the benefits of trade.

Definition of trade: One commenter stated that the definition of ''trade'' should not include both commercial and noncommercial shipments and should be based on economic value or intent since there is conservation value in a healthy public interest in natural history. The commenter believed that, by not discriminating between commercial trade and noncommercial activities, we are failing to adequately protect species and are promoting inconsistency and confusion in enforcement.

Our proposed definition of ''trade'' is based on Article I(c) of the Treaty, which explicitly states that ''trade'' means ''export, re-export, import and introduction from the sea.'' We propose to define ''trade'' to include both commercial and noncommercial transactions since there is no mention of intent in the Treaty definition. CITES and our proposed regulations, however, afford greater flexibility to noncommercial shipments, such as through the registration of scientific institutions and the limited exemption for personal and household effects. We believe this broad definition of ''trade'' and the flexibility recognized by CITES and our proposed regulations provide consistency, assist in enforcement, and offer a system that promotes species conservation.

Management and Scientific Authorities (section 23.6): Under Article IX of the Treaty, each Party must designate at least one Management Authority and one Scientific Authority. In the United States, these authorities have been delegated by the Secretary of the Interior and the Director of the FWS to different offices within the FWS. We propose to add a section to summarize the major roles of these authorities in the United States. The roles include a wide range of activities, such as the issuance and denial of permits; making scientific and management findings; monitoring of trade and trade impacts; communication with the Secretariat and other countries on scientific, administrative, and enforcement issues; and evaluation of species' status and trade. Another role is to provide training and technical assistance to countries when possible (Resolution Conf. 3.4 on Technical cooperation). Other Federal

agencies also play a role in CITES efforts, for example in communicating with the Secretariat and representing the United States at CITES meetings.

One commenter noted that there appears to be duplication in the roles of the Management and Scientific Authorities as shown in the chart. We note that, although there is some interrelationship in activities carried out by the Management and Scientific Authorities, the focus of these activities and the expertise of both offices are different. Within the broad categories, the Management Authority is responsible for dealing primarily with management and regulatory issues, and the Scientific Authority is responsible for dealing primarily with scientific issues. Text was added to the proposed rule to show this distinction.

Another commenter urged the addition of a clause in the regulations requiring Management and Scientific Authorities to fulfill their roles as required under the Treaty. We do not believe this is necessary. These offices are charged with the responsibility of fulfilling certain roles under the Treaty by their designation as Management and Scientific Authorities.

Contact information (section 23.7): The table in this proposed section outlines the type of information available from the U.S. Management Authority, U.S. Scientific Authority, Law Enforcement, APHIS, CBP, and the Secretariat, and the different ways you can contact each office. APHIS is the contact office for information on plant clearance procedures even though the formation of CBP split CITES responsibilities for import and export of plants. CBP inspects and clears shipments of dead CITES plant materials being imported into the United States and live plants being imported from Canada at a designated border port. CBP also identifies and regulates CITES materials in passenger baggage, including live plants. APHIS continues to inspect and clear shipments for the export and re-export of live and dead plants, and the import of live plants, except for live plants being imported from Canada at a designated border port.

One commenter stated that this section should also contain contact information for the National Marine Fisheries Service and information on import, export, possession, and sale of marine mammal parts and products under the MMPA. We disagree because the purpose of these regulations is to explain and implement CITES. To assist those dealing with such species, we provided information in proposed section 23.3 on where to find those requirements. Persons with questions about CITES compliance should contact the office identified in this section. Persons with questions about other laws that apply should contact the office that is responsible for administering those laws.

Information collection (section 23.8): Each information collection, including each application form, that we use must be reviewed and approved by the Office of Management and Budget under the Paperwork Reduction Act. These information collections undergo review every 3 years. This process gives the public an opportunity to provide input concerning the amount of time it takes to complete the forms and reports and to prepare the information requested. One commenter suggested that the term ''amend'' be added to paragraph (c). We made this revision to the new proposed rule to make the paragraph consistent with 50 CFR 13.23.

What Are the Proposed Changes to Subpart B of 50 CFR Part 23—Prohibitions, Exemptions, and Requirements?

In this proposed subpart, we detail the activities that are prohibited, circumstances when exemptions may apply, and requirements for international movement of specimens. CITES uses a system of documents to ensure that trade in protected species is legal and does not threaten the survival of wildlife or plant species in the wild. The Treaty outlines standardized information that needs to be included on these documents, and based on experience in inspecting shipments and enforcing CITES, the Parties have adopted a number of resolutions to refine the types of information that need to be included on documents for Parties and non-Parties.

Prohibitions (section 23.13): We are proposing minor changes to the prohibitions section in the current regulations. This section implements the prohibitions on international trade under CITES. We listed ''introduction from the sea'' separately from ''import'' to clarify that CITES treats these activities differently. We added the phrase ''engage in international trade'' to the list of prohibitions to clarify that international trade in specimens in violation of these regulations by any person subject to U.S. jurisdiction is prohibited even if specimens are not actually imported into or exported from the United States.

One commenter supported the language ''engaging in international trade,'' whereas two commenters opposed it. Several commenters expressed confusion over how this activity could be regulated. The regulatory language is derived from the language in section 9(c)(1) of the ESA, which makes it unlawful for any person subject to the jurisdiction of the United States to engage in trade contrary to the provisions of CITES. The ESA does not limit this prohibition to import into or export from the United States, but further requires U.S. citizens, and others subject to U.S. jurisdiction, engaging in trade outside of the United States to abide by CITES requirements as a matter of U.S. law. Although this activity may be difficult to detect, we will take enforcement action when appropriate. For example, a U.S. company engaging in illegal international trade of tiger products could be found in violation of this section even if the items never entered the United States.

One commenter suggested that the prohibition on engaging in trade should apply only to intentional acts. We disagree because the prohibitions in section 9(c)(1) of the ESA do not recognize an exception for unintentional conduct. Further, penalties and enforcement provisions that address CITES violations already distinguish between violations that are knowingly or intentionally committed and those that are not.

One commenter opposed the prohibition on possession and stated that simple possession should not be a violation. We agree that possession alone is not a violation. However, the regulations specifically implement the statutory language that prohibits possession of any specimen traded contrary to the provisions of CITES. If a specimen was traded in violation of CITES, any possession of that illegally traded specimen is prohibited.

Several commenters questioned whether ''possession'' and ''traded contrary to CITES'' were considered prohibitions just because there was no positive documentation provided in an application to the U.S. Management Authority. The lack of supporting documentation in a permit application does not necessarily mean a specimen is illegally possessed or has been traded contrary to CITES. However, we may not be able to make the required findings or issue CITES documents if there is a lack of documentation or other evidence showing legality (see the discussion in the preamble for proposed section 23.60).

Personal and household effects (section 23.15): Article VII(3) of the Treaty provides for the import, export, or re-export of specimens that are personal or household effects without CITES documents under certain circumstances. We propose to clarify the

current regulations (section 23.13(d)) based on our experience in administering the Convention and Resolution Conf. 13.7. This section details the circumstances under which a person may travel with personal items of CITES wildlife and plants worn as clothing or accessories, or contained in accompanying luggage. It also details how a person may move personal items of CITES wildlife and plants from one country to another as part of a change of residence. We propose to define ''personal effects'' and ''household effects'' in section 23.5. Based on one commenter's recommendation, we clarify that we consider qualifying tourist souvenirs to be personal effects.

In Resolution Conf. 13.7, the Parties agreed not to require CITES documents for personal or household effects of dead specimens, parts, products, or derivatives of Appendix-II species unless a Party requires a CITES document. Parties are to notify the Secretariat if they require CITES documents for personal and household effects, and the Secretariat will maintain a list on the CITES Web site. Importing countries would generally assume that an export permit is not required if the exporting country had not notified the Secretariat otherwise. For species covered by the Lacey Act, however, the United States would require an export permit if a Party requires such a permit even if the Party had not notified the Secretariat of the requirement. It is the responsibility of the importer to consult with the exporting country to determine whether an export permit is needed in such instances.

For certain species, the Parties also agreed to numerical limits of specific types of specimens that qualify as personal and household effects. These specimens include sturgeon caviar, seahorse and crocodilian products, giant clam and queen conch shells, and rainsticks. We note that if someone wants to import, export, or re-export more than the quantity designated in the regulations, the specimens no longer qualify for the personal effects exemption, and they must be accompanied by a valid CITES document for the entire quantity. For example, if a person is bringing in more than 250 grams of caviar, a CITES document is required that covers the entire amount, not just the amount over 250 grams. If a person arrives in the United States with 265 grams of sturgeon caviar without a CITES document for 265 grams, the whole amount would be subject to seizure. The importer would not be allowed to keep 250 grams as a personal effect.

We propose to exclude live wildlife and plants (including eggs and non-exempt seeds) and most Appendix-I specimens from the exemption. The drafting history of CITES, as well as significant debate that occurred at CoP4, clearly supports the view that this exemption applies only to dead items, such as clothing or jewelry, that are being used by an individual for personal needs and are not for resale. In addition, few countries allow the import or export of Appendix-I specimens, including personal pets, without CITES documents. In the United States, many Appendix-I species are also listed under the ESA and other laws that do not provide an exemption for personal or household effects. Therefore, to assist in the enforcement of the Convention and to reduce the risk to Appendix-I species in the wild, we propose to require CITES documents for all Appendix-I specimens, except for certain worked items made from African elephant ivory (see proposed section 23.15(f)).

Several commenters supported the limitations that were placed upon live and Appendix-I specimens, caviar, and African elephant ivory. Another commenter thought we should remove this section since some Parties do not recognize the personal and household effects exemption, and it allegedly undermines protection of species. We did not accept this suggestion. The exemption reflects the agreement of the Parties, yet allows us to further conserve species when we or other countries have stricter national measures in place. The proposed regulations inform the public that CITES documents for personal and household effects may be required by other Parties.

In 2000, the Canadian Management Authority commented that they allow the shipment of live plants and Appendix-I specimens as personal effects and, thus, require no CITES documents. We recognize that there are differences in how Parties implement this exemption, and we strongly encourage travelers to check with the Management Authority in the foreign country they intend to visit to find out that country's requirements for importing and exporting personal effects.

We clarify that personal effects must be personally owned by the traveler for exclusively noncommercial purposes, be reasonably appropriate for the purpose of the trip or stay, and either be worn as clothing or accessories or be part of accompanying personal baggage. Three commenters stated that the requirement for the effects to be reasonably appropriate was unenforceable or vague. We believe this requirement provides additional assistance to inspectors at the port when determining whether items are personal effects or are commercial items that a person is attempting to import without CITES documents under the exemption.

One commenter recommended that we use the definition of commercial in 50 CFR part 14 that provides the presumption that eight or more similar unused items are for commercial use. We do not believe that this standard is appropriate for making CITES decisions under the terms of the Convention because the general standard in place in 50 CFR part 14 applies to all wildlife whether it is protected or not. In addition, as described above, the Parties have acknowledged that the quantity of items that qualify as personal or household effects can vary by species. A blanket statement regarding the number of items that might be considered commercial may be appropriate for determining licensing requirements under 50 CFR part 14, but CITES requires a different approach.

We have encountered a number of instances, both in the United States as well as abroad, when individuals have had souvenirs or other items seized when these items were mailed or shipped to them. Although these could be considered items for personal use, the CITES exemption does not apply unless the specimens accompany the individuals.

We also clarify that household effects must be personally owned items that are part of a noncommercial household move. A shipment may contain only items acquired before the individual moves. It may not include items purchased, inherited, or otherwise acquired after the person has moved, even though the household goods have not yet been shipped.

We understand that sometimes it is not possible to ship household goods all at one time. Thus, we propose to allow a person to make as many shipments as needed to accomplish the move as long as they occur within 1 year of the person's change in residence. One commenter opposed the 1-year limitation on this exemption. We retained the timeframe because we believe it is reasonably appropriate for completing the shipment of household goods to a new residence. A person is not precluded from shipping his or her household effects after 1 year, although such a shipment would require the appropriate CITES documents.

The AECA and ESA include stricter U.S. legislation concerning international trade of African elephant ivory. We propose to allow U.S. residents to travel out of and return to the United States

with pre-Convention worked African elephant ivory as personal or household effects under certain conditions, including registering the items. Registration consists of obtaining a U.S. CITES pre-Convention certificate, FWS Wildlife Declaration (Form 3–177), or CBP Certificate of Registration for Personal Effects Taken Abroad (Form 4457). This exemption is limited to ivory already owned in the United States and is not a special opportunity for trade. Upon re-import, travelers need to show records that the ivory is pre-Convention and that they registered it before leaving the United States. The exemption does not include items that are purchased while abroad or intended as gifts. We propose to adopt the same definition of ''raw ivory'' as found in the special rule concerning African elephants in 50 CFR 17.40(e), which is similar to the definition found in Resolution Conf. 10.10 (Rev. CoP12). Individuals should contact the Management Authority in the country of their destination to find out about its requirements for African elephant ivory.

Urine, feces, and synthetically derived DNA (section 23.16): We propose that the international trade of these specimens be exempt from CITES requirements under certain circumstances. We consider samples of urine and feces to be wildlife byproducts, rather than parts, products, or derivatives. We differentiate between DNA extracted directly from blood or tissue samples and synthetically derived DNA. DNA extracted directly from blood and tissue samples must comply with all CITES permitting requirements. At CoP8, the Parties rejected Denmark's draft resolution to exempt blood and tissue samples to be used for DNA studies. The Parties agreed that such tissues should not be exempt from CITES controls.

One commenter stated that all DNA should be exempt, not just synthetic DNA. We disagree since the Treaty contains strict language on the regulation of ''readily recognizable parts or derivatives'' of CITES species. Virtually all trade in DNA samples extracted from CITES species involves the use of packaging that identifies the specimen as a part, product, or derivative of that species. Under Resolution Conf. 9.6 (Rev.), any specimen or its packaging that is marked, labeled, or otherwise identified as a part or derivative of a CITES species is considered to be readily recognizable. Trade in all readily recognizable parts and derivatives of Appendix-I and Appendix-II wildlife and Appendix-I plants is regulated by CITES, and the Parties cannot create or assert exemptions for these specimens beyond those provided in Article VII of the Treaty. The Parties' discretion to limit the trade controls of CITES to a limited set of ''readily recognizable parts or derivatives'' is confined to Appendix-III wildlife and to Appendix-II and Appendix-III plants as provided by Article I(b) of CITES. Therefore, to implement the commenter's request for an exemption would require an amendment to the Treaty, an initiative that the United States has historically opposed.

On the other hand, another commenter recommended that urine, feces, and synthetic DNA should not be exempt from CITES permitting requirements because they could have been obtained in a manner that required capture and restraint of animals. We believe that trade in urine, feces, and synthetically derived DNA samples will not adversely affect the conservation of, or effective regulation of trade in, CITES species and their parts, products, or derivatives. While we will not regulate these specimens under CITES, we believe it is important that researchers collect samples in a manner that does not harm the wildlife and that complies with the laws of the country where the collection occurs. Before collecting samples, researchers should contact the foreign Management Authority or other relevant wildlife or plant authorities to obtain information on collecting and exporting requirements.

One commenter asked why, if the United States considers urine, feces, and synthetic DNA to be exempt, we require CITES permits for these specimens if another country requires them for import or export. Because the Parties have not agreed whether urine, feces, or synthetically derived DNA are regulated by CITES, some countries may require CITES documents for these types of samples. If a country requires CITES documents, we will honor that country's interpretation and process an application because we must facilitate compliance with foreign laws consistent with the Lacey Act Amendments of 1981. At CoP12 and CoP13, there were proposals to annotate the list of species to exempt these types of samples. The proposals were withdrawn. It should be noted, however, that some Parties do not agree that these specimens should be exempt from CITES controls.

Another commenter suggested that submission of a wildlife declaration Form 3–177 should suffice for trade in any tissue or blood for DNA research, especially from salvaged dead specimens. We disagree since no provision in the Treaty exempts such tissues from requirements for CITES documentation. Declaration of specimens using Form 3–177 does not meet CITES document requirements that ensure that the specimens were acquired legally and the export will not be detrimental to the survival of the species. There is also no declaration mechanism, like Form 3–177, for plants.

One commenter stated that the proposed regulation imposes new restrictions on import of blood and tissue taken from sport-hunted game animals for DNA analysis. We disagree, since blood and tissue for research have always required CITES permits. We refer you to proposed section 23.74 for the definition of ''sport-hunted trophy.''

Diplomats and other customs-exempt persons (section 23.17): CITES Decision 9.15 urges the Parties to remind their diplomatic missions, their delegates in foreign countries, and their troops serving under the flag of the United Nations that they are not exempt from the provisions of the Convention. In these regulations we propose to remind all persons who receive duty-free or inspection exemption privileges that CITES specimens traded internationally must meet the requirements of CITES and these regulations.

Required CITES documents (sections 23.18–23.20): Articles III, IV, and V of the Treaty outline the types of documents that must accompany Appendix-I, -II, or -III specimens in international trade. Article VII and Article XIV of the Treaty recognize exemptions for certain specimens, such as those that qualify as pre-Convention, bred-in-captivity, or artificially propagated. Generally, these specimens must be accompanied by CITES exemption documents. The proposed regulations remind people who trade in wildlife and plants to check with the Management Authorities of all countries concerned to determine their requirements before importing, introducing from the sea, exporting, or re-exporting CITES specimens.

We propose to organize the information on what types of CITES documents are required into two decision trees and three tables. We developed separate decision trees specifically to address the confusion expressed by the public on the different export requirements for Appendix-I wildlife and plants.

The decision trees and tables should make it easier for importers and exporters to understand what type of document is needed for a shipment. They refer the user to the section in these proposed regulations that explains the application procedures, general provisions, issuance and acceptance criteria, and conditions.

One commenter suggested that we add information to detail what constitutes confirmation that the importing country has or will issue an import permit. We agree and have revised the proposed regulation by adding language to proposed section 23.35(e) on import permits (see the discussion in that section of the preamble).

Export of Appendix-I wildlife (section 23.18): The decision tree reflects the changes we are proposing to ensure that international trade in Appendix-I wildlife is not for commercial purposes when permits are issued under Article III of the Treaty. Article II of the Treaty states that Appendix-I specimens ''* * * must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.'' The Parties have agreed that Appendix-I wildlife specimens should not be traded for commercial purposes unless the specimens originated from a CITES-registered Appendix-I commercial breeding operation. In the past, the FWS has allowed commercial breeders of Appendix-I wildlife to export specimens that have been sold to individuals outside the United States provided that the Management Authority of the importing country can make a ''not primarily commercial'' finding and issues an import permit. After review of this type of trade, we do not believe that Article III of the Treaty was intended to allow such commercial trade. Thus, we propose no longer to allow the use of Article III of the Treaty to export Appendix-I wildlife unless the export is for noncommercial purposes. We also propose to allow the export of Appendix-I wildlife that qualifies for an exemption under Article VII(4) and (5) as bred-in-captivity only if the specimen was bred at a CITES-registered breeding operation or was bred for noncommercial purposes, respectively. Other Appendix-I wildlife bred-in-captivity will be given a source code ''F,'' rather than a ''C,'' and the export would be allowed only if the export is for noncommercial purposes and an import permit was granted.

Reservations (section 23.21): Articles XV, XVI, and XXIII of the Treaty allow a Party to take a reservation on a species listing in Appendix I, II, or III. Generally, a reserving Party is treated as a non-Party with respect to trade in the reserved species. Countries that choose not to recognize a listing and take a reservation may continue trading in the species without CITES documents with other Parties that have taken the same reservation or with non-Parties provided the shipment does not transit a Party country. Trade with Parties that have not taken the same reservation requires CITES documents.

We propose to add this section to emphasize what types of documents are required from Parties that have taken a reservation on a species. We propose to incorporate Resolution Conf. 4.25, which recommends that, when a species is newly listed in Appendix I or is transferred from Appendix II to Appendix I, Parties that take a reservation issue a CITES document and treat the species as if it were listed in Appendix II, rather than not listed, when trading with other reserving Parties or non-Parties. This provision should promote the conservation of species listed in Appendix I because the reserving Party would continue to issue CITES documents based on legal acquisition and non-detriment findings, and report such trade in its annual report. We also propose to incorporate Resolution Conf. 9.7 (Rev. CoP13) which clarifies the requirements of the Treaty that a shipment containing specimens of CITES species traded between non-Parties or reserving Parties or between a non-Party and a reserving Party must be accompanied by CITES documents if it transits a Party country before reaching its final destination.

One commenter suggested that we add specific provisions in case the United States took a reservation. We did not incorporate this suggestion because if the United States entered a reservation to a listing the requirements in proposed section 23.21(d) would apply. We did, however, add a paragraph on how a person could provide relevant information and request that the United States consider taking a reservation. Additionally, we added text indicating that if the United States entered a reservation to the listing of a species in Appendix I, we would require a CITES document that met Appendix-II permit criteria for international trade in specimens of that species. To date, the United States has not taken a reservation. Entering a reservation would do very little to relieve importers in the United States from the need for foreign export permits because the Lacey Act Amendments of 1981 make it a Federal offense to import into the United States any animal taken, possessed, transported, or sold in violation of foreign conservation laws. If the foreign nation has enacted CITES and has not taken a reservation with regard to the species, the United States would continue to require CITES documents as a condition of import. A reservation by the United States also would provide exporters in this county with little relief from the need for U.S. export documents. Unless the receiving country had entered the same reservation or was a non-Party, U.S. exporters would continue to be required to obtain CITES comparable documents because the Parties have agreed to trade with non-Parties and reserving Parties only if they issue permits and certificates that substantially conform with CITES requirements and contain the required information outlined in Resolution Conf. 9.5 (Rev. CoP13).

Another commenter did not understand the section and wondered if the intent was that a country could not take a reservation on all species. The Treaty does not restrict the number of species for which a Party may take a reservation, but Parties seldom take a reservation on large numbers of species. A reserving Party is still bound by the provisions of CITES as outlined in this section.

In-transit (section 23.22): Due to limited transportation routes and schedules, exporters and re-exporters may not always be able to ship specimens from one country directly to another without transhipping them through intermediary countries. Shipments of marine specimens harvested from international waters may need to move through waters under the jurisdiction of intermediary countries before reaching their port of introduction. Shipments of sample collections may transit a number of countries before returning to the originating country. Article VII(1) of the Treaty provides an exemption for specimens that are in transit through a country while the specimens remain under customs control. We propose to define an ''in-transit shipment'' as the transhipment of any wildlife or plant through an intermediary country when the specimen remains under customs control and meets either the requirements of this section or the requirements in section 23.50 for sample collections covered by an ATA carnet. (ATA is an acronym of the French and English words ''Admission Temporaire/Temporary Admission.'') In-transit shipments, other than sample collections in section 23.50, may stay in an intermediary country, including storage in a duty-free, bonded, or other kind of warehouse or a free trade zone, only for the time necessary to transfer the specimens to the mode of transport used to continue to the final destination.

In 1983, the CoP recognized the potential for abuse of the in-transit provision, such as when importers claimed the exemption and delayed shipment of the transiting specimen while they found a buyer in a foreign

country. In 1989, the CoP noted that if a valid CITES export document was required to accompany shipments through intermediary countries, Parties could discover illegal trade by drawing attention to undocumented shipments. The inspection of in-transit shipments was recommended in 1992. Resolution Conf. 9.7 (Rev. CoP13) consolidates the earlier resolutions concerning in-transit shipments.

These proposed regulations reflect the recommendations of the CoP to prevent misuse of the in-transit exemption. Based on comments received about the loss of documents during transit, we revised this section to allow the use of a copy of the valid original document for in-transit shipments. Transhippers should be aware, though, that if shipments are not accompanied by an original CITES document, intermediary countries could delay movement of the shipment while they determine whether a copy is an accurate copy of the original valid document. If we have reason to question an accompanying copy, we will contact the Management Authorities in the countries of export or re-export and final destination.

The CITES document must designate the name of the importer in the country of final destination. The shipment must also be accompanied by a copy of a valid import permit for Appendix-I specimens, where required, and transportation routing documents that show that the shipment has been consigned to the importer listed on the CITES documents.

In 2000, we proposed that in-transit shipments may not be sold, manipulated, or split. One commenter stated that this requirement does not address what happens if there is a problem with part of a shipment. To clarify, we revised the proposed regulations to indicate that an inspecting official has the authority to order a shipment to be split or manipulated if problems are detected with part of the shipment. Another commenter suggested that we add the phrase ''solicited for sale'' to the requirement that shipments may not be sold. We did not accept this suggestion as it goes beyond the intent of the resolution. As long as the goods are not sold while in transit, we are not concerned about what kind of solicitations occur.

A shipment that contains specimens of CITES species protected under other U.S. regulations, such as migratory birds, bald and golden eagles, injurious wildlife, endangered or threatened species, or marine mammals, that arrives in the United States before continuing on to another country is considered an import and must meet all import requirements. One commenter thought that, if shipments are treated as an import, the possible ramifications were unclear. Shippers must meet the requirements of all applicable regulations. To clarify, we revised this proposed section to reference § 23.3 on other specific regulations that may affect the import of protected species, including 50 CFR part 14.

Required information on CITES documents (section 23.23): We propose a new section to provide details on what information CITES documents must contain. It applies not only to documents issued by the United States, but also to those issued by other Parties and non-Parties. Article VI of the Treaty provides basic requirements for CITES documents for import, introduction from the sea, export, and re-export. At the first CoP, the Parties recognized the importance of having standardized documents. They also recognized that the process of developing the standards would be a continuous one. The resolution on permits and certificates has been revised at CoPs 2, 3, 7, 9, 10, 11, 12, and 13. The resulting comprehensive resolution (Resolution Conf. 12.3 (Rev. CoP13)) provides guidance on all aspects of CITES documents.

Two commenters stated that we should not reject what they thought were otherwise valid documents just because they do not comply with U.S. standards. The document standards in these proposed regulations are not just U.S. standards, but are based on the Treaty and resolutions agreed to by the Parties. The use of standardized documents assists Parties in implementing CITES. Such standardization allows countries to verify that the specimen being shipped is the one listed on the document and helps identify false and invalid CITES documents. It facilitates the collection of information on the volume of trade in wildlife and plants, provides standard information for annual reports, and allows better monitoring of the levels of commercial trade on a species-specific basis. It also facilitates the clearance of shipments at ports of exit and entry by making all necessary information available to the inspector in a familiar format. Documents that do not contain the required information may be considered invalid documents and rejected by any CITES Party.

One commenter stated that there was no basis to require non-Parties to comply with document information requirements. Article X of the Treaty requires that documents issued by non-Parties must ''substantially conform'' with these requirements of the Convention. See discussion of proposed section 23.25 in the preamble.

Most of the information in this proposed section is presented in a series of tables, organized alphabetically by required information, code, or type of document. This format should help those shipping and receiving specimens to understand what information is needed on CITES documents. We discuss some of the requirements here to clarify issues raised in the past.

Bill of lading or air waybill (section 23.23(c)(3)): APHIS suggested that we make the air waybill and bill of lading information mandatory on all documents to assist inspection officials. Although we agree that this information helps match a shipment to a document, we decline to make this mandatory since the specific information is not always known at the time the CITES document is validated.

Dates (section 23.23(c)(4)): We have had many questions about the ''valid until date.'' We clarify that the validity of a document expires at midnight (local time at the place of presentation) on the date indicated on the document. All activities, including but not limited to transport and presentation for import, must be completed before that time.

Description of the specimen (section 23.23(c)(5)): The use of standard descriptions for a specimen is needed to perform accurate global trade analyses, particularly for purposes of evaluating the impact of trade on the conservation of the species in the wild. We propose to require that descriptions on CITES documents from Parties be in English, Spanish, or French (the three working languages of the Treaty) to assist inspectors in determining if documents match the accompanying shipment.

One commenter believed that the form should not have to be in English, French, or Spanish. The Parties agreed that the form itself should be in one of the three working languages of the Treaty to ensure that inspecting officials could read the documents. The required information on the form itself does not have to be in one of the three languages, except for the description of the specimen, which is a critical piece of information for inspecting officials. The Parties recognized that it is unreasonable to expect inspecting officials globally to be conversant in all languages of CITES permit-issuing countries. We have experienced difficulties in processing CITES documents written in languages other than English, Spanish, or French, and clearance of some shipments has been delayed. Limiting descriptions to the three languages of the Treaty should

help prevent or reduce such delays, while assisting in enforcement efforts.

Humane transport (section 23.23(c)(7)): One commenter requested that we add a reference to the IATA LAR and CITES guidelines for humane shipping in many other sections of the regulations. We do not believe it is necessary to repeat this reference throughout the regulations, since it is this proposed section that outlines all document requirements for the export or re-export of live specimens. Another commenter suggested that we not reference a specific IATA LAR volume because of continuous changes. We decline to adopt this recommendation and have kept the reference to a specific volume since we do not have the authority to automatically codify future editions of the IATA LAR.

Identification of specimen (section 23.23(c)(8)): We propose to require that the CITES document contain information on any unique number or mark that is used to identify a specimen. If the specimen has a microchip, the specific information concerning the code, trademark of the transponder manufacturer, and location of the chip will need to be on the CITES document and, if necessary, we may ask the importer, exporter, or re-exporter to have the equipment on hand to read the microchip at the time of import, export, or re-export.

One commenter stated that we should not mandate marking that is required under a resolution unless that resolution is also codified. We revised the proposed regulations to clarify that specimens must be marked using any mark required under these regulations or a CITES listing annotation. To effectively implement CITES, we may require that specimens be marked if a mark is necessary to support findings of legal acquisition and non-detriment. We also require marking information for CITES documents that we issue to ensure that exports or re-exports are not seized abroad.

Purpose of transaction (section 23.23(c)(11)): Resolution Conf. 12.3 (Rev. CoP13) lists standard transaction codes that are to be used on documents. These are the same codes used by Parties in their CITES annual reports.

Quantity (section 23.23(c)(12)): Shipments have been presented for clearance with quantities identified as ''one box'' or ''one case.'' These quantities lack clear information about the actual amount of wildlife or plants in the shipment. One box may contain one wildlife or plant specimen, or it may contain hundreds. The unit of measurement should be appropriate for the type of specimen and agree with the preferred or alternative unit to be used in the CITES annual report, if possible. The unit should be in metric measurement. If weight is given, it is important to provide the weight of the specimen, not the packing material. Some items are more accurately reported by volume, such as logs and sawn wood, which should be shown as cubic meters. Based upon comments from APHIS, and information from CBP, the timber industry, and other CITES Parties, we have clarified that veneer and plywood should be shown as either square meters or cubic meters. To monitor trade effectively, we need records on quantities that actually reflect the volume of that trade.

Scientific name (section 23.23(c)(13)): We propose that a CITES document must contain the scientific name of the species, which must follow the standard nomenclature as it appears in the CITES Appendices or in the references adopted by the CoP. The CITES website contains the Appendices and a species database for easy query by common or scientific name. Resolution Conf. 12.11 (Rev. CoP13) provides guidelines on standard nomenclature and contains a list of taxonomic and nomenclatural references adopted by the CoP as the official standard references for species included in the Appendices. UNEP-World Conservation Monitoring Centre (WCMC) publishes the *Checklist of CITES Species,* which provides the official digest of scientific names contained in the standard references. The checklist contains an alphabetical list of CITES species, their scientific synonyms, their common names in English, French, and Spanish (to the extent that these were available to the compilers) and the Appendix in which they are listed. Taxonomy evolves, and different references may use different scientific names for the same organism. Having one standard that we can follow is important to ensure that documents are issued for the correct species.

One commenter stated that we should not require subspecies information on the CITES document. The scientific name of the species on the CITES document must include the subspecies when that information is needed to determine the level of protection of the specimen under CITES. For example, under CITES, three subspecies of cougar (*Puma* (=*Felis*) *concolor coryi, P. c. costaricensis,* and *P. c. cougar*) are listed in Appendix I, while all other subspecies are listed in Appendix II.

Resolution Conf. 12.3 (Rev. CoP13) recommends situations when a higher taxon name (such as genus or family) could be used on a CITES document. We propose to accept a CITES document that uses a higher taxon name only when the CoP has agreed to its use, the issuing Party can show it is well justified and has communicated the information to the Secretariat, or when the item is a pre-Convention manufactured product containing a specimen that cannot be identified to the species level. The Parties have agreed to the use of higher taxon names for coral rock and live and dead coral under certain conditions.

Signature (section 23.23(c)(16)): We propose to require that the signatures of individuals authorized to sign CITES documents for a Management Authority must be on file with the Secretariat. This requirement will help us determine if a document is valid and avoid delays in the clearance of shipments.

Validation (section 23.23(c)(21)): We revised the paragraph to reflect one commenter's statement that validation is required whether the shipment is physically inspected or not.

Additional information (section 23.23(e)): The table in paragraph (e) provides details on additional information that is required for specific types of documents, such as an annex or certificate of origin. Some documents require additional information because of the type of transaction, the specimen involved, or special provisions, such as quotas.

One commenter noted that quota information is not standardized so that this required section was premature. We did not change this section since the information that is required to appear on the face of a CITES document has been standardized by the Parties. We agree, however, that the system used internally in each country to account for quotas is not standardized. The Parties discussed export quotas at CoP12 and CoP13 and forwarded the issue to the Standing Committee for further consideration.

Phytosanitary certificates (section 23.23(f)): CITES allows phytosanitary certificates to be used in lieu of CITES certificates to export certain artificially propagated plants under specific circumstances. At CoP12, the Parties agreed in Resolution Conf. 12.3 (Rev. CoP13) that the phytosanitary certificate was valid only to export plants that were artificially propagated in the exporting country. The phytosanitary certificate should not be used for the subsequent re-export of such plants. Paragraph (f) lists information that is required on these certificates. At this time, the United States does not use phytosanitary certificates in lieu of CITES certificates.

Source of the specimen (section 23.24): The source of a specimen is

needed by Management and Scientific Authorities to make the findings required to issue CITES documents and is an important component in analyzing data and monitoring trade. We are providing a list of standardized codes that Management Authorities use on documents. Each code is defined as to the source of the specimen under CITES. The U.S. Management Authority will determine the appropriate code based on information provided in an application. At CoP12, the Parties agreed to add source code ''O'' for pre-Convention specimens to conform with the *Guidelines for the preparation and submission of CITES annual reports.* Parties should assign the code ''O'' in conjunction with another code.

We often receive questions about the difference between the source codes ''C'' and ''F.'' Wildlife bred-in-captivity can be given the source code ''C'' and traded under an Article-VII exemption certificate only if the specimen meets the requirements adopted by the CoP as ''bred-in-captivity'' (see proposed section 23.63). In addition, for Appendix-I wildlife, the specimen must have been bred for noncommercial purposes. If a specimen does not meet these criteria, it is assigned the source code ''F'' and requires CITES documents under Articles III, IV, or V of the Treaty. For export of Appendix-I wildlife, see the discussion in the preamble for section 23.18.

Additional information required on non-Party documents (section 23.25): This section provides the additional information that is required on non-Party documents. Article X of the Treaty allows a Party to accept documentation from a non-Party if it is issued by the competent authority and substantially conforms to the requirements of CITES. Because the Parties were concerned that the trade of CITES specimens through non-Parties might jeopardize the effectiveness of the Convention, Resolution Conf. 9.5 (Rev. CoP13) was adopted. This resolution recommends that Parties accept documents from non-Parties only if they contain certain basic information, including certifications that they have made the findings required under Articles III, IV, and V of the Treaty. Therefore, we propose to incorporate the requirements of Resolution Conf. 9.5 (Rev. CoP13) on trade with non-Parties and Resolution Conf. 12.3 (Rev. CoP13) on permits and certificates. This means a non-Party CITES document would need to contain essentially the same information as a Party document plus the additional certifications in this section for us to consider it valid.

Valid CITES documents (section 23.26): Article VIII of the Treaty outlines measures that Parties should take to enforce the provisions of the Convention. Resolutions Conf. 9.9, 11.3 (Rev. CoP13), and 12.3 (Rev. CoP13) further detail these measures. For CITES to be effective, shipments must be accompanied by valid CITES documents issued by the appropriate authority and must meet all conditions of those documents. Each Party must have border controls for the inspection and validation of CITES documents. To ensure that specimens traded in violation of CITES are not re-entered into illegal trade, Parties are to consider seizure of specimens, rather than refusal of entry of the shipment. Parties are encouraged to cooperate with other Parties, the Secretariat, and international enforcement organizations to further effective enforcement of the Treaty and provide protection to CITES species.

We propose to include this section in the regulations to outline what requirements must be met for CITES documents to be considered valid. Several commenters objected to our reviewing the legal and scientific bases for a CITES document issued by another country. They believe we should accept a document if it is not procured by fraud and meets Article VI of the Treaty. We have the authority to question any shipment and its accompanying documents if the surrounding facts indicate a potential violation or create a reasonable suspicion of a violation. Section 10(g) of the ESA places the burden on a permittee to prove that the document was valid and in force at the time of entry into the United States. Foreign countries have the same discretion to inquire about documents we have issued. As noted by the United States District Court for the District of Columbia in *Castlewood Products* v. *Norton* (Apr. 16, 2003), the role of all CITES Parties is to ensure that international trade in CITES specimens meets the provisions of the Convention, and that the Government has the authority to decline to accept export permits at face value when reason is shown to doubt their validity.

We present this information on valid documents in a table arranged alphabetically by key phrase to assist importers and exporters. Most of the requirements are self-explanatory. However, we believe it would be helpful to discuss some in more detail.

Management Authority and Scientific Authority (section 23.26(c)(7)): We propose to incorporate the recommendations of Resolutions Conf. 9.5 (Rev. CoP13), 10.3, and 11.3 (Rev. CoP13) that documents should be accepted only from Parties and non-Parties that have designated a Management Authority and Scientific Authority and have provided that information to the Secretariat.

One commenter objected to this requirement while two commenters supported it. To clear a shipment, we must be satisfied that the required findings have been made for documents issued by a Party or non-Party. Without these findings, CITES documents are not valid. When a country designates a Management Authority and Scientific Authority, those offices assume the responsibility to make the needed findings before issuing CITES documents. Information provided through the Secretariat on the designation of these offices allows the U.S. to ensure that the government office issuing the CITES document had the capability and legal authority to make the required findings and issue the document.

One commenter thought that this section implied that a nation must have its own authorities. Although most countries designate their own Management Authority and Scientific Authority, joint authorities could meet the criteria. For example, CITES has supported the concept of shared Management Authorities or shared Scientific Authorities for island developing nations.

Ranched specimen: In 2000, we proposed not to allow trade in specimens from species that have been transferred from Appendix I to Appendix II based on ranching from a non-Party or a Party that has taken a reservation on the species based on a recommendation in Resolution Conf. 10.18. That resolution was repealed at CoP11. We agree that this provision is not necessary as we accept shipments from a non-Party or a reserving Party only when the document is issued by a competent authority and it substantially conforms to the requirements of the Treaty. Thus, we have not included any conditions for ranched specimens in the table in this new proposal.

Shipment contents (section 23.26(c)(13)): The proposed language reflects current practice. CITES documents must be obtained before the shipment occurs; the specimen must be identified on the document; and the shipper may not substitute a new specimen to replace the one authorized. The inspecting official may inspect the shipment and verify that the contents match the specimens described on the document. The official will validate or certify on the CITES document the actual quantity being shipped. The

quantity may be less than the quantity shown on the document at the time it was issued, but cannot be more than that quantity.

Quotas (section 23.26(c)(14)): Quotas may be established voluntarily by Parties, adopted by the CoP through a resolution or proposal to amend Appendices I or II, or put into place through the review of significant trade in Appendix-II species (Resolution Conf. 12.8 (Rev. CoP13). The Secretariat notifies the Parties of these quotas each year, and we propose to require that the quantity exported may not exceed the quota.

Verification of CITES documents (section 23.26(d)): This section outlines the situations when we may request verification of documents from the Secretariat or the Management Authority of any country involved in the shipment. They include instances when we have reasonable grounds to believe a document is not valid or authentic.

Two commenters recommended that the United States request specific information to support the non-detriment findings made by other countries for each species they export to the United States. We did not incorporate this suggestion and believe it goes beyond the intent of the Treaty. Although we agree it is important that certain CITES documents only be used when a non-detriment finding has been made, we rely on Parties or non-Parties to make appropriate findings and would seek additional information only when we have a specific reason to do so. The Plants and Animals Committees regularly evaluate whether Parties are properly making non-detriment findings through the significant trade review process. In addition, we request information on non-detriment findings made by other countries, including quotas established by Parties, when we have a need to question a shipment or a pattern of trade. If the commenters are concerned about a non-detriment finding that is currently being accepted, they should provide us with any relevant information for our review.

Presentation of CITES documents at the port (section 23.27): Inspecting officials at the ports of exit and entry must verify that shipments are accompanied by valid CITES documents and take enforcement action when shipments do not comply with CITES. To help importers and exporters, we propose this new section, which provides a table that outlines the type of U.S. and foreign documents they must present for validation or certification or surrender when importing, introducing from the sea, exporting, or re-exporting CITES species. Based on comments from APHIS, we updated the reference to the general requirements for import and export of plants.

One commenter believed that we should allow CITES documents to be submitted after the fact for CITES specimens that are part of accompanying baggage when Customs and Agriculture fail to collect the documents. We, or APHIS or CBP for plants, are the agency from which any importer or exporter must obtain release under CITES. Persons should contact the responsible agency prior to importing wildlife or plants as accompanying baggage. Importers unable to submit CITES documents to us, APHIS, or CBP for noncommercial shipments in accompanying baggage at the time of entry should contact the appropriate office as soon as possible after arrival.

Based upon suggestions from APHIS, we clarified sections of the table to indicate that we, APHIS, or CBP will validate a copy of a multiple-use document if the document is so conditioned. We also added a footnote indicating that the CITES mailing label for scientific institutions does not require validation, but the scientific institution must present the package, which has the CITES mailing label affixed to it, for inspection at the time of export, re-export, or import (see 50 CFR part 14).

What Are the Proposed Changes to Subpart C of 50 CFR Part 23—Application Procedures, Criteria, and Conditions?

This proposed subpart expands the current section 23.15(c) through (f) to provide information on how to apply for a U.S. CITES document. It also contains proposed general provisions and criteria that apply to both U.S. and foreign CITES documents.

Application procedures (section 23.32): We propose a new section that gives a general overview of the application process for U.S. CITES documents. A number of CITES species are protected under other laws or treaties that we implement. If appropriate, we will accept one application if the applicant provides the information needed under all relevant regulations. An applicant should review the issuance criteria for all relevant regulations when preparing an application to ensure he or she understands the kinds of information we need. This review will help the applicant submit a more complete application and prevent delays in processing. When we review an application, we decide whether the requirements of an exemption document under Article VII of the Treaty can be met or whether we need to process the application under the standard CITES requirements of Articles III, IV, or V (see proposed sections 23.35–23.39). If we find that the application is incomplete, we will contact the applicant for additional information. If the applicant does not respond to our request within 45 days, we will abandon the file. We will not re-open the application if the applicant sends the additional information at a later date. The applicant may, however, submit a new application, including any relevant application fees, if he or she still wants to pursue obtaining a permit.

Decisions on applications (section 23.33): This new proposed section explains the procedures we follow in making a decision on an application. When an application is complete, we review the information under all applicable issuance criteria, including 50 CFR part 13, regulations under other wildlife and plant laws, and the CITES regulations. We may consult with outside experts, scientists, and staff within the Federal Government, State and tribal agencies, the Secretariat, or foreign Management or Scientific Authorities before we make our findings. The burden of proof in establishing that the issuance criteria are met lies with the applicant. We can issue a CITES document only if we are satisfied that all criteria specific to the proposed activity are met.

One commenter suggested that we accept at face value biological non-detriment findings of the exporting range countries and the quotas set by the CoP. We decline to incorporate this suggestion (see discussion for proposed section 23.61 in the preamble). Another commenter asserted that the regulations do not provide a reasonable alternative to expensive court action when permits are denied. We note that the general permit procedures in 50 CFR part 13 set out a review process to be followed if an application, including a CITES application, is denied. If the applicant objects to the denial of an application, he or she may request reconsideration and then appeal the decision, if necessary. The reconsideration or appeal review will be based on the original application and any explanation of either how we have misinterpreted the information or made a procedural or technical error in our original review of the application.

Records (section 23.34): We propose this new section to summarize the types of general records that potential applicants may want to keep for specimens that have been in or may

enter international trade. Many orchid hobbyists and commercial growers expressed great concern that the documentation requirements in the 2000 proposal were excessive and impractical. Concerns included comments that plants are traded, gifted, and otherwise exchanged freely within the United States without specific receipts; document requirements should be different for orchids since they are easy to propagate, produce a large number of offspring, and are easy to hybridize; recordkeeping requirements should not be the same for hobbyists and commercial nurseries; and hybrids should be exempt from regulation since they are artificially propagated.

After considering the comments, we recognize that our 2000 proposal on records and legal acquisition (see proposed section 23.60 in the current proposal) was not clear. Our intent was to reflect how we currently conduct business. Thus, we revised the proposed regulations. This section on records provides examples of the kinds of records potential applicants may want to keep if they intend to trade in CITES species internationally (see the discussion for proposed section 23.2 in the preamble concerning possession and domestic trade). Although the applicant for a CITES document needs to provide sufficient information for us to make the legal acquisition finding, we base the amount of information we need on the risk that the specimen was illegally acquired. These factors take into account many of the issues raised by commenters. For example, we consider whether the specimen is a hybrid; is common in captivity in the United States; breeds or propagates readily; has little illegal trade; and is commonly imported. We give less scrutiny and require less information when the trade poses a low risk and exert more scrutiny and require more detailed information when the proposed activity poses greater risk.

A few commenters believed that the recordkeeping provisions for exempt plant material, such as flasked orchid seedlings, went beyond the requirements of CITES. We disagree because the exemptions recognized by the Parties for a number of plants are narrowly applied to those particular specimens. Once those exempt plant materials take a different form (such as a seedling removed from a flask and entered into cultivation or a plant grown from an exempt seed), the new specimen requires CITES documents to be traded internationally. We have, however, revised the proposal to only ask for records that document the name and address of the source of the exempt plant material. We are no longer proposing to ask for information on the cultivated origin of exempt seeds because at CoP13 the Parties agreed that plants grown from exempt plant material under controlled conditions qualify as artificially propagated.

Some commenters contended that we should grandfather or grant amnesty to Appendix-II specimens known in cultivation for more than a set number of years. We did not adopt this suggestion. For specimens to be eligible for certain CITES documents, we have to be satisfied that the specimens were legally acquired. We cannot exempt specimens from this finding regardless of the length of time they have been in cultivation. We can, however, use a less rigorous paperwork requirement, as we have done through the risk assessment process described above.

A few commenters contended that documentation is all but useless in effectively monitoring whether the trade in orchids is legal. We disagree and believe that documents have effectively worked as the centerpiece of CITES trade controls. A CITES document indicates that a Party has made the findings to show that the specimen was legally acquired and the trade is not detrimental to the survival of the species. In addition, our use of risk assessment as described above allows us to consider all factors, not just documents.

One commenter thought it would be anti-competitive for a nursery to be required to disclose the source of plants. We note that each application form contains a notice under FOIA. Organizations, businesses, or individuals operating as a business must identify any information that should be considered privileged and confidential business information to allow us to meet our responsibilities under FOIA. Confidential business information must be clearly marked ''Business Confidential'' and be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary and remaining documents may be made available to the public under FOIA.

One commenter suggested we use ''sequential ownership'' rather than ''multiple ownership'' to clarify that we do not mean joint title. We agree and revised the text to reflect this change. Several commenters were concerned that importers were not provided copies of CITES documents at the port of entry and asked if we would provide free copies of prior documents if requested. We note that it is important for persons who plan to conduct international trade to keep copies of CITES documents. This is especially true if the specimen or its parts, products, or derivatives are to be re-exported. A re-export certificate can be issued only if we have the permit number and date of issuance of the foreign CITES document under which the specimen was imported. This is one instance when we will be looking for sequential ownership records. If a person did not get a copy of a CITES document at the time of entry into the United States, he or she should contact us to obtain copies as soon as possible. Copies of CITES documents may be requested from us through FOIA, but such documents may not be available after a few years. If the requester qualifies for the fee waiver under FOIA, there is no charge.

Two commenters questioned the legal basis for requiring records to show (a) that the cultivated parental stock was established in accordance with CITES and relevant national laws for a plant to qualify as artificially propagated or (b) the chain of custody. We have a responsibility under the Treaty to make a legal acquisition finding before issuing certain CITES documents. In the case of artificially propagated plants, the Parties agreed to an interpretation of ''artificially propagated,'' which includes whether the cultivated parental stock was legally established. In the case of sequential ownership, we may need to look further to be satisfied that there is no illegality in the chain of custody. The amount of information we need depends on the risk associated with the proposed activity as described in the application.

A few commenters thought we should change the recordkeeping for wild-collected specimens taken on public land where no permit is required. We agree and have revised the text. When applying for a permit, persons who collect on public land where no permit is required should provide information on when and where the specimen was collected and state that no permission was required. We will contact the appropriate State or Federal agency that has jurisdiction over collection of wildlife or plants on that land.

General requirements for standard CITES documents (sections 23.35–23.39): The basic requirements for U.S. and foreign CITES documents have not changed since the Treaty took effect in 1975, and are the same as in the current regulations (section 23.15). We have designed U.S. application forms for specific activities and protection levels to make applications easier to complete and to clarify what information is needed. Each proposed section provides information to help an applicant determine which application form to

request. The forms can be obtained from our website or requested by phone, mail, or e-mail (see proposed section 23.7).

Each proposed section lists the issuance criteria for each type of document and references the appropriate section for factors we consider in making a decision on certain criteria. The issuance criteria are based on the provisions of the Convention (Articles III, IV, V, and XIV) and resolutions, including Resolution Conf. 12.3 (Rev. CoP13) on permits and certificates.

As discussed earlier, to comply with Resolution Conf. 12.3 (Rev. CoP13), CITES documents must show the scientific name of the species based on the standard nomenclature in the CITES Appendices or the references adopted by the CoP. We propose to add this requirement as an issuance criterion to conform to the resolution, expedite review of permit applications, and ensure that documents are issued for the correct species.

Prior issuance of an import permit (section 23.35(e)): Under Article III of the Treaty, before a Management Authority can issue an export permit for an Appendix-I specimen, it must be satisfied that an import permit has been issued for the specimen. However, some countries have stricter national measures that require the export permit to be issued before they can issue an import permit. Resolutions Conf. 10.14 (Rev. CoP13) and 10.15 (Rev. CoP12) recommend that this requirement may be satisfied when the Management Authority of the importing country has provided written assurance that an import permit will be issued. Thus, for the export of live and dead Appendix-I specimens and re-export of live Appendix-I specimens (as required by Article III of the Treaty), we propose that the issuance criteria can be met either by showing that the import permit has been issued or by providing confirmation from the Management Authority of the importing country that the import permit will be issued. For re-export of dead specimens, the Management Authority does not need to see the import permit before issuing a re-export certificate, but the shipment still must be accompanied by an import permit.

One commenter suggested that a written confirmation from the appropriate authority in the form of a letter, fax, e-mail, or similar media should be acceptable, with allowance for oral confirmation in an urgent situation to be followed by written confirmation. We agree that these types of written communications could confirm that an import permit has been or will be issued. We also agree that oral confirmation may be acceptable, but only under exceptional circumstances since oral confirmation is open to misunderstanding. We revised the text to clarify that confirmation should be in writing except when the life or health of a specimen is threatened and no timely means of written communication is possible.

Export permits (section 23.36): To comply with Article II of the Treaty, we propose that the export of Appendix-I wildlife that only qualifies as source code ''W'' or ''F'' must be for noncommercial purposes (see discussion in the preamble for proposed section 23.18). This proposed new provision means that facilities that are commercially breeding Appendix-I wildlife need to become registered under proposed section 23.46 before they can export Appendix-I specimens. This does not affect the sale of specimens within the United States, only the commercial export of such specimens, nor does it preclude the export of specimens where the export is noncommercial, such as for purposes of science, conservation, or personal use.

We propose to add language to address the exemption in Article XIV paragraphs 4 and 5 for certain Appendix-II marine species protected under another treaty, convention, or international agreement that was in force on July 1, 1975 (the date of entry into force of CITES). Export of a marine specimen exempted under Article XIV requires a CITES certificate indicating that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement.

Re-export certificate (section 23.37): A re-export certificate is required for the export of Appendix-I, -II, and -III specimens that were previously imported, including items subsequently converted to manufactured goods. A certificate may be issued when evidence of legal import has been provided.

Certificate of origin (section 23.38): This document allows the export of a specimen of species listed in Appendix III when the specimen originated in a non-listing country. Current regulations (section 23.12(b)(2)) provide only general information about a certificate of origin. We are proposing a new section to provide specific information on the application form and issuance criteria for a certificate of origin. One commenter was concerned about the inconvenience of obtaining a CITES certificate of origin from a country's Management Authority when often a certificate is issued on a local level, especially for hunting trophies. The commenter suggested that a certificate of origin from the local authorities should be acceptable for Appendix-III and some Appendix-II species. We note that a certificate of origin is acceptable under CITES only for Appendix-III species. Resolution Conf. 12.3 (Rev. CoP13) recommends that a certificate of origin be issued by a country's designated Management Authority and that Parties accept a document only if it is issued by such authorities. Although permission to hunt may be granted locally, export is often a function of a country's national government. However, a central national office that is the designated Management Authority may delegate issuance authority to field or local offices, such as provincial offices, for all CITES documents, not just certificates of origin.

Introduction from the sea (section 23.39): Paragraphs 4 and 5 of Article XIV of the Treaty provide a limited exemption for certain Appendix-II species when a country is a party to another treaty, convention, or international agreement that protects the listed marine species and was in force on July 1, 1975 (the date of entry into force of CITES). For introductions from the sea, this exemption applies only to specimens that were harvested by a ship registered in the country of introduction that is also a party to the pre-existing treaty. This is in keeping with Article XIV paragraph 4 and with the intent of the provisions of Article IV of the Treaty. It also supports the CITES goal of exempting only those introductions from the sea that are certified as being in compliance with a pre-existing treaty by a party to that treaty who is competent to make such a certification. Should a commercially exploited marine species that is exempt under Article XIV be listed in the future, implementation details may need to be addressed at the time of listing.

Certificates for artificially propagated plants (section 23.40): The Parties recognize that it is sometimes necessary to approach plants differently than wildlife because of the unique aspects of plant biology and trade. This proposed section implements Article VII(5) of the Treaty and allows us to issue a certificate for artificially propagated plants. This includes specimens of Appendix-I species propagated for noncommercial purposes or traveling as part of an exhibition, certain Appendix-I hybrids (see proposed section 23.42), and specimens of Appendix-II or -III species propagated for any purpose. (See proposed section 23.47 to export Appendix-I plants propagated for

commercial purposes under Article VII(4) of the Treaty.)

We propose to adopt the conditions of Resolution Conf. 11.11 (Rev. CoP13) to decide whether plants qualify as artificially propagated (see proposed section 23.64). This resolution clarifies that not all cultivated plants grown under controlled conditions qualify as artificially propagated, and a shipper may need a CITES export permit rather than a certificate for artificially propagated plants. An Appendix-I plant that qualifies for this exemption does not need a CITES import permit.

Some certificates for artificially propagated plants are issued with an inventory sheet as part of the CITES document. APHIS asked that we clarify whether a permittee is authorized to add native plants to the inventory sheet. Generally, propagators of native plant species are issued a CITES document on which we list the native plant species authorized for export. The permittee is not authorized to add species to the CITES document. All CITES documents are issued with specific conditions that contain language on how a permittee is to use the document. This language is found in block 5 of the CITES document and on the accompanying inventory sheet and, in some cases, on a separate sheet containing special conditions attached to the document. We emphasize how important it is that permittees and inspectors read all the conditions on the CITES document and call the U.S. Management Authority if questions arise or if the conditions are not clear.

Several commenters urged us to revise the CITES regulations to make artificially propagated Appendix-I specimens available for any purpose, including commercial purposes, since they believe that the widespread artificial propagation of orchid species serves as a major deterrent to the collection of orchid species from the wild. The proposed regulations in section 23.47 already provide procedures for the export of Appendix-I plants that were artificially propagated for commercial purposes.

Bred-in-captivity certificates (section 23.41): Wildlife bred-in-captivity is also covered under Paragraphs 4 and 5 of Article VII of the Treaty. In adopting Resolutions Conf. 10.16 (Rev.) and 12.10 (Rev. CoP13), the Parties recognized the need for a standard interpretation of these two paragraphs. The Parties have expressed concern that trade in specimens falsely declared as bred-in-captivity is contrary to the Convention and may be detrimental to the survival of wild populations. (See proposed section 23.46 concerning the registration of operations that breed Appendix-I wildlife for commercial purposes to meet the provisions of Article VII(4).)

This proposed section implements Article VII(5) and allows us to issue a bred-in-captivity certificate for specimens of Appendix-I species bred for noncommercial purposes (see proposed section 23.5) or traveling as part of an exhibition, and specimens of Appendix-II or -III species bred for any purpose. At CoP12, the Parties agreed that facilities that are breeding Appendix-I species for noncommercial purposes must be participating in a cooperative conservation program with one or more of the range countries for that species. We propose to adopt this provision. If the breeding facility is not participating in a cooperative conservation program, specimens will be assigned the source code ''F'' and are not eligible for a bred-in-captivity certificate. Export of such Appendix-I specimens would only be allowed when the export is for noncommercial purposes (see the discussion in the preamble to proposed section 23.18). We also propose to adopt the recommendations of Resolution Conf. 10.16 (Rev.) for specimens bred-in-captivity (see proposed section 23.63). Appendix-I wildlife that qualifies for a bred-in-captivity certificate does not need a CITES import permit.

General information on hybrids (sections 23.42 and 23.43): At CoP2, the Parties recognized that it is difficult to distinguish between purebred and hybrid specimens for trade identification purposes. If hybrids were not subject to CITES controls, persons wishing to avoid the controls of CITES could falsely claim that the specimens in question were hybrids. Resolution Conf. 2.13 recommended that hybrids, even though not specifically listed in any of the Appendices, are subject to CITES if one or both parents are listed. The Parties agreed at CoP10 to treat plant hybrids differently from wildlife hybrids. Resolution Conf. 2.13 was repealed, and provisions for hybrids were placed in other resolutions.

Plant hybrids (section 23.42): Resolution Conf. 11.11 (Rev. CoP13) on trade in plants contains provisions on trade in plant hybrids. We are proposing a new section in the regulations to implement this resolution. Trade in plant hybrids must meet the requirements of CITES unless the Parties agree to exempt an Appendix-II or -III hybrid by a specific annotation to the Appendices (see proposed section 23.92). At CoP10, a number of artificially propagated hybrids of some ''supermarket'' cacti were granted a general exemption, and at CoP13, artificially propagated hybrids of the orchid genera *Cymbidium*, *Dendrobium*, *Phalaenopsis*, and *Vanda* were granted an exemption under certain conditions.

Plant hybrids are subject to CITES controls if one or both parents are listed in the Appendices. If the hybrid includes two CITES species in its lineage, it is listed in the more restrictive Appendix of either parent, with Appendix I being the most restrictive. Most plant hybrids are the product of artificial propagation using well-established nursery stocks that have been artificially propagated for many years. Thus, the Parties agreed to allow artificially propagated hybrids of one or more Appendix-I species or taxa that had not been annotated to include hybrids to be traded with a certificate for artificially propagated plants. In addition, seeds and pollen (including pollinia), cut flowers, and flasked seedlings or tissue cultures of these Appendix-I artificially propagated hybrids are exempt from CITES controls and do not require CITES documents (see proposed section 23.92).

One commenter stated that all hybrids should be exempt from CITES document requirements. We did not accept this suggestion. See the general discussion of hybrids above for the basis of applying CITES requirements to hybrids of CITES species.

Another commenter stated that CITES Resolution Conf. 9.18 (Rev.) (replaced by Resolution Conf. 11.11 (Rev. CoP13)) amounted to an amendment of the Treaty and, therefore, should not be implemented until it has been ratified by Congress. We disagree since resolutions are not amendments to the Treaty, but are interpretations of the Treaty's requirements that are agreed upon by the Parties. Absent an amendment to the Treaty, there is no requirement to seek the advice and consent of the Senate. If such consultation were required for interpretations of CITES, we would not be able to readily implement any of the interpretations of the Treaty agreed to by the Parties, including measures like the flasked seedling exemption, which represents a relaxation of permit requirements for plant specimens.

The same commenter stated that the rule would increase the reach of the Treaty by treating orchid hybrids the same as species. We again disagree because the treatment of plant hybrids in the proposed rule is based on existing CITES resolutions, and we have always regulated hybrids according to the interpretation of the Treaty by the Parties. Therefore, these proposed regulations do not represent a change in

the scope of the Treaty or the way we apply it to plants.

Wildlife hybrids (section 23.43): In Resolution Conf. 10.17 (Rev.), the Parties agreed that wildlife hybrids with one or more Appendix-I or -II specimens in their recent lineage are controlled under CITES. The term ''recent lineage'' means the previous four generations of a specimen's ancestry. We anticipate most hybrids that include a CITES species will continue to be regulated by CITES (note that the proposed definition of ''species'' includes hybrids since hybrids are controlled under CITES). A hybrid would be excluded from CITES controls only when non-listed CITES species appear in its ancestry for the past four generations. For example, a specimen who's ''great-great-great grandfather'' was a CITES-listed species would not be considered to be listed under CITES if all specimens within the past four generations of direct line of descent were species that are not listed under CITES. Also, a hybrid of species included in a higher-taxon listing, such as parrots or cats (excluding domestic cats) generally would be regulated by CITES because the crosses usually are between species within that taxon.

We propose to require an excluded wildlife hybrid to be accompanied by a CITES document or letter, issued by the Management Authority of the country of export or re-export. The letter would need to certify that the wildlife hybrid contains no CITES species in its recent lineage. Because not all countries will be aware of this U.S. requirement, a person who plans to import an excluded wildlife hybrid needs to contact the Management Authority of the exporting or re-exporting country to get the appropriate letter or CITES document before making a shipment. For export or re-export from the United States, a person should submit an application to our office that includes information on the hybrid's lineage. After reviewing the information, we will determine if we can issue a letter or if a CITES document is required.

We propose not to require a domestic dog or cat that has no CITES species in its recent lineage to be accompanied by a letter or CITES document. Note, however, that wolf (*Canis lupus*)-domestic dog hybrids that include wolf in the last four generations and domestic cats that include CITES cats in the last four generations (*e.g.*, some Bengal cats) would need to be accompanied by a letter or CITES document upon export, re-export, or import.

Two commenters questioned the legal basis for the four-generation rule, stating that captive hybrids are biologically dead as a wild species. This proposed section addresses the issue of hybrids in a manner that reflects the multilateral interpretation by the Parties. Because some hybrids are phenotypically similar in appearance to the parent species, the failure to control trade in hybrids would create difficulties in enforcing CITES for the listed parent species. We believe the four-generation rule is a reasonable approach to ensure that trade in hybrids does not undermine the effective control of trade in CITES species.

The same two commenters also questioned the scientific basis for the four-generation rule. The Parties adopted the four-generation rule because they made the judgment that a fifth-generation or more distant generation hybrid of a listed species had a negligible genetic relationship to the listed species.

One commenter recommended that we delete this provision and questioned the practicality of the rule as it would be impossible to show that no CITES species is within four generations of the lineage of a specimen, especially for specimens taken on game ranches where hybridization is known to occur with some species. We did not adopt this suggestion because the provision provides a mechanism to exclude some hybrids from CITES controls while helping us maintain trade controls on hybrids that the Parties have agreed to regulate. To qualify for the exclusion, a person needs to provide genealogical records (pedigrees) showing that no specimen of a CITES species was included in the past four generations. Without such records, which are generally kept by breeders, you must apply for a CITES document.

Another commenter was concerned that the importer of wildlife hybrids will frequently get caught without a proper document and suggested that retrospective documents should be available to importers who were unaware of the requirement. We disagree and note that this section provides an exclusion under very limited circumstances. We emphasize that for an importer to be eligible for a retrospective document, he or she must meet the proposed requirements of section 23.53.

Personally owned live wildlife (section 23.44): Article VII(3) of the Treaty provides that, in some circumstances, the provisions of Articles III, IV, and V of the Treaty do not apply to specimens that are personal or household effects. As discussed previously, Parties have generally excluded live wildlife from this exception. However, in Resolution Conf. 10.20, the Parties recommend that the term ''personal and household effects'' include personally owned, live wildlife that is registered by the Management Authority in the country where the owner usually resides. To monitor frequent international movement and reduce administrative and technical problems, the Parties agreed to use a certificate of ownership under specific conditions.

We propose to implement this resolution, which should simplify the procedure for people who frequently travel internationally with companion animals or wildlife used in noncommercial competitions, such as falconry. The certificate of ownership acts like a passport, but can be issued only after agreement between the Management Authorities of the Parties concerned. The owner must accompany the specimen when crossing international borders, and the wildlife cannot be sold or otherwise transferred when traveling abroad.

Several commenters strongly supported this provision as a way to reduce the burden on pet owners and the U.S. Management Authority while supporting wildlife protection laws. One commenter suggested that, when the permittee no longer owns the wildlife, he or she should be required to provide information on the disposition of the wildlife, such as death or sale, at the time he or she returns the certificate. We agree and have revised the condition to include this requirement.

Pre-Convention specimen (section 23.45): Under Article VII(2) of the Treaty, a specimen acquired before the provisions of CITES applied to the species is exempt from Articles III, IV, and V of the Treaty when a Management Authority issues a certificate. Resolution Conf. 13.6 provides guidance on determining when a specimen is considered pre-Convention. We propose to define the term ''pre-Convention'' in section 23.5 and clarify in this proposed section the general provisions that apply to the acceptance and issuance of pre-Convention documents. One commenter suggested we define ''acquisition date.'' Another suggested we define ''pre-Convention date'' separate from ''pre-Convention'' since the date is an additional piece of information required for a valid pre-Convention document. We did not adopt these suggestions, but did revise the definition of ''pre-Convention'' in proposed section 23.5 and the text in proposed section 23.23(e)(9) for clarity.

Before CoP13, the date that a Party considered a specimen to be pre-Convention varied depending on when the Party joined CITES and if it had taken a reservation on the species listing. At CoP13, the Parties agreed that

the pre-Convention date should be the same for all Parties and set it as the date on which the species was first listed in the Appendices. The Parties also agreed to advise holders of pre-Convention certificates to check with the importer or with the Management Authority of the country of destination whether the importing country would accept the certificate.

Before we can issue a pre-Convention certificate, the applicant must provide sufficient information for us to determine that the wildlife or plant (including parts, products, and derivatives) was removed from the wild or born or propagated in a controlled environment before the first date that CITES applied to the specimen. This information also is needed for products (such as manufactured items) or derivatives subsequently made from such specimens. If the specific acquisition date is unknown or cannot be proved, then the applicant should provide any subsequent and provable date on which the item was first possessed by a person.

The pre-Convention status applies to the specimen, not to when it was possessed by the current owner. The applicant can provide information to show the specific date the specimen was acquired, or if that specific date is not known, he or she can provide information to show that it was acquired prior to the date the species was first listed in CITES. The Treaty requires that, before issuing an exemption document, a Management Authority must be satisfied that a specimen was acquired before the date the provisions of CITES applied to it. We recognize that exact purchase or import records may not be available for some pre-Convention specimens and accept a wide range of information to show the pre-Convention status of a specimen. An applicant should state that the specimen is pre-Convention and document the origin to the best of his or her ability. If receipts or invoices are not available, applicants may provide other documents, such as photographs, catalogs, advertisements, or inventories that can attest to the origin of the specimen. For example, an antique dealer may not be able to provide the specific date an item was manufactured, but may be able to provide information that shows the item dates to the 16th Century.

Even antiques that are at least 100 years old that clearly qualify as pre-Convention must be accompanied by pre-Convention documents. One commenter suggested that we be flexible in evaluating the documentation for antiques and accept errors in the description of antiques. We note that the description of an item on a CITES document, whether an antique or not, needs to be accurate to ensure that the item being shipped is what was authorized. An error in a description may cause a delay in clearing a shipment or result in a shipment being detained or seized. An unintentional technical error would be considered in any forfeiture proceeding.

Another commenter thought the regulations should not require a person to trace ownership of antiques over the past 100 years. The general import regulations for antiques under the ESA are found in 50 CFR part 14. Except in rare situations, we do not require a person to show the sequential ownership of pre-Convention specimens including antiques. If a CITES species is also listed under the ESA and does not qualify under the ESA as an antique, we will ask for information on whether the specimen has been sold or offered for sale because an ESA species loses its pre-Act status when placed in commerce.

One commenter questioned whether plants obtained before CITES was ratified and their progeny (offspring), including divisions or seedlings, were exempt. The Treaty sets out a limited exemption for pre-Convention specimens, but requires that such specimens in international trade be accompanied by a CITES exemption document. This exemption does not include offspring of pre-Convention specimens, including plants grown from divisions and seeds. Article VII(2) of the Treaty, allows for a Management Authority to issue an exemption document when it ''is satisfied that a *specimen* was acquired before the provisions of the present Convention applied to *that specimen*'' [emphasis added]. Offspring of pre-Convention specimens do not meet this provision since they did not exist before the provisions of the Convention applied. However, plants grown under controlled conditions may be eligible for an exemption document as artificially propagated.

Further, we will no longer apply the definition of pre-Convention to cell lines whose originating line was established prior to the listing date of the species. These cell lines are continually growing and cells are harvested from growing cultures. Applicants who wish to export cell lines must comply with CITES requirements, including legal acquisition and establishment of the cell line. Cells grown in a controlled environment may be eligible for a CITES exemption document, such as a bred-in-captivity certificate.

Another commenter suggested that if the exemption did not apply to offspring of pre-Convention specimens, it would constitute a retroactive application of requirements. We disagree with the commenter's interpretation of the legal concept of ''retroactive.'' The provisions that apply to offspring of pre-Convention specimens do not apply to international trade that occurred before the effective date of the existing CITES regulations, only to subsequent trade.

One commenter expressed concern that we require proof that a specimen was acquired before the provisions of CITES applied to it since orchids have been gathered for cultivation for about 150 years. The commenter stated that, prior to CITES, few hobbyists, hybridizers, or commercial growers had reason to maintain records to support the legality of the original acquisition, and many orchid specimens were acquired over the years at auctions, as gifts, or in trade. We are puzzled by this comment since we have not had requests for pre-Convention certificates to export orchids. All orchids have been listed under CITES since July 1975, and we assume there is little international trade in pre-Convention specimens. We also note that this is not a change from the regulations that have been in place since 1977. Again we clarify that the offspring of a pre-Convention specimen does not qualify for this exemption.

One commenter said that, since virtually all who enter the plant trade started as amateur growers of plants, the failure to provide some means for documenting, for CITES purposes, these plants would cause a taking of the commercial productive value of the collection of every amateur. We emphasize that the provisions for pre-Convention in these regulations do not go beyond the terms of the Treaty. We merely are adopting the interpretation of the Parties. There is no taking of property, either as a matter of fact or law. We are not limiting trade, nor are we affecting the use or transfer of plants within the United States. For individuals to be eligible to trade in protected plants internationally, they need to follow the provisions of the Treaty, which is a multilateral agreement. In fact, meeting the requirements agreed upon by the Parties protects property from detention and seizure when in international trade.

One commenter suggested that the use of the word ''qualifying'' in the proposed regulations is confusing as it gives the impression that only certain Appendix-I species qualify for the exemption. To address this concern, we

revised the text to clarify that no CITES import permit is required for an Appendix-I specimen that meets the pre-Convention exemption.

One commenter asked us to add the term ''manufactured items'' to the list of what is pre-Convention under issuance criteria in paragraph (d)(1). We adopted this suggestion in the current proposal. Although a manufactured item is a subset of the term ''product,'' for some items, the date of manufacture into a product can help establish that the item qualifies as pre-Convention.

In 2000, we proposed to establish a voluntary registration of any inventory or stockpile of live specimens or parts, products, or derivatives when species are initially listed on the CITES Appendices. In this notice, we are not proposing to establish such a registration. Based on comments received, the purpose of such an inventory was confusing to the public. It also created another layer of regulation that is not needed to effectively issue pre-Convention certificates.

Registration of Appendix-I commercial breeding operations (section 23.46): Article VII(4) of the Treaty provides that specimens of Appendix-I species bred for commercial purposes will be deemed to be in Appendix II for CITES document requirements. To clarify, a Management Authority may grant an export permit or a re-export certificate without requiring the prior grant of an import permit, thus allowing specimens that originate in a CITES-registered breeding operation to be traded commercially. The specimens are still listed in Appendix I and are not eligible for any exemption granted to an Appendix-II species or taxon, such as less restrictive provisions for personal and household effects.

The Parties recognize the potential abuse inherent in this exemption because it is difficult for inspectors to distinguish between specimens bred-in-captivity and those removed from the wild. They also recognize that captive breeding for commercial and conservation purposes is increasing. We propose to implement Resolution Conf. 12.10 (Rev. CoP13) and establish application procedures to allow an operation to become registered for each Appendix-I species maintained at the operation. The registration criteria would include whether the species qualifies as bred-in-captivity (see proposed section 23.63).

In May 2000, we proposed to publish a notice when a registration request is received and invite public comment. We now believe that publication of such notices in the **Federal Register** is unnecessary because Resolution Conf. 12.10 (Rev. CoP13) requires the CITES Secretariat to notify all Parties of all registration requests. If a Party objects to, or expresses concern about, the registration within 90 days from the date of the Secretariat's notification, the Secretariat refers the application to the Animals Committee. The Secretariat then communicates the recommendations of the Committee to the Management Authority of the Party that submitted the application and assists in the resolution of the identified problems. If the objection is not withdrawn, approval of the registration will require a two-thirds majority vote by the parties at the next CoP or by a postal vote. Publication of registration requests in the **Federal Register** would not only be duplicative of the review process embodied in Resolution Conf. 12.10 (Rev. CoP13), but would also result in delays in the processing of registration requests. Moreover, as noted earlier, no legal requirement exists for us to obtain public comments on CITES applications, and we already make determinations on whether specimens qualify as bred-in-captivity for other CITES documents without obtaining public comments.

Appendix-I wildlife from a registered breeding operation can be exported with an export permit under Article IV of the Treaty. An import permit is not required, and specimens can be used for primarily commercial purposes. To date, only four U.S. operations have chosen to complete the process of registering, and most U.S. commercial breeders are applying for permits under Article III of the Treaty. We propose to issue permits under Article III only in exceptional circumstances. This reflects the intent of CITES to prohibit trade in Appendix-I specimens for primarily commercial purposes when they do not qualify for an exemption to allow it. Thus, we encourage breeders to register their operations if they plan to trade in Appendix-I specimens internationally (see discussion in the preamble for proposed section 23.18).

One commenter recommended that closed bands should not be required on all birds and that the use of microchips should be allowed as an alternative. We agree and have revised the wording in this section to indicate that closed-banding is an option and that other marking methods may be used. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have the equipment on hand to read the microchip at the time of import, export, or re-export.

Two commenters stated that what is to be included in a study of ecological risks is not clear. We have revised this text so that it no longer states that the applicant must conduct a study of the ecological risks. In this proposal we have added a criterion for registering an Appendix-I breeding operation which states that potential escape of specimens or pathogens from the facility may not pose a risk to the ecosystem and native species. The Scientific Authority would assess the potential impact of the commercial breeding operation on the environment in which it is located. Persons requesting registration of their breeding operation must provide information on whether there is a risk of escape of animals from the facility and identify specific measures that have been taken to prevent escape. Applicants should address possible risks should these measures fail, including the potential for the animals to be invasive if the species is not native to the area where the breeding facility is located. If the species involved is native to the area, a determination should be made whether the stock of the breeding operation is of a different genetic stock than the surrounding wild populations. The application must also demonstrate that disease will not be transmitted from the breeding operation to wild populations, either directly (contact among animals) or indirectly (disposal of animal waste, disposal of waste water, air exchange, or other means). We will not forward a request to the CITES Secretariat to register a breeding operation if the assessment of ecological risks indicates a potential for the breeding operation to result in harm to the surrounding environment.

One commenter stated that no system allowing expedited treatment of commercial facilities should exclude amateurs. Article VII of CITES has different procedures for commercial and noncommercial breeders of Appendix-I wildlife. CITES requires a Party to decide which type of CITES document to issue based on the purpose of the transaction and the ability of the exporter to breed the specimen in captivity. This proposed section outlines the registration requirements for operations that are breeding Appendix-I wildlife for commercial purposes. The requirements for CITES documents for entities that are breeding wildlife for noncommercial purposes are found in proposed section 23.41.

Exporting Appendix-I plants commercially (section 23.47): The Parties recognize that the artificial propagation of plants is essentially different from captive breeding of wildlife and requires a different approach. Artificial propagation of native plants can provide an economic

alternative to traditional agriculture in countries of origin. By making specimens readily available, artificial propagation may have a positive effect on the conservation of wild populations by reducing pressure from collection, provided the parental stock was legally obtained in a non-detrimental manner.

Article VII(4) of the Treaty provides that specimens of Appendix-I plants artificially propagated for commercial purposes will be deemed to be in Appendix II for CITES document requirements. Just as for wildlife in the previous section, this means that a Management Authority may grant an export permit without requiring the prior grant of an import permit. The specimens are still listed in Appendix I, and they are not eligible for any exemption granted to an Appendix-II species or taxon. For example, seeds of Appendix-I cycads require CITES documents, even if from plants that were artificially propagated for commercial purposes and treated as if listed in Appendix II. These seeds require a CITES document upon export or re-export showing them as artificially propagated and as listed in Appendix I, but they do not require an import permit. They would not be exempt from CITES requirements, as are seeds of Appendix-II cycads, and they also would not be eligible for the personal effects exemption (see proposed section 23.15) if obtained outside a person's country of usual residence.

Two commenters thought that a registration system should be provided for facilities that propagate Appendix-I plants similar to the registration system for wildlife. We note that, at CoP9, the Parties adopted Resolution Conf. 9.19 (Rev. CoP13), which recommends guidelines on the registration of nurseries that export artificially propagated Appendix-I plants. At the same time, the Parties recognized that nurseries that are not registered could still export artificially propagated Appendix-I plants using the standard procedures. Although we recognize that there may be some advantages to developing a registration process, we propose not to incorporate Resolution Conf. 9.19 (Rev. CoP13) into the regulations due to the complex issues resulting from the decentralized system of regulating nurseries in the United States. Instead, we propose to reserve section 23.47(e) for nursery registration, because we will need to work with nurseries, regulators, and the interested public to develop regulations.

We continue to implement Article VII(4) of the Convention by reviewing a nursery's facilities during the application process and issuing CITES export permits with a source code ''D.'' This type of export permit indicates to other Parties that we have treated the nurseries as propagating Appendix-I plants for commercial purposes. No import permit is required under CITES for the trade of those specimens.

One commenter stated that registration of nurseries should be by a Management Authority, not the Secretariat. The resolution on nursery registration lays out roles for the nursery, Management Authority, and Secretariat. A Management Authority is to notify the Secretariat to register a nursery. The Secretariat is responsible for reviewing the application, monitoring the registration, and maintaining a Register of nurseries.

One commenter thought that commercial propagators should not be afforded expedited treatment that is not also accessible to amateurs. We have streamlined the application and review process for entities that are propagating plants for either commercial or noncommercial purposes in a similar manner. As required under CITES, our decisions are based on the purpose of the transaction and the ability of the exporter to propagate the specimens. The provisions in this proposed section allow artificially propagated Appendix-I plants to be traded commercially and do not adversely affect the trade in Appendix-I plants artificially propagated for noncommercial purposes. The requirements for CITES documents for entities that are propagating for noncommercial purposes are found in proposed § 23.40.

Registered scientific institutions (section 23.48): Article VII(6) of the Treaty provides an exemption from strict CITES controls for preserved, dried, or embedded museum specimens, herbarium specimens, and live plant materials that carry an approved label. The exemption covers the noncommercial loan, donation, or exchange of these items between scientific institutions registered by each country's Management Authority. Resolution Conf. 11.15 (Rev. CoP12) recommends that Parties encourage their natural history museums and herbaria to inventory their holdings of rare and endangered species. This recommendation is to allow researchers to efficiently borrow specimens for study and reduce any potential adverse impacts that museum needs for research specimens can have on small populations of rare wildlife and plants.

This proposed section would combine sections 23.13(g), 23.15(d)(8)(iii), and 23.15(e)(3) in the current regulations and adopt the guidelines in the resolution for registration of scientific institutions. A scientist who wishes to use this exemption must be affiliated with a registered scientific institution. Specimens are to be acquired primarily for research that is to be reported in scientific publications and no CITES specimens obtained through the use of this exemption may be used for commercial purposes. We are proposing to clarify that offspring (*i.e.*, cuttings, seeds, or propagules) may not be commercialized including sale through a catalog or as a fund-raising effort because the registration is for scientific purposes only.

We propose that biological samples, including blood and tissue samples of preserved, frozen, dried, or embedded museum samples, herbarium specimens, or live plant material that will be destroyed during analysis will be eligible for this exemption provided a portion of the sample is maintained and permanently recorded at a registered institution for future scientific reference. Because not all countries recognize these types of samples as being eligible to be traded under this exemption, registered scientific institutions should check with the foreign Management Authority before shipping such specimens under a scientific exchange certificate.

We also propose that all specimens for which the exemption is being claimed must have been legally acquired. The specimens must have been permanently recorded by the sending registered institution before being shipped for exchange, donation, or loan for scientific research purposes. The Parties were concerned about possible abuse of the exemption by scientists who might collect specimens and directly export them without the permission of a registered institution in the exporting country. Thus, the registration criteria require the orderly handling and permanent recording of specimens, including the maintenance of permanent records for loans and transfers of specimens to other institutions. In addition, scientists may still need permits under other parts of this subchapter (see proposed section 23.3).

Traveling exhibitions (section 23.49): Article VII(7) of the Treaty allows for the international movement without CITES certificates of pre-Convention, bred-in-captivity, or artificially propagated specimens that are part of a traveling zoo, circus, menagerie, plant exhibition, or other traveling exhibition. The exhibition must register each specimen with its Management Authority, and live specimens must be transported and cared for humanely. At CoP8 in Resolution Conf. 8.16, the

Parties agreed to require traveling live-animal exhibitions to be accompanied by CITES certificates to verify such registration, address technical problems, and to prevent potential fraud. At CoP12, the Parties agreed to extend these provisions to all traveling exhibitions, not just traveling live-animal exhibitions. Thus, Resolution Conf. 8.16 was repealed and Resolution Conf. 12.3 (Rev. CoP13) on permits and certificates was revised to include provisions for all traveling exhibitions. We propose to incorporate provisions for traveling exhibitions into these regulations and to define the term ''traveling exhibition'' in proposed section 23.5.

One commenter was concerned that the definition of ''traveling live-animal exhibition'' in the 2000 proposal inappropriately narrowed the activities of exhibitions to display and entertainment and suggested we use the language of Article VII(7) of the Treaty and resolution. We note that, although the Treaty and resolution provide examples of what could be considered a traveling exhibition, neither specifically defines the term. The word ''exhibition,'' however, carries a connotation of display as the purpose of the activity. We revised the definition to acknowledge the large range of activities included in the term, to include exhibitions of live plants and dead items (specimens that contain CITES species, such as herbarium and museum specimens), and to emphasize that the purpose of these activities must be exhibition.

An exhibition certificate acts like a passport. The exhibitor must obtain a separate certificate for each live animal. The exhibitor of live plants or dead parts, products, or derivatives may be issued a certificate with an inventory for all the specimens in the exhibition. The exhibitor retains the original certificate, which must be validated at each border crossing. We are also proposing a number of conditions to ensure these certificates are used only for temporary cross-border movement by the exhibitor who owns the specimen. A document may not be transferred to another exhibitor, and specimens cannot be sold or otherwise transferred when traveling abroad. Specimens can be transported internationally only for temporary display activities, not for breeding, propagating, or other purposes, and the specimens must return to the country in which the exhibition is based before the exhibition certificate expires.

Many specimens covered by this exemption are Appendix-I specimens. We propose under the general conditions (see proposed section 23.56(a)(4)) that all live Appendix-I specimens must be securely marked or uniquely identified in a way that border officials can verify that the specimen and CITES document correspond. To ensure that each specimen exported or imported is the specimen indicated on the certificate, we recommend that Appendix-II and -III specimens also be clearly identified and, if appropriate, uniquely marked. Tattoos, microchips, tags, or other marks may be used. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.

Two commenters liked the provisions that require the unique marking of each Appendix-I animal, a certificate for each animal, and the exclusion of breeding as a purpose for use of the certificate. One commenter asked the FWS to adopt regulations to prohibit the international movement of animals in traveling exhibitions because of the increased stress and probability of injury of animals. It is not necessary to prohibit the international movement of animals to ensure their humane care. The provisions of CITES help ensure the humane care of live animals being shipped by requiring that animals be shipped in accordance with IATA LAR or *CITES Guidelines for Transport* and that shipments be inspected.

Sample collections section 23.50: At CoP13, in an effort to address the international movement of display samples, such as sets of shoes or reptile skin samples, the Parties defined such shipments as sample collections and agreed to allow the in-transit shipment of such collections under specific conditions. Management Authorities could issue a CITES document that would allow the shipment to move from one country to another before returning to the originating country, rather than requiring the issuance of a re-export certificate from each country visited. Such a CITES document must be accompanied by a valid ATA carnet. The ATA carnet is an international customs document that allows the temporary introduction of goods destined for fairs, shows, exhibitions, and other events.

The CITES document must list the same specimens that the accompanying ATA carnet lists and must include the number of the ATA carnet on its face. The CITES document can only be valid for the same length of time as the ATA carnet or 6 months, whichever is shorter, and the shipment must return to the originating country prior to the expiration of the CITES document. None of the specimens within the sample collection may be sold, donated, or transferred while outside the originating country. The CITES document must be presented at border crossings, but only the ATA carnet must be stamped and signed at each intermediary border crossing by customs officials. At the time of first export or re-export and at re-import, the originating Party is to check the CITES document and sample collection closely to ensure that the collection was not changed.

Partially completed CITES documents (section 23.51): Under Article VIII(3) of the Treaty, Parties are to ensure that CITES specimens are traded with a minimum of delay. At CoP12, the Parties agreed to issue partially completed documents when the permitted trade would have a negligible impact or no impact on the conservation of the species (see Resolution Conf. 12.3 (Rev. CoP13)). The permittee would be authorized to complete specifically identified boxes on the document and would be required to sign the document to certify that the information entered is true and correct.

We propose to implement these procedures and issue single-use documents that are partially completed under specific circumstances. We issue a number of CITES documents to authorize exports that are repetitive in nature; the same types of specimens or the same specimens are exported shipment after shipment. This is particularly true for biological samples derived from cell lines that are maintained by a biomedical company and for traveling exhibition specimens that do not qualify as pre-Convention, bred-in-captivity, or artificially propagated.

In the past, in an effort to facilitate the timely movement of specimens that are of low conservation risk, we have issued multiple-use documents that allowed the use of photocopies. However, many countries will no longer accept photocopied multiple-use documents. In June of 2005 we stopped issuing multiple-use documents and set up new procedures to issue single-use permits for these types of activities (for more information, see the preamble in the April 11, 2005, **Federal Register** (70 FR 18311) on revisions to general permit procedures). An applicant should submit the appropriate application form for the proposed activity (see proposed sections 23.18–23.20) and show that the use of this type of document is beneficial and appropriate. At that time, if appropriate, we would create a master file or annual program file for native species that contains all of the relevant information about the proposed activity. We would issue single-use partially

completed documents based on the master file or annual program file when we find that the issuance criteria for the proposed activity and the issuance criteria for a partially completed document are met.

Replacement documents (section 23.52): We propose to adopt the provisions of Resolution Conf. 12.3 (Rev. CoP13) on replacing documents that are lost, damaged, stolen, or accidentally destroyed. We clarify when replacement documents may be available and how to request one. One of the proposed issuance criteria requires a full and reasonable explanation of the circumstances under which the CITES document was lost, damaged, stolen, or accidentally destroyed. We will also check to see if the exporter has requested a replacement document before and review the circumstances surrounding any previous request.

We propose that a replacement document indicate on its face the reason the document was replaced. Since we sometimes receive a replacement document that does not provide this information, we propose to add a paragraph to section 23.26(d)(8) to indicate that we may verify the validity of such a document with the issuing Management Authority. It is important that we issue and accept replacement documents only when the circumstances warrant doing so and that issuance of such documents prevents the use of the original CITES document for a different shipment.

Several commenters found these provisions to be extremely helpful. One suggested that we establish procedures to help U.S. companies in contacting foreign Management Authorities, particularly for antique products. In most instances, the U.S. importer or exporter should not need to contact the foreign Management Authority. When a replacement document is requested after a commercial shipment has left the United States, we will consult with the Management Authority of the importing country. When a replacement document is needed for a shipment that arrives in the United States, the importer should contact the exporter or re-exporter in the foreign country to assess the circumstances surrounding a lost, damaged, stolen, or accidentally destroyed CITES document. Then, the exporter or re-exporter should contact the Management Authority in that country concerning replacement documents, and the Management Authority will contact us directly.

One commenter stated that all CITES documents leaving the United States, even replacement documents, must be validated for the amount that was originally exported as shown on the Wildlife Declaration Form (3–177). Although the U.S. CITES document states in block 15 that it is ''valid only with inspecting official's ORIGINAL stamp, signature and date in this block,'' we propose that we not validate U.S. replacement documents for shipments that have already left the United States because we cannot compare the actual shipment contents to the document. Instead, we will issue a replacement document only for the quantity that was originally exported as shown on a cleared copy of the Wildlife Declaration for wildlife or a copy of the validated CITES document for plants and condition the document so the importing country can accept it as valid.

APHIS requested clarification of the phrase ''true copy of the original.'' Most CITES replacement documents they see state ''replacement'' and reference the original permit number. In their opinion, this is an ''original'' document, not a ''true copy of the original.'' We agree that this is confusing and have revised the regulations to reflect the two types of documents used by Management Authorities: (1) a newly issued original document that indicates it is a replacement document for the original document or (2) a copy marked as a ''true copy of the original.'' We also clarified that a ''true copy'' must contain a new date and original signature of the issuing Management Authority.

Retrospective documents (section 23.53): A retrospective document authorizes an export or re-export after that activity has occurred, but before the shipment is cleared for import. One commenter did not understand the reason the document had to be requested at the time of import of the shipment. To clarify, a shipment must be cleared when it first arrives at the port of import. At that time, we, APHIS, or CBP inspect the paperwork to see that it meets the requirements of CITES. The request for a retrospective document needs to be made at the time the specimens are available for inspection.

Resolution Conf. 12.3 (Rev. CoP13) recommends that a Party neither issue nor accept retrospective documents, but recognizes that there may be some limited exceptions. We propose to add this new section to allow for the issuance and acceptance of retrospective documents based on the resolution and to amend 50 CFR 13.1 to reflect this change. We generally limit issuance of retrospective documents to noncommercial items and even then, only in certain prescribed circumstances. We propose to clarify the limited circumstances under which we will issue or accept retrospective CITES documents. Management Authorities of both the exporting or re-exporting and the importing countries must be satisfied either that any irregularities that have occurred are not attributable to the exporter or re-exporter or the importer, or in addition in the case of items for personal use, that evidence indicates a genuine error was made and there was no attempt to deceive. Thus, before a retrospective document can be issued, the exporter or re-exporter or importer must demonstrate either that he or she was misinformed by an official who should have known the CITES requirements (in the United States, an employee of the FWS for any species, or APHIS or CBP for plants; or in a foreign country, an employee of the Management Authority or CITES inspection authorities), or that the issuing Management Authority made a technical error on the CITES document that was not prompted by the applicant. An additional provision limited to individuals exporting or re-exporting certain specimens for personal use allows them to demonstrate that they made a genuine error and did not attempt to deceive.

While several commenters supported the effort to establish an efficient process for addressing irregularities, one commenter opposed the issuance of documents retrospectively except for noncommercial, personally owned, live animals where the welfare of the animal was at stake. The commenter stated that importers and exporters, particularly businesses, should be expected to know the law, and saw no conservation or other benefit in issuing such documents for dead specimens. We agree that commercial importers and exporters are expected to know the laws that apply to how they conduct business and, generally, would not qualify for retrospective documents. To prevent the use of retrospective documents to circumvent CITES, the Parties laid out the rigorous process described above.

Another commenter stated that the provision would be difficult to implement and would confuse foreign Management Authorities. Although this process can be difficult to implement, we recognize the need for a system to correct any technical errors made by a Management Authority and to assist uninformed travelers with specimens for personal use to comply with CITES.

A retrospective document would be issued and accepted only after the Management Authorities of both the exporting or re-exporting and importing countries have thoroughly investigated the situation and agreed to the issuance of the document. One commenter

suggested that we make it clear that such consultation is required. Another commenter pointed out that we, not the importer or exporter, should consult directly with the foreign Management Authority. We revised the text to clarify these two points.

One commenter stated that we should not require the importing Management Authority to agree to accept the retrospective document since it would create a stalemate, with each government waiting for the other. We did not accept this suggestion. Although the consultation process can be time consuming, it is a basic tenet of the resolution and is important in assessing the circumstances surrounding a shipment.

We received comments that suggested that ''irregularities'' should include errors made by officials, not just misinformation; clerical error, mistake of fact, or other inadvertence; and procedural errors. We agree that Management Authority staff can make mistakes, and we revised the regulations to include unintentional technical errors on a CITES document as an irregularity. We limited this criterion to errors that were not prompted by information provided by the applicant.

Other commenters suggested we allow all errors regardless of who makes them if no unlawful scheme or intentional wrongdoing is involved. These comments on expanding the range of circumstances for issuing a retrospective document exceed the intent of the resolution. The Parties intended for this provision to be used rarely and only under very narrow circumstances. The exporter is responsible for obtaining CITES documents before making a shipment and for inspecting the CITES documents to ensure the key information on the face of the permit, such as quantity and species, match what was requested and what is in the shipment. The provisions for retrospective documents are not to help resolve an enforcement issue, but to resolve a mistake by the government or a genuine error made by a person exporting or re-exporting specimens for their personal use.

Another commenter thought we should allow the use of an affidavit to explain the circumstances if the specific officer cannot be identified. We note the regulations state that the applicant must provide ''sufficient information.'' Retaining the current language allows us more flexibility to consider all pertinent information, including an affidavit, if the circumstances warrant. At the same time, it is misleading to state that the mere filing of an affidavit will be sufficient information in most instances.

One commenter suggested that we include customs officials in the list of people misinforming the exporter or importer. We revised this section to reflect that a customs agency may be the responsible agency in some cases. We recognize that in some countries customs officials inspect and clear CITES shipments on behalf of the Management Authority, and we will consider that in making a decision. In the United States, however, although CBP officials have the authority under the ESA to enforce CITES, they are not generally responsible for the clearance of CITES wildlife or live plant shipments except for live plants being imported from Canada (see proposed section 23.7(e)).

To avoid expensive storage costs and possible harm to the specimen, two commenters suggested shipments be held in ''constructive seizure'' pending issuance of a retrospective CITES document. Another suggested allowing importers to get retrospective documents before a shipment is seized. The issuance and acceptance of a retrospective document and the seizure of shipments are two separate decision processes. The CITES regulations provide the criteria that need to be met for a Management Authority to issue or accept a retrospective document. The regulations that establish procedures relating to property seizure and forfeiture are found in 50 CFR part 12, 7 CFR part 356, and 19 CFR part 162. Although these processes are independent, enforcement officials consider the issuance or denial of a retrospective CITES document in making a decision concerning seizure or forfeiture on a case.

One commenter thought the FWS should allow import of collected material into proper facilities with temporary papers since many developing countries do not have the manpower to issue CITES documents in a timely manner. Neither the Treaty nor Resolution Conf. 12.3 (Rev. CoP13) allows a temporary paper to be used to import CITES specimens. The Parties stressed that a Management Authority should not issue CITES documents retrospectively except under very limited circumstances. When a person anticipates collecting perishable or fragile specimens, he or she needs to work with the foreign Management Authority to meet its requirements and lay the groundwork to obtain a CITES document within the needed timeframe.

We propose to issue a retrospective document only if the Management Authority of the importing country agrees to accept it. APHIS asked us to clarify that the provision applies not only to the issuance of retrospective documents, but to the acceptance of such documents. We agree this section includes the acceptance of documents, and we revised the text.

In 2000, the Canadian CITES Management Authority stated that their law allows the issuance or acceptance of retrospective documents only when specimens are found to be legal and the importer or exporter can demonstrate that he or she was misinformed about permit requirements by a Canadian official or an official of the foreign country. We note that Canada and a number of other CITES countries interpret this provision more strictly than the United States, and travelers may not qualify for a retrospective document for specimens, especially live wildlife or plants, taken with them to these countries.

One commenter wrote that we should either define ''personal use'' or add ''and is for noncommercial purposes'' to the end of the sentence. We agree and have defined personal use as use that is not commercial and is for an individual's own consumption or enjoyment (see proposed section 23.5).

One commenter stated that it was unclear who would inform possible candidates of retrospective documents. These proposed regulations would establish the criteria of who could qualify for a retrospective document depending on circumstances. Wildlife and plant inspectors could refer an importer to the regulations when the circumstances of the import appear to fit those outlined in the regulations. Unfortunately, people apply for retrospective documents even though they clearly do not meet the criteria. This unrealistically raises their hopes and causes additional work for us. We emphasize that CITES requires a document be obtained before the activity occurs and the proposed issuance and acceptance of retrospective documents is to be made only in limited circumstances.

Length of document validity (section 23.54): Article VI(2) of the Treaty states that an export permit can be valid only for a period of 6 months from the date of issuance. Resolution Conf. 12.3 (Rev. CoP13) specifies validity timeframes for re-export certificates (6 months), import permits (12 months), certificates of origin (12 months), and traveling exhibitions (3 years). Resolution Conf. 10.20 recommends that certificates of ownership be valid for no more than 3 years.

We propose to incorporate the recommended validity timeframes set by the resolutions. We also propose to set the term for an introduction-from-

the-sea certificate at 12 months since the activity is similar to import. All CITES documents must specify the length of validity. All import and introduction-from-the-sea activities must be completed by midnight (local time at the point of import) of the expiration date indicated on the document. The only situation where an extension of the validity date is authorized is for certain timber species under limited circumstances (see proposed section 23.73).

One commenter contended that restrictions imposed by the air freight industry and recent European Commission transshipment requirements were causing delays in the shipment of sport-hunted trophies to such an extent as to cause the trophies to arrive in the United States after the export permit had expired. The commenter urged us to add a provision to allow for an extension of validity when the importer could provide a certified statement from the air carrier that outlined the date and routing of the shipment. We decline to adopt this suggestion since export permits are limited to a validity period of 6 months. This timeframe is set by the Treaty, and experience has shown it is adequate time for shipments to be made. If some trophy exporters are encountering problems with shipping arrangements, they should ensure that the shipment is made as soon as the CITES document is issued.

Use of CITES specimens after import (section 23.55): Unless an Appendix-I wildlife or plant specimen qualifies for an exemption under Article VII of the Treaty, it can be imported only when the intended use is not for primarily commercial purposes. In addition, the Parties addressed subsequent use of certain Appendix-I sport-hunted trophies by recommending that the trophies be ''imported as personal items that will not be sold in the country of import'' (Resolution Conf. 10.14 (Rev. CoP13) for leopards, Resolution Conf. 10.15 (Rev. CoP12) for markhor, and Resolution Conf. 13.5 for black rhinoceros).

Thus, we propose to add this new section that conditions the import and subsequent use of CITES wildlife or plant specimens. The import and subsequent use of Appendix-I specimens and certain Appendix-II specimens, including a transfer, donation, or exchange, may be only for noncommercial purposes. Such imports are conditioned by the regulation that the specimen and all its parts, products, and derivatives may not be imported and subsequently used for any commercial purpose. The importer will not be allowed to use or transfer the specimen for commercial purposes once in the United States. Any financial benefit or gain would include, but not be limited to, the donation of these types of specimens, including sport-hunted trophies, where the owner claims a tax deduction or benefit on his or her local, State, or Federal tax return. Other Appendix-II specimens and any Appendix-III specimen may be used for any purpose after import, unless the trade allowed under CITES is only for a noncommercial purpose.

One commenter thought this condition was an important clarification, particularly for highly valuable Appendix-I specimens that are in high illegal commercial demand. On the other hand, three commenters considered it to be unreasonable, illegal, and beyond the scope of CITES, and thought we should have no control or interest in how the specimen is subsequently used within the United States. Section 9(c)(1) of the ESA, which contains a prohibition on illegally traded specimens, confirms that the FWS's regulatory responsibility does not end at import. The commercialization of Appendix-I specimens can result in further demand, which is contrary to the intent of allowing limited import of Appendix-I specimens. We note that the condition does not apply to specimens, such as artificially propagated orchids, that are traded under a CITES Article VII exemption.

One commenter specifically requested that the sale of trophies by estates or trusts be allowed. Although we do not consider transfer to an heir a change in the use of a specimen, the sale or donation of a specimen that results in some form of financial benefit or gain would be considered a commercial activity and not allowed.

One commenter thought requiring a letter of approval from us to use or transfer an Appendix-I specimen for a purpose different than the purpose for which it was imported goes beyond CITES, would be an extraordinary burden, and would be arbitrarily enforced. We have deleted this provision from the current proposal because we provide clearer guidance on what constitutes commercial, noncommercial, and personal use.

Another commenter suggested the regulations need to require annual verification that an individual who imported Appendix-I wildlife or plants into the United States under a CITES permit will not subsequently use or transfer the specimens for commercial purposes. We note that an importer is responsible for ensuring that all requirements of the regulations for import are met. If we receive information that imported specimens are being commercialized, we will investigate the situation. However, we do not plan to require an annual report from an importer to verify compliance with the regulations.

CITES document conditions (section 23.56): Current section 23.18(e) would be replaced by this proposed section. General conditions apply to all CITES documents, standard conditions apply to specific types of documents, and special conditions may be placed on a CITES document when the authorized activity warrants it. All CITES document conditions must be met for a shipment to be lawful.

Resolution Conf. 8.13 (Rev.) recommends that Parties, where possible and appropriate, adopt the use of microchip transponders for the secure identification of live Appendix-I wildlife. Because the Parties have identified a number of technical issues that need to be addressed, we are not proposing that all Appendix-I wildlife be marked with microchips. We are proposing, however, that all live Appendix-I wildlife be securely marked or uniquely identified. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export. One commenter recommended that we add language to this condition to clarify that the mark or identification must be done in such a way that border officials can verify that the CITES document and specimen correspond. We agree and have revised the text.

What Are the Proposed Changes to Subpart D of 50 CFR Part 23—Factors Considered in Making Certain Findings?

Legal acquisition (section 23.60): One of the issuance criteria in the current regulations at section 23.15(d)(2) is whether the wildlife or plant was acquired lawfully. Under Articles III, IV, and V of the Treaty, we must make a legal acquisition finding before issuing export permits and re-export certificates for Appendix-I, -II, and -III wildlife and plants. The Parties have also agreed through a number of resolutions to make this finding before issuing certain exemption documents under Article VII of the Treaty. These include Resolutions Conf. 10.16 (Rev.) and 12.10 (Rev. CoP13) on bred-in-captivity wildlife; Conf. 9.19 (Rev. CoP13) and 11.11 (Rev. CoP13) on artificially propagated plants; Conf. 10.20 on personally owned live wildlife; and 11.15 (Rev. CoP12) on scientific exchange.

There are two types of legal acquisition determinations: (a) Whether the specimen and its parental stock were traded internationally under the provisions of CITES and (b) whether they were acquired consistent with national laws for the protection of wildlife and plants. In the United States, these laws include all applicable local, State, Federal, tribal, and foreign laws.

We make the legal acquisition finding on a case-by-case basis considering all available information (see the preamble to Subpart E for a discussion of legal acquisition for State or tribal programs). The applicant is responsible for providing sufficient information for us to make this finding. We received a number of comments on records and legal acquisition. See the discussion in the preamble for section 23.34 for comments on records. We propose to add this new section to the regulations to clarify that the amount of information we need to make the legal acquisition finding is based on our review of a number of general and specific factors.

General factors include the status of the species; whether the specimen was cultivated from exempt plant material, is a hybrid, or was bred-in-captivity or artificially propagated; whether the species is common in a controlled environment in the United States and has been documented to breed or propagate readily in a controlled environment; and whether significant illegal trade in the species occurs, specimens have been legally imported into the United States, and the range country allows commercial export of the species. We also consider a number of specific factors, such as whether the specimen was confiscated, a donation of unknown origin, or imported previously. Thus, we consider not only information provided by the applicant, but other relevant trade information, scientific literature, and advice of experts. In making a legal acquisition finding, we may also consult with foreign Management and Scientific Authorities, the CITES Secretariat, other U.S. governmental agencies, and nongovernmental experts.

We propose to hold persons who conduct commercial activities involving protected wildlife and plants to a high standard in understanding and complying with the requirements of the laws that affect their activities. We apply a lower information requirement, in most instances, for persons who acquired a specimen in the United States and want to travel internationally with it for personal use. We believe this proposed system for individuals traveling internationally with their personal items or pets is appropriate for the limited number of specimens involved, for the low conservation risk posed, and because most specimens are purchased from retailers who, as businesses, are expected to comply with the laws. We will, however, request additional information when noncommercial trade in a particular species raises greater conservation concern.

For the export of specimens that are bred-in-captivity or artificially propagated in the United States, we consider whether the breeding stock or cultivated parental stock was established under the provisions of CITES and national laws according to Resolutions Conf. 10.16 (Rev.) and 11.11 (Rev. CoP13). In addition, for the registration of Appendix-I commercial breeding operations or nurseries, Resolutions Conf. 12.10 (Rev. CoP13) and 9.19 (Rev. CoP13) require that a Management Authority find that the parental stock was legally acquired. We propose to define the terms ''parental stock,'' ''breeding stock,'' and ''cultivated parental stock'' (see proposed sections 23.5, 23.63, and 23.64, respectively). We agree with two commenters who supported a rigorous standard for legal acquisition before a CITES document can be issued, especially for Appendix-I specimens, and thought it should satisfy the concerns of Appendix-I species range countries regarding the laundering of wild-caught specimens through captive-breeding programs.

We also propose to allow the export of donated CITES specimens of unknown origin by public institutions on a case-by-case basis under limited circumstances. One commenter thought this paragraph should not refer to re-export, but should refer to import or introduction from the sea because the Scientific Authority is not required to make a non-detriment finding for re-export, but is required to make such a finding for import and introduction from the sea. We clarify that this provision applies to export. We did not include import or introduction from the sea, because in our experience we have never encountered a request to import such specimens. In some instances, public institutions, primarily zoos, aquariums, and botanical gardens, receive unsolicited donations of wildlife and plants. These donations may be brought in by individuals or left anonymously on the doorstep and may include specimens found sick or injured by well-meaning citizens, pets or plants that are no longer wanted, or specimens that owners fear they may possess in violation of the law. When this occurs, the institution may not be able to obtain reliable information concerning the origin of the specimen.

Justifying issuance of a permit under CITES is extremely difficult when no data exist on the origin of the specimen, especially when the donor remains anonymous. We do not wish to open a loophole for laundering specimens that were illegally obtained by the donor or by someone else in the chain of ownership. However, the underlying purpose of CITES is to protect, preserve, and benefit the listed species. We believe that the provisions proposed will assist in the suitable placement of specimens without leading to illegal or unjustified take of wildlife and plants from the wild. One commenter thought we should include specimens of unknown origin owned by private parties who inherited or were given such specimens. We believe it is important to limit this provision to public institutions that generally receive these kinds of unsolicited donations due to their work with wildlife and plants. We emphasize that this provision is only for limited, noncommercial international trade with CITES species.

Non-detriment findings (section 23.61): This proposed section explains how the U.S. Scientific Authority makes its non-detriment findings, as required under Articles III and IV of the Treaty and Resolution Conf. 10.3. Some commenters mistakenly referred to the Management Authority as making non-detriment findings, either alone or with the Scientific Authority. It is the Scientific Authority that advises the Management Authority on whether an export or introduction from the sea will not be detrimental to the survival of the species being traded, or whether an import of Appendix-I specimens will be for purposes that are not detrimental to the survival of the species. If the Scientific Authority advises that it is unable to find that the issuance of a CITES permit would not be detrimental to the survival of the species, the Management Authority may not issue the permit. However, if the Scientific Authority advises that the issuance of the permit would not be detrimental to the survival of the species, the Management Authority decides whether to issue the permit based on other requirements of the Treaty.

One commenter recommended that we should adopt a public comment process for making non-detriment findings. We do not agree, and point out that no legal requirement exists for us to obtain public comments for non-detriment findings on individual permits. Furthermore, instituting such a mechanism would result in delays in the processing of permits and also be a

drain on resources. We also believe such a process would be excessive for the consideration of permit applications for common Appendix-II species and specimens for which adequate information already exists to show that there is little or no conservation risk resulting from trade. We do, however, remain open to information from the public for any species where the information would be useful in evaluating permit applications, whether or not a current application is pending for the species.

Two commenters remarked that non-detriment findings for import and export were treated exactly alike in the proposed rule and, thus, we were not basing the non-detriment finding for import of Appendix-I species on the ''purpose'' of the import as required by the Treaty. One of the commenters asked that the final rule contain separate sections on non-detriment findings for import and export to draw a distinction between the two and make the regulations easier to understand. We discuss the non-detriment findings for import and export together because we are keeping to the essential language of the Treaty, which is that the activity must not be detrimental to the survival of the species. The finding for the import of an Appendix-I species is based on a consideration of purpose for which the specimen will be used upon import into the United States. We can determine the potential for detriment, even when tying it to the purpose, only if we know the biological and management status of the species. Therefore, similar types of information are required for both Appendix-I and -II species. To avoid redundancy in the proposed regulations, we are not treating import and export separately, but we do outline separate additional factors used in making non-detriment findings for Appendix-I and -II species.

Two commenters stated that having applicants ''provide sufficient information for us to make a finding of non-detriment'' is too burdensome on applicants, whereas another commenter stated that this appears to allow the applicant to make the non-detriment finding. Applicants do not make the non-detriment finding. As discussed above, the Scientific Authority makes the non-detriment finding. While applicants must demonstrate their eligibility for a permit, in some cases the actual burden for applicants to provide information to support their application may be small. If an application involves a type of trade that is already occurring and for which we have an established record of information, an applicant may be required to submit little more than a brief description of the proposed activity and the origin of the specimen being traded. The amount of information required from the applicant increases, however, as information otherwise available to us becomes more limited. This is especially true when an application involves a species or circumstance that we have not previously considered, for example if the species is known to be rare and is not commonly in trade.

We are proposing to identify several factors that we consider in making a non-detriment finding. These factors include whether the activity represents sustainable use or would result in net harm to the status of the species in the wild. One commenter stated that a non-detriment finding should not be based on ''no net harm'' but on ''no harm,'' regardless of countervailing benefits. We believe that ''no net harm'' is appropriate because the finding required by CITES is whether a proposed activity will be detrimental to the survival of the species, not individual animals. For both Appendix-I and -II species, this generally involves a determination of whether there is any effect, either adverse or beneficial, on the species in the wild, and if so, an assessment of the productivity of the species to determine whether the removal of specimens from the wild will adversely affect the species' long-term viability. However, Appendix-I species require consideration of additional factors, such as the effect of the import or export on recovery efforts for the species, including long-range strategies to ensure the survival of the species. The evaluation of the ''net harm'' posed to the survival of the species does not allow the balancing of adverse and beneficial effects to reach a ''not detrimental'' finding. Instead, all the effects of the proposed trade, whether direct, indirect, or cumulative, must be assessed to determine the aggregate ''net'' effect on the survival of the species before making the finding.

Another commenter stated that, for demonstrating sustainable use, the requirement to consider ''scientific information'' represents a different standard than using ''the best available biological information.'' We consider these terms to be interchangeable, but for consistency we propose to use the term ''best available biological information.''

Some commenters believed that the general factors listed in section 23.61(c) constitute vague criteria that either preclude or require the use of adaptive management. We believe that the general factors are important considerations and are written broadly to allow flexibility in making this finding. The factors do not proscribe or require adaptive management, which may be used if it is demonstrated to result in sustainable use. See the discussion on sustainable use in the preamble for section 23.5.

One commenter argued that the concept of sustainable use has been the subject of debate, and, therefore, it is premature for us to apply the general factors. Another recommended that we adopt management principles for sustainable use that were developed by the Southern Africa Sustainable Use Specialist Group of IUCN–The World Conservation Union. We agree there is no universally accepted definition or set of criteria for sustainable use, although the term itself has gained wide usage. For the very reason that it is subject to different interpretations, we propose to establish a definition based on sound scientific principles for use in the administration of our permitting program.

One commenter objected to our considering whether removal of an Appendix-I species from the wild would stimulate further trade in making a non-detriment finding, since it would be subjective and could not be proven. We note the preamble of the Treaty provides for the Parties to take action in anticipation of the effects of trade, since it recognizes the need for cooperation in protection of plants and wildlife against over-exploitation. Similarly, Article II of the Treaty allows for listing of species in Appendix-I based on a judgment that they ''are or may be affected by trade.'' We believe it is reasonable to expect that, in some cases, allowing trade in one instance would stimulate additional trade, as was the case of market demand for leopard skin coats before the listing of leopards under CITES. In their actions on particular species, the Parties have also considered that allowing trade in a species may stimulate further unsustainable trade if adequate controls are lacking.

One commenter contended that our evaluating the ''biological impact'' of the proposed activity is outside the scope of a non-detriment finding as required by CITES. We do not agree. We consider a number of factors in making the non-detriment finding, including biological, trade, and management information on the species. The information must include not only what is known about the current status of the species, but the potential biological impact that the proposed import or export will have. For example, we consider whether the biological impact is to reduce the population of the species (by direct removal of animals) or

to interfere with reproduction or recruitment (such as by targeting breeding animals or a specific age-class for removal or sampling). The type and magnitude of the biological impact are weighed against the status and needs of the species to determine whether issuance of the permit will be detrimental to the survival of the species.

One commenter recommended that the non-detriment finding should include whether the proposed activity: (a) Would sustain the species at a level that maintains its role in its ecosystem; (b) is compatible with other uses of the species and is not detrimental to other populations or species and their habitats and ecosystems; (c) would not stimulate illegal trade in other CITES species; and (d) is not wasteful and live animals are treated so as to minimize risk of injury, damage to health, or cruel treatment, at all times, including from the time of capture. In making a non-detriment finding, we consider some of these factors and not others. We consider whether the proposed activity represents sustainable use of the species. This includes a determination of whether the use interferes with the species' ability to perform its role or function in its ecosystem (see definition of ''sustainable use'' in proposed section 23.5). For Appendix-I species, we consider alternative uses and potential impacts on conservation activities, and for Appendix-II species, the sum of uses impacting the species, including the proposed export under consideration. However, as long as the use or combination of uses is not detrimental to the survival of the species, the potential incompatibility of one use with another is irrelevant for CITES purposes. The focus of the non-detriment finding is on the species for which a permit is being sought, and the Treaty includes no explicit provision for considering impacts on other species. We do, though, consider the impact on another species for species listed in Appendix II under the provisions of Article II(2)(b) of the Treaty due to similarity of appearance to other listed species, since that is the specific purpose of such a listing (see discussion of CITES furbearers in proposed § 23.69 in the preamble). For Appendix-I species, we consider whether allowing legal trade is likely to stimulate illegal trade for the species involved. The Treaty lacks any provision to ensure that harvest is not wasteful, as long as it is not detrimental to the survival of the species. In addition, the Treaty does not allow for regulation of the treatment of live animals except for how they are prepared for shipment and the manner in which they are shipped. This does not include capture, which is regulated by range countries through domestic law. The Parties do consider the type of containers in which the animals are shipped, how they are prepared for export, and the mode of shipment, including whether transport to the country of import will be accomplished in a timely manner.

Three commenters expressed concern that we would be unable to make a non-detriment finding for many orchid species in cultivation taking a precautionary approach, due to the lack of definitive information on the status of wild orchid populations and their habitats. We agree that definitive information on the status of wild populations may be lacking for many orchid species, but that may not preclude us from making a non-detriment finding. We base our decisions on the best available information for all pertinent factors. A lack of information on a particular species' status in the wild may be countered by specific information on whether the specimens are artificially propagated, commonly available, long established in cultivation, or similar factors demonstrating a low risk to wild populations.

Another commenter stated that, for some species, allowing trade may promote conservation of the species and preventing trade may not constitute a precautionary measure. We agree that in some instances allowing controlled trade in a species may create incentives for species conservation, including incentives for habitat conservation and the generation of funds to support management programs. The use of precautionary measures does not argue against trade in such instances, but only means that we will be cautious in allowing trade if there is uncertainty as to what effect it will have. CITES recognizes that trade can be a threat to the survival of species, as stated in Article II of the Treaty. Financial or other incentives may result in trade that is unsustainable. A species may also be so rare or reproduce at such a slow rate that it can sustain only very low levels of exploitation, or none at all. Sufficient evidence must exist to show that the level of trade will not be detrimental to the survival of the species, either because demand for the species can be sustained by the productivity of the species, or there is adequate control on harvest and trade to prevent over-exploitation.

This proposed section describes how we use both risk assessment and precautionary measures to make a non-detriment finding. There is a continuum of how stringent the documentation requirements may be for us to make a non-detriment finding. Rarer species will generally require a more complete documentation trail to show that they were obtained in a manner that was not detrimental to the species. Documentation requirements will be strictest for species that have been recently discovered, are not established in cultivation or breeding programs, are difficult to propagate or breed, and most importantly, could be adversely impacted by trade in wild-collected specimens due to a restricted range or other factors. We use precautionary measures when a review of the available information reveals an absence of essential data as to the intensity of the effect of the proposed trade on the status of the species in the wild. The lack of information may cause the Scientific Authority to be unable to find that the import or export will not be detrimental to the survival of the species. This process was upheld by the Federal District court in *Prima* v. *DOI*, (E.D. La. Feb. 19, 1998) when we denied a CITES document based on a lack of sufficient information to make a non-detriment finding.

One commenter stated that risk assessment is contrary to the use of precautionary measures and should not be applied because it allows for some possibility that an activity will be detrimental to the survival of the species. We disagree and note that risk assessment is a way for us to decide how much scrutiny and information we need to make a non-detriment finding. We use precautionary measures where there is uncertainty about the impact of trade on the conservation of the species. This includes when we lack sufficient information to make a non-detriment finding or when the risk is unknown or cannot be adequately determined. We believe this approach gives us the flexibility we need to effectively implement CITES while ensuring the conservation of the species.

Two commenters stated that the invasive potential of a species and the risk of disease transmission should be deleted from the factors we consider in evaluating potential detriment because the non-detriment finding is limited to the impact of the activity on the species involved, not other species. We agree that the invasive potential of a species should not be a factor to consider in the non-detriment determination and have deleted it from the list of general factors. However, we point out that on February 3, 1999, Executive Order 13112 was issued. It, among other things, directs each Federal agency to (a) prevent the

introduction of invasive species, and (b) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere except under special circumstances. We wish to advise the public that to comply with the Executive Order we must give special attention to permit applications involving potentially invasive species. In deciding whether to issue permits, we will consider whether any applicable Federal, State, or foreign laws prohibit the import or export of invasive species and whether those laws would be violated (see proposed section 23.3). We further note that significant attention is being focused on the problem of invasive species, both within the United States and internationally, and is likely to result in further restrictions that would affect the issuance of CITES permits for such species.

Regarding disease transmission, we continue to believe that this is a legitimate factor to consider in evaluating non-detriment for imports or exports. We will consider the possibility of introducing disease to other populations of the species involved, whether in the wild or in captivity, and whether spread of the disease could put the survival of the species at risk.

Two commenters advised that we should follow the recommendation contained in Resolution Conf. 2.11 (Rev.) on trade in hunting trophies of species listed in Appendix I, which is to ''accept the finding of the Scientific Authority of the exporting country that the exportation of the hunting trophy is not detrimental to the survival of the species.'' We note that Resolution Conf. 2.11 (Rev.) further allows the importing country's Scientific Authority not to accept the finding of the Scientific Authority of the exporting country if ''there are scientific or management data to indicate otherwise.'' The resolution also reaffirms the complementary findings of the importing and exporting countries for Appendix-I species, as provided for in Article III of the Convention, by recommending that ''the scientific examination by the importing country * * * [be] carried out independently of the result of the scientific assessment by the exporting country * * * and vice versa.'' What effect the purpose of an import may have is impossible to determine without considering scientific and management information on the species from the exporting country.

We only question the finding of the exporting country if our analysis of the best available biological information shows a problem. We can neither accept the finding of the exporting country nor ascertain the potential for detriment derived from the purpose of the import without knowledge of the exporting country's management program for the species (including whether one exists or is being implemented) or what scientific information exists on the species itself. We must also determine whether the effect of allowing imports for a particular purpose can be separated from other potentially detrimental impacts on the species, including trade for other purposes.

Two commenters opposed how we proposed to make a non-detriment finding for Appendix-I species when an export quota has been set. They argued that, according to Resolution Conf. 9.21 (Rev. CoP13), the adoption of export quotas by the Parties for Appendix-I species satisfies the requirement for a non-detriment finding on the purpose of the import and assures exporting countries that their exports will be accepted by importing countries, and they believe no further assessment by the importing country's Scientific Authority is required. However, another commenter urged us to continue to scrutinize biological and management information used as the basis for quotas for Appendix-I species adopted by the Parties since this is consistent with Article-III requirements.

We are bound to base our non-detriment finding on the best available biological and management information, and Resolution Conf. 9.21 (Rev. CoP13) contains sufficient latitude to allow this. The resolution does not require us to accept imports of Appendix-I species blindly if the Parties have approved a quota for the species for the country of export. Rather, the resolution contains a provision that preserves the independent authority of the Scientific Authority of an importing country to make its own non-detriment finding if the quota has been exceeded or if ''new scientific or management data have emerged to indicate that the species'' population in the range State concerned can no longer sustain the agreed quota.'' Similar to our rationale for obtaining information from range countries for making our non-detriment findings on the import of trophies (see above discussion relative to Resolution Conf. 2.11 (Rev.)), we will rely on the best available scientific and management information on the species for the exporting country to determine if the basis for the quota is still valid. We modified proposed section 23.61(h) to show that we will use the best available biological information, not just the information used as the basis for the quota.

Not for primarily commercial purposes (section 23.62): Under Article III of the Treaty, import permits or introduction-from-the-sea certificates for Appendix-I species can be issued only when a Management Authority is satisfied that the specimen is to be used not for primarily commercial purposes. The Parties interpreted ''primarily commercial purposes'' in Resolution Conf. 5.10. We believe this resolution is an accurate interpretation of the Treaty, and we consider the principles and examples set out in the resolution in evaluating applications for import documents for Appendix-I species.

We propose to incorporate the provisions of this resolution in this section and define ''commercial'' and ''primarily commercial purposes'' in section 23.5. One commenter thought we should not use a key word ''commercial'' as a descriptor in the definition, but should first define ''commercial'' then ''primarily.'' ''Commercial'' is already defined in these regulations, and the definition of ''primarily commercial purposes'' is based on language taken directly from the resolution and is further clarified in this proposed section.

Another commenter suggested that we explicitly state in the definition that the import of sport-hunted trophies to be used by the hunter for noncommercial purposes is not considered primarily commercial. We do not believe it is appropriate to add this language to the general definition of ''primarily commercial purposes.'' We point out, though, that in this proposed section ''personal sport-hunted trophy'' is specifically listed under the ''personal use'' example.

For an import or introduction from the sea of an Appendix-I specimen to qualify for a CITES document, the noncommercial aspects of the import or introduction must clearly predominate. One commenter requested that we revise the regulations to clarify that both the transaction and the proposed end use are relevant in making the finding. The commenter thought the proposal mistakenly suggested that direct sales of Appendix-I specimens to collectors would not be subject to the prohibition on trade for primarily commercial purposes. We clarify that, in most cases, the direct sale of Appendix-I specimens to collectors in another country would be considered commercial.

One commenter expressed concern that the regulation grants too much discretion to the permittee when determining whether the transaction is for primarily commercial purposes. We

do not agree. We are responsible for making the finding, but the applicant is responsible for providing sufficient information for us to make that finding. We evaluate each application on a case-by-case basis and take all factors involved into account. The applicant needs to provide core information on the purposes for carrying out the proposed activity and intended use of the specimen after import or introduction from the sea for us to consider.

One commenter asserted that we strayed from the focus of the CITES finding, which is the nature of the use of the specimen, and the requirements laid out in the proposed rule are onerous, potentially expensive, and counterproductive to the future of conservation programs involving Appendix-I species. They thought captive-bred specimens should be treated differently from wild-caught specimens; cautioned that it would be virtually impossible to accurately assess exact net profits over the life of the specimen; and said they did not believe there were species, other than the giant panda, that are of such high public appeal to warrant these regulations.

To help address some of these concerns, we revised this proposed section to conform to the analytical process used in the legal acquisition and non-detriment sections. Instead of outlining a specific list of information that each applicant must provide, we outline how we make our finding, provide examples of types of transactions in which noncommercial aspects may predominate, and outline factors we will consider in assessing the level of information we will need to make a finding. We also added a paragraph on how, for high-risk activities, we will analyze anticipated measurable increases in revenue and other economic value that would be incidental to the proposed import or introduction from the sea.

We propose to give less scrutiny and require less detailed information when the import or introduction from the sea poses a low risk of being primarily commercial, and require more detailed information when the proposed activity poses greater risk. Based on our experience, we anticipate that we will rarely receive an application that involves high-risk activities with anticipated high net profits. We anticipate that only under rare instances would we need to ask the applicant for a detailed analysis of expected revenues and a statement from a licensed, independent certified public accountant that the internal accounting system is sufficient to account for and track funds generated by the proposed activity. We believe this proposed revision is more flexible and a better description of the way we currently make this finding. We will still ask applicants to describe their proposed activity and intended use. If information raises a reasonable question of whether commercial motivation may have influenced the proposed import, we will ask for more detailed information.

One commenter contended that the information requirements exceeded the CITES mandate and questioned the legal basis for our asking for a description of any funded conservation project or monitoring plan. Before we can issue a CITES document, we need sufficient information to make the finding that is required under Article III of the Treaty. The Parties agreed to an interpretation of ''primarily commercial purposes'' in Resolution Conf. 5.10, which calls for an examination of all aspects of the intended use of the import or introduction from the sea. For high-risk activities, descriptions of any funded conservation project and its monitoring plan, including the use of funds, are information we need to consider in making our finding. If the noncommercial aspects do not clearly predominate, we will consider the import or introduction from the sea to be primarily commercial.

Although we deleted the paragraph on for-profit entities, we will still consider the type of entity as a factor in deciding the level of information we need to make a finding. In general, the nature of for-profit organizations, which carry out activities in the pursuit of gain or profit, makes it more difficult for us to find that a proposed import or introduction from the sea is not to be used for primarily commercial purposes.

Even when an applicant states that public education, scientific research, or captive breeding is the primary purpose for the import of an Appendix-I species, the likelihood of measurable increases in revenue or other economic value that would be generated incidental to the declared primary use must be analyzed. In these instances, all net profits generated from high-risk activities in the United States must be used for the conservation of the Appendix-I species in a range country. One commenter strongly supported this requirement, whereas another contended that the requirement is more appropriate as part of an enhancement finding under the ESA. To clarify, it is possible that an import or introduction from the sea, although superficially commercial, may qualify as not for primarily commercial purposes because anticipated profit may be offset by conservation benefits that will be provided through assistance to range countries, research, or other considerations that result from the import or introduction from the sea as long as the primary motivation for the trade is not commercial, and the noncommercial purposes clearly predominate.

Bred-in-captivity (section 23.63): Paragraphs 4 and 5 of Article VII of the Treaty provide exemptions for wildlife bred-in-captivity. To establish a standard interpretation of the term ''bred-in-captivity,'' the Parties adopted Resolution Conf. 10.16 (Rev.). We propose to incorporate provisions of the resolution in this section.

In making this finding, we consider the conditions under which an individual specimen is bred, whether the breeding stock was established legally and in a non-detrimental manner, and whether it is maintained with limited introduction of wild specimens. We also consider whether the breeding stock has reliably produced offspring to at least the second-generation (F2), or whether it is managed in a way that has been demonstrated to result in the reliable production of F2 offspring and has produced some F1 offspring.

One commenter mistakenly thought that the proposed rule requires that the entire U.S. population of a species be managed in a manner that results in production of F2 offspring, which would be a stricter requirement than the resolution. We may consider whether specimens of a species qualify as bred-in-captivity for the breeding population of an individual operation or any larger conglomerate of breeding operations, up to and including the entire U.S. captive population. This approach is more flexible and less burdensome for both the public and the FWS.

The breeding stock of an individual operation may independently meet the bred-in-captivity criteria based on its own history and production data, including the reliable production of F2 offspring. Few operations, however, have sufficient stock to meet the criteria. Also, we may limit bred-in-captivity findings to individual operations when information on a broader captive population is lacking, when there is ongoing import of wild-caught specimens into the United States, or if there is illegal trade in the species. Alternatively, by evaluating a larger population, we have more extensive information with which to make our finding. If we can demonstrate that the entire U.S. population or any conglomerate of breeding operations meets the criteria, then all specimens within that breeding population can be

considered to meet the criteria without requiring a review of each individual breeding facility.

Typically, we may consider the entire U.S. captive population of an exotic species to meet the bred-in-captivity criteria if, among other things, the U.S. population is a ''closed'' population that is not augmented through imports of wild-caught specimens. These often are populations that can be tracked to a limited parental population that qualifies as pre-Convention or was otherwise legally established, and for which there is both a lack of evidence of current illegal trade into the United States and reliable breeding of the species within the United States to F2 or beyond. Thus, we have determined that a number of species commonly held in the United States (such as lions, tigers, and brown eared pheasants) qualify as bred-in-captivity. We may find, however, that only part of the U.S. population qualifies as bred-in-captivity, such as a population managed cooperatively by zoos, if only that part of the population can be shown to meet the criteria.

Another commenter recommended that we modify the regulations to reflect the revision of Resolution Conf. 10.16 (Rev.) that occurred at CoP11. We note that the revision to this resolution did not affect the proposed regulations, which are consistent with Resolution Conf. 10.16 (Rev.).

Artificially propagated (section 23.64): Paragraphs 4 and 5 of Article VII of the Treaty provide exemptions for artificially propagated plants. The Parties recognize the unique aspects of plant biology and trade. Modern developments in plant propagation, such as the use of micropropagation and growth of seedlings in sterile flasks, have allowed large quantities of artificially propagated plants to be produced. Resolution Conf. 11.11 (Rev. CoP13) addresses ways to reduce the paperwork required to trade plants internationally while maintaining protection of wild plants.

This proposed section expands the current regulations at section 23.18(d)(8), is based on Resolution Conf. 11.11 (Rev. CoP13), and incorporates criteria we will use to decide whether plants, including cuttings or divisions, grafted plants, and timber, qualify as artificially propagated. In making this finding, we consider the controlled conditions under which a plant is propagated. Plants grown from exempt plant material, including seeds that may have been collected from the wild, are considered artificially propagated when grown under controlled conditions. For other plants, we also consider whether the cultivated parental stock was established legally and in a non-detrimental manner, and whether it is managed in a way to ensure its long-term maintenance.

At CoP13, the Parties agreed to amend the definition of ''artificially propagated'' to allow, in exceptional circumstances, for some plants grown from wild-collected seeds or spores to be treated as artificially propagated if certain conditions are met. The basis for the exception is the practical limitations that arise for long-lived, late-maturing species, such as certain trees (*e.g.*, the monkey-puzzle tree, *Araucaria araucana*). The exception is allowed only when the seeds or spores are legally collected and propagated in a range country and the Scientific Authority of that country has determined not only that the collection of the seeds or spores was not detrimental to the survival of the species in the wild, but also that allowing trade in such specimens has a positive effect on the conservation of wild populations. A portion of the plants produced must be used for replanting in the wild, to enhance recovery of existing populations or to re-establish populations that have been extirpated. Some plants produced under such circumstances must also be used to establish a cultivated parental stock for future production so that removal of seeds or spores from the wild can eventually be reduced or eliminated.

One commenter questioned why ''the long-term maintenance of cultivated parental stock [must be] guaranteed'' for artificially propagated plants. As discussed above, the purpose of this provision is to encourage the development of artificially propagated stocks to reduce trade impacts on wild plant populations. If propagators are not maintaining their cultivated parental stock for the long term, then continued availability of plants must rely on collection of plants or propagules from the wild.

Another commenter asked why we require a permittee to maintain a specific number of parental stock plants. We may condition a permit to require a permittee to maintain a specific number of cultivated parental stock plants to ensure artificial propagation without continued significant augmentation from the wild. Generally, we will make a determination of whether the long-term maintenance of cultivated parental stock can be guaranteed based on an applicant's description of how his or her stock is managed. We do not necessarily require a propagator to maintain the same plants indefinitely. Applicants must show that they are maintaining sufficient cultivated parental stock plants, either by keeping their original plants or by retaining a sufficient number of the plants they produce for subsequent propagation, so that their operation is essentially self-sustaining or augmented primarily with stock from other artificially propagated sources.

One commenter stated that, in determining whether plants were artificially propagated, we should not consider whether the cultivated parental stock was established according to the provisions of CITES and relevant national laws. We think this is an important requirement agreed to by the Parties in Resolution Conf. 11.11 (Rev. CoP13). We do not make a legal acquisition finding on each plant that is artificially propagated. Instead, we make a legal acquisition finding on the origin of the cultivated parental stock. This prevents the creation of a conduit for illegal specimens to become legitimized. Range countries in particular request the assistance of other Parties to ensure that specimens are legally acquired.

We received some comments on the artificially propagated finding and how it relates to other issues. See discussions in the preamble of recordkeeping (section 23.34), pre-Convention (section 23.45), legal acquisition (section 23.60), and non-detriment (section 23.61).

Suitably equipped to house and care for (section 23.65): Under Article III(3)(b) and (5)(b) of the Treaty, we must determine that an individual or institution has facilities that are suitably equipped to house and care for a live Appendix-I specimen being imported or introduced from the sea. These requirements are to ensure that rare specimens will survive in a controlled environment.

This proposed section outlines the factors we consider in making this finding. All individuals or institutions that will be receiving specimens must be identified in an application, and their facilities approved by us, including individuals or institutions that are likely to receive specimens within 1 year of the specimens' arrival in the country. We will consider all identified uses of the imported specimens that could be reasonably expected to occur, and the housing and care requirements for those uses.

We will base our finding on the best available information on the requirements of the species and information provided by the applicant. We will give closer scrutiny to applications for species with more demanding biological and husbandry or horticultural needs. For a captive-born, commonly held species, like a scarlet macaw (*Ara macao*), we would provide

less scrutiny due to the ease with which such a species can be held in captivity and the availability of veterinary care and commercially prepared diets. For a species, such as the Chinese giant salamander, that is not commonly held in captivity and has very restrictive husbandry and housing requirements, we would require a greater level of detail regarding the facilities and personnel where the specimen would be held.

We also provide the general and specific factors that we consider in making this finding. We consider whether a facility supplies adequate space, appropriate living conditions, adequate veterinary or horticultural care, sufficient security, and properly trained staff to care for the specimen being imported. We revised the proposed paragraph on the amount of information we would need to assess whether a facility has had a reasonable survival rate of specimens. We believe 3 years, rather than 5 years, of data on numbers of animals born or plants propagated, mortalities, and occurrence of significant disease would generally provide sufficient information for us to consider.

An applicant may apply for a CITES document to import or introduce from the sea a specimen before the facility is completed or the staff who will maintain the specimen has been identified or properly trained. In such a case, we review the information, including construction plans or intended staffing, and make the finding based on that information. We would, however, condition any resulting permit to require that the import could not occur until the facility has been completed, or the staff hired and trained, and approved by us.

One commenter recommended that we implement a public comment process for applications requiring findings on suitability of housing and care. We decline to adopt this suggestion. There is no legal requirement for us to institute such a process, and we believe that it could result in unnecessary delays in the issuance of permits. Our staff possesses considerable expertise in the housing and care of captive wildlife and cultivated plants, maintains extensive contacts with relevant experts, and regularly consults current literature on captive animal and plant management. If anyone has relevant information that may not be readily available on a species that has unusual requirements for housing and care in cultivation or captivity, we would appreciate receiving it.

What Are the Proposed Changes to Subpart E of 50 CFR Part 23—International Trade in Certain Specimens?

This proposed subpart deals with situations that are either covered by specific resolutions or by procedures we have developed to deal with certain native CITES species from States or Tribes with appropriate conservation management programs and legal controls.

Export of heavily traded native species (sections 23.68–23.70): Certain native species (American ginseng, bobcat, river otter, Canada lynx, gray wolf, brown bear, and American alligator) that are managed by a State or Tribe conservation program are traded internationally, sometimes in high volumes. As for all CITES species, before we can issue a CITES document to allow export, we must find that the specimens were legally acquired and that the export is not detrimental to the survival of the species in the wild. Over the past 25 years, we have worked with State and tribal governments to develop procedures that allow us to make the necessary findings programmatically rather than on a permit-by-permit basis. When States and Tribes provide information showing that they have established a management program that ensures a sustainable harvest, and that they have the means to identify or mark specimens that have been legally taken under their system, we are able to make findings for specimens harvested within their jurisdiction, thereby approving their program. A tag or certificate issued by the State or Tribe demonstrates that a particular specimen was harvested under an approved program and that the appropriate findings have been made. This alternative to making the legal acquisition and non-detriment findings on a permit-by-permit basis reduces a potentially large workload for exporters as well as for our offices.

States and Tribes for which programmatic findings have been made submit annual reports to us containing information on the previous harvest season. In some cases, such as for many furbearer species, we make our findings on a multiyear basis. Regular reporting from States and Tribes allows us to determine whether our findings remain valid. In these sections, we include the types of information we request from the States and Tribes on an annual basis to maintain approval of their export program.

Although it was not required, in the past we published State- and Tribe-based findings in the **Federal Register** as a convenient way of notifying the public. Since there are now more timely ways to provide this information, we have discontinued publication of the findings in the **Federal Register**. A list of States and Tribes with approved CITES export programs, copies of recent findings on which the approvals are based, and conditions that must be met for lawful export will be posted on our Web site or will be available from us.

American ginseng roots (section 23.68): This proposed section is a revision of the current regulations in section 23.51. Most American ginseng, both collected from the wild and artificially propagated, is exported as roots. Ginseng root is exported in a much larger volume than any other native CITES plant species. Ginseng that has been legally harvested under State or tribal requirements is certified by the appropriate State or tribal authority prior to export. To document the legal origin of the material, State or tribal certificates must accompany the ginseng until the time of export from the United States.

In the 2000 proposal, we developed various ginseng categories (wild, wild simulated, wild cultivated, cultivated, and cultivated woodsgrown) in response to concerns of some States that ginseng originating from artificially propagated seeds and cultivated in a manner to look more like wild ginseng was being reported as wild rather than artificially propagated. In addition, some ginseng dealers and exporters did not want to show on their State certificates that the wild-looking cultivated ginseng was artificially propagated. In meetings with the States and industry on the ginseng trade, we also learned that some ginseng reported as ''cultivated woodsgrown'' did not meet the criteria for artificially propagated plants, as outlined in section 23.64 of this proposed rule. Because of limited manipulation of the growing environment by the grower, this misidentification could allow certain trade to occur under the exemption for artificially propagated plants when in fact the ginseng does not qualify under CITES as artificially propagated. Furthermore, we found that few States had adopted the various ginseng categories.

Thus, in this proposed rule we eliminated all categories other than wild and artificially propagated because CITES only recognizes these two categories. The permits we issue and our annual report to the CITES Secretariat use only these two classifications.

If an applicant wishes to export ginseng as artificially propagated even though it visually resembles wild ginseng, he or she must demonstrate

that the ginseng indeed meets the criteria for artificially propagated plants. We note that the classification of ginseng as either wild or artificially propagated on export permits is only for CITES purposes and is not intended to indicate marketing categories or value of the roots. Furthermore, it does not preclude the use of additional categories by States and Tribes. We continue to monitor the use of additional categories by States and Tribes, and we may use such information in future decision making on ginseng exports as we evaluate the impact of trade on the viability of the wild populations.

This proposed section no longer asks States or Tribes to provide us in their annual reports an estimate of the average age of wild-harvested plants. Instead, the U.S. Scientific Authority will use roots-per-pound information provided by the States as an index to indicate shifts in age structure of harvested roots. In addition, we propose to change the annual report date from May 31 to May 1 to ensure that we receive information in time for us to make required CITES findings before the beginning of the next harvest season.

One commenter questioned what criteria would be used to evaluate applications for export and re-export of ginseng from States and Tribes without approved programs. We would use the same criteria that are used for the evaluation of other requests for export or re-export of CITES species (see proposed section 23.36 for export, section 23.37 for re-export, and section 23.40 for export of artificially propagated plants). For export or re-export of such ginseng, the applicant would be responsible for providing us with sufficient information to allow us to make the required findings. Because a State or Tribe with an approved program has provided information on management and harvest controls on a State or tribal basis, the time required to process such export permit applications is streamlined. However, the time needed to process an application to export ginseng from a State or Tribe without an approved program would likely be extensive, and making the required CITES findings could be problematic depending on the management regimes for ginseng harvest in that State or on those tribal lands.

CITES furbearers (section 23.69): This proposed section consolidates and revises the current regulations in sections 23.52 through 23.56 for furs of certain native species that are sometimes traded in high volumes and originate in States or on tribal lands with appropriate conservation management programs and legal controls. We define ''CITES furbearers'' to include bobcat, river otter, Canada lynx, gray wolf, and brown bear. These species are included in Appendix II under the provisions of Article II(2)(b) of the Treaty because their parts, products, and derivatives are difficult to distinguish from certain similar CITES Appendix-I and -II species.

To streamline the export process for CITES furbearers, we review the programs that States and Tribes have set up for management and harvest. We approve programs for States and Tribes when they have provided information that allows us to make the required non-detriment and legal acquisition findings. Our non-detriment finding takes into account that the CITES furbearers are listed in Appendix II because of their similarity of appearance to other listed species under Article II(2)(b) of the Treaty. These species are listed to ensure that trade in the species to which they are similar is brought under effective control. We are obligated, however, by the Treaty to ensure that a species does not decline to the point that it qualifies to be treated as an Appendix-II species under Article II(2)(a) of the Treaty.

Under the current regulations, States and Tribes with approved programs must have procedures for placement of CITES export tags on fur skins. When a fur skin with a CITES tag is presented for export, the tag provides assurance that the fur was harvested under an approved CITES export program and that the necessary findings have been made. This allows the exporter to more quickly obtain CITES documents from either the U.S. Management Authority or certain FWS Law Enforcement offices (see proposed section 23.7). One commenter objected to the requirement to obtain CITES tags and permits for species listed under Article II(2)(b). The Treaty requires CITES documents for the export of species listed under II(2)(b) and a document cannot be issued until all required findings have been made. However, there may be flexibility in whether furbearer skins must be tagged. The utility and effectiveness of the current U.S. CITES tagging regime has been the subject of ongoing discussions between the FWS and the States and Tribes. Through this process we are exploring other ways to determine legal acquisition, for example, the possible use of a documentation system in lieu of tags, or issuance of a national legal acquisition finding based on State and tribal legal and enforcement systems. Any alternative system of determining legal acquisition would be as reliable as the current system.

We review the information we receive annually from each State or Tribe to determine if our programmatic findings remain correct or if the species needs closer monitoring. Article IV(3) of the Convention requires the Scientific Authority to monitor trade in any Appendix-II species, regardless of whether it is listed under the provisions of Article II(2)(a) or II(2)(b). Species listed in Appendix II are not designated as being listed for similarity of appearance, and the Convention lacks a mechanism for review of Appendix-II species to determine if they should continue to be listed under the provisions of Article II(2)(b). It is the responsibility of each range country to monitor its species listed under Article II(2)(b) and determine whether they subsequently qualify under Article II(2)(a).

Two commenters suggested that for species listed under Article II(2)(b) a non-detriment finding on exports from a given country should be limited to a determination of whether the tagging program is effective in controlling illegal trade in the species to which they are similar. We cannot adopt this suggestion because it would not allow us to fully meet our obligations under the Treaty. For all Appendix-II species being exported, we must determine whether the species is being maintained throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which it might become eligible for inclusion in Appendix I. Therefore, we must obtain sufficient information when a State or tribal program is first approved to establish baseline information for monitoring. In part, the information required for initial approval of a State or tribal export program is necessary to ensure that the population of the species managed by that State or Tribe does not qualify for treatment as a species listed in Appendix II under the provisions of Article II(2)(a). After initial approval, exports are approved as long as the periodic submission of information by the State or Tribe, for monitoring purposes, shows that there is no significant change in harvest levels, management of the species, or status of the species that might lead to different treatment of the species.

Two commenters stated that we require burdensome levels of information from States or Tribes seeking approval of export programs for species listed because they are similar in appearance to other listed species. We believe that the level of information we require for approval of exports is appropriate to ensure that the State or Tribe implements and maintains a

management program that is consistent with the continued treatment of the species as one listed because of similarity of appearance. When making a non-detriment finding, review of a species treated under Article II(2)(b) is less rigorous and requires less-detailed information than if the species is treated under Article II(2)(a). Species treated under Article II(2)(a) require closer review, with the possible establishment of quotas and more stringent information requirements to support a finding of non-detriment by the Scientific Authority.

One commenter suggested that an export of a native U.S. species should be considered to be detrimental to the survival of the species only if the species involved is listed, or is a candidate for listing, under the ESA. The CITES requirement for making a non-detriment finding is wholly independent of any other legal standard, such as those under the ESA. Our experience has shown that many people are confused by the name of the Treaty, because it refers to ''trade in endangered species.'' However, CITES covers many species that are not ESA-listed, but which require trade controls to prevent over-exploitation that could cause the species to become endangered. This is clarified within Article II of the Treaty, which establishes the basis for including species in the different CITES Appendices.

Two commenters requested that the date for submission of the annual report be changed since the information was not usually available by April 30. We agree that many States do not have these data available until later in the year, and we revised the date of submission to October 31.

One commenter thought that the American black bear (*Ursus americanus*) should be included in this section. Although the American black bear is listed in CITES Appendix II, the U.S. trade is almost entirely sport-hunted trophies taken in Alaska. Therefore, we did not include it in this proposed section. To export an American black bear, including its parts, products, or derivatives, you should follow the procedures in proposed section 23.36.

Crocodilians (including American alligator) (section 23.70): This proposed section revises the current regulations in section 23.57 and incorporates Resolution Conf. 11.12 concerning the universal tagging of crocodilian skins. The proposed revision extends the tagging requirements to all crocodilian skins entering international trade, which assists Parties in identifying legal skins. Raw, tanned, or finished crocodilian skins may be imported, exported, or re-exported only if tagged with a non-reusable tag containing specific information.

One commenter suggested that the tagging resolution should not be implemented until we have an adequate tag, and U.S. States are satisfied with the procedure for issuance of replacement tags for American alligators outside the United States. We have been working with the States to identify problems with U.S. tags and tags from other countries where problems have been noted. We will continue to work to try and resolve problems resulting from broken, damaged, or defective tags. However, many Parties have already implemented the tagging resolution. Failure on our part to implement the resolution would leave U.S. importers and exporters at a disadvantage in the international market because of their inability to trade, and could facilitate illegal trade. The requirements of the special rules in 50 CFR part 17 concerning the American alligator and other threatened crocodilians must be met in addition to the requirements of this section.

One commenter questioned the legality of, and procedures for, replacement of broken or detached tags for alligator skins outside the United States. Resolution Conf. 11.12 recommends that replacement tags be placed on skins where the original tag has been lost or removed. Each Party is responsible for setting up its own procedure for providing replacement tags. We are proposing a procedure to obtain replacement tags in the United States. Current U.S. regulations only require that American alligator skins be tagged at the time of export; they do not require that skins being re-imported be tagged. Requiring that these skins now be tagged on re-import (either with the original tag or a replacement tag) should provide better assurances of the legality of skins in international trade, as well as ensuring that the United States complies with CITES.

Like American ginseng and native CITES furbearers, we have developed specific CITES procedures for States and Tribes with an approved conservation program for the American alligator. As part of the reporting required under the program, participating States and Tribes provide us with information as to how many alligators were taken during the wild harvest in the State, and how many alligators were harvested from farming facilities. Two commenters objected to the section of the proposed rule that requested information concerning captive-bred specimens in addition to wild and farmed specimens harvested. We did not intend to require the States to change their methods of collecting harvest data. Although there is some captive breeding of alligators, these specimens represent a small percentage of the overall number of alligators harvested. In addition, we have little information to determine whether or not such specimens meet the conditions of CITES for certification as bred-in-captivity. Therefore, we clarified in this proposed rule that we will ask the States to continue to report the numbers of wild and farmed (including any captive-bred) alligators as they have been doing.

Sturgeon caviar (section 23.71): At CoP10, all sturgeons that were not already included in the CITES Appendices were added to Appendix II. This proposed section implements Resolution Conf. 12.7 (Rev. CoP13) on the conservation of and trade in sturgeons and paddlefish, including labeling of caviar containers, provisions for shared populations subject to annual export quotas, and re-export timeframes for caviar.

To assist Parties in identifying legal caviar in trade, the resolution recommends a universal labeling system. Sturgeon caviar may be imported, exported, or re-exported only if non-reusable labels containing specific information are affixed to primary and secondary containers. If caviar is repackaged before export or re-export, the containers must be re-labeled to reflect the change.

To improve monitoring of re-exports in relation to the original export permits, the Parties agreed to establish time limits for re-exporting caviar. We propose to require that any re-export of caviar take place within 18 months from the issuance date of the original export permit.

Likewise, to assist in monitoring the level of exports in relation to annual export quotas and to address certain unscrupulous trade practices, the Parties agreed to place a time limit on export of caviar from shared stocks subject to quotas. We propose to allow import of sturgeon caviar from shared stocks subject to quotas only during the calendar year in which it was harvested.

One specific recommendation by the Parties is to ''monitor the storage, processing and repackaging of specimens of sturgeon and paddlefish species in customs free zones and free ports, and for airline and cruiseline catering.'' However, the resolution did not provide guidance on how Parties should monitor airline and cruiseline catering, other than to determine that such shipments are not exempt from CITES requirements. In 2000, in an effort to address this issue, we proposed

a registration system for airlines and cruiselines that serve caviar to passengers for on-board consumption. However, we have decided not to propose such a system here. Although we support the idea of a streamlined procedure, after analyzing comments we received and consulting with other Parties, we have been unable to develop a system that would address the unique circumstances faced by these industries and meet CITES requirements for international trade in listed species. The Parties will need to agree on any special provisions for airlines and cruiselines. We do not believe a workable system can be developed by one Party acting alone. For now, movement of caviar (or other CITES species) for passenger consumption on airplanes or cruise ships will continue to require standard CITES documents.

One commenter stated that passenger consumption is not an export or trade, and that airlines should be exempt from CITES. CITES does not provide any exemptions for the movement of caviar internationally except for a specific exemption for caviar in personal effects shipments. We consider a shipment, including specimens for passenger consumption, to be an export as soon as it is consigned to depart from areas under the jurisdiction of the United States. In addition, under the ESA, a shipment is considered an import as soon as it is in an area under the jurisdiction of the United States, whether or not it is considered an import under customs law.

Since all sturgeon have been included in the CITES Appendices since 1998, we no longer accept pre-Convention certificates for caviar. One commenter disagreed with the shelf-life determination and stated that this was not something to be decided by us, but by the U.S. Food and Drug Administration. We note that caviar is perishable and this practice is consistent with CITES Notification to the Parties No. 1999/23, which recommended that no permits or certificates declaring caviar as pre-Convention should be accepted after April 1, 1999. To be imported legally into the United States, shipments of sturgeon caviar must be accompanied by the appropriate export or re-export document.

Trade in plants (section 23.72): This section clarifies that seeds, like other propagules, parts, products, and derivatives, are included in the listing of Appendix-I species, except for seeds of certain artificially propagated hybrids. Seeds may also be included in a listing of Appendix-II or -III species, depending on how the species listing is annotated. International shipments of CITES seeds, including artificially propagated seeds, must be accompanied by valid CITES documents.

Some plant materials of CITES species are exempt from CITES requirements, including certain seeds and flasked seedlings (see proposed section 23.92). However, plants grown from exempt plant materials are regulated under CITES. In general, any plant grown from exempt plant material would be considered artificially propagated if grown under controlled conditions, but records should be kept to document that the plants came from exempt plant materials.

We propose to define ''salvaged plant'' for the purposes of this section and provide conditions that must be met for obtaining CITES documents to trade internationally in salvaged plants. These conditions include that the trade in Appendix-I plants and in Appendix-II plants whose entry into trade might otherwise have been considered detrimental to the survival of the species in the wild must clearly benefit the survival of the species and that the import must be by a *bona fide* botanic garden or scientific institution. Salvaged Appendix-I plants may not be sold or used to establish a commercial propagating operation.

Timber (section 23.73): The Parties recognize that trade in timber may require some variations on standard CITES procedures. Resolution Conf. 10.13 (Rev. CoP13) discusses the implementation of the Convention for timber species and defines some terms used in annotations to certain timber species. Resolution Conf. 12.3 (Rev. CoP13) incorporates specific recommendations for timber species listed in Appendix II or III that have a substantive annotation regulating either the trade in logs, sawn wood, and veneer sheets, or the trade in logs, sawn wood, veneer sheets, and plywood. It allows that under specific circumstances the period of validity for CITES documents for timber may be extended for a maximum of 6 months. It also includes provisions for changing the ultimate consignee for a shipment after export or re-export. We propose to incorporate these definitions and recommendations into this section.

Personal sport-hunted trophies (section 23.74): This proposed section defines ''sport-hunted trophy'' and outlines the requirements for trade in sport-hunted trophies, including the use of a sport-hunted trophy after import (see proposed section 23.55). Some countries allow limited take of Appendix-I species as part of an overall management plan. The export of Appendix-I hunting trophies requires both export and import permits under Article III of the Treaty (see proposed section 23.35). This practice is re-affirmed in Resolution Conf. 2.11 (Rev.).

We propose to define ''sport-hunted trophy'' to provide the public with a clear understanding of what we consider to be included in the term. The definition does not include handicraft items or items manufactured from the trophy used as clothing, curios, ornamentation, jewelry, or other utilitarian items. We based this definition on our experience with international trade in these items and the commonly understood meaning of the term from the dictionary and other wildlife regulations. The definition is similar to one used in 50 CFR part 18 (marine mammals) for sport-hunted polar bear trophies, which was developed to ensure that the trade in trophies was consistent with CITES. We considered language from a House Committee Report (H.R. Rep. No. 439, 103rd Cong., 2nd Sess. (1994)) that states ''trophies normally constitute the hide, hair, skull, teeth, and claws of an animal that can be used by a taxidermist to create a mount of an animal for display or tanned for use as a rug.''

Several commenters believed that any items manufactured from a trophy should be included in the definition. We do not agree that utilitarian items manufactured from a trophy should still be considered a trophy. We recognize that manufactured items have been included in trophy shipments imported in the past, but this practice has caused problems in differentiating between commercial and noncommercial shipments, particularly with Appendix-I specimens. In a number of instances, large quantities of fully manufactured products, such as briefcases, handbags, and golf bags, have been imported as parts of a ''hunting trophy.'' Indeed, one commenter stated that it was routine for commercial curios and other items to be packed and shipped with a trophy. Since we accord a noncommercial status to personal sport-hunted trophies, we must be able to distinguish between a noncommercial trophy and commercial products derived from an animal that may or may not have been taken by the hunter as a sport-hunted trophy.

This does not mean that the import or export of utilitarian items made from a trophy is not allowed. Provided that the items are not identified as a sport-hunted trophy, manufactured items of Appendix-II and -III species may be imported into the United States or exported from the United States with CITES export or re-export documents that indicate an appropriate purpose

code (*e.g.*, ''P'' for personal or ''T'' for commercial). The purpose code ''H'' (sport-hunted) may not be used. However, the Parties have established greater controls over the international movement of Appendix-I specimens. As with Appendix-II or -III species, manufactured items produced from an Appendix-I species outside the United States could be imported provided that all of the required findings have been made and the items are not identified as a sport-hunted trophy.

One commenter stated that the definition failed to include hooves, penis bones, antlers, or meat, and was especially concerned that the definition would prevent a hunter from bringing in the meat of a sport-hunted animal. We note that the definition is not an all-inclusive list of parts of a trophy, but provides examples. It already included bones, antlers, and meat, but, based on the commenter's statement, we have added hooves to the proposed definition.

The commenter also stated that blood, skin, and meat samples from a sport-hunted trophy imported for scientific research should be considered a trophy. We do not agree that these samples are a trophy, and the items should be properly treated as research specimens with the appropriate permits.

One commenter opposed the definition because it would not allow a sport-hunted trophy to be imported by anyone other than the hunter. We believe that the hunter is the individual responsible for the take of a personal sport-hunted trophy and, therefore, the individual eligible for the import and export permit. This is consistent with other regulations on import of personal sport-hunted trophies, including polar bears and migratory birds.

Many commenters were confused by the proposed definition and believed that it applied to any sport-hunted trophy in the United States, including nonprotected species. They stated that the definition would no longer allow them, as taxidermists in the United States, to manufacture utilitarian items from a sport-hunted trophy. To clarify, these proposed regulations do not apply to non-CITES species nor do they restrict the manufacture of utilitarian items from most CITES Appendix-II or Appendix-III specimens once a sport-hunted trophy has been imported into the United States. The export or re-export of utilitarian items manufactured in the United States from most CITES Appendix-II or -III sport-hunted trophies is also allowed when the appropriate CITES documents have been obtained. However, this is not the case with sport-hunted trophies of Appendix-I species or certain Appendix-II species (see proposed section 23.55).

We also propose to include specific conditions for import, export, or re-export of leopard, markhor, and black rhinoceros hunting trophies as provided in Resolutions Conf. 10.14 (Rev. CoP13), Conf. 10.15 (Rev. CoP12), and Conf. 13.5, respectively. In any calendar year, a hunter may import no more than two leopard trophies, one markhor trophy, and one black rhinoceros trophy. Any tagging or marking requirements for skins, horns, or other parts of trophies, mounted or loose, must also be met. These requirements are in addition to any requirements in 50 CFR part 17.

One commenter recommended that we prohibit the import of all sport-hunted trophies listed in the CITES Appendices. We decline to accept this recommendation. CITES allows a limited trade in Appendix-I sport-hunted trophies when the permitting requirements are met, and any Appendix-II and -III specimens may be traded as sport-hunted trophies when the necessary findings are made. We note that some Appendix-II and -III species that are traded as sport-hunted trophies are also commercially harvested for other purposes. CITES did not intend to ban the trade in species just because the specimen is a sport-hunted trophy, nor do we have the authority to impose a ban on the import of any CITES species without legal or scientific justification.

What Are the Proposed Changes to Subpart F of 50 CFR Part 23—Disposal of Confiscated Wildlife and Plants?

Confiscated specimens (section 23.78): Article VIII(4) and (5) of the Treaty outline the requirements for disposal of confiscated live specimens, and the Parties adopted Resolution Conf. 10.7, which sets out detailed guidance. One commenter suggested we prepare an action plan for the disposition of confiscated live wildlife. We recognize that the resolution recommends development of such a plan. However, we deal with confiscated live specimens on a case-by-case basis because of the complexity of the issue, including the variety of species, volume, and lack of resources.

For the United States, the general procedures for disposal of forfeited or abandoned property are in 50 CFR part 12, 7 CFR part 356, and 19 CFR part 162. These procedures apply to CITES, as well as the other laws that we, APHIS, or CBP enforce. We are not proposing to revise the regulations concerning disposal of property, but to add a section to these regulations on the process we use in making a decision to dispose of confiscated live CITES wildlife and plants that have been forfeited or abandoned to FWS Law Enforcement, APHIS, or CBP. One commenter suggested that a similar paragraph be included in this subpart to explain how we dispose of confiscated dead specimens, including plant products and byproducts. Although CITES has not addressed the issue of disposal of dead specimens, including their parts, products, or derivatives, we revised the regulations to clarify that the procedures set out in 50 CFR part 12, 7 CFR part 356, and 19 CFR part 162 apply to both living and dead specimens.

Sometimes the country of export requests that a shipment of confiscated live specimens be returned. Although under Article VIII of the Treaty, this is one of the options a country should consider, we are not always able to select this option or return specimens quickly. For example, when criminal charges are brought in connection with confiscated specimens, litigation may require us to hold the specimens as evidence for an extended period of time, and the court may decide how we are to dispose of them.

Many factors must be considered when live specimens are seized. The most important of these factors is the welfare of the wildlife or plants. Resolution Conf. 10.7 details a number of options for disposal as well as the difficulties associated with each option. We propose to consult this guidance as necessary in making a decision. For wildlife, the options discussed include maintenance in captivity, return to the wild, and euthanasia. For plants, the resolution discusses maintenance in cultivation, return to the wild, and destruction. Two commenters stated that euthanasia should not be considered an option for wildlife, and one commenter stated that destruction should not be considered an option for plants. When other options are not available, we consider euthanasia or destruction since it may present the most humane or appropriate option.

Return to the wild of confiscated specimens is rarely possible. It can carry enormous risks for existing wild populations, such as introduction of disease, and can result in the death of the specimens released due to starvation, disease, or predation. Before return to the wild is considered, a country must decide if that action would make a significant contribution to the conservation of the species or might be harmful to the conservation of the species in the wild.

In many countries, including the United States, some confiscated specimens have been donated to zoos, aquariums, or botanical gardens. However, this option is not always open when large numbers of common species are seized. The zoological community recognizes that placing animals of low conservation value in limited space may benefit those individuals, but may detract from conservation efforts as a whole. As a result, they are setting conservation priorities for space. Botanical gardens are in a similar situation.

To comply with the intent of Resolution Conf. 9.10 (Rev. CoP13) and, in limited circumstances, to return confiscated live Appendix-I specimens to the country of export, we propose to add an issuance criterion for re-export of confiscated specimens in section 23.37(c)(5). It would require us, before issuing a re-export certificate, to find that the proposed re-export of confiscated specimens would not be detrimental to the survival of the species. Regulations in 50 CFR part 12 allow for the sale of confiscated Appendix-II and -III wildlife and plants. When specimens have been confiscated and subsequently sold or transferred by the U.S. Government, we would consider them legally acquired when the applicant provides the appropriate documentation to show the origin of the specimens. However, because the specimens were imported without the proper CITES documents, we need to make the biological finding (that normally would have been made prior to export) before issuing a re-export certificate.

Participation in the Plant Rescue Center Program (section 23.79): We propose to add this section to outline how a public institution can participate in our Plant Rescue Center Program. Shipments of live plants imported into the United States in contravention of CITES are confiscated or seized and generally placed with a participating institution. We have enlisted more than 60 publicly accessible, nonprofit institutions, including botanical gardens, arboretums, zoological parks, and research institutions in the United States, to cooperate with us in this program.

Several commenters expressed concerns that the rescue centers did not want the plants in most cases, had no place to put them, and were ill-equipped to handle them. We disagree with these comments. We realize that many CITES plants require specialized care. This was one of the reasons we initiated the Plant Rescue Center Program. We require information on a rescue center's facilities and the types of plants they are able to maintain when it is accepted into the program. Prior to placing plants, we contact facilities with the expertise to care for them and determine if they are willing and able to care for the seized plants. Acceptance of any shipment is voluntary, and a shipment is placed only after we receive confirmation from the individual rescue center. Some commenters were concerned that there were delays in placing plants in rescue centers. Plants may not always be sent to a rescue center immediately after they are seized. Some shipments may be delayed due to regulatory procedures that APHIS or CBP must follow relative to the seizure of property.

One commenter congratulated us on the establishment of the Plant Rescue Center Program and believed that it was an excellent step in dealing with the complicated and burdensome task of disposal of seized live plants. Another commenter suggested that we continue refining the procedures for treatment of orchids in Plant Rescue Centers and make provisions for better interim care for plants temporarily held. We plan to continue our efforts to provide care for seized plants and to work with APHIS and CBP on care of seized plants.

One commenter stated that the destruction of confiscated plants does not further conservation and that the availability of confiscated wild and propagated plants for propagation would further conservation. The commenter also suggested that if a rescue center rejects confiscated orchids, the specimens should be available for sale. We received several other comments concerning the ultimate disposition of seized plants. We only destroy plants as a last resort. However, the manner in which seized items are ultimately handled, including sale, is addressed in 50 CFR part 12, 7 CFR part 356, and 19 CFR part 162.

What Are the Proposed Changes to Subpart G of 50 CFR Part 23—CITES Administration?

Roles of the Secretariat and the committees (section 23.84): This proposed section outlines the responsibilities of the Secretariat, established under Article XII of the Treaty, and the responsibilities of the committees, which were established under Resolution Conf. 11.1 (Rev. CoP13). The committees provide administrative, technical, and scientific support to the Parties. Resolution Conf. 11.1 (Rev. CoP13) also outlines how regional representatives are selected to serve on the various committees and their responsibilities.

Meetings of the CoP (section 23.85): We propose to add basic information on what a CoP entails, how CoP locations and dates are determined, and who can attend the meetings.

Notice of a CoP (section 23.86): This proposed section revises sections 23.31 through 23.39 to clarify how we provide information to the public concerning a CoP and how the public may participate in preparations for it. We propose to provide, either through published notices in the **Federal Register** or postings on our Web site, information on the location, dates, agenda, proposed amendments to the Appendices, proposed resolutions, and public meetings. Since we will provide up-to-date information on how to participate in the public meetings, including the correct addresses for submission of any written comments and a telephone number for further information, we propose not to include the addresses and telephone numbers in 50 CFR part 23.

Development of U.S. documents and negotiating positions for a CoP (section 23.87): We propose to reorganize the information in sections 23.33, 23.35, and 23.38 of the current regulations to show the process we follow in developing documents for submission to the CoP and our negotiating positions, including how the public can participate in this process. We will outline what the United States is considering and our proposed negotiating positions on agenda items and proposals from other countries either through **Federal Register** notices or postings on our Web site. We will hold one or more public meetings to discuss these issues. One commenter wanted a deadline for publication of final negotiating positions in the **Federal Register**. We propose not to publish final negotiating positions because some issues are extremely complex and require extensive coordination, and our final negotiating positions may not be available prior to the CoP. We hold daily briefings at the CoP for U.S. observers where we often discuss our tentative negotiating positions and any changes to them. We also propose to delete section 23.39 of the current regulations and no longer publish an official report after each CoP. Information on the results of a CoP is available from a number of sources, such as the CITES Web site, so the production of a separate report has become duplicative and not necessary. We propose to delete section 23.36 in the current regulations since this information is incorporated into other newly proposed sections.

Resolutions and decisions (section 23.88): At each CoP, the Parties adopt resolutions and decisions. As noted by the United States Court of Appeals for the District of Columbia in *Castlewood Products, L.L.C.* v. *Norton* (April 30, 2004), the resolutions provide appropriate clarification and guidance when interpreting the Treaty and our regulations. Decisions typically contain instructions to the permanent committees, Parties, or Secretariat on actions that are to be implemented, often within a specific timeframe, and then become redundant or obsolete. We propose to add this new section to provide the legal basis and purpose of resolutions and decisions. We also propose to implement Resolution Conf. 4.6 (Rev. CoP13), which establishes that a resolution or decision becomes effective 90 days after the meeting at which it is adopted, unless the resolution or decision specifies a different date.

What Are the Proposed Changes to Subpart H of 50 CFR Part 23—List of Species?

Listing criteria for Appendix I or II (section 23.89): CITES lists species in one of three Appendices for which there are different levels of regulation, depending on the degree of threat to the survival of the species and the protection in international trade believed to be necessary by the Parties (see proposed section 23.4). In 1992 at CoP8, the Parties directed the Standing Committee to undertake, with the assistance of the Secretariat, a revision of the criteria for amending the Appendices in Resolution Conf. 1.1 (referred to as the Berne criteria). This review, carried out in consultation with the Parties, was based on initial technical work done by IUCN—The World Conservation Union in collaboration with species experts. A joint meeting of the Plants and Animals Committees addressed all aspects of this review, in association with the Standing Committee, in Brussels in September 1993. From this review, the Parties adopted Resolution Conf. 9.24, which established specific criteria for listing species. Between CoP11 and CoP13, the Parties conducted a full review of the listing criteria with regard to the scientific validity of the criteria, definitions, notes, and guidelines, and their applicability to different groups of organisms. That review resulted in the adoption of Resolution Conf. 9.24 (Rev. CoP13). This proposed section adopts the revised resolution as it is written. When considering any proposal to amend Appendix I or II, the Parties should apply precautionary measures so that scientific uncertainty is not used as a reason for failing to act in the best interest of the conservation of the species. We propose to define the terms ''precautionary measures'' and ''affected by trade'' in section 23.5.

According to Article II of the Treaty, Appendix II should include species that could be threatened with extinction if trade is not regulated (Article II(2)(a)) and species where trade should be regulated because of their similarity of appearance or close association with other listed species (Article II(2)(b)). In both cases, our goal is to ensure that international trade does not adversely affect any listed species. In addition, we wish to ensure that trade does not get to a level where the species would meet the criteria for listing in Appendix I and that the species is maintained at a level consistent with its role in its ecosystem. To monitor the effectiveness of protection offered by the Convention, range countries, in cooperation with the Animals Committee or the Plants Committee, are instructed to regularly review the status of species listed in Appendices I and II.

One commenter recommended that the specific resolution containing the criteria for amending Appendix I or II should be referenced within this section of the regulation. We have referenced the current resolution (Conf. 9.24 (Rev. CoP13)) containing these criteria here in the preamble. Because the CITES resolutions are dynamic documents, subject to change by the CoP, we have avoided citing them specifically in any part of the proposed rule. However, we intend that the listing criteria identified in this section will faithfully track the criteria and principles set out in Resolution Conf. 9.24 (Rev. CoP13). If that resolution is substantially modified at a future CoP, then we may propose amendments to this section to maintain our science-based interpretation of criteria for the addition or removal of species from Appendices I and II.

Numerous commenters questioned the biological or management basis for the inclusion of certain species, such as all orchids, in the CITES Appendices. Species were first placed in the Appendices as a negotiated part of the Treaty, based on the advice of experts. Subsequently, species have been proposed for inclusion based on the criteria in effect at the time, and the Parties voted to include them. If anyone believes that a species or higher taxonomic group no longer qualifies for listing in the CITES Appendices, based on an evaluation of the species under the current criteria, then that person is encouraged to submit relevant information to us so that we may consider submission of a proposal to a future CoP.

One commenter suggested that criteria for removal from the Appendices (delisting) and transfer from Appendix I to Appendix II (downlisting) should also be included in this section, not just criteria for listing. The criteria for including a species in the Appendices (listing) are the same as the criteria for delisting, downlisting, and uplisting. If an Appendix-I species no longer meets the criteria for listing in Appendix I, then it may be transferred to Appendix II. Likewise, if the status of an Appendix-II species changes so that it meets the criteria for listing in Appendix I, then it may be transferred to Appendix I. If an Appendix-II species no longer meets the criteria for listing in Appendix II, then it may be removed from the Appendices, unless individual Parties wish to retain the species in Appendix III (see proposed section 23.90).

Listing criteria for Appendix III (section 23.90): Article II(3) of the Treaty sets out that Appendix III includes native species that a Party lists to obtain international cooperation in controlling trade. Under Article XVI of the Treaty, a Party can include a species in Appendix III by submitting information to the Secretariat. No vote of the Parties is required. The criteria to list a species in Appendix III include the requirement that the species must be native to the listing country, be protected under that country's regulations to prevent or restrict exploitation and trade, and be in international trade, with an indication that cooperation of other Parties would help to control illegal trade. The listing Party can request that the species be removed from Appendix III at any time. By listing a species in Appendix III, trade data and other relevant information can be gathered to assist policy makers in a country to determine whether the species should be proposed for listing in Appendix II, removed from Appendix III, or retained in Appendix III.

This proposed section incorporates Resolution Conf. 9.25 (Rev.) by outlining the criteria that a country must address to list a species in Appendix III. In addition, it gives a general description of the process we will use to decide if a species native to the United States should be listed in Appendix III. On December 16, 2005 we published a final rule in the **Federal Register** (70 FR 74700) listing the alligator snapping turtle (*Macroclemys* [=*Macrochelys*] *temminckii*) and all species of map turtle (*Graptemys spp.*) in Appendix III. These listings will

become effective on June 14, 2006. These are the first taxa to be listed by the United States in Appendix III.

Listed species (section 23.91): This proposed section is a revision and reorganization of current section 23.23. It provides information on how to determine if a species is listed in the CITES Appendices and when a listing becomes effective. The official list of CITES species is maintained by the CITES Secretariat and can be found on the CITES Web site (*http://www.cites.org*). In the past, we published an unofficial list of CITES species in the CFR. Because the official CITES list is available on the CITES Web site, we propose to discontinue compilation of our unofficial list and its publication in the CFR. We believe this is a more practical approach since the unofficial list in the CFR was extremely resource intensive to compile and was often outdated because the CFR is only published annually.

Exemptions (section 23.92): This proposed section also is a revision of current section 23.23. It provides details on what materials are exempt. We propose to add coral sand; coral fragments; personal and household effects as provided in proposed section 23.15; urine, feces, and synthetically derived DNA as provided in proposed section 23.16; and certain marine specimens protected under another treaty or international agreement as provided in proposed section 23.39 as exempt from the requirements of CITES. One commenter suggested we include the phrase ''or cultivar'' in paragraph (b) after the word ''hybrid.'' We do not agree because we consider cultivars to be regulated by CITES. At the 53rd Meeting of the Standing Committee in June 2005, the issue of the legality of some plant annotations, including the annotations concerning cultivars, was discussed. This issue will need to be considered by the Parties at the next CoP.

Required Determinations

Regulatory Planning and Review: The Office of Management and Budget (OMB) has determined that this is a significant regulatory action under Executive Order 12866 because it may raise novel legal or policy issues. Therefore this proposed rule will be reviewed by OMB.

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 government. An assessment to clarify the costs and benefits associated with this rule follows. The purpose of this proposed rule is to clarify and update the regulations that implement CITES. It is designed to assist individuals and businesses who import and export specimens of CITES species by clearly outlining the requirements that the United States, as well as the other 168 Parties, must follow under the Convention. As of July 19, 2005, our records show there are 5,988 active U.S. CITES documents (the period of validity for documents ranges from 6 months to 4 years). In the United States, the percentage of CITES documents issued for various uses is generally as follows: 34 percent hunting trophies; 19 percent commercial wildlife; 18 percent personal use; 8 percent scientific research; 6 percent commercial plants; 6 percent zoological parks; 5 percent breeding; 3 percent circuses; and 1 percent miscellaneous.

The overwhelming majority of countries that trade internationally in wildlife and plants are CITES Parties. Because most of these Parties are currently implementing the CITES resolutions, this proposed rule should cause little or no impact for importers or exporters. The foreign suppliers are, in most cases, already required by their own country's laws to follow the CITES resolutions and decisions. In addition, if a U.S. importer were to receive a shipment that did not comply with all of the requirements of the country of export, the import may violate the Lacey Act Amendments of 1981. Exporters need to comply with the requirements of the importing country in addition to U.S. requirements. If a shipment is not in compliance with all applicable laws, it may be seized, detained, or refused clearance at its destination. These proposed revisions include clarifications of the Convention's provisions that have not previously been published. Thus, U.S. businesses are already complying with most of the proposed revisions. Proposed revisions that would impact current business practices are addressed below.

We do not expect that this proposed rule would have a significant effect on the volume or dollar value of wildlife and plants imported, exported, or re-exported to and from the United States. There is no indication that this proposed rule would result in statistically significant higher or lower levels of trade, permit applications, or permit issuance or denial.

Many of the costs incurred by industry would be associated with changes to required information collections. These are annual, periodic, or one-time collections. The costs presented represent the estimated yearly costs for all types of collections. Refer to the ''Paperwork Reduction Act'' section for more details. The yearly cost associated with new information collections described in the proposed rule is $34,063 ($2,813 in value of burden hours + $31,250 in application fees). The 10-year quantitative cost is $340,630 ($299,281 discounted at 3 percent or $255,991 discounted at 7 percent). We do not anticipate that this rulemaking would have a significant effect on permit application processing time for CITES documents issued under 50 CFR part 23. We do not expect administrative costs to increase.

Costs not associated with information collections are more difficult to quantify. These costs include (1) The need for operations that are breeding Appendix-I wildlife for commercial purposes to become registered, (2) the need for facilities that are breeding Appendix-I wildlife for noncommercial purposes to participate in a cooperative conservation program, (3) conditioned noncommercial use of Appendix-I and certain Appendix-II and -III specimens after import into the United States, and (4) the need to label sturgeon caviar and re-export caviar within 18 months from the date of the issuance of the original export permit.

To comply with Article II of the Treaty, which states that Appendix-I specimens ''* * * must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances,'' we propose no longer to allow the use of Article III of the Treaty for commercial export of Appendix-I wildlife. This proposed new provision means that operations that are breeding Appendix-I wildlife for commercial purposes under Article VII(4) of the Treaty need to become registered. This does not affect the sale of specimens within the United States, only the commercial export of such specimens, nor does it preclude the export of specimens where the export is not commercial, such as scientific, conservation, or personal use.

Wildlife may be exported with an exemption bred-in-captivity certificate under Article VII(5). At CoP12, the Parties agreed that facilities that are breeding Appendix-I species for noncommercial purposes must be participating in a cooperative conservation program with one or more of the range countries for that species to qualify for such a certificate. We propose to adopt this new provision to ensure that trade in Appendix-I species would not be detrimental to the survival of the species in the wild. Many Appendix-I species also are listed under the Endangered Species Act, and an

export permit can be issued only when the activity will provide for the conservation of the species. Thus, we do not expect administrative costs to facilities that want to export Appendix-I species bred for noncommercial purposes to increase.

Unless an Appendix-I wildlife or plant specimen qualifies for an exemption under Article VII of the Treaty, it can be imported only when the intended use is not for primarily commercial purposes. In addition, the Parties agreed that Appendix-I trophies be ''imported as personal items that will not be sold in the country of import'' (Resolution Conf. 10.14 (Rev. CoP13) for leopards, Resolution Conf. 10.15 (Rev. CoP12) for markhor, and Resolution Conf. 13.5 for black rhinoceros). We propose to incorporate into 50 CFR part 23 a provision that Appendix-I specimens and certain Appendix-II and -III specimens may not be imported and subsequently used for a commercial purpose. This provision is to prevent commercial use after import when the trade allowed under CITES is only for a noncommercial purpose. The provision would apply to Appendix-II specimens that are subject to an annotation that allows noncommercial trade of sport-hunted trophies, such as the African elephant populations of Botswana, Namibia, South Africa, and Zimbabwe. Under the regulations proposed here, these types of trophies may be imported for personal use only and may not be sold or otherwise transferred for economic gain, including for tax benefits, after import into the United States. From 2001 to 2003, there were between 265 and 300 African elephant trophies and between 420 and 450 leopard trophies imported into the United States annually.

We propose to implement changes in requirements for trade in sturgeon caviar agreed at CoP12 and CoP13. We will require that all caviar be labeled in accordance with Resolution Conf. 12.7 (Rev. CoP13) and any re-exports of caviar take place within 18 months from the date of issuance of the original export permit. We believe these procedures are consistent with current industry practices and will not cause any additional burden to applicants.

The publication of the proposed revisions would assist U.S. businesses in complying with CITES requirements when engaging in international wildlife trade. Many of the benefits associated with the proposed rule are due to clarified regulations. Benefits include (1) Streamlining procedures for traveling exhibitions, (2) establishing application procedures for registration of operations breeding Appendix-I wildlife species for commercial purposes, (3) issuing a bred-in-captivity certificate that eliminates the need to obtain an import permit, (4) using standardized coral nomenclature to simplify procedures and therefore provide relief to entities that trade in coral internationally, (5) informing the public about proper CITES documents and procedures for international travel with personal live wildlife (*i.e.*, pets), (6) streamlining procedures to issue permits for trade that would have a negligible impact or no impact on the conservation of the permitted species and that is repetitive in nature, (7) simplifying procedures for shipment of sample collections under an ATA carnet, (8) for certain wildlife hybrids, issuing or accepting a letter that could be used repeatedly, in place of requiring a single-use permit, and (9) exempting urine, feces, and synthetically derived DNA from CITES requirements. These benefits are presented qualitatively below.

We expect the proposed regulations to provide relief in streamlining the CITES document procedures for traveling exhibitions. At CoP 8, the Parties agreed to issue CITES documents for live pre-Convention and bred-in-captivity animals that travel internationally as part of an exhibition. The document is to be treated like a passport, allowing the exhibitor to use the same CITES document to cross multiple borders, rather than having to obtain a new document for each border crossing. This CITES document is valid for three years, rather than six months like a standard export permit. At CoP 12, the Parties agreed to extend these provisions to all traveling exhibitions, not just traveling live-animal exhibitions. We propose to incorporate provisions for such traveling exhibitions into these regulations and to define the term ''traveling exhibition'' to include live animals and plants and dead items (e.g., herbarium specimens and museum specimens). We estimate that 50 permittees would be affected by this procedure, although we do not categorize permittees as traveling exhibitors in our records, and, therefore, are not able to quantify the precise effect of this relief.

We also propose to implement Resolution Conf. 12.10 (Rev. CoP13) and establish application procedures for an operation breeding Appendix-I wildlife species for commercial purposes to register their facility for each Appendix-I species. Specimens that originate from registered facilities may be granted export permits or re-export certificates without the issuance of an import permit. This provides some economic relief by allowing specimens from registered facilities to be imported for commercial purposes, trade which is otherwise prohibited by the Treaty for Appendix-I specimens. The registration fee in 50 CFR part 13 is set at $100. To date, the United States has registered four commercial Appendix-I breeding operations. Since 2000, two facilities have exported a total of 5 shipments per year, on average. We anticipate that about 15–20 operations would seek to be registered annually.

We are proposing to implement the definition of ''bred for noncommercial purposes'' in Resolution Conf. 12.10 (Rev. CoP13) for Appendix-I wildlife. Facilities that are breeding for noncommercial purposes must participate in a cooperative conservation program with one or more of the range countries for that species. Qualifying applicants are issued a bred-in-captivity certificate that eliminates the need to obtain an import permit. The number of facilities exporting Appendix-I wildlife is relatively small. In 2002, we issued about 100 CITES documents to export Appendix-I specimens.

We propose to exempt coral sand and coral fragments from CITES requirements, because the Parties have recognized the difficulty in identifying these coral specimens. The Parties also agreed to the use of higher taxon names (broader classification) for coral rock and live and dead coral under certain conditions. We propose to accept a CITES document that uses a higher taxon name for coral when the CoP has agreed to its use. A current list of acceptable higher taxon names for coral is available on the CITES Web site (*http://www.cites.org*) or from us. We anticipate that the use of this standardized nomenclature and the exemption of coral sand and coral fragments from CITES requirements would simplify procedures and therefore provide relief to entities that trade in coral internationally. Because we are uncertain how much of the trade would be affected by these changes, we are unable to quantify their impact.

Resolution Conf. 10.20 (''Frequent cross-border movements of personally owned live animals'') provides for the issuance of certificates for personal live wildlife that would be valid for a period of three years and allow for multiple imports, exports, and re-exports of the covered specimens. Current U.S. regulations do not inform the public of this. The proposed rule advises travelers that they must have a CITES document in order to travel with their CITES-listed pets, and it provides procedures for the issuance of these CITES documents.

Individuals importing live CITES wildlife as pets would be required under this proposed rule to obtain a CITES document prior to arriving in the United States with their pets. Since most Parties require CITES documents for international trade of all live specimens, this requirement would ensure that pet owners are not inadvertently violating the Lacey Act by exporting a CITES species without having obtained the required CITES permits. Although we can issue and accept retrospective documents under limited circumstances for activities that have already occurred, the practice is discouraged. On average, we issue about 20 retrospective documents for personal shipments, including live wildlife, annually. These revised regulations would not impose an additional paperwork or financial burden for pet owners, but may actually save time and money by clearly informing travelers of CITES requirements.

This proposed rule would provide relief to permit applicants by streamlining procedures to issue permits for trade that would have a negligible impact or no impact on the conservation of the permitted species and that is repetitive in nature (*i.e.*, the same type of specimens or the same actual specimens are exported shipment after shipment). Examples include biomedical companies shipping biological samples derived from cell lines they maintain and production facilities exporting certain native Appendix-II (and potentially Appendix-III) species. In the past, in an effort to facilitate the timely movement of such specimens, we have issued ''multiple-use'' export documents that could be photocopied for use with multiple shipments. However, many countries no longer accept photocopied documents. Thus, we propose to implement streamlined procedures adopted at CoP12 and issue partially completed documents under specific circumstances. The permittee would be authorized to complete specifically identified boxes on the document and would be required to sign the document to certify that the information entered was true and correct. For U.S. documents, an applicant would submit the appropriate application form for the proposed activity and show that the use of this type of document is beneficial to both the applicant and to the Service. We could issue multiple partially completed documents when we find that the issuance criteria for the proposed activity and the issuance criteria for a partially completed document are met. In 2002, we issued about 350 ''multiple-use'' documents. We estimate that applicants would receive relief under this proposed rule for approximately 1,000 shipments a year.

This proposed rule would provide relief to applicants who travel internationally with collections of display samples, such as sets of shoes or reptile skin samples. At CoP13, the Parties agreed to allow the in-transit shipment of such collections under specific conditions. We propose to issue a CITES document that would allow these sample collections to move from one country to another before returning to the originating country, rather than requiring the issuance of a re-export certificate from each country visited. Such a CITES document must be accompanied by a valid ATA carnet. An ATA carnet is an international customs document that allows the temporary introduction of goods destined for fairs, shows, exhibitions, and other events. We estimate that approximately 50 applicants would benefit from this simplified procedure.

Certain wildlife hybrids may be excluded from CITES trade requirements under an interpretive resolution. Under the proposed rule, we would accept or issue a letter for a qualifying hybrid, in place of a permit. Unlike a permit, the letter could be used indefinitely for travel with the hybrid animal. We generally receive fewer than 10 inquiries concerning excluded hybrids annually.

We propose that urine, feces, and synthetically derived DNA of CITES species be exempt from CITES requirements under certain circumstances. We consider samples of urine and feces to be wildlife byproducts, rather than parts, products, or derivatives and therefore do not require CITES permits for the international movement of these specimens unless a permit is required by the other country involved in the trade. This exemption applies only to synthetically derived DNA. DNA extracted directly from blood and tissue samples must comply with all CITES permitting requirements. Because we do not maintain records on the trade in these specimens we are unable to estimate the impact of this exemption.

b. This proposed rule will not create inconsistencies with other agencies' actions. As the lead agency for implementing CITES in the United States, we are responsible for monitoring imports and exports of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES.

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

d. OMB has determined that this proposed rule raises novel legal or policy issues. As a Party to CITES, the United States is committed to fully and effectively implementing the Convention. This proposed rule clarifies the requirements for the import, export, and re-export of CITES specimens and informs individuals and businesses of the current requirements.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a ''small business'' as one with annual revenue or employment that meets or is below an established size standard. To assess the effects of the rule on small entities, we focus on industries that may have businesses that import, export, or re-export CITES specimens. Many of these businesses can be placed in the following 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. The U.S. Economic Census does not capture the detail necessary to determine the

number of small businesses that are engaged in international commerce in CITES species. However, we expect that the overwhelming majority of the entities involved with this type of commerce would be considered small as defined by the SBA. The declared value for U.S. trade in CITES wildlife (not including plants) was $345 million in 2002 and $394 million in 2003.

These proposed new regulations would create no substantial fee or paperwork changes in the permitting process. Any increase in costs due to information collections is expected to be minimal. Response time for new information collections would vary from 6 minutes to 30 minutes per response and new application fees range from free to $100. The proposed regulatory changes are not major in scope and would create only a modest financial or paperwork burden on the affected members of the general public.

This proposed rule also benefits these businesses by providing updated and more clearly written regulations for the international trade of CITES specimens. We do not expect these benefits to be significant under the Regulatory Flexibility Act. The authority to enforce CITES requirements already exists under the Endangered Species Act and is carried out by regulations contained in 50 CFR part 23. The requirements that must be met to import, export, and re-export CITES species are based on the text of the Convention, which has been in effect in the United States since 1975.

Therefore, we have determined that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

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

a. Does not have an annual effect on the economy of $100 million or more. This proposed rule provides the importing and exporting community within the United States updated and more clearly written regulations that implement CITES in the United States. This proposed rule would not have a negative effect on this part of the economy.

This proposed rule would affect all importers, exporters, and re-exporters equally, and the benefits of having updated guidance on complying with CITES requirements would be evenly spread among all businesses, whether small or large. There is not a disproportionate share of benefits for small or large businesses.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions. This proposed rule would clarify and update the regulations that implement CITES and, as such, would provide benefits to all permit applicants in terms of time savings. However, this proposed rule may result in a small increase in the number of applications and processing fees for circuses, pet owners trading in CITES animal species, Appendix–I commercial breeding operations, and entities currently exporting under multiple-use permits. This rule also proposes to establish processing fees for the following application types: Introduction from the sea ($100), and registration of Appendix–I commercial breeding operations ($100). We anticipate fewer than 30 applicants would be affected annually by these new proposed fees.

c. Does 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. This proposed rule would enable U.S. importers and exporters of CITES species to better understand and comply with the regulations covering international trade in CITES wildlife and plants. Without these proposed revisions to the regulations, the U.S. importing and exporting community may not be able to compete effectively with foreign-based companies in the international trade of CITES specimens. This proposed rule would assist U.S. businesses in ensuring that they are meeting all current CITES requirements thereby decreasing the possibility that shipments may be delayed or even seized in another country that has implemented CITES resolutions not yet incorporated into U.S. regulations.

Unfunded Mandates Reform Act: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This proposed rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. As the lead agency for implementing CITES in the United States, we are responsible for monitoring import and export of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES. The structure of the program imposes no unfunded mandates. Therefore, this proposed rule has no effect on small governments' responsibilities. This rule affects States only as described below, concerning export programs for certain CITES native species.

Some rural communities rely on the added income produced by harvesting and selling certain CITES species that occur in the United States, such as the American alligator, American ginseng, bobcat, river otter, Canada lynx, brown bear, and gray wolf. The majority of consumer products made from these species are processed and manufactured overseas. During 2001–2003, annual exports of animal skins under the CITES export programs ranged from approximately $28 to 43 million. Annual exports of American ginseng during the same timeframe ranged from approximately $41 to 111 million. We are not proposing to change the existing regulations for export from these programs (although we may eliminate the need for export tags on certain native furbearers) and, therefore, do not anticipate any change in economic effects or current activities.

States have the right and responsibility to manage their wildlife and plants. Many States have monitored the harvest of CITES species since before the Convention came into effect. We have worked with States and Indian Tribes to use the information they collect to make CITES findings on a State or tribal basis where export program approval is requested. This allows us to make findings for all specimens of a particular species from a State or Tribe rather than requiring each individual applicant to supply the information we need to make legal acquisition and non-detriment findings. We supply States and Tribes that have approved programs for the export of skins with CITES export tags at no charge. These tags are placed on each skin under State-or Tribe-monitored conditions or regulations. The presence of a tag on a skin indicates that the skin was taken from an approved program and that the necessary findings have been made. By making programmatic findings, we reduce the amount of paperwork required considerably, and, thus, allow exporters of these species to benefit from streamlined export procedures. Export from a State or from tribal lands where there is not an approved program is also allowed. However, where there is no approved program, each applicant must complete the standard application for export (rather than the streamlined application for export from approved programs) and must provide all information necessary to determine that the specimens were

legally acquired and that their export would not be detrimental to the species.

In the proposed revisions, we provide the criteria we use in making decisions to approve a program. However, these proposed criteria are consistent with those that we currently employ in making such findings and program approval would continue to function as it does now. The proposed revisions provide the public with information on how the Service makes findings regarding State and tribal programs.

The proposed changes to the CITES regulations would assist those who rely on income from the export of certain native CITES species by allowing them to remain competitive when conducting business in international markets. This proposed rule provides the importing and exporting community a better opportunity for obtaining economic gain from international business in CITES specimens.

b. This proposed rule will not produce a Federal requirement of $100 million or greater in any year and is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings: Under Executive Order 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required. This proposed rule is not considered to have takings implications because it does not further restrict the import, export, or re-export of CITES specimens. Rather, the proposed rule updates the regulations for the import, export, and re-export of CITES specimens, which will assist the importing and exporting community in conducting international trade in CITES specimens.

Federalism: These proposed revisions to Part 23 do not contain provisions that have Federalism implications significant enough to warrant preparation of a Federalism Assessment under Executive Order 13132.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly 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 potential 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: This proposed rule contains information collections for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We 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. The information collections associated with this proposed rule will be used to evaluate applications for CITES documents and registrations. We will use the information to make decisions on the issuance, suspension, revocation, or denial of CITES documents and registrations.

The majority of the information collection associated with this proposed rule has been approved under OMB control number 1018–0093, which expires June 30, 2007. Forms approved under 1018–0093 include 3–200–19, 3–200–20, 3–200–23 through 3–200–37, 3–200–39, 3–200–43, 3–200–46 through 3–200–48, 3–200–52, and 3–200–53, 3–200–58, 3–200–64 through 3–200–66, and 3–200–73. Form 3–200–61 was approved under OMB control number 1018–0130. OMB approvals are valid for three years.

We are also requesting new information collections in conjunction with this proposed rule. We have developed new application forms for single-use permits under a master file or an annual program file and registration of production facilities for export of certain native species. The new information collections, including forms 3–200–74 and 3–200–75, will be submitted to OMB for approval at the same time this proposed rule is published. The new information collections and the estimated reporting burdens are indicated in the following table.

NEW INFORMATION COLLECTIONS ASSOCIATED WITH THE PROPOSED RULE

Form No.	Activity	Total number of respondents	Total number of responses	Estimated completion time (hours)	Total annual burden hours	Value of burden hours (dollars)	Application processing fee (dollars)	Total annual non-hour cost burden (dollars)	Regulation
3–200–74	Single-Use Permits Under a Master File or an Annual Program File.	350	1,000	0.1	100	$2,500	*$5	$30,000	50 CFR 23.51
3–200–75	Registration of a Production Facility for Export of Native CITES Species.	25	25	0.5	12.5	313	*50	1,250	50 CFR 23.36, 23.20, 13.11
Totals		375	1,025		112.5	2,813		31,250	

*These fees have been approved (see 70 FR 18311, April 11, 2005).

Under the proposed rule we would accept or issue a letter, in place of a permit, for international movement of certain wildlife hybrids. Unlike a permit, the letter could be used repeatedly for travel with the qualifying hybrid animal, thus reducing fees and paperwork. An individual may apply for an excluded hybrid letter by completing our standard export permit application. One example of trade in hybrids that might be eligible for exclusion from CITES is certain domestic ''Bengal cats'' (a cross between a domestic cat and a CITES-listed cat). We generally receive fewer than 10 inquiries concerning excluded hybrids annually.

We are also proposing to make changes to the requirements covering trade in sturgeon caviar (which includes paddlefish caviar). While we are proposing a number of modifications to 50 CFR part 23 that would specifically cover caviar trade, the majority of these requirements are already implemented by other CITES Parties that are either exporting caviar to the United States, or are receiving imports of caviar from the United States. Therefore, our proposed codification of these existing requirements would not impose a new burden on traders. We are proposing to require the labeling of containers of caviar being imported, exported, or re-exported to or from the United States. Resolution Conf. 12.7 (Rev. CoP13) recommends guidelines for a universal

labeling system in order to assist Parties in identifying legal caviar in trade. Sturgeon caviar may be traded internationally only if non-reusable labels containing specific information are affixed to primary and secondary containers. In 2002, we issued approximately 150 CITES documents to export and re-export caviar from the United States.

CITES Resolution Conf. 12.3 (Rev. CoP13) also requires each live animal in a traveling exhibition (such as a circus) that is pre-Convention or bred-in-captivity to be covered by a CITES document specific to that specimen. Currently, circuses are allowed to have one document that covers several animals. Under these proposed regulations, when a document covering multiple pre-Convention or bred-in-captivity specimens expires, the permittee would need to obtain one document for each specimen. As a result, this proposed rule may result in increased permit application processing fees ($100 per application) for a small number of importers and exporters. This requirement would be phased in as current documents expire. We estimate that approximately 40 circuses import and export CITES wildlife to and from the United States on a regular basis. If exhibitors do not obtain individual documents for each specimen, they may encounter difficulties at border crossings. During the comment period on the 2000 proposal, one circus stated that they would not wait for their documents to expire, but would obtain the new documents as soon as possible since the new type of documents should expedite border crossings.

The system for providing multiple single-use CITES documents, in lieu of a single multiple-use document, will result in increased permit fees ($5 per document) for those entities that were utilizing photocopied multiple-use CITES documents. We are eliminating multiple-use documents because many CITES Parties will no longer accept photocopied documents. We estimate 350 exporters will be impacted by this change.

We estimate the public burden for all the information collections associated with this proposed rule, including those already approved under OMB control number 1018–0093 and 1018–0130, will vary from 6 minutes to 40 hours per response, with the vast majority requiring 1 hour per response. This estimate includes time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms and reports.

We invite comments on this information collection on: (1) Whether or not the collection of information is necessary for the proper performance of our management functions involving CITES, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

National Environmental Policy Act (NEPA): The Department of the Interior has determined that the issuance of this action is categorically excluded under the Department's NEPA procedures in 516 DM 2, Appendix 1.9.

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 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. Individual tribal members must meet the same regulatory requirements as other individuals who trade internationally in CITES species.

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 rule proposes to revise the current regulations in 50 CFR part 23 that implement CITES. The proposed regulations provide procedures to assist individuals and businesses that import, export, and re-export CITES wildlife and plants, and their parts, products, and derivatives, to meet international requirements. Although this proposed rule is considered a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Clarity of this regulation: Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements of the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 23.1 What are the purposes of these regulations and CITES?) (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to *Exsec@ios.doi.gov.*

Public Comments Solicited

We invite interested organizations and the public to comment on this proposed rule. It generally reflects the way we implement CITES under the current resolutions. We have drafted the proposal as part of our ongoing permits reform effort to simplify procedures, use risk assessment to reduce paperwork while still ensuring effective species conservation, and help people understand how to conduct international trade in CITES species. We are seeking comments, in particular, on whether the provisions of the proposed rule allow the affected public to effectively comply with CITES.

When providing comments, to the extent possible, reference the section of the proposed regulations on which you are commenting and give the category of your comments. Select one of the following categories: (1) International organization; (2) government; (3) nongovernmental conservation organization; (4) humane or animal welfare organization; (5) wildlife/pet business; (6) other business; or (7) private citizen. You may send comments via e-mail to: *part23@fws.gov.* Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Also, please reference in your e-mail message the following information: ''RIN 1018-AD87''; your name and mailing address; and the category of your comments.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Any person commenting may request that we withhold their name and home address, which we will honor to the extent allowable by law. In some

circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name and address or e-mail address, you must state this request prominently at the beginning of your comments. We will not, however, consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received will be available for public inspection by appointment, from 7:45 a.m. to 4:15 p.m., at the Division of Management Authority (see **ADDRESSES** section).

List of Subjects

50 CFR Part 10

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

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

50 CFR Part 23

Animals, Endangered and threatened species, Exports, Fish, Foreign officials, Foreign trade, Forest and forest products, Imports, Incorporation by reference, Marine mammals, Plants, Reporting and recordkeeping requirements, Transportation, Treaties, Wildlife.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend title 50, chapter I, subchapter B of the CFR as follows:

PART 10—[AMENDED]

1. The authority citation for part 10 continues to read as follows:

Authority: 18 U.S.C. 42; 16 U.S.C. 703–712; 16 U.S.C. 668a–d; 19 U.S.C. 1202; 16 U.S.C. 1531–1543; 16 U.S.C. 1361–1384, 1401–1407; 16 U.S.C. 742a–742j–l; 16 U.S.C. 3371–3378.

2. In § 10.12, the definition of *United States* is revised to read as follows:

§ 10.12 Definitions.

* * * * *

United States means the several States of the United States of America, District of Columbia, Commonwealth of Puerto Rico, American Samoa, U.S. Virgin Islands, Guam, Commonwealth of the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Island, or any other territory or possession under the jurisdiction of the United States.

* * * * *

PART 13—[AMENDED]

3. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j-l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374; 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

4. Section 13.1 is revised to read as follows:

§ 13.1 General.

(a) A person must obtain a valid permit before commencing an activity for which a permit is required by this subchapter, except as provided for retrospective permits in § 23.53 of this subchapter for certain CITES shipments under very specific situations.

(b) A person must apply for such a permit under the general permit procedures of this part and any other regulations in this subchapter that apply to the proposed activity.

(1) The requirements of all applicable parts of this subchapter must be met.

(2) A person may submit one application that includes the information required in each part of this subchapter, and a single permit will be issued if appropriate.

5. Section 13.11(d) is amended, as set forth below, by:

a. Revising the first two sentences in paragraph (d)(1); and

b. Adding to the table in paragraph (d)(4) the following four entries in the section ''Endangered Species Act/CITES/Lacey Act'' immediately before the last four entries in that section so that all entries that begin with the word ''CITES'' are listed together:

§ 13.11 Application procedures.

* * * * *

(d) *Fees.* (1) Unless otherwise exempted under this paragraph (d), you must pay the required permit processing fee at the time that you apply for issuance or amendment of a permit. You must pay in U.S. dollars. If you submit a check or money order, it must be made payable to the ''U.S. Fish and Wildlife Service.''

* * * * *

(4) *User fees.* * * *

Type of permit	Citation	Fee	Amendment fee
* * * *	*	*	*
Endangered Species Act/CITES/Lacey Act			
* * * *	*	*	*
CITES Introduction from the Sea	50 CFR 23	100	50
CITES Participation in the Plant Rescue Center Program	50 CFR 23	(1)	(1)
CITES Registration of Appendix-I Commercial Breeding Operations	50 CFR 23	100	
CITES Request for Approval of an Export program for a State or Tribe (American ginseng, Certain furbearers, and American Alligator)	50 CFR 23	(1)	(1)
* * * *	*	*	*

* * * * *

6. Section 13.12(a)(1) is revised to read as follows:

§ 13.12 General information requirements on applications for permits.

(a) * * *

(1) Applicant's full name and address (street address, city, county, state, and zip code; and mailing address if different from street address); home and work telephone numbers; and, if available, a fax number and e-mail address, and:

(i) If the applicant resides or is located outside the United States, an address in the United States, and, if conducting commercial activities, the name and address of his or her agent that is located in the United States; and

(ii) If the applicant is an individual, the date of birth, social security number, if available, occupation, and any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by the license or permit; or

(iii) If the applicant is a business, corporation, public agency, or institution, the tax identification number; description of the type of business, corporation, agency, or institution; and the name and title of the person responsible for the permit (such as president, principal officer, or director);

* * * * *

7. Section 13.22(c) is revised to read as follows:

§ 13.22 Renewal of permits.

* * * * *

(c) *Continuation of permitted activity.* Any person holding a valid, renewable permit may continue the activities authorized by the expired permit until the Service acts on the application for renewal if all of the following conditions are met:

(1) The permit is currently in force and not suspended or revoked;

(2) The person has complied with this section; and

(3) The permit is not a CITES document that was issued under part 23 of this subchapter (because the CITES document is void upon expiration).

* * * * *

8. Section 13.46 is amended by adding a sentence at the end of the section to read as follows:

§ 13.46 Maintenance of records.

* * * Permittees who reside or are located in the United States and permittees conducting commercial activities in the United States who reside or are located outside the United States must maintain records at a location in the United States where the records are available for inspection.

PART 17—[AMENDED]

9. 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.

§ 17.8 [Redesignated]

10. Part 17 is amended by redesignating § 17.8 as § 17.9.

11. New § 17.8 is added to read as follows:

§ 17.8 Import exemption for threatened, CITES Appendix-II wildlife

(a) Except as provided in a special rule in §§ 17.40 through 17.48 or in paragraph (b) of this section, all provisions of §§ 17.31 and 17.32 apply to any specimen of a threatened species of wildlife that is listed in Appendix II of the Convention.

(b) *Import.* Except as provided in a special rule in §§ 17.40 through 17.48, any live or dead specimen of a fish and wildlife species listed as threatened under this part may be imported without a threatened species permit under § 17.32 provided all of the following conditions are met:

(1) The specimen was not acquired in foreign commerce or imported in the course of a commercial activity;

(2) The species is listed in Appendix II of the Convention.

(3) The specimen is imported and subsequently used in accordance with the requirements of part 23 of this subchapter, except as provided in paragraph (b)(4) of this section.

(4) Personal and household effects (see § 23.5) must be accompanied by a CITES document.

(5) At the time of import, the importer must provide to the FWS documentation that shows the specimen was not acquired in foreign commerce in the course of a commercial activity.

(6) All applicable requirements of part 14 of this subchapter are satisfied.

12. In § 17.42, paragraphs (a)(1), (a)(2)(ii)(A), (a)(2)(ii)(B), and (c) are revised to read as follows, paragraphs (a)(3) and (a)(4) are added, and paragraph (g) is removed and reserved:

§ 17.42 Special rules—reptiles.

(a) American alligator (*Alligator mississippiensis*)—(1) *Definitions.* For purposes of this paragraph (a) the following definitions apply:

(i) *American alligator* means any specimen of the species *Alligator mississippiensis*, whether alive or dead, including any skin, part, product, egg, or offspring thereof held in captivity or from the wild.

(ii) The definitions of *crocodilian skins* and *crocodilian parts* in § 23.70(b) of this subchapter apply to this paragraph (a).

(2) * * *

(ii) * * *

(A) Any skin of an American alligator may be sold or otherwise transferred only if the State or Tribe of taking requires skins to be tagged by State or tribal officials or under State or tribal supervision with a Service-approved tag in accordance with the requirements in part 23 of this subchapter; and

(B) Any American alligator specimen may be sold or otherwise transferred only in accordance with the laws and regulations of the State or Tribe in which the taking occurs and the State or Tribe in which the sale or transfer occurs.

(3) *Import and export.* Any person may import or export an American alligator specimen provided that it is in accordance with part 23 of this subchapter.

(4) *Recordkeeping.* (i) Any person not holding an import/export license issued by the Service under § 14.91 and who imports, exports, or obtains permits under part 23 of this subchapter for the import or export of American alligator shall keep such records as are otherwise required to be maintained by all import/export licensees under § 14.93(d). Such records shall be maintained as in the normal course of business, reproducible in the English language, and retained for 5 years from the date of each transaction.

(ii) Subject to applicable limitations of law, duly authorized officers at all reasonable times shall, upon notice, be afforded access to examine such records required to be kept under paragraph (a)(4)(i) of this section, and an opportunity to copy such records.

* * * * *

(c) *Threatened crocodilians*—(1) *What are the definitions of terms used in this paragraph (c)?* (i) *Threatened crocodilian* means any live or dead specimen of the following species: yacare caiman (*Caiman yacare*), common caiman (*caiman crocodilus crocodilus*), brown caiman (*Caiman crocodilus fuscus,* including *caiman crocodilus chiapasius*), saltwater crocodile (*Crocodylus porosus*) originating in Australia (also referred to as Australian saltwater crocodile), and Nile crocodile (*Crocodylus niloticus*).

(ii) The definitions of *crocodilian skins* and *crocodilian parts* in § 23.70(b) and *re-export* in § 23.5 of this subchapter apply to this paragraph (c).

(2) *What activities involving threatened crocodilians are prohibited by this rule?*

(i) All provisions of §§ 17.31 and 17.32 apply to live specimens, including viable eggs, of all threatened crocodilians and to any specimen of the Appendix-I Nile crocodile.

(ii) Except as provided in paragraph (c)(2)(i) of this section, the following prohibitions apply to threatened crocodilians.

(A) *Import, export, and re-export.* Except as provided in paragraph (c)(3) of this section, it is unlawful to import, export, or re-export, or attempt to import, export, or re-export without valid permits as required under parts 17 and 23 of this subchapter any threatened crocodilians, including their skins, parts, and products.

(B) *Commercial activity.* Except as provided in paragraph (c)(3) of this section, it is unlawful, in the course of a commercial activity, to sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce any threatened crocodilians, including their skins, parts, and products.

(C) It is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, solicit to commit, or cause to be committed any acts described in paragraphs (c)(2)(i) and (ii)(A) and (B) of this section.

(3) *What activities involving threatened crocodilians are allowed by this rule?* Except as provided in (c)(2)(i), you may import, export, or re-export, or sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity, threatened crocodilian skins, parts, and products without a threatened species permit otherwise required under § 17.32 provided the requirements of parts 13, 14, and 23 of this subchapter and the requirements of paragraphs (c)(3) and (4) of this section have been met.

(i) *Skins and parts.* Except as provided in (c)(3)(ii) of this section, the import, export, or re-export of threatened crocodilian skins and crocodilian parts is allowed provided the following conditions are met:

(A) Each crocodilian skin and crocodilian part imported, exported, or re-exported must be tagged or labeled in accordance with § 23.70 of this subchapter.

(B) Any countries re-exporting crocodilian skins or parts must have implemented an administrative system for the effective matching of imports and re-exports.

(C) If a shipment contains more than 25 percent replacement tags, the U.S. Management Authority will consult with the Management Authority of the re-exporting country before clearing the shipment. Such shipments may be seized if we determine that the requirements of the Convention have not been met.

(D) The country of origin and any intermediary country(s) must be effectively implementing the Convention. If we receive persuasive information from the CITES Secretariat or other reliable sources that a specific country is not effectively implementing the Convention, we will prohibit or restrict imports from such country(s) as appropriate for the conservation of the species.

(ii) *Meat, skulls, scientific specimens, products, and noncommercial personal or household effects.* The tagging requirements in paragraph (c)(3)(i) of this section for skins and parts do not apply to the import, export, or re-export of threatened crocodilian meat, skulls, scientific specimens, or products or to the noncommercial import, export, or re-export of personal effects in accompanying baggage or household effects.

(4) *When and how will the Service inform the public of additional restrictions in trade of threatened crocodilians?* Except in rare cases involving extenuating circumstances that do not adversely affect the conservation of the species, the Service will issue an information bulletin (posted on our websites, *http://www.fws.gov/le* and *http://www.fws.gov/international*) announcing additional restrictions in trade of specimens of threatened crocodilians if any of the following criteria are met:

(i) The country is listed in a Notification to the Parties by the CITES Secretariat as not having designated Management and Scientific Authorities.

(ii) The country is identified in any action adopted by the Conference of the Parties to the Convention, the Standing Committee, or in a Notification issued by the CITES Secretariat, whereby Parties are asked not to accept shipments of specimens of any CITES species from the country in question or of any crocodilian species listed in the CITES Appendices.

(iii) We determine, based on information from the CITES Secretariat or other reliable sources, that the country is not effectively implementing the provisions of the Convention.

(5) *Reporting requirements for yacare caiman range countries.* (i) *Biannual reports.* Range countries (Argentina, Bolivia, Brazil, and Paraguay) wishing to export specimens of yacare caiman to the United States for commercial purposes must provide a biannual report containing the most recent information available on the status of the species. The first submission of a status report will be required as of December 31, 2001, and every two years thereafter on the anniversary of that date. For each range country, all of the following information must be included in the report.

(A) Recent distribution and population data, and a description of the methodology used to obtain such estimates.

(B) Description of research projects currently being conducted related to the biology of the species in the wild, particularly reproductive biology (for example, age or size when animals become sexually mature, number of clutches per season, number of eggs per clutch, survival of eggs, survival of hatchlings).

(C) Description of laws and programs regulating harvest, including approximate acreage of land set aside as natural reserves or national parks that provide protected habitat for yacare caiman.

(D) Description of current sustainable harvest programs, including ranching (captive-rearing of specimens collected from the wild as eggs or juveniles) and farming (captive-breeding) programs.

(E) Current harvest quotas for wild populations.

(F) Export data for the last two years. Information should be organized according to the source of specimens such as wild-caught, captive-reared, or captive-bred.

(ii) *Review and restrictions.* The U.S. Scientific Authority will conduct a review every 2 years, using information in the biannual reports and other available information, to determine whether range country management programs are effectively achieving conservation benefits for the yacare caiman. Based on the best available information, we may restrict trade from a range country if we determine that the conservation or management status of threatened yacare caiman populations has changed, such that continued recovery of the population in that country may be compromised. Trade restrictions, as addressed in paragraph (c)(4) of this section, may be implemented based on one or more of the following factors:

(A) Failure to submit the reports described above, or failure to respond to requests for additional information.

(B) A change in range country laws or regulations that lessens protection for yacare caiman.

(C) A change in range country management programs that lessens protection for the species.

(D) A documented decline in wild population numbers.

(E) A documented increase in poaching.

(F) A documented decline in habitat quality or quantity.

(G) Other natural or man-made factors affecting the species' recovery.

* * * * *

13. Part 23 is revised to read as follows:

PART 23—CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)

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Authority: 27 U.S.T. 1087; 16 U.S.C. 1531 *et seq.*

Subpart A—Introduction

§ 23.1 What are the purposes of these regulations and CITES?

(a) *Treaty.* The regulations in this part implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as CITES, the Convention, the Treaty, or the Washington Convention, TIAS (Treaties and Other International Acts Series) 8249.

(b) *Purpose.* The aim of CITES is to regulate international trade in wildlife and plants, including parts, products, and derivatives, to ensure it is legal and does not threaten the survival of species in the wild. Parties, recognize that:

(1) Wildlife and plants are an irreplaceable part of the natural systems

of the earth and must be protected for this and future generations.

(2) The value of wildlife and plants is ever-growing from the viewpoints of aesthetics, science, culture, recreation, and economics.

(3) Although countries should be the best protectors of their own wildlife and plants, international cooperation is essential to protect wildlife and plant species from over-exploitation through international trade.

(4) It is urgent that countries take appropriate measures to prevent illegal trade and ensure that any use of wildlife and plants is sustainable.

(c) *National legislation.* We, the U.S. Fish and Wildlife Service (FWS), implement CITES through the Endangered Species Act (ESA).

§ 23.2 How do I decide if these regulations apply to my shipment or me?

Answer the following questions to decide if the regulations in this part apply to your proposed activity:

Question on proposed activity	Answer and action
(a) Is the wildlife or plant species (including parts, products, derivatives, whether wild- collected, or born or propagated in a controlled environment) Listed in Appendix I, II, or III of CITES (see § 23.91)?	(1) **YES.** Continue to paragraph (b) of this section. (2) **NO.** The regulations in this part do not apply.
(b) Is the wildlife or plant specimen exempted from CITES (see § 23.92)?	(1) **YES.** The regulations in this part do not apply. (2) **NO.** Continue to paragraph (c) of this section.
(c) Do you want to import, export, re-export, engage in international trade, or introduce from the sea?	(1) **YES.** The regulations in this part apply. (2) **NO.** Continue to paragraph (d) of this section.
(d) Was the intrastate or interstate commerce unlawfully acquired, illegally traded, or otherwise subject to conditions set out on a CITES document that authorized import?	(1) **YES.** The regulations in this part apply. See § 23.13(c) and (d) and sections 9(c)(1) and 11(a) and possess or want to(b) of the ESA (16 U.S.C. 1538(c)(1) and 1540(a) and enter into (b)). (2) **NO.** The regulations in this part do not apply.

§ 23.3 What other wildlife and plant regulations may apply?

(a) You may need to comply with other regulations in this subchapter that require a permit or have additional restrictions. Many CITES species are also covered by one or more parts of this subchapter or title and have additional requirements:

(1) Part 15 (exotic birds).

(2) Part 16 (injurious wildlife).

(3) Parts 17 of this subchapter and 222, 223, and 224 of this title (endangered and threatened species).

(4) Parts 18 of this subchapter and 216 of this title (marine mammals).

(5) Part 20 (migratory bird hunting).

(6) Part 21 (migratory birds).

(7) Part 22 (bald and golden eagles).

(b) If you are applying for a permit, you must comply with the general permit procedures in part 13 of this subchapter. Definitions and a list of birds protected under the Migratory Bird Treaty Act can be found in part 10 of this subchapter.

(c) If you are importing (including introduction from the sea), exporting, or re-exporting wildlife or plants, you must comply with the regulations in part 14 of this subchapter for wildlife or part 24 of this subchapter for plants. Activities with plants are also regulated by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) and Department of Homeland Security, U.S. Customs and Border Protection (CBP), in 7 CFR parts 319, 355, and 356.

(d) You may also need to comply with other Federal, State, tribal, or local requirements.

§ 23.4 What are Appendices I, II, and III?

Species are listed by the Parties in one of three Appendices (see subpart H of this part), each of which provides a different level of protection and is subject to different requirements. Parties regulate trade in specimens of Appendix-I, -II, and -III species and their parts, products, and derivatives through a system of permits and certificates (CITES documents). Such documents enable Parties to monitor the effects of the volume and type of trade to ensure trade is legal and not detrimental to the survival of the species.

(a) *Appendix I* includes species threatened with extinction that are or may be affected by trade. Trade in Appendix-I specimens may take place only in exceptional circumstances.

(b) *Appendix II* includes species that are not presently threatened with extinction, but may become so if their trade is not regulated. It also includes species that need to be regulated so that trade in certain other Appendix-I or -II species may be effectively controlled; these species are most commonly listed due to their similarity of appearance to other related CITES species.

(c) *Appendix III* includes species listed unilaterally by a range country to obtain international cooperation in controlling trade.

§ 23.5 How are the terms used in these regulations defined?

In addition to the definitions contained in part 10 of this subchapter, and unless the context otherwise requires, in this part:

Affected by trade means that either a species is known to be in trade and the trade has or may have a detrimental impact on the status of the species, or a species is suspected to be in trade or there is demonstrable potential international demand for the species that may be detrimental to the survival of the species in the wild.

Annotation means an official footnote to the listing of a species in the CITES Appendices. A reference annotation provides information that further explains the listing (such as ''p.e.'' for possibly extinct). A substantive annotation is an integral part of a species listing. It designates whether the listing includes or excludes a geographically separate population, subspecies, species, group of species, or higher taxon, and the types of specimens, such as certain parts, products, or derivatives that can be traded. A substantive annotation may designate export quotas adopted by the CoP. For species transferred from Appendix I to II subject to an annotation relating to specified types of specimens, other types of specimens that are not specifically included in the annotation are considered Appendix-I specimens.

Appropriate and acceptable destination, when used in an Appendix-II listing annotation for the export of, or international trade in, live animals, means that the Management Authority of the importing country has certified, based on advice from the Scientific Authority of that country, that the proposed recipient is suitably equipped to house and care for the animal (see criteria in § 23.65). Such certification

must be provided before a CITES document is issued by the Management Authority of the exporting or re-exporting country.

Artificially propagated means a cultivated plant that meets the criteria in § 23.64.

Bred for commercial purposes means any specimen of an Appendix-I wildlife species bred-in-captivity for commercial purposes.

Bred for noncommercial purposes means any specimen of an Appendix-I wildlife species bred-in-captivity for noncommercial purposes, where each donation, exchange, or loan is conducted between facilities that are involved in a cooperative conservation program.

Bred-in-captivity means wildlife that is captive-bred and meets the criteria in § 23.63.

Captive-bred means wildlife that is the offspring (first (F1) or subsequent generations) of parents that either mated or otherwise transferred egg and sperm under controlled conditions if reproduction is sexual, or of a parent that was maintained under controlled conditions when development of the offspring began if reproduction is asexual; but does not meet the criteria for bred-in-captivity (see § 23.63).

Certificate means a CITES document or CITES exemption document that identifies on its face the type of certificate it is, including re-export certificate, introduction-from-the-sea certificate, and certificate of origin.

CITES document or CITES exemption document means any certificate, permit, or other document issued by a Management Authority of a Party or a competent authority of a non-Party whose name and address is on file with the Secretariat to authorize the international movement of CITES specimens.

Commercial means related to an activity, including actual or intended import, export, re-export, sale, offer for sale, purchase, transfer, donation, exchange, or provision of a service, that is reasonably likely to result in economic use, gain, or benefit, including, but not limited to, profit (whether in cash or in kind), or tax benefits.

Conference of the Parties (CoP) means either the Parties to CITES collectively as a group, or the meeting of the Parties to consider amendments to the Appendices and resolutions, and other administrative issues, to improve the implementation of CITES.

Cooperative conservation program means a program in which facilities produce Appendix-I specimens bred for noncommercial purposes and participate in or support a recovery activity for that species in one or more of the species' range countries.

Coral (dead) means pieces of coral in which the skeletons of the individual polyps are still intact, but which contain no living coral tissue.

Coral fragments, including coral gravel and coral rubble, means loose pieces of broken finger-like coral between 2 and 30 mm in diameter that contain no living coral tissue (see § 23.92 for exemptions).

Coral (live) means pieces of coral that are alive.

Coral rock means hard consolidated material, greater than 30 mm in diameter that consists of pieces of coral and possibly also cemented sand, coralline algae, or other sedimentary rocks that contain no living coral tissue. Coral rock includes *live rock* and *substrate,* which are terms for pieces of coral rock to which are attached live specimens of other invertebrate species or coralline algae that are not listed in the CITES Appendices.

Coral sand means material that consists entirely, or in part, of finely crushed coral no larger than 2 mm in diameter and that contains no living coral tissue (see § 23.92 for exemptions).

Country of origin means the country where the wildlife or plant was taken from the wild or was born or propagated in a controlled environment, except in the case of a plant specimen that qualified for an exemption under the provisions of CITES, the country of origin is the country in which the specimen ceased to qualify for the exemption.

Cultivar means a horticulturally derived plant variety that has been selected for specific morphological, physiological, or other characteristics, such as color, a large flower, or disease resistance.

Cultivated means a plant grown or tended by humans for human use. A cultivated plant can be treated as artificially propagated under CITES only if it meets the criteria in § 23.64.

Export means to send, ship, or carry a specimen out of a country (for export from the United States, see part 14 of this subchapter).

Flasked means plant material obtained *in vitro,* in solid or liquid media, transported in sterile containers.

Household effect means a dead wildlife or plant specimen that is part of a household move and meets the criteria in § 23.15.

Hybrid means any wildlife or plant that results from a cross of genetic material between two separate taxa when one or both are listed in Appendix I, II, or III. See § 23.42 for plant hybrids and § 23.43 for wildlife hybrids.

Import means to bring, ship, or carry a specimen into a country (for import into the United States, see part 14 of this subchapter).

International trade means the import, introduction from the sea, export, or re-export across jurisdictional or international boundaries for any purpose whether commercial or noncommercial.

In-transit shipment means the transshipment of any wildlife or plant through an intermediary country when the specimen remains under customs control and either the shipment meets the requirements of § 23.22 or the sample collection covered by an ATA carnet meets the requirements of § 23.50.

Introduction from the sea means transportation into a country of specimens of any species that were taken in the marine environment not under the jurisdiction of any country.

Live rock see the definition for coral rock.

Management Authority means a governmental agency officially designated by, and under the supervision of, either a Party to implement CITES, or a non-Party to serve in the role of a Management Authority, including the issuance of CITES documents on behalf of that country.

Noncommercial means related to an activity that is not commercial. Noncommercial includes, but is not limited to, personal use.

Non-Party means a country that has not deposited an instrument of ratification, acceptance, approval, or accession to CITES with the Depositary Government (Switzerland), or a country that was a Party but subsequently notified the Depositary Government of its denunciation of CITES and the denunciation is in effect.

Offspring of first generation (F1) means a wildlife specimen produced in a controlled environment from parents at least one of which was conceived in or taken from the wild.

Offspring of second generation (F2) or subsequent generations means a wildlife specimen produced in a controlled environment from parents that were also produced in a controlled environment.

Parental stock means the original breeding or propagating specimens that produced the subsequent generations of captive specimens.

Party means a country that has given its consent to be bound by the provisions of CITES by depositing an instrument of ratification, acceptance, approval, or accession with the

Depositary Government (Switzerland), and for which such consent is in effect.

Permit means a CITES document that identifies on its face import permit or export permit.

Personal effect means a dead wildlife or plant specimen, including a tourist souvenir, that is worn as clothing or accessories or is contained in accompanying baggage and meets the criteria in § 23.15.

Personal use means use that is not commercial and is for an individual's own consumption or enjoyment.

Precautionary measures means the actions taken that will be in the best interest of the conservation of the species when there is uncertainty about the status of a species or the impact of trade on the conservation of a species.

Pre-Convention means a specimen that was acquired (removed from the wild or born or propagated in a controlled environment) before the date the provisions of the Convention first applied to the species and that meets the criteria in § 23.45, and any product (including a manufactured item) or derivative made from such specimen.

Primarily commercial purposes means an activity whose noncommercial aspects do not clearly predominate (see § 23.62).

Propagule means a structure, such as a cutting, seed, or spore, that is capable of propagating a plant.

Readily recognizable means any specimen that appears from a visual, physical, scientific, or forensic examination or test; an accompanying document, packaging, mark, or label; or any other circumstances to be a part, product, or derivative of any CITES wildlife or plant, unless such part, product, or derivative is specifically exempt from the provisions of CITES or this part.

Re-export means to send, ship, or carry out of a country any specimen previously imported into that country, whether or not the specimen has been altered since import.

Reservation means the action taken by a Party to inform the Secretariat that it is not bound by the effect of a specific listing (see § 23.21).

Scientific Authority means a governmental or independent scientific institution or entity officially designated by either a Party to implement CITES, or a non-Party to serve the role of a Scientific Authority, including making scientific findings.

Secretariat means the entity designated by the Treaty to perform certain administrative functions (see § 23.84).

Shipment means any CITES specimen in international trade whether for commercial or noncommercial use, including any personal item.

Species means any species, subspecies, hybrid, variety, cultivar, color or morphological variant, or geographically separate population of that species.

Specimen means any wildlife or plant, whether live or dead. This term includes any readily recognizable part, product, or derivative unless otherwise annotated in the Appendices.

Sustainable use means the use of a species in a manner and at a level that maintains wild populations at biologically viable levels for the long term. Such use involves a determination of the productive capacity of the species and its ecosystem to ensure that utilization does not exceed those capacities or the ability of the population to reproduce, maintain itself, and perform its role or function in its ecosystem.

Trade means the same as international trade.

Transit see the definition for *in-transit shipment.*

Traveling exhibition means an entity that displays live or dead wildlife or plants for entertainment, educational, cultural, or other purposes where the entity is temporarily moving internationally.

§ 23.6 What are the roles of the Management and Scientific Authorities?

Under Article IX of the Treaty, each Party must designate a Management and Scientific Authority to implement CITES for that country. If a non-Party wants to trade with a Party, it must also designate such Authorities. The names and addresses of these offices must be sent to the Secretariat to be included in the Directory. In the United States, different offices within the FWS have been designated the Scientific Authority and Management Authority, which for purposes of this section includes FWS Law Enforcement. When offices share activities, the Management Authority is responsible for dealing primarily with management and regulatory issues and the Scientific Authority is responsible for dealing primarily with scientific issues. The offices do the following:

Roles	U.S. Scientific Authority	U.S. Management Authority
(a) Provide scientific advice and recommendations, including advice on biological findings for applications for certain CITES documents, registrations, and export program approvals. Evaluate the conservation status of species to determine if a species listing or change in a listing is warranted. Interpret listings and review nomenclatural issues.	x	
(b) Review applications for CITES documents and issue or deny them based on findings required by CITES.		x
(c) Communicate with the Secretariat and other countries on scientific, administrative, and enforcement issues.	x	x
(d) Ensure that export of Appendix-II specimens is at a level that maintains a species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which it might become eligible for inclusion in Appendix I.	x	
(e) Monitor trade in all CITES species and produce annual reports on CITES trade.		x
(f) Collect the cancelled foreign export permit or re-export certificate and any corresponding import permit presented for import of any CITES specimen. Collect a copy of the validated U.S. export permit or re- export certificate presented for export or re-export of any CITES specimen.		x
(g) Produce biennial reports on legislative, regulatory, and administrative measures taken by the United States to enforce the provisions of CITES.		x
(h) Coordinate with State and tribal governments and other Federal agencies on CITES issues, such as the status of native species, development of policies, negotiating positions, and law enforcement activities.	x	x

Roles	U.S. Scientific Authority	U.S. Management Authority
(i) Communicate with the scientific community, the public, and media about CITES issues. Conduct public meetings and publish notices to gather input from the public on the administration of CITES and the conservation and trade status of domestic and foreign species traded internationally.	x	x
(j) Represent the United States at the meetings of the CoP, on committees (see subpart G of this part), and on CITES working groups. Consult with other countries on CITES issues and the conservation status of species. Prepare discussion papers and proposals for new or amended resolutions and species listings for consideration at the CoP.	x	x
(k) Provide assistance to APHIS and CBP for the enforcement of CITES. Cooperate with enforcement officials to facilitate the exchange of information between enforcement bodies and for training purposes.	x	x
(l) Provide financial and technical assistance to other governmental agencies and CITES officials of other countries.	x	x

§ 23.7 What office do I contact for CITES information?

Contact the following offices to receive information about CITES:

Type of information	Office to contact
(a) *CITES administrative and management issues:* (1) CITES documents, including application forms and procedures; list of registered scientific institutions and bred-in-captivity operations; and reservations (2) Information on the CoP (3) List of CITES species (4) Names and addresses of other countries' Management and Scientific Authority offices (5) Notifications, resolutions, and decisions (6) Standing Committee documents and issues (7) State and tribal export programs	U.S. Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, Toll Free: (800) 358–2104/permit questions, Tel: (703) 358–2095/other questions, Fax: (703) 358–2281/permits, Fax: (703) 358–2298/other issues, E-mail: *managementauthority@fws.gov,* Web site: *http://www.fws.gov/international* and *http://www.fws.gov/permits.*
(b) *Scientific issues:* (1) Animals and Plants Committees documents and issues (2) Findings of non-detriment and suitability of facilities, and other scientific findings (3) Listing of species in the Appendices and relevant resolutions (4) Names and addresses of other countries' Scientific Authority offices and scientists involved with CITES-related issues (5) Nomenclatural issues	U.S. Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203, Tel: (703) 358–1708, Fax: (703) 358–2276, E-mail: *scientificauthority@fws.gov,* Web site: *http://www.fws.gov/international.*
(c) *Wildlife clearance procedures:* (1) CITES replacement tags (2) Information about wildlife port office locations (3) Information bulletins (4) Inspection and clearance of wildlife shipments involving import, introduction from the sea, export, and re-export, and filing a Declaration of Importation or Exportation of Fish or Wildlife (Form 3–177) (5) Validation, certification, or cancellation of CITES wildlife documents	Law Enforcement, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop LE–3000, Arlington, Virginia 22203, Tel: (703) 358–1949, Fax: (703) 358–2271, Web site: *http://www.fws.gov/le.*
(d) *APHIS plant clearance procedures:* (1) Information about plant port office locations (2) Inspection and clearance of plant shipments involving: (i) Import and introduction from the sea of living plants (ii) Export and re-export of living and nonliving plants (3) Validation or cancellation of CITES plant documents for the type of shipments listed in paragraph (d) of this section	U.S. Department of Agriculture APHIS/PPQ, 4700 River Road, Riverdale, Maryland 20737–1236, Toll Free: (877) 770–5990/permit questions, Tel: (301) 734–5312/other CITES issues, Fax: (301) 734–5786/permit questions, Fax: (301) 734–4300/other CITES issues, Web site: *http://www.aphis.usda.gov/ppq.*
(e) *CBP plant clearance procedures:* (1) Inspection and clearance of plant shipments involving: (i) Import and introduction from the sea of nonliving plants (ii) Import of living plants from Canada at designated border ports (7 CFR 319.37–14(b) and 50 CFR 24.12(d)) (2) Cancellation of CITES plant documents for the type of shipments listed in paragraph (e)(1) of this section	Department of Homeland Security, U.S. Customs and Border Protection, Office of Field Operations, Agricultural Inspection Policy and Planning, 1300 Pennsylvania Avenue, NW., Room 5.4 C, Washington, DC 20229, Tel: (202) 344–3298, Fax: (202) 344–1442.

Type of information	Office to contact
(f) *General information on CITES:* (1) CITES export quota information (2) *CITES Guidelines for Transport* (3) Information about the Secretariat (4) Names and addresses of other countries' Management and Scientific Authority offices (5) Official documents, including resolutions, decisions, notification, CoP documents, and committee documents (6) Official list of CITES species and species database (7) Text of the Convention	CITES Secretariat, Web site: *http://www.cites.org.*

§ 23.8 What are the information collection requirements?

(a) The Office of Management and Budget approved the information collection requirements for application forms 3–200–19, 3–200–20, 3–200–23 through 3–200–37, 3–200–39, 3–200–43, 3–200–46 through 3–200–48, 3–200–52, 3–200–53, 3–200–58, 3–200–61, 3–200–64 through 3–200–66, and 3–200–73 through 3–200–75 contained in this part under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Numbers 1018–0093, 1018–0130, and 1018–xxxx.

(b) When using a form, we cannot collect or sponsor the collection of information, and you are not required to provide information, unless the form displays a currently valid OMB control number.

(c) We collect this information to evaluate applications and make decisions under this part on whether to issue, suspend, revoke, amend, or deny a request for a CITES document or registration.

(d) We also collect information from States and Tribes seeking CITES export program approval and annual reports from States and Tribes with approved programs. This information allows us to streamline the permitting process for species taken under approved programs. We collect information from entities seeking to participate in the Plant Rescue Center program and reports from Plant Rescue Centers regarding status of confiscated plant shipments. The Office of Management and Budget has approved these information collections.

(e) You must respond to our request for information to receive or retain a CITES document, registration, or program approval.

(f) We estimate the public reporting burden for the collection of information under this part to vary from 6 minutes to 40 hours per response, with the majority requiring 1 hour or less to complete. This estimate includes time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms and reports.

(g) You may direct comments concerning the accuracy of the burden estimate and any suggestions for reducing the burden to the Information Collection Clearance Officer, Mail Stop 222, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Subpart B—Prohibitions, Exemptions, and Requirements

§ 23.13 What is prohibited?

Except as provided in § 23.92, it is unlawful for any person subject to the jurisdiction of the United States to conduct any of the following activities unless they meet the requirements of this part:

(a) Import, export, re-export, or engage in international trade with any specimen of a species listed in Appendix I, II, or III of CITES.

(b) Introduce from the sea any specimen of a species listed in Appendix I or II of CITES.

(c) Possess any specimen of a species listed in Appendix I, II, or III of CITES imported, exported, re-exported, introduced from the sea, or traded contrary to the provisions of CITES, the ESA, or this part.

(d) Attempt to commit, solicit another to commit, or cause to be committed any of the activities described in paragraphs (a) through (c) of this section.

§ 23.14 [Reserved]

§ 23.15 How may I travel internationally with my personal or household effects, including tourist souvenirs?

(a) *Purpose.* Article VII(3) of the Treaty recognizes a limited exemption for the international movement of personal and household effects.

(b) *Stricter national measures.* The exemption for personal and household effects does not apply if a country prohibits or restricts the import, export, or re-export of the item.

(1) You or your shipment must be accompanied by any document required by a country under its stricter national measures.

(2) In the United States, you must obtain any permission needed under other regulations in this subchapter (see § 23.3).

(c) *Required CITES documents.* You must obtain a CITES document for personal or household effects and meet the requirements of this part if one of the following applies:

(1) The Management Authority of the importing, exporting, or re-exporting country requires a CITES document.

(2) You or your shipment does not meet all of the conditions for an exemption as provided in paragraphs (d) through (f) of this section.

(3) The personal or household effect for the following species exceeds the quantity indicated in paragraphs (c)(3)(i) through (vi) in the table below:

Major group	Species (Appendix II only)	Type of specimen	Quantity[1]
Fishes	(i) Acipenseriformes (sturgeon, including paddlefish)	Sturgeon caviar (see § 23.71)	250 gm
	(ii) *Hippocampus* spp. (seahorses)	Dead specimens, parts, products (including manufactured items), and derivatives	4
Reptiles	(iii) Crocodylia (alligators, caimans, crocodiles, gavial)	Dead specimens, parts, products (including manufactured items), and derivatives	4

Major group	Species (Appendix II only)	Type of specimen	Quantity[1]
Molluscs	(iv) *Strombus gigas* (queen conch)	Shells	3
	(v) Tridacnidae (giant clams)	Shells, each of which may be one intact shell or two total not matching halves	3 shells, exceeding 3 kg
Plants	(vi) Cactaceae (cacti)	Rainsticks	3

[1] To import, export, or re-export more than the quantity listed in the table, you must have a valid CITES document for the entire quantity.

(d) *Personal effects.* You do not need a CITES document to import, export, or re-export any legally acquired specimen of a CITES species to or from the United States if all of the following conditions are met:

(1) No live wildlife or plant (including eggs or non-exempt seeds) is included.

(2) No specimen from an Appendix-I species is included, except for certain worked African elephant ivory as provided in paragraph (f) of this section.

(3) The specimen and quantity of specimens are reasonably necessary or appropriate for the nature of your trip or stay and, if the species is one listed in paragraph (c)(3) of this section, the quantity does not exceed the quantity given in the table.

(4) You own and possess the specimen for personal use, including any specimen intended as a personal gift.

(5) You are either wearing the specimen as clothing or an accessory or taking it as part of your personal baggage, which is being carried by you or checked as baggage on the same plane, boat, vehicle, or train as you.

(6) The specimen was not mailed or shipped separately.

(e) *Household effects.* You do not need a CITES document to import, export, or re-export any legally acquired specimen of a CITES species that is part of a shipment of your household effects when moving your residence to or from the United States, if all of the following conditions are met:

(1) The provisions of paragraphs (d)(1) through (3) of this section are met.

(2) You own the specimen and are moving it for personal use.

(3) You import or export your household effects within 1 year of changing your residence from one country to another.

(4) The shipment, or shipments if you cannot move all of your household effects at one time, contains only specimens purchased, inherited, or otherwise acquired before you changed your residence.

(f) *African elephant worked ivory.* You may export or re-export from the United States worked African elephant (*Loxodonta africana*) ivory and then re-import it without a CITES document if all of the following conditions are met:

(1) The worked ivory is a personal or household effect that meets the requirements of paragraphs (c) through (e) of this section and you are a U.S. resident who owned the worked ivory before leaving the United States and intend to bring the item back to the United States.

(2) The ivory is pre-Convention (see § 23.45) (the African elephant was first listed in CITES on February 26, 1976).

(3) You may not sell or transfer the ivory while outside the United States.

(4) The ivory is substantially worked and is not raw. *Raw ivory* means an African elephant tusk, and any piece of tusk, the surface of which, polished or unpolished, is unaltered or minimally carved, including ivory mounted on a stand or part of a trophy.

(5) When you return, you are able to provide records, receipts, or other documents to show that the ivory is pre-Convention and that you owned and registered it before you left the United States. To register such an item you must obtain one of the following documents:

(i) U.S. CITES pre-Convention certificate.

(ii) FWS Declaration of Importation or Exportation of Fish or Wildlife (Form 3–177).

(iii) Custom and Border Protection Certificate of Registration for Personal Effects Taken Abroad (Form 4457).

§ 23.16 What are the U.S. CITES requirements for urine, feces, and synthetically derived DNA?

(a) *CITES documents.* We do not require CITES documents to trade in urine, feces, or synthetically derived DNA.

(1) You must obtain any collection permit and CITES document required by the foreign country.

(2) If the foreign country requires you to have a U.S. CITES document for these kinds of samples, you must apply for a CITES document and meet the requirements of this part.

(b) *Urine and feces.* Except as provided in paragraph (a) of this section, we consider urine and feces to be wildlife byproducts, rather than parts, products, or derivatives, and exempt them from the requirements of CITES and this part.

(c) *DNA.* We differentiate between DNA directly extracted from blood and tissue and DNA synthetically derived as follows:

(1) A DNA sample directly derived from wildlife or plant tissue is regulated by CITES and this part.

(2) A DNA sample synthetically derived that does not contain any part of the original template is exempt from the requirements of CITES and this part.

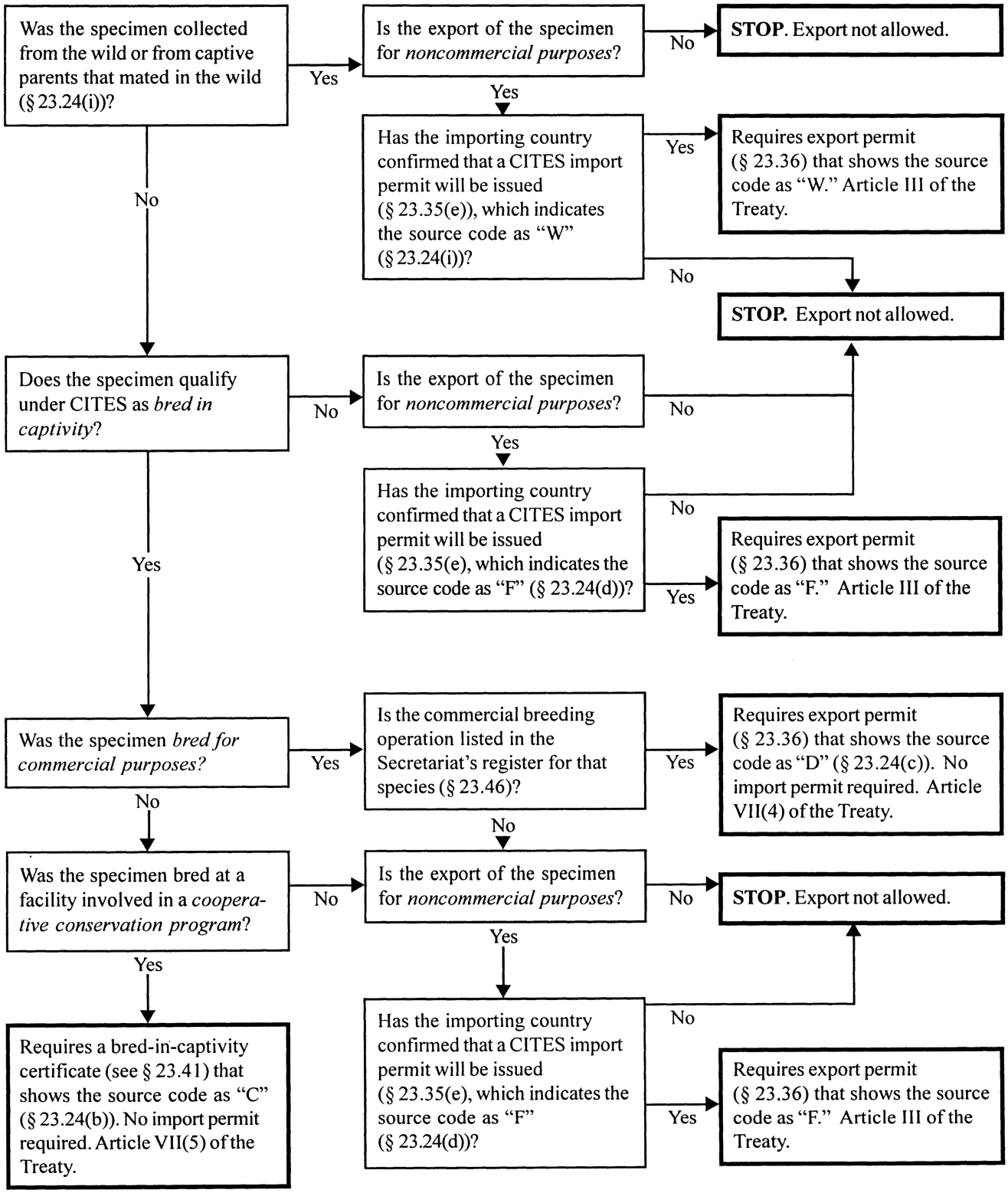
§ 23.17 What are the requirements for CITES specimens traded internationally by diplomatic, consular, military, and other persons exempt from customs duties or inspections?

A specimen of a CITES species imported, introduced from the sea, exported, or re-exported by a person receiving duty-free or inspection exemption privileges under customs laws must meet the requirements of CITES and the regulations in this part.

§ 23.18 What CITES documents are required to export Appendix-I wildlife?

Answer the questions in the following decision tree to find the section in this part that applies to the type of CITES document you need to export Appendix-I wildlife. See § 23.20(d) for CITES exemption documents or § 23.92 for specimens that are exempt from the requirements of CITES and do not need CITES documents.

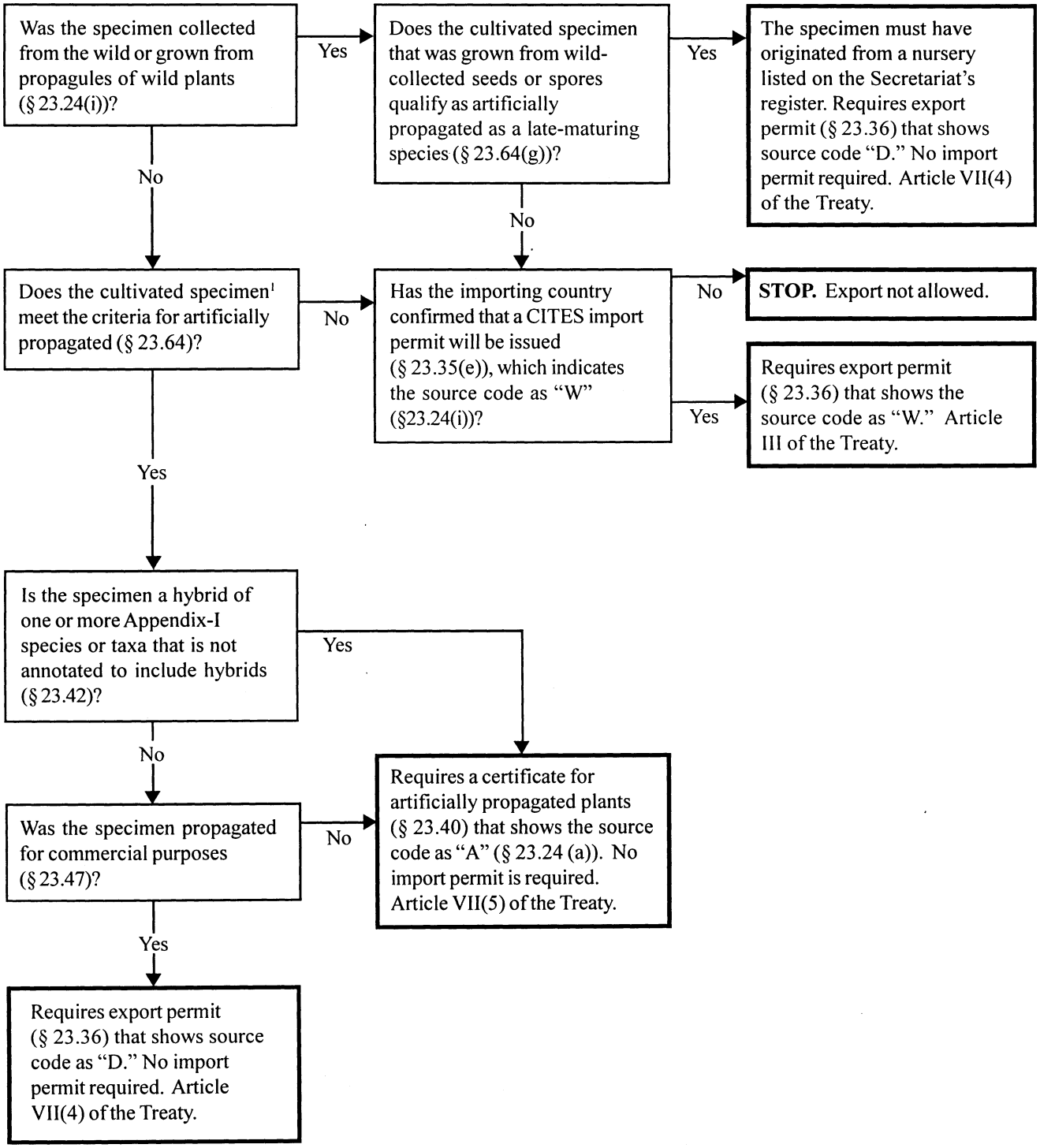
Decision Tree for Export of Appendix-I Wildlife



§ 23.19 What CITES documents are required to export Appendix-I plants?

Answer the questions in the following decision tree to find the section in this part that applies to the type of CITES document you need to export Appendix-I plants. See § 23.20(d) for CITES exemption documents or § 23.92 for specimens that are exempt from the requirements of CITES and do not need CITES documents.

Decision Tree for Export of Appendix-I Plants



[1] Cultivated specimens (see §23.5) that do not meet the criteria as artificially propagated are treated as wild.

§ 23.20 What CITES documents are required for international trade?

(a) Purpose. Articles III, IV, and V of the Treaty give the types of standard CITES documents that must accompany an Appendix-I, -II, or -III specimen in international trade. Articles VII and XIV recognize some exemptions and provide that a CITES document must accompany most exempt specimens.

(b) *Stricter national measures.* Before importing, introducing from the sea,

exporting, or re-exporting a specimen, check with the Management Authorities of all countries concerned to obtain any documentation required under stricter national measures.

(c) *CITES documents.* Except as provided in the regulations in this part, you must have a valid CITES document to engage in international trade in any CITES specimen.

(d) *CITES exemption documents.* The following table lists the CITES exemption document that you must obtain before conducting a proposed activity with an exempt specimen (other than specimens exempted under § 23.92). If one of the exemptions does not apply to the specimen, you must obtain a CITES document as provided in paragraph (e) of this section. The first column in the following table alphabetically lists the type of specimen or activity that may qualify for a CITES exemption document. The last column indicates the section of this part that contains information on the application procedures, provisions, criteria, and conditions specific to each CITES exemption document, as follows:

Type of specimen or activity	Appendix	CITES exemption document	Section
(1) Artificially propagated plant (see paragraph (d)(4) of this section for an Appendix-I plant propagated for commercial purposes)	I, II, or III	CITES document with source code "A" [1]	23.40
(2) Artificially propagated plant from a country that has provided copies of the certificates, stamps, and seals to the Secretariat	II or II	Phytosanitary certificate with CITES statement [1]	23.23(f)
(3) Bred-in-captivity wildlife (see paragraph (d)(5) of this section for Appendix—I wildlife bred for commercial purposes)	I, II, or III	CITES document with source code "C" [1]	23.41
(4) Commercially propagated Appendix-I plant	I	CITES document with source code "D"[1]	23.47
(5) Commercially bred Appendix-I wildlife from a breeding operation registered with the CITES Secretariat	I	CITES document with source code "D" [1]	23.46
(6) Export of certain marine specimens protected under a pre-existing treaty, convention, or international agreement for that species	II	CITES document indicating that the specimen was taken in accordance with provisions of the applicable treaty, convention, or international agreement	23.36(e) 23.39(e)
(7) Hybrid of plants	I, II, or III	CITES document	23.42
(8) Hybrid of wildlife	I, II, or III	CITES document or certification letter from a Management Authority [1]	23.43
(9) In-transit shipment (see paragraph (d)(13) of this section for sample collections covered by an ATA carnet)	I, II, or III	CITES document designating importer and country of final destination	23.22
(10) Introduction from the sea under a pre-existing treaty, convention, or international agreement for that species	II	Document required by applicable treaty, convention, or international agreement, if appropriate	23.39(d)
(11) Noncommercial loan, donation, or exchange of specimens between scientific institutions registered with the CITES Secretariat	I, II, or III	A label indicating CITES and the registration codes of both institutions and, in the United States, a CITES certificate of scientific exchange that registers the institution [3]	23.48
(12) Personally owned live wildlife for multiple cross-border movement	I, II, or III	CITES certificate of ownership [2]	23.44
(13) Pre-Convention specimen	I, II, or III	CITES document indicating pre-Convention status [1]	23.45
(14) Sample collection covered by an ATA carnet	I [4] , II, or III	CITES document indicating sample collection [2]	23.50
(15) Traveling exhibition	I, II, or III	CITES document indicating pre-Convention, bred-in-captivity, or artificially propagated status [2]	23.49

[1] Issued by the Management Authority in the exporting or re-exporting country.
[2] Issued by the Management Authority in the owner's country of usual residence.
[3] Registration codes assigned by the Management Authorities in both exporting and importing countries.
[4] Appendix-I species bred-in-captivity or artificially propagated for commercial purposes (see §§ 23.46 and 23.47).

(e) *Import permits, export permits, re-export certificates, and certificates of origin.* Unless one of the exemptions under paragraph (d) of this section or § 23.92 applies, you must obtain the following CITES documents before conducting the proposed activity:

Appendix	Type of CITES document(s) required
I	Import permit (§ 23.35) and export permit (§ 23.36) or re-export certificate (§ 23.37).
II	Export permit (§ 23.36) or re-export certificate (§23.37).
III	Export permit if the specimen originated in a country that listed the species; certificate of origin (§ 23.38) if the specimen originated in a country other than the listing country, unless the listing annotation indicates otherwise; or re-export certificate for all re-exports (§ 23.37).

(f) *Introduction-from-the-sea documents.* For introduction from the sea of Appendix-I or Appendix-II specimens, you must obtain an introduction-from-the-sea certificate before conducting the proposed activity, unless the exemption in paragraph (d)(10) of this section applies (see § 23.39). The export of a specimen that was previously introduced from the sea will be treated as an export (see § 23.36 for export or § 23.36(e) and § 23.39(e) for export of exempt specimens). Although an Appendix-III specimen taken from the marine environment not under the jurisdiction of any country does not require a CITES document to be introduced from the sea, the subsequent international trade of the specimen would be considered an export.

§ 23.21 What happens if a country enters a reservation for a species?

(a) *Purpose.* CITES is not subject to general reservations. Articles XV, XVI, and XXIII of the Treaty allow a Party to enter a specific reservation on a species listed in Appendix I, II, or III, or on parts, products, or derivatives of a species listed in Appendix III.

(b) *General provision.* A Party can enter a reservation in one of the following ways:

(1) A Party must provide written notification to the Depositary Government (Switzerland) on a specific new or amended listing in the Appendices within 90 days after the CoP that adopted the listing, or at any time for Appendix-III species.

(2) A country must provide written notification on a specific species listing when the country ratifies, accepts, approves, or accedes to CITES.

(c) *Requesting the United States take a reservation.* You may submit information relevant to the issue of whether the United States should take a reservation on a species listing to the U.S. Management Authority. The request must be submitted within 30 calendar days after the last day of the CoP where a new or amended listing of a species in Appendix I or II occurs, or at any time for a species (or its parts, products, or derivatives) listed in Appendix III.

(d) *Required CITES documents.* Except as provided in paragraph (d)(2) of this section, Parties treat a reserving Party as if it were a non-Party for trade in the species concerned (including parts, products, and derivatives, as appropriate). The following table indicates when CITES documents must accompany a shipment and which Appendix should appear on the face of the document:

If	Then
(1) The shipment is between a Party and a reserving Party, or the shipment is from a non-Party to a reserving party and is in transit through a Party	The shipment must be accompanied by a valid CITES document(s) (see § 23.26) that indicates the CITES Appendix in which the species is listed.
(2) The shipment is from a reserving Party to another reserving Party [1] or non-Party and is in transit through a Party	The shipment must be accompanied by a valid CITES document (see § 23.26) that indicates the CITES Appendix in which the species is listed.[2]
(3) The shipment is between a reserving Party and another reserving Party [1] or non-Party and is not in transit through a Party	No CITES document is required.[2]

[1] Both reserving Parties must have a reservation for the same species, and if the species is listed in Appendix III, a reservation for the same parts, products, and derivatives.

[2] CITES recommends that reserving Parties treat Appendix–I species as if listed in Appendix II and issue CITES documents based on Appendix–II permit criteria (see § 23.36). However, the CITES document must show the specimen as listed in Appendix I. If the United States entered a reservation, such a CITES document would be required.

(e) *Reservations taken by countries.* You may consult the CITES Web site or contact us for a list of countries that have taken reservations and the species involved.

§ 23.22 What are the requirements for in-transit shipments?

(a) *Purpose.* Article VII(1) of the Treaty allows for a shipment to transit an intermediary country that is a Party before reaching its final destination without the need for the intermediary Party to issue CITES documents. To control any illegal trade, Parties are to inspect, to the extent possible under their national legislation, specimens in transit through their territory to verify the presence of valid documentation. See § 23.50 for in-transit shipment of sample collections covered by an ATA carnet.

(b) *Document requirements.* An in-transit shipment does not require a CITES document from an intermediary country, but must be accompanied by all of the following documents:

(1) Unless the specimen qualifies for an exemption under § 23.92, a valid original CITES document, or a copy of the valid original CITES document, that designates the name of the importer in the country of final destination and is issued by the Management Authority of the exporting or re-exporting country. A copy of a CITES document is subject to verification.

(2) For shipment of an Appendix–I specimen, a copy of a valid import permit that designates the name of the importer in the country of final destination, unless the CITES document in paragraph (b)(1) of this section is a CITES exemption document (see § 23.20(d)).

(3) Transportation and routing documents that show the shipment has been consigned to the same importer and country of final destination as designated on the CITES document.

(c) *Shipment requirements.* An in-transit shipment, including an on-board store, must meet the following:

(1) When in an intermediary country, an in-transit shipment must stay only for the time needed to immediately transfer the specimen to the mode of transport used to continue to the final destination and remain under customs control. Other than during immediate transfer, the specimen may not be stored in a duty-free, bonded, or other kind of warehouse or a free trade zone.

(2) At any time during transit, an in-transit shipment must not be sold, manipulated, or split unless authorized by the Management Authority of the intermediary country.

(d) *Reserving Party or non-Party.* All the requirements of this section apply to shipments to or from a reserving Party or non-Party that are being transhipped through a Party. The CITES document must treat the specimen as listed in the Appendix as provided in § 23.21(d).

(e) *Specimen protected by other regulations.* Shipment of a specimen that is also listed as a migratory bird (part 10 of this subchapter), injurious wildlife (part 16 of this subchapter), endangered or threatened species (parts 17 of this subchapter and 222–224 of this title), marine mammal (parts 18 of this subchapter and 216 of this title), or bald or golden eagle (part 22 of this subchapter), and is moving through the United States is considered an import, and cannot be treated as an in-transit shipment (see § 23.3).

§ 23.23 What information is required on U.S. and foreign CITES documents?

(a) *Purpose.* Article VI of the Treaty provides standard information that must be on a permit and certificate issued under Articles III, IV, and V. To identify a false or invalid document, any CITES document, including a CITES exemption document issued under Article VII, must contain standardized information to allow a Party to verify that the specimen being shipped is the one listed on the document and that the trade is consistent with the provisions of the Treaty.

(b) *CITES form.* A CITES document issued by a Party must be on a form printed in one or more of the three working languages of CITES (English, Spanish, or French). A CITES document from a non-Party may be in the form of a permit or certificate, letter, or any other form that clearly indicates the nature of the document and includes the information in paragraphs (c) through (e) of this section and the additional information in § 23.25.

(c) *Required information.* Except for a phytosanitary certificate used as a CITES certificate for artificially propagated plants in paragraph (f) of this section or an excluded wildlife hybrid letter in § 23.43, a CITES document issued by a Party or non-Party must contain the information set out in this paragraph (listed alphabetically). Specific types of CITES documents must also contain the additional information identified in paragraph (e) of this section. A CITES document is valid only when it contains the following information:

Required information	Description
(1) Appendix	The CITES Appendix in which the species, subspecies, or population is listed (see § 23.21 when a Party has taken a reservation on a listing).
(2) Applicant's signature	The applicant's signature if the CITES document includes a place for it.
(3) Bill of lading, air waybill, or flight number	As applicable for export or re-export: (i) By ocean or air cargo, the bill of lading or waybill number, or (ii) in accompanying baggage, the flight number, as recorded on the CITES document by the inspecting official at the port, if known at the time of validation or certification.
(4) Dates	Date of issue and date of expiration (''valid until'' date on the standardized CITES form), which is midnight of the date on the CITES document. See § 23.54 for the length of validity for different types of CITES documents.
(5) Description of the specimen	A complete description of the specimen, including whether live or the type of goods. The sex and age of a live specimen should be recorded, if possible. Such information must be in English, Spanish, or French on a CITES document from a Party. If a code is used to indicate the type of specimen, it must agree with the *Guidelines for preparation and submission of CITES annual reports* available from the CITES website or us.
(6) Document number	A unique control number. We use a unique 12-character number. The first two characters are the last two digits of the year of issuance, the next two are the two-letter ISO country code, followed by a six-digit serial number, and two digits or letters used for national informational purposes.
(7) Humane transport of live wildlife	If the CITES document authorizes the export or re-eexport of live wildlife, a statement that the document is valid only if the transport conditions comply with the *CITES Guidelines for Transport* (available from the CITES website), or, in the case of air transport of wildlife, with the *International Air Transport Association Live Animals Regulations.* The shipment must comply with the requirements of the Live Animals Regulations (LAR), 32nd edition, October 1, 2005, by the International Air Transport Association (IATA), Reference Number: 9105–32, ISBN 92–9195–560–4.[1]
(8) Identification of the specimen	Any unique identification number or mark (such as a tag, band, ring, microchip, label, or serial number), including any mark required under these regulations or a CITES listing annotation. For a microchip, the microchip code, trademark of the transponder manufacturer and, where possible, the location of the microchip in the specimen. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.
(9) Management Authority	The complete name and address of the issuing Management Authority as included in the CITES directory, which is available from the CITES website or us.
(10) Name and address	The complete name and address, including country, of the exporter and importer.

Required information	Description
(11) Purpose of transaction	The purpose of the transaction, if possible, using one of the codes given in paragraph (d) of this section. The code is determined by the issuing Management Authority through information submitted with an application. This is not required for a certificate of origin.
(12) Quantity	The quantity of specimens authorized in the shipment and, if appropriate, the unit of measurement using the metric system: (i) The unit of measurement should be appropriate to the type of specimen and agree with the *Guidelines for the preparation and submission of CITES annual reports* available from the CITES website or us. General descriptions such as ''one case'' or ''one batch'' are not acceptable. (ii) Weight should be in kilograms. If weight is used, net weight (weight of the specimen alone) must be stated, not gross weight that includes the weight of the container or packaging. (iii) Volume should be in cubic meters for logs and sawn wood and either square meters or cubic meters for veneer and plywood. (iv) For re-export, if the type of good has not changed since being imported, the same unit of measurement as on the export permit must be used, except to change to units that are to be used in the CITES annual report.
(13) Scientific name	The scientific name of the species, including the subspecies when needed to determine the level of protection of the specimen under CITES, using standard nomenclature as it appears in the CITES Appendices or the references adopted by the CoP. A list of current references is available from the CITES website or us. A CITES document may contain higher-taxon names in lieu of the species name only under one of the following circumstances: (i) The CoP has agreed that the use of a higher-taxon name is acceptable for use on CITES documents. (A) If the genus cannot be readily determined for coral rock, the scientific name to be used is the order Scleractinia. (B) Live and dead coral must be identified to the level of species except where the CoP has agreed that identification to genus is acceptable. A current list of coral taxa identifiable to genus is available from the CITES website or us. (C) Re-export of worked skins or pieces of *Tupinambis* species that were imported before August 1, 2000, may indicate *Tupinambis* spp. (ii) The issuing Party can show the use of a higher- taxon name is well justified and has communicated the justification to the Secretariat. (iii) The item is a pre-Convention manufactured product containing a specimen that cannot be identified to the species level.
(14) Seal or stamp	The embossed seal or ink stamp of the issuing Management Authority.
(15) Security stamp	If a Party uses a security stamp, the stamp must be canceled by an authorized signature and a stamp or seal, preferably embossed. The number of the stamp must also be recorded on the CITES document.
(16) Signature	An original handwritten signature of a person authorized to sign CITES documents for the issuing Management Authority. The signature must be on file with the Secretariat.
(17) Signature name	The name of the person who signed the CITES document.
(18) Source	The source of the specimen. For re-export, unless there is information to indicate otherwise, the source code on the CITES document used for import of the specimen must be used. See § 23.24 for a list of codes.
(19) Treaty name	Either the full name or acronym of the Treaty, or the CITES logo.
(20) Type of CITES document	The type of CITES document (import, export, re-export, or other): (i) If marked ''other,'' the CITES document must indicate the type of document, such as artificially propagated, bred-in-captivity, certificate of origin, certificate of ownership, introduction from the sea, pre-Convention, sample collection covered by an ATA carnet, scientific exchange, or traveling exhibition. (ii) If multiple types are authorized on one CITES document, the type that applies to each specimen must be clearly indicated.
(21) Validation or certification	The actual quantity of specimens exported or re-exported: (i) Using the same units of measurement as those on the CITES document. (ii) Validated or certified by the stamp or seal and signature of the inspecting authority at the time of export or re-export.

[1] The incorporation by reference of the IATA LAR was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from IATA, 800 Place Victoria, P.O. Box 113, Montreal, Quebec, Canada H4Z 1M1, by calling 1–800–716–6326, or ordering through the Internet at *http://www.iata.org.* Copies may be inspected at the U.S. Management Authority or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(d) *Purpose of transaction.* If possible, the CITES document should contain one of the following codes:

Code	Purpose of transaction
B	Breeding in captivity or artificial propagation.
E	Education.
G	Botanical garden.
H	Hunting trophy.
L	Law enforcement/judicial/forensic.

Code	Purpose of transaction
M	Medical research (including biomedical research).
N	Reintroduction or introduction into the wild.
P	Personal.
Q	Circus and traveling exhibition.
S	Scientific.
T	Commercial.
Z	Zoo.

(e) *Additional required information.* The following describes the additional information that is required for specific types of documents (listed alphabetically):

Type of document	Additional required information
(1) Annex (such as an attached inventory, conditions, or continuation pages of a CITES document)	The page number, document number, and date of issue on each page of an annex that is attached as an integral part of a CITES document. The signature and ink stamp or seal, preferably embossed, of the Management Authority issuing the CITES document must also be included on each page of the annex. The CITES document must indicate an attached annex and the total number of pages.
(2) Certificate of origin (see § 23.38)	A statement that the specimen originated in the country of origin that issued the certificate.
(3) Copy when used in place of the original CITES document	(i) Information required in paragraph (e)(7) of this section when the document authorizes export or re-export. (ii) A statement by the Management Authority on the face of the document authorizing the use of a copy when the document authorizes import.
(4) Export permit for a registered commercial breeding operation or nursery—Appendix-I specimens (see § 23.46)	The registration number of the operation or nursery assigned by the Secretariat, and if the exporter is not registered operation or nursery, the name of the registered operation or nursery.
(5) Export permit with a quota	Number of specimens, such as 500/1,000, that were: (i) Exported thus far in the current calendar year, including those covered by the current permit (such as 500), and (ii) Included in the current annual quota (such as 1,000).
(6) Import permit (Appendix-I specimen) (see § 23.35)	A certification that the specimen will not be used for primarily commercial purposes and, for a live specimen, that the recipient has suitable facilities and expertise to house and care for it.
(7) Replacement CITES document (see § 23.52)	When a CITES document replaces an already issued CITES document that was lost, damaged, stolen, or accidentally destroyed: (i) If a newly issued CITES document, indication it is a ''replacement,'' the number and date of issuance of the CITES document that was replaced, and reason for replacement. (ii) If a copy of the original CITES document, indication it is a ''replacement'' and a ''true copy of the original,'' a new original signature of the issuing Management Authority, the date signed, and reason for replacement.
(8) Partially completed documents (see § 23.51)	(i) A list of the blocks that must be completed by the permit holder. (ii) If the list includes scientific names, an inventory of approved species must be included on the face of the CITES document or in an attached annex. (iii) A signature of the permit holder, which acts as a certification that the information entered is true and accurate.
(9) Pre-Convention document (see § 23.45)	(i) An indication on the face of the CITES document that the specimen is pre-Convention. (ii) A date that shows the specimen was acquired before the date the Convention first applied to it.
(10) Re-export certificate (see § 23.37)	(i) The country of origin, the export permit number, and the date of issue. (ii) If previously re-exported, the country of last re-export, the re-export certificate number, and the date of issue. (iii) If all or part of this information is not known, a justification must be given.
(11) Retrospective CITES document (see § 23.53)	A clear statement that the CITES document is issued retrospectively and the reason for issuance.
(12) Sample collection covered by an ATA carnet (see § 23.50)	(i) A statement that the document covers a sample collection and is invalid unless accompanied by a valid covered by a valid ATA carnet. (ii) The number of the accompanying ATA carnet either recorded by the Management Authority, customs, or other responsible CITES inspecting official.

(f) *Phytosanitary certificate.* A Party may use a phytosanitary certificate as a CITES document under the following conditions:

(1) The Party has provided copies of the certificate, stamps, and seals to the Secretariat.

(2) The certificate is used only when all the following conditions are met:

(i) The plants are being exported, not re-exported.

(ii) The plants are Appendix-II species or hybrids of one or more Appendix-I species or taxa that are not annotated to include hybrids.

(iii) The plants were artificially propagated in the exporting country.

(3) The certificate contains the following information:

(i) The scientific name of the species, including the subspecies when needed to determine the level of protection of the specimen under CITES, using

standard nomenclature as it appears in the CITES Appendices or the references adopted by the CoP.

(ii) The type (such as live plant or bulb) and quantity of the specimens authorized in the shipment.

(iii) A stamp, seal, or other specific indication stating that the specimen is artificially propagated (see § 23.64).

§ 23.24 What code is used to show the source of the specimen?

The Management Authority must indicate on the CITES document the source of the specimen using one of the following codes, except the code ''O'' for pre-Convention, which should be used in conjunction with another code:

Source of specimen	Code
(a) *Artificially propagated plant (see § 23.40):* (1) An Appendix-II or -III artificially propagated specimen. (2) An Appendix-I plant specimen artificially propagated for noncommercial purposes or certain Appendix-I hybrids (see § 23.42) propagated for commercial purposes.	A
(b) *Bred-in-captivity wildlife (see § 23.41):* (1) An Appendix-II or -III specimen bred-in-captivity. (See paragraph (d)(1) of this section for wildlife that does not qualify as bred-in-captivity.) (2) An Appendix-I specimen bred for noncommercial purposes. (See paragraph (c)(1) of this section for an Appendix-I specimen bred for commercial purposes.)	C
(c) *Bred-in-captivity or artificially propagated for commercial purposes (see §§ 23.46 and 23.47):* (1) An Appendix-I wildlife specimen bred-in-captivity for commercial purposes at an operation registered with the Secretariat. (2) An Appendix-I plant specimen artificially propagated for commercial purposes at a nursery that is registered with the Secretariat or a commercial propagating operation that meets the requirements of § 23.47.	D
(d) *Captive-bred wildlife (§ 23.36):* (1) An Appendix-II or -III species that is captive-bred. (2) An Appendix-I species that is one of the following: (i) Captive-bred. (ii) Bred for commercial purposes, but the commercial breeding operation was not registered with the Secretariat. (iii) Bred for noncommercial purposes, but the facility does not meet the definition in § 23.5 because it was not involved in a cooperative conservation program.	F
(e) *Confiscated or seized specimen (see § 23.78).*	I
(f) *Pre-Convention specimen (see § 23.45)* (code to be used in conjunction with another code).	O
(g) *Ranched wildlife* (wildlife that originated from a ranching operation).	R
(h) *Source unknown* (must be justified on the face of the CITES document).	U
(i) *Specimen taken from the wild:* (1) For wildlife, this includes a specimen born in captivity from an egg collected from the wild or from wildlife that mated or exchanged genetic material in the wild. (2) For a plant, it includes a specimen propagated from a propagule collected from a wild plant, except as provided in § 23.64.	W

§ 23.25 What additional information is required on a non-Party CITES document?

(a) *Purpose.* Under Article X of the Treaty, a Party may accept a CITES document issued by a competent authority of a non-Party only if the document substantially conforms to the requirements of the Treaty.

(b) *Additional certifications.* In addition to the information in § 23.23(c) through (e), a CITES document issued by a non-Party must contain the following certifications on the face of the document:

Activity by a non-party	Certification
(1) Export	(i) The Scientific Authority has advised that the export will not be detrimental to the survival of the species. (ii) The Management Authority is satisfied that the specimen was legally acquired.
(2) Import	The import will be for purposes that are not detrimental to the survival of the species.

§ 23.26 When is a U.S. or foreign CITES document valid?

(a) *Purpose.* Article VIII of the Treaty provides that Parties take appropriate measures to enforce the Convention to prevent illegal trafficking in wildlife and plants.

(b) *Original CITES documents.* A separate original or a true copy of a CITES document must be issued before the import, introduction from the sea, export, or re-export occurs, and the document must accompany each shipment. No copy may be used in place of an original except as provided in § 23.23(e)(3) or when a shipment is in transit (see § 23.22). Fax or electronic copies are not acceptable.

(c) *Acceptance of CITES documents.* We will accept a CITES document as valid for import, introduction from the sea, export, and re-export only if the document meets the requirements of this section, §§ 23.23 through 23.25, and the following conditions:

Key phrase	Conditions for an acceptable CITES document
(1) Altered or modified CITES document	The CITES document has not been altered (including by rubbing or scratching out), added to, or modified in any way unless the change is validated on the document by the stamp and signature of the issuing Management Authority, or if the document was issued as a partially completed document, the Management Authority lists on the face of the document which blocks must be completed by the permit holder.
(2) CITES document	U.S. and foreign CITES documents must meet the general provisions and criteria in subparts C and E.
(3) Conditions	All conditions on the CITES document are met.
(4) Extension of validity	The validity of a CITES document may not be extended except as provided in § 23.73 for certain timber species.
(5) Fraudulent CITES document or CITES document containing false information	The CITES document is authentic and does not contain erroneous or misleading information.
(6) Humane transport	Live wildlife or plants were transported in compliance with the *CITES Guidelines for Transport* or, in the case of air transport of wildlife, the *International Air Transport Association Live Animals Regulations.*
(7) Management Authority and Scientific Authority	The CITES document was issued by a Party or non-Party that has designated a Management Authority and Scientific Authority and has provided information on these authorities to the Secretariat.
(8) Name of importer and exporter	A CITES document is specific to the name on the face of the document and may not be transferred or assigned to another person.
(9) Phytosanitary certificate	A phytosanitary certificate can be used to export artificially propagated plants only if the issuing Party has provided copies of the certificates, stamps, and seals to the Secretariat.
(10) Registered commercial breeding operation for Appendix-I wildlife	(i) The operation is in the Secretariat's register. (ii) Each specimen is specifically marked, and the mark is described on the CITES document.
(11) Registered commercial nursery for Appendix-I plants	The operation is included in the Secretariat's register.
(12) Retrospective CITES documents	A CITES document was not issued retrospectively except as provided in § 23.53.
(13) Shipment contents	The contents of the shipment match the description of specimens provided on the CITES document, including the units and species. A shipment cannot contain more or different specimens or species than certified or validated on the CITES document at the time of export or re-export (the quantity of each specimen validated or certified may be less, but not more, than the quantity stated at the time of issuance).
(14) Quota	For species with a quota on file with the Secretariat, the quantity exported from a country does not exceed the quota.
(15) Wild-collected wildlife specimen	A wild-collected wildlife specimen (indicated on the CITES document with a source code of "W") is not coming from a country that is outside the range of the species, unless we have information indicating that the species has been established in the wild in that country through accidental introduction or other means.

(d) *Verification of a CITES document.* We may request verification of a CITES document from the Secretariat or a foreign Management Authority before deciding whether to accept it under some circumstances, including, but not limited to, the following:

(1) We receive reliable information that indicates the need for CITES document verification.

(2) We have reasonable grounds to believe that a CITES document is not valid or authentic because the species is being traded in a manner detrimental to the survival of the species or in violation of foreign wildlife or plant laws, or any applicable Management or Scientific Authority finding has not been made.

(3) The re-export certificate refers to an export permit that does not exist or is not valid.

(4) We have reasonable grounds to believe that the document is fraudulent, contains false information, or has unauthorized changes.

(5) We have reasonable grounds to believe that the specimen identified as bred-in-captivity or artificially propagated is a wild specimen or otherwise does not qualify for these exemptions.

(6) The import of a specimen designated as bred-in-captivity or artificially propagated is from a non-Party. For an Appendix-I specimen, we must consult with the Secretariat.

(7) For a retrospectively issued CITES document, if both the importing and exporting or re-exporting countries' Management Authorities have not agreed to the issuance of the document.

(8) For a replacement CITES document, we need clarification of the reason the document was issued.

§ 23.27 What CITES documents do I present at the port?

(a) *Purpose.* Article VIII of the Treaty provides that Parties establish an inspection process that takes place at a port of exit and entry. Inspecting officials must verify that valid CITES documents accompany shipments and take enforcement action when

shipments do not comply with the Convention.

(b) *Process.* Officials in each country inspect the shipment and validate or certify the CITES document. In the United States, you must follow the clearance requirements for wildlife in part 14 of this subchapter and for plants in 7 CFR parts 319, 352, and 355. The table in this paragraph (b) provides information on:

(1) The types of original CITES documents you must present to be validated or certified by the inspecting official to export or re-export from a country.

(2) When you need to surrender a copy of the original CITES document to the inspecting official at the time of export or re-export.

(3) When you need to surrender the original CITES document to the inspecting official at the time of import or introduction from the sea.

Type of CITES document	Present original for export or re-export validation or certificaion	Surrender copy upon export or re-export	Surrender original upon import or introduction from the sea
Bred-in-captivity certificate	Required	Required	Required.
Certificate for artificially propagated artificially propagated plants	Required	Required	Required.
Certificate of origin	Required	Required	Required.
Certificate of ownership	Required	Required	Not required; submit copy.
Export permit	Required	Required	Required.
Hybrid, excluded wildlife hybrid letter	Required [1]	Required	Not required; submit copy.
Import permit	Not required	Required	Required.
Introduction-from-the-sea certificate	Not applicable	Not applicable	Required.
Multiple-use document	Required [2]	Required	Not required; submit copy.
Pre-Convention document	Required	Required	Required.
Re-export certificate	Required	Required	Required.
Registered Appendix-I commercial breeding operation, export permit	Required	Required	Required.
Registered Appendix-I nursery, export permit	Required	Required	Required.
Registered scientific institution CITES label	Not required [3]	Not required	Not required.
Replacement document where a shipment has been made and is in a foreign country	Not required	Not required	Required.
Replacement document where a shipment has not left the United States	Required	Required	Required.
Retrospective document	Not required	Not required	Required.
Sample collection covered by an ATA carnet, CITES document	Required	Required	Not required; submit copy.
Traveling exhibition certificate	Required	Required	Not required; submit copy.

[1] Certification letter may not require validation.
[2] Orginal must be available for inspection, but permit conditions will indicate whether an original or copy is to be validated.
[3] Original label must be affixed to the package, which must be presented for inspection at the time of export, re-export, or import.

Subpart C—Application Procedures, Criteria, and Conditions

§ 23.32 How do I apply for a U.S. CITES document?

(a) To apply for a U.S. CITES document, you must complete a standard application form and submit it to the appropriate office shown on the top of the form.

(b) To determine the type of CITES document needed for your shipment, go to §§ 23.18 through 23.20 for further guidance.

(c) If a species is also regulated under another part of this subchapter (such as endangered or threatened, see § 23.3), the requirements of all parts must be met. You may submit a single application that contains all the information needed to meet the requirements of CITES and other applicable parts.

(d) You must also follow the general permit procedures in part 13 of this subchapter.

(e) You should review the criteria in all applicable regulations in this subchapter that apply to the type of permit you are seeking before completing the application form.

(f) We will review your application to assess whether it contains the information needed to make the required findings.

(1) Based on available information, we will decide if any of the exemptions apply and what type of CITES document you need.

(2) If we need additional information, we will contact you. If you do not provide the information within 45

calendar days, we will abandon your application. If you wish to apply for a permit at a later time, you must submit a new application.

§ 23.33 How is the decision made to issue or deny a request for a U.S. CITES document?

(a) Upon receiving a complete application, we will decide whether to issue a CITES document by considering:

(1) The general criteria in § 13.21(b) of this subchapter and, if the species is protected under a separate law or treaty, criteria in any other applicable parts.

(2) The CITES issuance criteria provided in this subpart (see subpart D of this part for factors we consider in making certain findings).

(b) As needed, the U.S. Management Authority, including FWS Law Enforcement, will forward a copy of the application to the U.S. Scientific Authority; State, tribal, or other Federal government agencies; or other applicable experts. We may also query the Secretariat and foreign Management and Scientific Authorities for information to use in making the required findings.

(c) You must provide sufficient information to satisfy us that all criteria specific to the proposed activity are met before we can issue a CITES document.

(d) We will base our decision on whether to issue or deny the application on the best available information.

§ 23.34 What kinds of records may I use to show the origin of a specimen when I apply for a U.S. CITES document?

(a) When you apply for a U.S. CITES document, you will be asked to provide information on the origin of the specimen that will be covered by the CITES document.

(1) You need to provide sufficient information for us to determine if the issuance criteria in this part are met (see the sections in this subpart for each type of CITES document).

(2) We require less detailed information when the import, introduction from the sea, export, or re-export poses a low risk to a species in the wild and more detailed information when the proposed activity poses greater risk to a species in the wild (see Subpart D of this part for factors we consider in making certain findings).

(b) Information you may want to provide in a permit application includes, but is not limited to, the following:

Source of specimen	Types of records
(1) Captive-bred or cultivated [1]	(i) Records that identify the breeder or propagator of the specimens that have been identified by birth, hatch, or propagation date and for wildlife by sex, size, band number, or other mark, or for plants by size or other identifying feature: (A) Signed and dated statement by the breeder or propagator that the specimen was bred or propagated under controlled conditions. (B) Name and address of the breeder or propagator as shown by documents such as an International SpeciesInventory System (ISIS) record, veterinary certificate, or plant nursery license. (ii) Records that document the breeding or propagating of specimens at the facility: (A) Number of wildlife (by sex and age-or size-class) or plants at the facility. (B) How long the facility has been breeding or propagating the species. (C) Annual production and mortalities. (D) Number of specimens sold or transferred annually. (E) Number of specimens added from other sources annually. (F) Transaction records with the date, species, quantity of specimens, and name and address of seller. (G) Marking system, if applicable. (H) Photographs or video of facility, including for wildlife any activities during nesting and production and rearing of young, and for plants, different stages of growth.
(2) Confiscated or seized	Copy of remission decision, legal settlement, or disposal action after forfeiture or abandonment that demonstrates the applicant's legal possession.
(3) Exempt plant material	Records that document how you obtained the exempt plant material, including the name and address of the person from whom you received the plant material.
(4) Imported previously	(i) A copy of the cancelled CITES document that accompanied the shipment into the United States. (ii) For wildlife, copies of a cleared Declaration for Importation or Exportation of Fish or Wildlife (Form 3–77) for each shipment.
(5) Pre-Convention	Records that show the specimen was acquired before the date the provisions of the Convention first applied to it, such as: (i) Receipt or invoice. (ii) Catalog, inventory list, photograph, or art book. (iii) Statement from a qualified appraiser attesting to the age of a manufactured product. (iv) CBP (formerly U.S. Customs Service) import documents. (v) Phytosanitary certificate. (vi) Veterinary document or breeding or propagation logs.
(6) Sequential ownership or purchase	(i) Records that specifically identify the specimen, give the name and address of the owner, and show the specimen's origin (pre-Convention, previously imported, wild-collected, or born or propagated in a controlled environment in the United States). (ii) Records that document the history of all transfers in ownership (generally not required for pre-Convention specimens).
(7) Unknown origin, for non-commercial purposes	A complete description of the circumstances under which the specimen was acquired (where, when, and from whom I the specimen was acquired), including efforts made to obtain information on the origin of the specimen.

Source of specimen	Types of records
(8) Wild-collected	Records, such as permits, licenses, and tags, that demonstrate the specimen or the parental stock was legally removed from the wild under relevant foreign, Federal, tribal, State, or local wildlife or plant conservation laws or regulations: (i) If taken on private or tribal land, permission of the landowner if required under applicable law. (ii) If taken in a national, State, or local park, refuge, or other protected area, permission from the applicable agency, if required.

[1] If the wildlife was born in captivity from an egg collected from the wild or from parents that mated or exchanged genetic material in the wild, or the plant was propagated from a propagule collected from a wild plant, see paragraph (b)(8) of this section.

(c) If you intend to engage in international trade with a CITES specimen in the future, you should keep sufficient records to establish your eligibility for a CITES document for as long as you possess the specimen and, if you sell, donate, or transfer ownership of the specimen, by providing records to the new owner on the origin of the specimen.

§ 23.35 What are the requirements for an import permit?

(a) *Purpose.* Article III(3) of the Treaty sets out the conditions under which a Management Authority can issue an import permit.

(b) *U.S. application forms.* Complete the appropriate form for the proposed activity and submit it to the U.S. Management Authority:

Type of application for an import permit for an Appendix-I specimen	Form No.
(1) CITES:	
Southern African Leopard, African Elephant, and Namibian Southern White Rhinoceros Sport-hunted Trophies	3–200–19
Appendix-I Plants	3–200–35
Appendix-I Wildlife	3–200–37
Appendix-I Biological Samples	3–200–29
(2) Endangered Species Act and CITES:	
ESA Plants	3–200–36
ESA Sport-hunted Trophies	3–200–20
ESA Wildlife	3–200–37
(3) Marine Mammal Protection Act and CITES:	
Marine Mammals	3–200–43
(4) Wild Bird Conservation Act and CITES:	
Personal Pet Bird	3–200–46
Under an Approved Cooperative Breeding Program	3–200–48
Scientific Research or Zoological Breeding/Display	3–200–47

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. and foreign import permits. When applying for a U.S. import permit, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an import permit for an Appendix-I specimen	Section
(1) The proposed import would be for purposes that are not detrimental to the survival of the species.	23.61
(2) The specimen will not be used for primarily commercial purposes.	23.62
(3) The recipients are suitably equipped to house and care for any live wildlife or plant to be imported.	23.65
(4) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP.	23.23

(d) *U.S. standard conditions.* You must meet all of the provisions on use after import in § 23.55 and the standard conditions in § 23.56.

(e) *Prior issuance of an import permit.* For Appendix-I specimens, the Management Authority of the exporting country may:

(1) Issue an export permit for live or dead specimens or a re-export certificate for live specimens only after the Management Authority of the importing country has either issued an import permit or confirmed in writing that an import permit will be issued.

(2) Accept oral confirmation from the Management Authority of the importing country that an import permit will be issued in an emergency situation where the life or health of the specimen is threatened and no means of written communication is possible.

(3) Issue a re-export certificate for a dead specimen without confirmation that the import permit has been issued.

§ 23.36 What are the requirements for an export permit?

(a) *Purposes.* Articles III, IV, and V of the Treaty set out the conditions under which a Management Authority may issue an export permit for an Appendix-I, -II, or -III specimen. Article XIV sets out the conditions under which a Management Authority may issue a document for export of certain Appendix-II marine specimens protected under a pre-existing treaty, convention, or international agreement.

(b) *U.S. application forms.* Complete the appropriate form for the proposed activity and submit it to the U.S. Management Authority. Form 3–200–26 may also be submitted to FWS Law Enforcement at certain ports or regional offices:

Type of application for an export permit	Form No.
(1) CITES:	
American Ginseng	3–200–34
Appendix-I Plants Artificially Propagated for Commercial Purposes	3–200–33
Biological Specimens	3–200–29
Captive-born Raptors	3–200–25
Captive-born Wildlife (except raptors)	3–200–24
Export of Skins/Products of Bobcat, Canada Lynx, River Otter, Brown Bear, Gray Wolf, and American Alligator Taken under an Approved State or Tribal Program	3–200–26
Personal Pets, One-time Export	3–200–46
Plants	3–200–32
Registration of a Native Species Production Facility	3–200–75
Single-use Permits under a Master File or an Annual Program File	3–200–74
Trophies by Taxidermists	3–200–28
Wildlife, Removed from the Wild	3–200–27
(2) Endangered Species Act and CITES:	
ESA Plants	3–200–36
ESA Wildlife	3–200–37
(3) Marine Mammal Protection Act and CITES:	
Biological Samples	3–200–29
Live Captive-held Marine Mammals	3–200–53
Take from the Wild for Export	3–200–43

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. and foreign export permits except as provided for certain marine specimens in paragraph (d) of this section. When applying for a U.S. permit or certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an export permit	Appendix of the specimen			Section
	I	II	III	
(1) The wildlife or plant was legally acquired	Yes	Yes	Yes	23.60
(2) The proposed export would not be detrimental to the survival of the species	Yes	Yes	n/a	23.61
(3) An import permit has already been issued or the Management Authority of the importing country has confirmed that it will be issued	Yes	n/a	n/a	23.35
(4) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP	Yes	Yes	Yes	23.23
(5) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen	Yes	Yes	Yes	23.23
(6) The specimen originated in a country that listed the species	n/a	n/a	Yes	23.20
(7) For wildlife with the source code "W" or "F," the export is for noncommercial purposes (See § 23.46 for the export of specimens that originated at an Appendix-I commercial breeding operation that is registered with the Secretariat.)	Yes	n/a	n/a	

(d) *Export of certain exempt marine specimens.* Article XIV(4) and (5) of the Treaty provide a limited exemption for Appendix-II marine species that are protected under another treaty, convention, or international agreement that was in force at the time CITES entered into force. When all of the following conditions are met, export of exempt Appendix-II marine wildlife or plants requires only that the shipment is accompanied by a document issued by the Management Authority of the exporting country indicating that the specimens were taken in accordance with the provision of the other international treaty, convention, or agreement:

(1) The exporting country is a CITES Party and is a party to an international treaty, convention, or agreement that

affords protection to the species and was in force on July 1, 1975.

(2) The ship that harvested the specimen is registered in the exporting country.

(3) The specimen was taken within waters under the jurisdiction of the exporting country or in the marine environment not under the jurisdiction of any country.

(4) The specimen was taken in accordance with the other international treaty, convention, or agreement, including any quotas.

(5) The shipment is accompanied by any official document required under the other international treaty, convention, or agreement or otherwise required by law.

(e) *Export of exempt specimens from the United States.* To export a specimen exempted under paragraph (d) of this section, you must obtain a CITES document from the U.S. Management Authority that indicates the specimen was taken in accordance with the provisions of another international treaty, convention, or agreement that was in force on July 1, 1975.

(f) *U.S. application for export of exempt specimens.* To apply for a CITES exemption document under paragraph (e) of this section, complete the appropriate form for your activity and submit it to the U.S. Management Authority.

(g) *Criteria.* The criteria in this paragraph (g) apply to the issuance and acceptance of U.S. and foreign export documents. To obtain a U.S. CITES document for export of specimens exempted under paragraph (d) of this section you must provide sufficient information for us to find that your proposed export meets all of the following issuance criteria:

(1) The specimen was taken in accordance with the provisions of an applicable international treaty, convention, or agreement that was in force on July 1, 1975.

(2) The scientific name of the CITES species is in the standard nomenclature in the CITES Appendices or references adopted by the CoP (see § 23.23).

§ 23.37 What are the requirements for a re-export certificate?

(a) *Purposes.* Articles III, IV, and V of the Treaty set out the conditions under which a Management Authority may issue a re-export certificate for an Appendix-I, -II, or -III specimen.

(b) *U.S. application forms.* Complete the appropriate form for the proposed activity and submit it to the U.S. Management Authority. Form 3–200–73 may also be submitted to Law Enforcement at certain ports or regional offices:

Type of application for a re-export certificate	Form No.
(1) CITES:	
Biological Specimens	3–200–29
Plants	3–200–32
Single-use Permits under a Master File or an Annual Program File	3–200–74
Trophies by Taxidermists	3–200–28
Wildlife	3–200–73
(2) Endangered Species Act and CITES:	
ESA Plants	3–200–36
ESA Wildlife	3–200–37
(3) Marine Mammal Protection Act and CITES:	
Biological Samples	3–200–29
Live Captive-held Marine Mammals	3–200–53

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. and foreign re-export certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for a re-export certificate	Appendix of the specimen			Section
	I	II	III	
(1) The wildlife or plant was legally acquired	Yes	Yes	Yes	23.60
(2) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP	Yes	Yes	Yes	23.23
(3) For a live specimen, an import permit has already been issued or the Management Authority of the importing country has confirmed that it will be issued. This criterion does not apply to a specimen with the source code "D."	Yes	n/a	n/a	23.35
(4) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen	Yes	Yes	Yes	23.23
(5) For re-export of a confiscated specimen, the proposed re-export would not be detrimental to the survival of the species	Yes	Yes	n/a	23.61
(6) For wildlife with the source code "W" or "F," the re-export is for noncommercial purposes	Yes	n/a	n/a	.....

§ 23.38 What are the requirements for a certificate of origin?

(a) *Purpose.* Article V(3) of the Treaty requires that a shipment of Appendix-III specimens be accompanied by a certificate of origin when the shipment is not from a country that listed the species in Appendix III and is not a re-export.

(b) *U.S. application forms.* For a certificate of origin, complete one of the following forms and submit it to the U.S. Management Authority:

(1) Form 3–200–27 for wildlife removed from the wildlife.

(2) Form 3–200–24 for captive-born wildlife.

(3) Form 3–200–32 for plants.

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. and foreign certificates of origin. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The specimen originated in the country of export, which is not a country that listed the species in Appendix III. In the case of a listing that is annotated to cover only a certain population, no CITES document is required if the listed population does not occur in the country of export. For U.S. applicants, the country of origin must be the United States.

(2) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP (see § 23.23).

(3) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen (see § 23.23).

§ 23.39 What are the requirements for an introduction-from-the-sea certificate?

(a) *Purpose.* Articles III(5), IV(6), and IV(7) of the Treaty set out the conditions under which a Management Authority may issue a certificate of introduction from the sea.

(b) *U.S. application form.* Complete Form 3–200–31 and submit it to the U.S. Management Authority.

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. certificates. You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an introduction-from-the-sea certificate	Appendix of the specimen		Section
	I	II	
(1) The specimen was taken in the marine environment not under the jurisdiction of any country	Yes	Yes	
(2) The proposed introduction from the sea would not be detrimental to the survival of the species	Yes	Yes	23.61
(3) The specimen will not be used for primarily commercial purposes	Yes	n/a	23.62
(4) The recipients are suitably equipped to house and care for live wildlife or plants	Yes	n/a	23.65
(5) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP	Yes	Yes	23.23
(6) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen	Yes	Yes	23.23

(d) *Exemption.* As allowed under Article XIV(4) and (5) of the Treaty, you may directly introduce into the United States any Appendix-II wildlife or plant taken in the marine environment that is not under the jurisdiction of any country without a CITES document when all of the following conditions are met:

(1) The United States is a party to an international treaty, convention, or agreement that affords protection to the species and was in force on July 1, 1975.

(2) The ship that harvested the specimen is registered in the United States.

(3) The specimen was taken in accordance with the other international treaty, convention, or agreement, including any quotas.

(4) The shipment is accompanied by any official document required under the other international treaty, convention, or agreement or otherwise required by U.S. law.

(e) *Export of exempt specimens.* To export a specimen exempted under paragraph (d) of this section, you must obtain a CITES document from the U.S. Management Authority that indicates the specimen was taken in accordance with the provisions of the other international treaty, convention, or agreement that was in force on July 1, 1975. See requirements in § 23.36 (e)—(g).

(f) *Appendix III.* Introduction-from-the-sea certificate requirements do not apply to Appendix-III species.

§ 23.40 What are the requirements for a certificate for artificially propagated plants?

(a) *Purpose.* Article VII(5) of the Treaty grants an exemption to plants that are artificially propagated when a Management Authority issues a certificate.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of a certificate for artificially propagated Appendix-I, -II, or -III plants:

(1) The certificate for artificially propagated plants and any subsequent re-export certificate must show the source code as ''A'' for artificially propagated.

(2) For an Appendix-I specimen that satisfies the requirements of this section, no CITES import permit is required.

(c) *U.S. application form.* Complete Form 3–200–33 and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for a certificate for artificially propagated plants	Appendix of the specimen			Section
	I	II	III	
(1) The plant was artificially propagated	Yes	Yes	Yes	23.64
(2) The plant specimen is one of the following: (i) Was propagated for noncommercial purposes. (ii) Is part of a traveling exhibition. (iii) Is a hybrid of one or more Appendix-I species or taxa that is not annotated to include hybrids in the listing and was propagated for commercial or noncommercial purposes.	Yes	n/a	n/a	
(3) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP	Yes	Yes	Yes	23.23
(4) The live plant will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen	Yes	Yes	Yes	23.23

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, you must meet all of the following conditions:

(1) You may not export or re-export a plant (including its parts, products, or derivatives) under this certificate if the plant was removed from the wild or grown directly from a wild seed, except for plants grown from exempt plant materials that qualify as artificially propagated.

(2) You may not export an Appendix-I species that was propagated for commercial purposes under this certificate, except for hybrids of one or more Appendix-I species or taxa that are not annotated to include hybrids in the listing.

(3) You may export a native plant under this certificate only when specifically approved for export and listed on the certificate, inventory sheet, or an approved species list.

(4) You may export a specimen under a higher-taxon name only if you identified the taxon in your application and we approved it on this certificate.

§ 23.41 What are the requirements for a bred-in-captivity certificate?

(a) *Purpose.* Article VII(5) of the Treaty grants an exemption to wildlife that is bred-in-captivity when a Management Authority issues a certificate.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of a certificate for Appendix-I, -II, or -III wildlife that was bred-in-captivity:

(1) The certificate and any subsequent re-export certificate must show the source code as ''C'' for bred-in-captivity.

(2) For an Appendix-I specimen that satisfies the requirements of this section, no CITES import permit is required.

(c) *U.S. application form.* Complete Form 3–200–24 and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for a bred-in-captivity certificate	Appendix of the specimen			Section
	I	II	III	
(1) The wildlife was bred-in-captivity	Yes	Yes	Yes	23.63
(2) The wildlife specimen was bred for noncommercial purposes or is part of a traveling exhibition	Yes	n/a	n/a	23.5
(3) The scientific name of the species is the standard nomenclature in the CITES Apendices or the references adopted by the CoP	Yes	Yes	Yes	23.23
(4) Live wildlife will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen	Yes	Yes	Yes	23.23

§ 23.42 What are the requirements for a plant hybrid?

General provisions. Except as provided in § 23.92, the export, re-export, or import of a plant hybrid of a CITES species must be accompanied by a valid CITES document that shows the Appendix of the specimen as follows:

Question on a plant hybrid	Answer and status of specimen
(a) Is the specimen an artificially propagated hybrid of one or more Appendix-I species or taxa?	(1) **YES.** Continue to paragraph (b) of this section. (2) **NO**. Continue to paragraph (c) of this section.

Question on a plant hybrid	Answer and status of specimen
(b) Is one or more of the Appendix-I species or taxa in paragraph (a) of this section annotated to include hybrids?	(1) **YES.** The hybrid is listed in Appendix I. (2) **NO.** The hybrid is listed in Appendix I, but may be granted a certificate for artificially propagated plants even if propagated for commercial purposes.
(c) Is the specimen a hybrid that includes two or more CITES species or taxa in its lineage?	(1) **YES.** Consider the specimen to be listed in the more restrictive Appendix, with Appendix I being the most restrictive and Appendix III the least. (2) **NO.** Continue to paragraph (d) of this section.
(d) Is the specimen a hybrid that includes one CITES species or taxon in its lineage?	(1) **YES.** Consider the specimen to be listed in the Appendix in which the species or taxon is listed in the CITES Appendices. (2) **NO.** The hybrid is not regulated by CITES.

§ 23.43 What are the requirements for a wildlife hybrid?

(a) *Definition.* For the purposes of this section, recent lineage means the last four generations of a specimen's ancestry (direct line of descent).

(b) *U.S. and foreign general provisions.* Except as provided in paragraph (c) of this section, the export, re-export, or import of a wildlife hybrid must be accompanied by a valid CITES document that shows the hybrid listed in the following Appendix:

If at least one specimen in the recent lineage is listed in:	Then the specimen is listed in:
(1) Appendix I	Appendix I
(2) Appendix II, and an Appendix-I species is not included in the recent lineage	Appendix II
(3) Appendix III, and an Appendix-I or -II species is not included in the recent lineage	Appendix III

(c) *Wildlife hybrid excluded from regulation.* A wildlife hybrid that does not have a CITES species in its recent lineage must be accompanied by either a CITES document or an excluded wildlife hybrid letter issued by us or a foreign Management Authority. This requirement does not apply to a domestic dog or domestic cat that has no CITES species in its recent lineage. The CITES document or letter must describe the specimen, provide the scientific name, and certify that the wildlife contains no CITES species in the last four generations of its ancestry.

(d) *U.S. application for wildlife hybrid.* To apply for a CITES document or an excluded wildlife hybrid letter, complete the appropriate form for the proposed activity (see §§ 23.18 through 23.20) and submit it to the U.S. Management Authority.

(e) *Criteria.* For export of a hybrid that contains a CITES species in its recent lineage, you must meet the requirements of § 23.36. For an excluded wildlife hybrid letter, you must provide sufficient information for us to find that your proposed activity meets all of the following issuance criteria:

(1) The wildlife hybrid does not include any CITES species in its recent lineage.

(2) The scientific name of the CITES species in the lineage of the hybrid is the standard nomenclature in the CITES Appendices or references adopted by the CoP (see § 23.23).

§ 23.44 What are the requirements to travel internationally with my personally owned live wildlife?

(a) *Purpose.* A Management Authority may use the exemption in Article VII(3) of the Treaty to issue a certificate of ownership that authorizes frequent cross-border movements of personally owned live wildlife for personal use.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of a certificate of ownership for frequent international travel with live wildlife for personal use:

(1) The certificate must be obtained from the Management Authority in the country of the owner's primary residence.

(2) Parties should treat the certificate like a passport for import to and export or re-export from each country and should not collect the original certificate at the border.

(3) If offspring are born or an additional specimen is acquired while the owner is outside his or her country of primary residence, the owner must obtain the appropriate CITES document for the export or re-export of the wildlife, not a certificate of ownership, from the Management Authority of that country.

(4) Upon returning home, the owner may apply for a certificate of ownership for wildlife born or acquired overseas.

(c) *U.S. application form.* Complete Form 3–200–64 and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The traveler owns the live wildlife and it will accompany the owner.

(2) The cross-border movement will be frequent and for personal use, including, but not limited to, companionship or use in a noncommercial competition such as falconry.

(3) To apply for a U.S. certificate, the owner resides in the United States.

(4) The wildlife was legally acquired (see § 23.60).

(5) The owner does not intend to sell, donate, or transfer the wildlife while traveling internationally.

(6) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP (see § 23.23).

(7) The Management Authority of the country of import has agreed to the cross-border movement.

(8) The wildlife is securely marked or uniquely identified in such a manner

that the border official can verify that the specimen and CITES document correspond.

(9) The wildlife is transported and cared for in a way that minimizes risk of injury, damage to health, or cruel treatment of the specimen (see § 23.23).

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, all of the following conditions must be met:

(1) You must accompany the wildlife during any cross-border movement.

(2) You must transport the wildlife for personal use only.

(3) You must not sell, donate, or transfer the specimen while traveling internationally.

(4) You must present the certificate to the official for validation at each border crossing.

(5) If the certificate is lost, stolen, or accidentally destroyed, you must obtain a replacement certificate from the issuing Management Authority.

(6) If you no longer own the live wildlife, you must immediately return the original document to the issuing Management Authority and report on the disposition of the wildlife, such as death, sale, or transfer.

§ 23.45 What are the requirements for a pre-Convention specimen?

(a) *Purpose.* Article VII(2) of the Treaty exempts a pre-Convention specimen from standard permitting requirements in Articles III, IV, and V of the Treaty when the exporting or re-exporting country is satisfied that the specimen was acquired before the provisions of CITES applied to it and issues a CITES document to that effect.

(b) *U.S. and foreign general provisions.* The following general provisions apply to the issuance and acceptance of pre-Convention documents:

(1) Trade in a specimen under the pre-Convention exemption is allowed only if the importing county will accept a pre-Convention certificate.

(2) The pre-Convention date is the date the species was first listed under CITES regardless of whether the species has subsequently been transferred from one Appendix to another.

(3) For a pre-Convention Appendix-I specimen, no CITES import permit is required.

(4) The pre-Convention exemption does not apply to offspring or cell lines of any wildlife or plant born or propagated after the date the species was first listed under CITES.

(c) *U.S. application form.* Complete Form 3–200–23 (wildlife) or Form 3–200–32 (plants) and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that the specimen meets all of the following criteria:

(1) The specimen was removed from the wild or born or propagated in a controlled environment before the date CITES first applied to it, or is a product (including a manufactured item) or derivative made from such specimen.

(2) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP (see § 23.23).

(3) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen.

(4) For the re-export of a pre-Convention specimen previously imported under a CITES document, the wildlife or plant was legally imported.

§ 23.46 What are the requirements for registering an Appendix-I commercial breeding operation and commercially exporting specimens?

(a) *Purpose.* Article VII(4) of the Treaty provides that Appendix-I specimens that are bred-in-captivity for commercial purposes shall be deemed to be listed in Appendix II. This means that an Appendix-I specimen originating from a commercial breeding operation that is registered with the CITES Secretariat may be traded under an export permit or re-export certificate based on Appendix-II criteria. The specimen is still listed in Appendix I and is not eligible for any exemption granted to an Appendix-II species or taxon, including any exemption granted by an annotation (see § 23.92).

(b) *U.S. and foreign general provisions.* The following provisions apply to the registration of U.S. and foreign Appendix-I commercial breeding operations:

(1) If the Management Authority is satisfied that the operation in its country meets the conditions for registration in paragraph (d) of this section, it will send the request to register a breeding operation to the Secretariat.

(2) The Secretariat will verify that the application is complete and notify the Parties of the request.

(3) If any Party objects to or expresses concern about the registration within 90 days from the date of the Secretariat's notification, the Secretariat will refer the application to the Animals Committee. The Committee has 60 days to respond to objections. The Secretariat will provide the recommendations of the Committee to the Management Authority of the Party that submitted the application and the Party that objected to the registration, and will facilitate a dialogue for resolution of the identified problems within 60 days.

(4) If the objection is not withdrawn or the identified problems are not resolved, approval of the registration will require a two-thirds majority vote by the Parties at the next CoP or by a postal vote.

(5) If other operations have already been registered for the species, the Secretariat may send the request to appropriate experts for advice only if significant new information is available or if there are other reasons for concern.

(6) If the Secretariat is not satisfied that the operation meets the conditions for registration, it will provide the Management Authority that submitted the registration request with a full explanation of the reasons for rejection and indicate the specific conditions that must be met before the registration can be resubmitted for further consideration.

(7) When the Secretariat is satisfied that the operation meets the registration requirements, it will include the operation in its register.

(8) Operations are assigned an identification number and listed in the official register. Registration is not final until the Secretariat notifies all Parties.

(9) If a Party believes that a registered operation does not meet the bred-in-captivity requirements, it may, after consultation with the Secretariat and the Party concerned, propose that the CoP delete the operation from the register by a two-thirds vote of the Parties. Once an operation has been deleted, it must re-apply and meet the registration requirements to be reinstated.

(10) The Management Authority, in collaboration with the Scientific Authority, of a country where any registered operation is located must monitor the operation to ensure that it continues to meet the registration requirements. The Management Authority will advise the Secretariat of any major change in the nature of the operation or in the types of products being produced for export, and the Animals Committee will review the operation to determine whether it should remain registered.

(11) A Party may unilaterally request the removal of a registered operation within its jurisdiction by notifying the Secretariat.

(12) An Appendix-I specimen may not be imported for purposes of establishing or augmenting a commercial breeding operation, unless the specimen is pre-Convention (see § 23.45) or was bred at a commercial breeding operation that is

registered with the CITES Secretariat as provided in this section.

(c) *U.S. application to register.* Complete Form 3–200–65 and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the registration of U.S. and foreign Appendix-I commercial breeding operations. For your breeding operation to be registered in the United States, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for registering an Appendix-I breeding operation	Section
(1) The operation breeds wildlife for commercial purposes	23.5
(2) The parental stock was legally acquired	23.60
(3) The wildlife meets bred-in-captivity criteria	23.63
(4) Where the establishment of a breeding operation involves the removal of animals from the wild (allowable only under exceptional circumstances), the operation must demonstrate to the satisfaction of the Management Authority on advice of the Scientific Authority and of the Secretariat that the removal is or was not detrimental to the conservation of the species	
(5) The potential escape of specimens or pathogens from the facility may not pose a risk to the ecosystem and native species	
(6) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP	23.23
(7) The breeding operation will make a continuing, meaningful contribution to the conservation of the species, as warranted by the conservation needs of the species	
(8) The operation will be carried out at all stages in a humane (non-cruel) manner	

(e) *Standard conditions of the registration.* In addition to the conditions in § 23.56, you must meet all of the following conditions:

(1) You must uniquely mark all specimens from the breeding operation in the manner proposed at the time of registration. Birds may be marked with closed bands, although other methods may be used.

(2) You may not import Appendix-I specimens for primarily commercial purposes (such as to establish a commercial captive-breeding operation) except from breeding operations registered for that species.

(3) You must provide information to the Management Authority each year on the year's production and your current breeding stock. You may provide the information by mail, fax, or e-mail.

(4) You must allow our agents to enter the premises at any reasonable hour to inspect wildlife held or to inspect, audit, or copy applicable records.

(f) *U.S. and foreign general provisions for export of specimens that originated in a registered breeding operation.* The following provisions apply to the issuance and acceptance of export permits for Appendix-I specimens bred at an operation registered with the CITES Secretariat:

(1) An export permit may be issued to the registered operation or to persons who have purchased a specimen that originated at the registered operation if the specimen has the unique mark applied by the operation. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.

(2) The export permit, and any subsequent re-export certificate, must show the specimen as listed in Appendix I and the source code as ''D,'' and give the identification number of the registered breeding operation where the specimen originated.

(3) No CITES import permit is required for a qualifying specimen.

(g) *U.S. application form.* Complete Form 3–200–24 and submit it to the U.S. Management Authority.

(h) *Criteria.* The criteria in this paragraph (h) apply to the issuance and acceptance of U.S. and foreign export permits. When applying for a U.S. permit, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an export permit	Section
(1) The specimen was bred at an Appendix-I breeding operation that is registered with the CITES Secretariat	23.46
(2) The proposed export would not be detrimental to the survival of the species	23.61
(3) Live wildlife will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen	23.23

§ 23.47 What are the requirements for export of an Appendix-I plant artificially propagated for commercial purposes?

(a) *Purpose.* Article VII(4) of the Treaty provides that Appendix-I plants artificially propagated for commercial purposes shall be deemed to be listed in Appendix II. This means that an Appendix-I specimen originating from a commercial nursery that is registered with the CITES Secretariat or that meets the requirements of this section may be traded under an export permit or re-export certificate based on Appendix-II criteria. The specimen is still listed in Appendix I and is not eligible for any exemption granted to an Appendix-II species or taxon, including any exemption granted by an annotation.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of export permits for Appendix-I specimens artificially propagated for commercial purposes:

(1) An Appendix-I specimen may not be imported for purposes of establishing or augmenting a nursery or commercial propagating operation, unless the specimen is pre-Convention (see § 23.45) or was propagated at a nursery that is registered with the CITES Secretariat or a commercial propagating

operation that qualifies under paragraph (d) of this section and the CITES document indicates the source code as ''D.''

(2) An export permit may be issued to a CITES-registered nursery, to a commercial propagating operation that qualifies under paragraph (d) of this section, or to persons who have purchased a specimen that originated at such a nursery or operation. No CITES import permit is required for a qualifying specimen.

(3) The export permit, and any subsequent re-export certificate, must show the specimen as listed in Appendix I and the source code as ''D,'' and if from a nursery registered with the Secretariat, give the identification number of the registered nursery where the specimen originated.

(c) *U.S. application form.* Complete Form 3–200–33 or Form 3–200–74 (for additional single-use permits under a master file or an annual export program file). Complete Form 3–200–32 for one-time export. Submit the completed form to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign export permits. When applying for a U.S. permit, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an export permit	Section
(1) The specimen was propagated for commercial purposes	23.5
(2) The parental stock was legally acquired	23.60
(3) The proposed export would not be detrimental to the survival of the species	23.61
(4) The plant was artificially propagated	23.64
(5) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP	23.23
(6) The live plant will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen	23.23

(e) *Nursery registration.* [Reserved]

§ 23.48 What are the requirements for a registered scientific institution?

(a) *Purpose.* Article VII(6) of the Treaty grants an exemption that allows international trade in certain specimens for noncommercial loan, donation, or exchange between registered scientific institutions.

(b) *U.S. and foreign general provisions.* The following provisions apply to the registration of scientific institutions and acceptance of shipments from registered scientific institutions:

(1) The receiving and sending scientific institutions must be registered with the Management Authority in their country. Scientists who wish to use this exemption must be affiliated with a registered scientific institution.

(i) When a Management Authority is satisfied that a scientific institution has met the criteria for registration, it will assign the institution a five-character code, consisting of the ISO country code and a unique three-digit number. In the case of a non-Party, the Secretariat will ensure that the institution meets the standards and assign it a unique code.

(ii) The Management Authority must communicate the name, address, and assigned code to the Secretariat, which maintains a register of scientific institutions and provides that information to all Parties.

(2) A registered scientific institution does not need separate CITES documents for the noncommercial loan, donation, or exchange of preserved, frozen, dried, or embedded museum specimens, herbarium specimens, or live plant material with another registered institution. The shipment must have an external label that contains information specified in paragraph (e)(5) of this section.

(c) *U.S. application to register as a scientific institution.* To register, complete Form 3–200–39 and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the registration of U.S. and foreign institutions for scientific exchange. To be issued a certificate of scientific exchange as a registered U.S. scientific institution, you must provide sufficient information for us to find that your institution meets all of the following criteria:

(1) Collections of wildlife or plant specimens are permanently housed and professionally curated, and corresponding records are kept.

(2) Specimens are accessible to all qualified users, including those from other institutions.

(3) Specimens are properly accessioned in a permanent catalog.

(4) Records are permanently maintained for loans and transfers to and from other institutions.

(5) Specimens are acquired primarily for research that is to be reported in scientific publications, and CITES specimens are not used for commercial purposes or as decorations.

(6) Collections are prepared and arranged in a way that ensures their accessibility to researchers.

(7) Specimen labels, permanent catalogs, and other records are accurate.

(8) Specimens are legally acquired and lawfully possessed under a country's wildlife and plant laws.

(9) Appendix-I specimens are permanently and centrally housed under the direct control of the institution.

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, any activity conducted under a certificate of scientific exchange must meet all of the following conditions:

(1) Both scientific institutions involved in the exchange must be registered by the applicable Management Authorities (or the Secretariat in the case of a non-Party), and be included in the Secretariat's register of scientific institutions.

(2) An institution may send and receive only preserved, frozen, dried, or embedded museum specimens, herbarium specimens, or live plant materials that have been permanently and accurately recorded by one of the institutions involved in the exchange and that are traded as a noncommercial loan, donation, or exchange.

(3) An institution may use specimens acquired under a certificate of scientific exchange and their offspring only for scientific research or educational display at a scientific institution and may not use specimens for commercial purposes.

(4) The institution must keep records to show that the specimens were legally acquired.

(5) A customs declaration label must be affixed to the outside of each shipping container or package that contains all of the following:

(i) The acronym ''CITES.''

(ii) A description of the contents (such as ''herbarium specimens'').

(iii) The names and addresses of the sending and receiving registered institutions.

(iv) The signature of a responsible officer of the sending registered scientific institution.

(v) The scientific institution codes of both registered scientific institutions involved in the loan, donation, or exchange.

(6) A registered institution may destroy samples during analysis, provided that a portion of the sample is maintained and permanently recorded at a registered scientific institution for future scientific reference.

§ 23.49 What are the requirements for an exhibition traveling internationally?

(a) *Purpose.* Article VII(7) of the Treaty grants an exemption for specimens that qualify as bred-in-captivity, artificially propagated, or pre-Convention and are part of a traveling exhibition.

(b) *U.S. and foreign general provisions.* The following general provisions apply to the issuance and acceptance of a certificate for an exhibition to travel internationally with live wildlife and plants, or their parts, products, or derivatives:

(1) The Management Authority in the country of the exhibition's primary place of business must have determined that the specimens are bred-in-captivity, artificially propagated, or pre-Convention and issued a traveling-exhibition certificate.

(2) The certificate must indicate that the wildlife or plant is part of a traveling exhibition.

(3) A separate certificate must be issued for each live wildlife specimen; a CITES document may be issued for more than one specimen for a traveling exhibition of live plants and dead parts, products, or derivatives of wildlife and plants.

(4) The certificate is not transferable.

(5) Parties should treat the certificate like a passport for import and export or re-export from each country, and should not collect the original certificate at the border.

(6) Parties should check specimens closely to determine that each specimen matches the certificate and ensure that each live specimen is being transported and cared for in a manner that minimizes the risk of injury, damage to health, or cruel treatment of the specimen.

(7) If offspring are born or a new specimen is acquired while the exhibitor is in another country, the exhibitor must obtain the appropriate CITES document for the export or re-export of the specimen from the Management Authority of that country.

(8) Upon returning home, the exhibitor may apply for a traveling exhibition certificate for wildlife born overseas or for wildlife or plants acquired overseas.

(c) *U.S. application form.* Complete Form 3–200–30 for wildlife and Form 3–200–32 for plants, and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The traveling exhibition must be for frequent cross-border movement, and must return at the end of the tour to the country in which the exhibition is based before the certificate expires.

(2) The cross-border movement must be for exhibition, and not for breeding, propagating, or activities other than exhibition.

(3) The owner of the exhibition resides in and the exhibition is based in the country that issued the certificate.

(4) The specimen meets the criteria for a bred-in-captivity certificate, certificate for artificially propagated plants, or pre-Convention certificate.

(5) The exhibitor does not intend to sell or otherwise transfer the wildlife or plant while traveling internationally.

(6) The wildlife or plant is securely marked or identified in such a way that border officials can verify that the certificate and specimen correspond. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, you must meet all of the following conditions:

(1) The certificate may be used by you, and you must not transfer or assign it to another person or traveling exhibition.

(2) You must transport the specimen internationally only for exhibition, not for breeding, propagating, or activities other than exhibition.

(3) You must present the certificate to the official for validation at each border crossing.

(4) For live plants, the quantity of plants must be reasonable for the purpose of the exhibit.

(5) You must not sell or otherwise transfer the specimen, or any offspring born to such specimen, while traveling internationally.

(6) If the certificate is lost, stolen, or accidentally destroyed, you may obtain a replacement certificate only from the issuing Management Authority.

(7) If you no longer own the wildlife or plants, or no longer plan to travel as an exhibitor, the original certificate must be immediately returned to the issuing Management Authority.

§ 23.50 What are the requirements for a sample collection covered by an ATA carnet?

(a) *Purpose.* Article VII(1) of the Treaty allows for the transit of specimens through or within a Party country while the specimens remain under customs control.

(b) *Definition.* For purposes of this section, *sample collection* means a set of legally acquired parts, products, or derivatives of Appendix-II or -III species, or Appendix-I species bred or artificially propagated for commercial purposes, that will:

(1) Cross international borders only for temporary exhibition or display purposes and return to the originating country.

(2) Be accompanied by a valid ATA carnet and remain under customs control.

(3) Not be sold or otherwise transferred while traveling internationally.

(c) *U.S. and foreign general provisions.* The following general provisions apply to the issuance and acceptance of a CITES document for the movement of sample collections:

(1) The Management Authority in the country where the sample collection originated must issue a CITES document that:

(i) Clearly specifies that the document was issued for a ''sample collection.''

(ii) Includes the condition in block 5, or an equivalent place, of the document that it is valid only if the shipment is accompanied by a valid ATA carnet and that the specimens must not be sold, donated, or otherwise transferred while outside the originating country.

(2) The number of the accompanying ATA carnet must be recorded on the CITES document and, if this number is not recorded by the Management Authority, it must be entered by a customs or other CITES enforcement official responsible for the original endorsement of the CITES document.

(3) The name and address of the exporter or re-exporter and importer

must be identical, and the names of the countries to be visited must be indicated in block 5, or an equivalent place.

(4) The date of validity must not be later than that of the ATA carnet and the period of validity must not exceed 6 months from the date of issuance.

(5) At each border crossing, Parties must verify the presence of the CITES document, but allow it to remain with the shipment, and ensure that the ATA carnet is properly endorsed with an authorized stamp and signature by a customs official.

(6) The exporter or re-exporter must return the sample collection to the originating country prior to the expiration of the CITES document.

(7) Parties should check the CITES document and sample collection closely at the time of first export or re-export and upon its return to ensure that the contents of the sample collection have not been changed.

(8) For import into and export from the United States, the shipment must comply with the requirements of part 14 of this subchapter.

(d) *U.S. application form.* Complete Form 3–200–29 for wildlife and Form 3–200–32 for plants, and submit it to the U.S. Management Authority.

(e) *Criteria.* The criteria in this paragraph (e) apply to the issuance and acceptance of U.S. and foreign documents. When applying for a U.S. document, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The specimens meet the definition of a sample collection as provided in paragraph (b) of this section.

(2) The wildlife or plant specimens must be securely marked or identified in such a way that border officials can verify that the CITES document, ATA carnet, and specimens correspond.

(f) *U.S. standard conditions.* In addition to the conditions in § 23.56, you must meet all of the following conditions:

(1) You must transport the sample collection only for temporary exhibition or display purposes.

(2) You must not transfer or assign the CITES document to another person.

(3) You must not sell, donate, or transfer specimens while traveling internationally.

(4) You must present the CITES document and the ATA carnet to the official for validation at each border crossing.

(5) You must return the sample collection to the United States prior to the expiration of the CITES document.

(6) If the CITES document is lost, stolen, or accidentally destroyed, you may obtain a replacement certificate only from the U.S. Management Authority.

(7) If you no longer own the sample collection, or no longer plan to travel with the sample collection, you must immediately return the original document to the U.S. Management Authority.

§ 23.51 What are the requirements for issuing a partially completed CITES document?

(a) *Purpose.* Under Article VIII(3), Parties are to ensure that CITES specimens are traded with a minimum of delay.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of partially completed CITES documents.

(1) A Management Authority may issue partially completed CITES documents only when:

(i) The permitted trade will have a negligible impact or no impact on the conservation of the species.

(ii) All provisions of CITES have been met.

(iii) The specimens are one of the following:

(A) Biological samples.

(B) Pre-Convention specimens.

(C) Specimens that qualify as bred-in-captivity or artificially propagated.

(D) Appendix-I specimens from registered commercial breeding operations.

(E) Appendix-I plants artificially propagated for commercial purposes.

(F) Other specimens that the Management Authority determines qualify for partially completed documents.

(2) A Management Authority may register applicants for species that may be traded under partially completed documents.

(3) Partially completed CITES documents require the permit holder to:

(i) Enter specific information on the CITES document or its annex as conditioned on the face of the CITES document.

(ii) Enter scientific names on the CITES document only if the Management Authority included an inventory of approved species on the face of the CITES document or an attached annex.

(iii) Sign the CITES document, which acts as a certification that the information entered is true and accurate.

(4) CITES documents issued for biological samples may be validated at the time of issuance provided that upon export the container is labeled with the CITES document number and indicates it contains CITES biological samples.

(c) *U.S. application form.* Complete the appropriate form for the proposed activity (see §§ 23.18 through 23.20) and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign CITES documents. When applying for a U.S. CITES document, you must provide sufficient information for us to find that your proposed activity meets the criteria in subpart C for the appropriate CITES document and the following criteria:

(1) The use of partially completed documents benefits both the permit holder and the issuing Management Authority.

(2) The proposed activity will have a negligible impact or no impact upon the conservation of the species.

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56 and any standard conditions in this part that apply to the specific CITES document, the following conditions must be met:

(1) You must enter the information specified in block 5, either on the face of the CITES document or in an annex to the document.

(2) You may not alter or enter any information on the face of the CITES document or in an annex to the document that is not authorized in block 5, or an equivalent place.

(3) If you are authorized to enter a scientific name, it must be for a species authorized in block 5, or an equivalent place, or in an attached annex of the CITES document.

(4) You must sign the CITES document to certify that all information entered by you is true and correct.

§ 23.52 What are the requirements for replacing a lost, damaged, stolen, or accidentally destroyed CITES document?

(a) *Purpose.* A Management Authority may issue a duplicate document, either a copy of the original or a re-issued original, when a CITES document has been lost, damaged, stolen, or accidentally destroyed. These provisions do not apply to a document that has expired or that requires amendment. To amend or renew a CITES document, see part 13 of this subchapter.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of a replacement CITES document:

(1) The permittee must notify the issuing Management Authority that the document was lost, damaged, stolen, or accidentally destroyed.

(2) The issuing Management Authority must be satisfied that the CITES document was lost, damaged, stolen, or accidentally destroyed.

(3) The issuing Management Authority should immediately inform the Management Authority in the country of destination and, for commercial shipments, the Secretariat.

(4) If the replacement CITES document is a copy, it must indicate that it is a ''replacement'' and a ''true copy of the original,'' contain a new dated original signature of the issuing Management Authority, and give the reason for replacement.

(5) If the replacement CITES document is a newly issued original document, it must indicate that it is a ''replacement,'' include the number and date of issuance of the document being replaced, and give the reason for replacement.

(c) *U.S. application procedures.* To apply for a replacement CITES document, you must do all of the following:

(1) Complete application Form 3–200–66 and submit it to the U.S. Management Authority.

(2) Consult the list to find the types of information you need to provide (more than one circumstance may apply to you):

If	Then
(i) If the shipment has already occurred	Provide copies of: (A) Any correspondence you have had with the shipper or importing country's Management Authority concerning the shipment. (B) For wildlife, the validated CITES document and cleared Declaration for Importation or Exportation of Fish or Wildlife (Form 3–177). (C) For plants, the validated CITES document.
(ii) The original CITES document no longer exists	Submit a signed, dated, and notarized statement that: (A) Provides the CITES document number and describes the circumstances that resulted in the loss or destruction of the original CITES document. (B) States whether the shipment has already occurred. (C) Requests a replacement U.S. CITES document.
(iii) An original CITES document exists but has been damaged	Submit the original damaged CITES document and a signed, dated, and notarized statement that: (A) Describes the circumstances that resulted in the CITES document being damaged. (B) States whether the shipment has already occurred. (C) Requests a replacement U.S. CITES document.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S and foreign documents. When applying for a U.S. replacement document, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The circumstances for the lost, damaged, stolen, or accidentally destroyed CITES document are reasonable.

(2) If the shipment has already been made, the wildlife or plant was legally exported or re-exported, and the Management Authority of the importing country has indicated it will accept the replacement CITES document.

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, the following conditions apply:

(1) If the original CITES document is found, you must return it to the U.S. Management Authority.

(2) A CITES document issued for a shipment that has already occurred does not require validation.

(f) *Validation.* For an export or re-export that has not left the United States, follow the procedures in § 23.27. If the shipment has left the United States and is in a foreign country, submit the unvalidated replacement CITES document to the appropriate foreign authorities. We will not validate the replacement CITES document for a shipment that has already been shipped to a foreign country. We do not require validation on replacement documents issued by foreign Management Authorities.

§ 23.53 What are the requirements for obtaining a retrospective CITES document?

(a) *Purpose.* Retrospective CITES documents may be issued and accepted in certain limited situations to authorize an export or re-export after that activity has occurred, but before the shipment is cleared for import.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of a retrospective CITES document:

(1) A retrospective document may not be issued for Appendix-I specimens except for certain specimens for personal use as specified in paragraph (d)(7) of this section.

(2) The exporter or re-exporter must notify the Management Authority in the exporting or re-exporting country of the irregularities that have occurred.

(3) A retrospective document may be one of the following:

(i) An amended CITES document where it can be shown that the issuing Management Authority made a technical error.

(ii) A newly issued CITES document where it can be shown that the applicant was misinformed by CITES officials or the circumstances in (d)(7) of this section apply and a shipment has occurred without a document.

(4) Retrospective documents can only be issued after consultation between the Management Authorities in both the exporting or re-exporting country and the importing country, including a thorough investigation of circumstances and agreement between them that criteria in paragraph (d) of this section have been met.

(5) The issuing Management Authority must provide all of the following information on any retrospective CITES document:

(i) A statement that it was issued retrospectively.

(ii) A statement specifying the reason for the issuance.

(iii) In the case of a document issued for personal use, a condition restricting sale of the specimen within 6 months following the import of the specimen.

(6) The issuing Management Authority must send a copy of the retrospective CITES document to the Secretariat.

(7) In general, except when the exporter or re-exporter and importer have demonstrated they were not responsible for the irregularities, any person who has been issued a CITES document in the past will not be eligible to receive a retrospective document.

(c) *U.S. application.* Complete application Form 3–200–58 and submit it to the U.S. Management Authority. In addition, submit one of the following:

(1) For a shipment that occurred under a document containing a

technical error, the faulty CITES document.

(2) For a shipment that occurred without a CITES document, a completed application form for the type of activity you conducted (see §§ 23.18 through 23.20).

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign documents. When applying for a U.S. document, you must provide sufficient information for us to find that your activity meets all of the following criteria:

(1) The specimens were exported or re-exported without a CITES document or with a CITES document that contained technical errors as provided in paragraph (d)(6)(ii) of this section.

(2) The specimens were presented to the appropriate official for inspection at the time of import and a request for a retrospective CITES document was made at that time.

(3) The export or re-export and import of the specimens was otherwise in compliance with CITES and the relevant national legislation of the countries involved.

(4) The importing Management Authority has agreed to accept the retrospectively issued CITES document.

(5) The specimens must be Appendix-II or -III wildlife or plants, except as provided in paragraph (d)(7) of this section.

(6) Except as provided in paragraph (d)(7) of this section, the exporter or re-exporter and importer were not responsible for the irregularities that occurred and have demonstrated one of the following:

(i) The Management Authority or officials designated to clear CITES shipments misinformed the exporter or re-exporter or the importer about the CITES requirements. In the United States, this would be an employee of the FWS (for any species) or APHIS or CBP (for plants).

(ii) The Management Authority unintentionally made a technical error that was not prompted by information provided by the applicant when issuing the CITES document.

(7) In the case of specimens for personal use, you must either show that you qualify under paragraph (d)(6) of this section, or that a genuine error was made and that there was no attempt to deceive. The following specimens for personal use may qualify for issuance of a retrospective document:

(i) Personal or household effects.

(ii) Live Appendix-II or -III specimens or live pre-Convention Appendix-I specimens that you own for your personal use, accompanied you, and number no more than two.

(iii) Parts, products, or derivatives of an Appendix-I species that qualify as pre-Convention when the following conditions are met:

(A) You own and possess the specimen for personal use.

(B) You either wore the specimen as clothing or an accessory or took it as part of your personal baggage, which was carried by you or checked as baggage on the same plane, boat, car, or train as you.

(C) The quantity is reasonably necessary or appropriate for the nature of your trip or stay.

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, the following condition applies: A CITES document issued for a shipment that has already occurred does not require validation.

(f) *Validation.* Submit the original unvalidated retrospective CITES document to the appropriate foreign authority. We will not validate the retrospective CITES document for a shipment that has already been shipped to a foreign country, and we do not require validation on retrospective documents issued by foreign Management Authorities.

§ 23.54 How long is a U.S. or foreign CITES document valid?

(a) *Purpose.* Article VI(2) of the Treaty sets the time period within which an export permit is valid. Validity periods for other CITES documents are prescribed in this section.

(b) *Time of validity.* CITES documents are valid only if presented for import or introduction from the sea within the time of validity (before midnight on the expiration date) noted on the face of the document.

(1) An export permit and re-export certificate will be valid for no longer than 6 months from the issuance date.

(2) An import permit, introduction-from-the-sea certificate, and certificate of origin will be valid for no longer than 12 months from the issuance date.

(3) A traveling-exhibition certificate and certificate of ownership will be valid for no longer than 3 years from the issuance date.

(4) Other CITES documents will state the length of their validity, but no U.S. CITES document will be valid for longer than 3 years from the issuance date.

(c) *Extension of validity.* The validity of a CITES document may not be extended beyond the expiration date on the face of the document, except under limited circumstances for certain timber species as outlined in § 23.73.

§ 23.55 How may I use a CITES specimen after import into the United States?

You may use CITES specimens after import into the United States for the following purposes:

If the species is listed in	Allowed use after import
(a) Appendix I except for specimens imported with a CITES exemption document listed in paragraph (d) of this section	The specimen may be used, including a transfer, donation, or exchange, only for noncommercial purposes.
(b) Appendix II with an annotation for noncommercial use where other specimens of that species are treated as listed in Appendix I	
(c) Appendix II and threatened under the ESA, except as provided in a special rule in for §§ 17.40 through 17.48 or under a permit granted under §§ 17.32 or 17.52	
(d) Appendix I, specimens imported with a CITES exemption document as follows: (1) U.S.-issued certificate for personally owned wildlife (2) Pre-Convention certificate (3) Export permit or re-export certificate for wildlife from a registered commercial breeding operation (4) Export permit or re-export certificate for a plant from a registered nursery or under a permit with a source code of "D." (5) U.S.-issued traveling-exhibition certificate	The specimen may be used for any purpose, except if the regulations in this part or other parts of this subchapter allowed the import only for noncommercial purposes, then the import and subsequent use must be only for noncommercial purposes.

If the species is listed in	Allowed use after import
(e) Appendix II, other than those in paragraphs (b) and (c) of this section.	
(f) Appendix III.	

§ 23.56 What U.S. CITES document conditions do I need to follow?

(a) *General conditions.* The following general conditions apply to all U.S. CITES documents:

(1) You must comply with the provisions of part 13 of this subchapter as conditions of the document, as well as other applicable regulations in this subchapter, including, but not limited to, any that require permits. You must comply with all applicable local, State, Federal, tribal, and foreign wildlife or plant conservation laws.

(2) For export and re-export of live wildlife and plants, transport conditions must comply with the *CITES Guidelines for Transport* or, in the case of air transport of live wildlife, with the *International Air Transport Association Live Animals Regulations.*

(3) You must return the original CITES document to the issuing office if you do not use it, it expires, or you request renewal or amendment.

(4) When appropriate, a Management Authority may require that you identify Appendix-II and -III wildlife or plants with a mark. All live Appendix-I wildlife must be securely marked or uniquely identified. Such mark or identification must be made in a way that the border official can verify that the specimen and CITES document correspond. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.

(b) *Standard conditions.* You must comply with the standard conditions provided in this part for specific types of CITES documents.

(c) *Special conditions.* We may place special conditions on a CITES document based on the needs of the species or the proposed activity. You must comply with any special conditions contained in or attached to a CITES document.

Subpart D—Factors Considered in Making Certain Findings

§ 23.60 What factors are considered in making a legal acquisition finding?

(a) *Purpose.* Articles III, IV, and V of the Treaty require a Management Authority to make a legal acquisition finding before issuing export permits and re-export certificates. The Parties have agreed that a legal acquisition finding must also be made before issuing certain CITES exemption documents.

(b) *Types of legal acquisition.* Legal acquisition refers to whether the specimen and its parental stock were:

(1) Obtained in accordance with the provisions of national laws for the protection of wildlife and plants. In the United States, these laws include all applicable local, State, Federal, tribal, and foreign laws; and

(2) If previously traded, traded internationally in accordance with the provisions of CITES.

(c) *How we make our findings.* We make a finding that a specimen was legally acquired in the following way:

(1) The applicant must provide sufficient information for us to make a legal acquisition finding.

(2) We make this finding after considering all available information.

(3) The amount of information we need to make the finding is based on our review of general factors described in paragraph (d) of this section and additional specific factors described in paragraphs (e) through (k) of this section.

(4) As necessary, we consult with foreign Management and Scientific Authorities, the CITES Secretariat, State conservation agencies, Tribes, FWS Law Enforcement, APHIS or CBP, and other appropriate experts.

(d) *Risk assessment.* We review the general factors listed in this paragraph and additional specific factors in paragraphs (e) through (k) of this section to assess the level of scrutiny and amount of information we need to make a finding of legal acquisition. We give less scrutiny and require less detailed information when there is a low risk that specimens to be exported or re-exported were not legally acquired, and give more scrutiny and require more detailed information when the proposed activity poses greater risk. We consider the cumulative risks, recognizing that each aspect of the international trade has a continuum of risk from high to low associated with it as follows:

(1) *Status of the species:* From Appendix I to Appendix III.

(2) *Origin of the specimen:* From wild-collected to born or propagated in a controlled environment to bred-in-captivity or artificially propagated.

(3) *Source of the propagule used to grow the plant:* From documentation that the plant was grown from a non-exempt seed or seedling to documentation that the plant was grown from an exempt seed or seedling.

(4) *Origin of the species:* From species native to the United States or its bordering countries of Mexico or Canada to non-native species from other countries.

(5) *Volume of legal trade:* From low to high occurrence of legal trade.

(6) *Volume of illegal trade:* From high to low occurrence of illegal trade.

(7) *Type of trade:* From commercial to noncommercial.

(8) *Trade by range countries:* From range countries that do not allow commercial export, or allow only limited noncommercial export of the species, to range countries that allow commercial export in high volumes.

(9) *Occurrence of the species in a controlled environment in the United States:* From uncommon to common in a controlled environment in the United States.

(10) *Ability of the species to be bred or propagated readily in a controlled environment:* From no documentation that the species can be bred or propagated readily in a controlled environment to widely accepted information that the species is commonly bred or propagated.

(11) *Genetic status of the specimen:* From a purebred species to a hybrid.

(e) *Captive-bred wildlife or a cultivated plant.* For a specimen that is captive-bred or cultivated, we may consider whether the parental stock was legally acquired.

(f) *Confiscated specimen.* For a confiscated Appendix-II or -III specimen, we consider whether information shows that the transfer of the confiscated specimen or its offspring met the conditions of the remission decision, legal settlement, or disposal action after forfeiture or abandonment.

(g) *Donated specimen of unknown origin.* For an unsolicited specimen of unknown origin donated to a public institution (see § 10.12 of this subchapter), we consider whether:

(1) The public institution follows standard recordkeeping practices and has made reasonable efforts to obtain supporting information on the origin of the specimen.

(2) The public institution provides sufficient information to show it made a reasonable effort to find a suitable recipient in the United States.

(3) The export will provide a conservation benefit to the species.

(4) No persuasive information exists on illegal transactions involving the specimen.

(5) The export is noncommercial, with no money or barter exchanged except for shipping costs.

(6) The institution has no history of receiving a series of rare and valuable specimens or a large quantity of wildlife or plants of unknown origin.

(h) *Imported previously.* For a specimen that was previously imported into the United States, we consider any reliable, relevant information we receive concerning the validity of a CITES document, regardless of whether the shipment was cleared by FWS, APHIS, or CBP.

(i) *Personal use.* For a wildlife or plant specimen that is being exported or re-exported for personal use by the applicant, we consider whether:

(1) The specimen was acquired in the United States and possessed for strictly personal use.

(2) The number of specimens is reasonably appropriate for the nature of your export or re-export as personal use.

(3) No persuasive evidence exists on illegal transactions involving the specimen.

(j) *Sequential ownership.* For a specimen that was previously possessed by someone other than the applicant, we may consider the history of ownership for a specimen and its parental stock, breeding stock, or cultivated parental stock.

(k) *Wild-collected in the United States.* For a specimen collected from the wild in the United States, we consider the site where the specimen was collected, whether the species is known to occur at that site, the abundance of the species at that site, and if necessary, whether permission of the appropriate management agency or landowner was obtained to collect the specimen.

§ 23.61 What factors are considered in making a non-detriment finding?

(a) *Purpose.* Articles III and IV of the Treaty require that, before we issue a CITES document, we find that a proposed export or introduction from the sea of Appendix-I or -II specimens is not detrimental to the survival of the species and that a proposed import of an Appendix-I specimen is not for purposes that would be detrimental to the survival of the species.

(b) *Types of detriment.* Detrimental activities, depending on the species, could include, among other things, nonsustainable use and any activities that would pose a net harm to the status of the species in the wild. For Appendix-I species, it also includes use or removal from the wild that results in habitat loss or destruction, interference with recovery efforts for a species, or stimulation of further trade.

(c) *General factors.* The applicant must provide sufficient information for us to make a finding of non-detriment. In addition to factors in paragraphs (d) and (e) of this section, we will consider whether:

(1) Biological and management information demonstrates that the proposed activity represents sustainable use.

(2) The removal of the animal or plant from the wild is part of a biologically based sustainable-use management plan that is designed to eliminate over-utilization of the species.

(3) If no sustainable-use management plan has been established, the removal of the animal or plant from the wild would not contribute to the over-utilization of the species, considering both domestic and international uses.

(4) The proposed activity, including the methods used to acquire the specimen, would pose no net harm to the status of the species in the wild.

(5) The proposed activity would not lead to long-term declines that would place the viability of the affected population in question.

(6) The proposed activity would not lead to significant habitat or range loss or restriction.

(d) *Additional factor for Appendix-II species.* In addition to the general factors in paragraph (c) of this section, we will consider whether the intended export of an Appendix-II species would cause a significant risk that the species would qualify for inclusion in Appendix I.

(e) *Additional factors for Appendix-I species.* In addition to the general factors in paragraph (c) of this section, we will consider whether the proposed activity:

(1) Would not cause an increased risk of extinction for either the species as a whole or the population from which the specimen was obtained.

(2) Would not interfere with the recovery of the species.

(3) Would not stimulate additional trade in the species. If the proposed activity does stimulate trade, we will consider whether the anticipated increase in trade would lead to the decline of the species.

(f) *How we make our findings.* We base the non-detriment finding on the best available biological information. We also consider trade information, including trade demand, and other scientific management information.

(1) We consult with the States, Tribes, other Federal agencies, scientists, other experts, and the range countries of the species.

(2) We consult with the Secretariat and other Parties to monitor the level of trade that is occurring in the species.

(3) Based on the factors in paragraphs (c) through (e) of this section, we evaluate the biological impact of the proposed activity.

(4) In cases where insufficient information is available or the factors above are not satisfactorily addressed, we take precautionary measures and would be unable to make the required finding of non-detriment.

(g) *Risk assessment.* We review the status of the species in the wild and the degree of risk the proposed activity poses to the species to determine the level of scrutiny needed to make a finding. We give greater scrutiny and require more detailed information for activities that pose a greater risk to a species in the wild. We consider the cumulative risks, recognizing that each aspect of international trade has a continuum of risk (from high to low) associated with it as follows:

(1) *Status of the species:* From Appendix I to Appendix II.

(2) *Origin of the specimen:* From wild-collected to born or propagated in a controlled environment to bred-in-captivity or artificially propagated.

(3) *Source of the propagule used to grow the plant:* From documentation that the plant was grown from a non-exempt seed or seedling to documentation that the plant was grown from an exempt seed or seedling.

(4) *Origin of the species:* From native species to non-native species.

(5) *Volume of legal trade:* From low to high occurrence of legal trade.

(6) *Volume of illegal trade:* From high to low occurrence of illegal trade.

(7) *Type of trade:* From commercial to noncommercial.

(8) *Genetic status of the specimen:* From a purebred species to a hybrid.

(9) *Risk of disease transmission:* From high to limited risk of disease transmission.

(10) *Basis for listing:* From listed under Article II(1) or II(2)(a) of the Treaty to listed under Article II(2)(b).

(h) *Quotas for Appendix-I species.* When an export quota has been set by the CoP for an Appendix-I species, we will consider the scientific and management aspects used as the basis of the quota together with the best available biological information when we make our non-detriment finding. We

will contact the Scientific and Management Authorities of the exporting country for further information if needed.

§ 23.62 What factors are considered in making a finding of not for primarily commercial purposes?

(a) *Purpose.* Under Article III(3(c)) and (5(c)) of the Treaty, an import permit or an introduction-from-the-sea certificate for Appendix-I species can be issued only if the Management Authority is satisfied that the specimen is not to be used for primarily commercial purposes. Trade in Appendix-I species must be subject to particularly strict regulation and authorized only in exceptional circumstances.

(b) *How we make our findings.* We must find that the intended use of the Appendix-I specimen is not for primarily commercial purposes before we can issue a CITES document.

(1) We will make this decision on a case-by-case basis considering all available information.

(2) The applicant must provide sufficient information to satisfy us that the intended use is not for primarily commercial purposes.

(3) The definitions of ''commercial'' and ''primarily commercial purposes'' in § 23.5 apply.

(4) We will look at all aspects of the intended use of the specimen. If the noncommercial aspects do not clearly predominate, we will consider the import or introduction from the sea to be for primarily commercial purposes.

(5) While the nature of the transaction between the owner in the country of export and the recipient in the country of import or introduction from the sea may have some commercial aspects, such as the exchange of money to cover the costs of shipment and care of specimens during transport, it is the intended use of the specimen, including the purpose of the export, that must not be for primarily commercial purposes.

(6) We will conduct an assessment of factors listed in paragraph (d) of this section. For high-risk activities involving an anticipated measurable increase in revenue and other economic value due to incidental aspects of the intended use, we will conduct an analysis as described in paragraph (e) of this section.

(7) All net profits generated in the United States from high-risk activities must be used for the conservation of the Appendix-I species in a range country.

(c) *Examples.* The following are examples of types of transactions in which the noncommercial aspects of the intended use of the specimen may predominate depending on the facts of each situation. The discussions of each example provide further guidance in assessing the actual degree of commerciality on a case-by-case basis. These examples outline circumstances commonly encountered and do not cover all situations where import or introduction from the sea could be found to be not for primarily commercial purposes.

(1) *Personal use.* Import or introduction from the sea of an Appendix-I specimen for personal use generally is considered to be not for primarily commercial purposes. An example is the import of a personal sport-hunted trophy by the person who hunted the wildlife for display in his or her own home.

(2) *Scientific purposes.* The import or introduction from the sea of an Appendix-I specimen by a scientist or scientific institution may be permitted in situations where resale, commercial exchange, or exhibit for economic benefit of the specimen is not the primary intended use.

(3) *Conservation, education, or training.* Generally an Appendix-I specimen may be imported or introduced from the sea by government agencies or nonprofit institutions for purposes of conservation, education, or training. For example, a specimen could be imported or introduced from the sea primarily to train customs staff in effective CITES control, such as for identification of certain types of specimens.

(4) *Biomedical industry.* Import or introduction from the sea of an Appendix-I specimen by an institution or company in the biomedical industry is initially presumed to be commercial since specimens are typically imported or introduced from the sea to develop and sell products that promote public health for profit. However, if the importer clearly shows that the sale of products is only incidental to public health research and not for the primary purpose of economic benefit or profit, then such an import or introduction from the sea could be considered as scientific research under paragraph (c)(2) of this section if the principles of paragraph (b) of this section are met.

(5) *Captive-breeding or artificial propagation programs.* The import of an Appendix-I specimen for purposes of establishing a commercial operation for breeding or artificial propagation is considered to be for primarily commercial purposes. As a general rule, import or introduction from the sea of an Appendix-I specimen for a captive-breeding or artificial propagation program must have as a priority the long-term protection and recovery of the species in the wild. The captive-breeding or artificial propagation program must be part of a program aimed at the recovery of the species in the wild and be undertaken with the support of a country within the species' native range. Any profit gained must be used to support this recovery program. If a captive-breeding or artificial propagation operation plans to sell surplus specimens to help offset the costs of its program, import or introduction from the sea would be allowed only if any profit would be used to support the captive-breeding or artificial propagation program to the benefit of the Appendix-I species, not for the personal economic benefit of a private individual or share-holder.

(6) *Professional dealers.* Import or introduction from the sea by a professional dealer who states a general intention to eventually sell the specimen to an undetermined recipient would be considered to be for primarily commercial purposes. However, import or introduction from the sea through a professional dealer by a qualified applicant may be acceptable if the ultimate intended use would be for one of the purposes set out in paragraphs (c)(2), (3), and (5) of this section and where a binding contract, conditioned on the issuing of permits, is in place.

(d) *Risk assessment.* We review the factors listed in this paragraph (d) to assess the level of scrutiny and amount of information we need to make a finding of whether the intended use of the specimen is not for primarily commercial purposes. We give less scrutiny and require less detailed information when the import or introduction from the sea poses a low risk of being primarily commercial, and give more scrutiny and require more detailed information when the proposed activity poses greater risk. We consider the cumulative risks, recognizing that each aspect of the international trade has a continuum of risk from high to low associated with it as follows:

(1) *Type of importer:* From for-profit entity to private individual to nonprofit.

(2) *Ability of the proposed uses to generate revenue:* From the ability to generate measurable increases in revenue or other economic value to no anticipated increases in revenue or other economic value.

(3) *Appeal of the species:* From high public appeal to low public appeal.

(4) *Occurrence of the species in the United States:* From uncommon to common in a controlled environment in the United States.

(5) *Intended use of offspring:* From commercial to noncommercial.

(e) *Analysis of anticipated revenues and other economic value.* We will analyze revenues and other economic value anticipated to result from the use of the specimen for high-risk activities.

(1) We will examine the proposed use of any net profits generated in the United States. We consider net profit to include all funds or other valuable considerations (including enhanced value of common stock shares) received or attained by you or those affiliated with you as a result of the import or introduction from the sea, to the extent that such funds or other valuable considerations exceed the reasonable expenses that are properly attributable to the proposed activity.

(2) We will consider any conservation project to be funded and, if the species was or is to be taken from the wild, how the project benefits the species in its native range, including agreements, timeframes for accomplishing tasks, and anticipated benefits to the species.

(3) We will consider any plans to monitor a proposed conservation project, including expenditure of funds or completion of tasks.

(4) In rare cases involving unusually high net profits, we will require the applicant to provide a detailed analysis of expected revenue (both direct and indirect) and expenses to show anticipated net profit, and a statement from a licensed, independent certified public accountant that the internal accounting system is sufficient to account for and track funds generated by the proposed activities.

§ 23.63 What factors are considered in making a finding that an animal is bred-in-captivity?

(a) *Purpose.* Article VII(4) and (5) of the Treaty provide exemptions that allow for the special treatment of wildlife that was bred-in-captivity (see §§ 23.41 and 23.46).

(b) *Definitions.* The following terms apply when determining whether specimens qualify as ''bred-in-captivity:''

(1) A *controlled environment* means one that is actively manipulated for the purpose of producing specimens of a particular species; that has boundaries designed to prevent specimens, including eggs or gametes, from entering or leaving the controlled environment; and has general characteristics that may include artificial housing, waste removal, provision of veterinary care, protection from predators, and artificially supplied food.

(2) *Breeding stock* means an ensemble of captive wildlife used for reproduction.

(c) *Bred-in-captivity criteria.* For a specimen to qualify as bred-in-captivity, we must be satisfied that all the following criteria are met:

(1) If reproduction is sexual, the specimen was born to parents that either mated or transferred gametes in a controlled environment.

(2) If reproduction is asexual, the parent was in a controlled environment when development of the offspring began.

(3) The breeding stock meets all of the following criteria:

(i) Was established in accordance with the provisions of CITES and relevant national laws.

(ii) Was established in a manner not detrimental to the survival of the species in the wild.

(iii) Is maintained with only occasional introduction of wild specimens as provided in paragraph (d) of this section.

(iv) Has consistently produced offspring of second or subsequent generations in a controlled environment, or is managed in a way that has been demonstrated to be capable of reliably producing second-generation offspring and has produced first-generation offspring.

(d) *Addition of wild specimens.* A very limited number of wild specimens (including eggs or gametes) may be introduced into a breeding stock if all of the following conditions are met:

(1) The specimens were acquired in accordance with the provisions of CITES and relevant national laws.

(2) The specimens were acquired in a manner not detrimental to the survival of the species in the wild.

(3) The specimens were added either to prevent or alleviate deleterious inbreeding, with the number of specimens added as determined by the need for new genetic material, or to dispose of confiscated animals.

§ 23.64 What factors are considered in making a finding that a plant is artificially propagated?

(a) *Purpose.* Article VII(4) and (5) of the Treaty provide special treatment of plants that were artificially propagated (see §§ 23.40 and 23.47).

(b) Definitions. The following terms apply when determining whether specimens qualify as ''artificially propagated:''

(1) *Controlled conditions* means a nonnatural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include, but are not limited to, tillage, fertilization, weed and pest control, irrigation, or nursery operations such as potting, bedding, or protection from weather.

(2) *Cultivated parental stock* means the ensemble of plants grown under controlled conditions that are used for reproduction.

(c) *Artificially propagated criteria.* Except as provided in paragraphs (f) and (g) of this section, for a plant specimen to qualify as artificially propagated, we must be satisfied that the plant specimen was grown under controlled conditions from a seed, cutting, division, callus tissue, other plant tissue, spore, or other propagule that either is exempt from the provisions of CITES or has been derived from cultivated parental stock. The cultivated parental stock meets all of the following criteria:

(1) Was established in accordance with the provisions of CITES and relevant national laws.

(2) Was established in a manner not detrimental to the survival of the species in the wild.

(3) Is maintained in sufficient quantities for propagation so as to minimize or eliminate the need for augmentation from the wild, with such augmentation occurring only as an exception and limited to the amount necessary to maintain the vigor and productivity of the cultivated parental stock.

(d) *Cutting or division.* A plant grown from a cutting or division is considered to be artificially propagated only if the traded specimen does not contain any material collected from the wild.

(e) *Grafted plant.* A grafted plant is artificially propagated only when both the rootstock and the material grafted to it have been taken from specimens that were artificially propagated in accordance with paragraph (c) of this section. A grafted specimen that consists of taxa from different Appendices is treated as a specimen of the taxon listed in the more restrictive Appendix.

(f) *Timber.* Timber taken from trees planted and grown in a monospecific plantation is considered artificially propagated if the seeds or other propagules from which the trees are grown were legally acquired and obtained in a non-detrimental manner.

(g) *Exception for certain plant specimens grown from wild-collected seeds or spores.* Plant specimens grown from wild-collected seeds or spores may be considered artificially propagated only when all of the following conditions have been met:

(1) Establishment of a cultivated parental stock for the taxon presents significant difficulties because

specimens take a long time to reach reproductive age.

(2) The seeds or spores are collected from the wild and grown under controlled conditions within a range country, which must also be the country of origin of the seeds or spores.

(3) The Management Authority of the range country has determined that the collection of seeds or spores was legal and consistent with relevant national laws for the protection and conservation of the species.

(4) The Scientific Authority of the range country has determined that collection of the seeds or spores was not detrimental to the survival of the species in the wild, and allowing trade in such specimens has a positive effect on the conservation of wild populations. In making these determinations, all of the following conditions must be met:

(i) The collection of seeds or spores for this purpose must be limited in such a manner as to allow regeneration of the wild population.

(ii) A portion of the plants produced must be used to establish plantations to serve as cultivated parental stock in the future and become an additional source of seeds or spores and thus reduce or eliminate the need to collect seeds from the wild.

(iii) A portion of the plants produced must be used for replanting in the wild, to enhance recovery of existing populations or to re-establish populations that have been extirpated.

(5) Operations propagating Appendix-I species for commercial purposes must be registered with the CITES Secretariat in accordance with the Guidelines for the registration of nurseries exporting artificially propagated specimens of Appendix-I species.

§ 23.65 What factors are considered in making a finding that an applicant is suitably equipped to house and care for a live specimen?

(a) *Purpose.* Under Article III(3)(b) and (5)(b) of the Treaty, an import permit or introduction-from-the-sea certificate for live Appendix-I specimens can be issued only if we are satisfied that the recipients are suitably equipped to house and care for them.

(b) *General principles.* We will follow these general principles in making a decision on whether an applicant has facilities that would provide proper housing to maintain the specimens for the intended purpose and the expertise to provide proper care and husbandry or horticultural practices.

(1) All persons who would be receiving a specimen must be identified in an application and their facilities approved by us, including persons who are likely to receive a specimen within 1 year after it arrives in the United States.

(2) The applicant must provide sufficient information for us to make a finding, including, but not limited to, a description of the facility, photographs, or construction plans, and resumes of the recipient or staff who will care for the specimen.

(3) We use the best available information on the requirements of the species in making a decision and will consult with experts and other Federal and State agencies, as necessary and appropriate.

(4) The degree of scrutiny that we give an application is based on the biological and husbandry or horticultural needs of the species.

(c) *Specific factors considered for wildlife.* In addition to the general provisions in paragraph (e) of this section, we consider the following factors in evaluating suitable housing and care for wildlife:

(1) Enclosures constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.

(2) Appropriate forms of environmental enrichment, such as nesting material, perches, climbing apparatus, ground substrate, or other species-specific materials or objects.

(3) If the wildlife is on public display, an off-exhibit area, consisting of indoor and outdoor accommodations, as appropriate, that can house the wildlife on a long-term basis if necessary.

(4) Provision of water and nutritious food of a nature and in a way that are appropriate for the species.

(5) Staff who are trained and experienced in providing proper daily care and maintenance for the species being imported or introduced from the sea, or for a closely related species.

(6) Readily available veterinary care or veterinary staff experienced with the species or a closely related species, including emergency care.

(d) *Specific factors considered for plants.* In addition to the general provisions in paragraph (e) of the section, we consider the following factors in evaluating suitable housing and care for plants:

(1) Sufficient space, appropriate lighting, and other environmental conditions that will ensure proper growth and reproduction.

(2) Ability to provide appropriate culture, such as water, fertilizer, and pest and disease control.

(3) Staff with experience with the imported species or related species with similar horticultural requirements.

(e) *General factors considered for wildlife and plants.* In addition to the specific provisions in paragraphs (c) or (d) of this section, we will consider the following factors in evaluating suitable housing and care for wildlife and plants:

(1) Adequate enclosures or holding areas to prevent escape or unplanned exchange of genetic material with specimens of the same or different species outside the facility.

(2) Appropriate security to prevent theft of specimens and measures taken to rectify any previous theft or security problem.

(3) A reasonable survival rate of specimens of the same species or, alternatively, closely related species at the facility, including number of births or plants propagated, mortalities for the previous 3 years, significant injuries to wildlife or damage to plants, occurrence of significant disease outbreaks during the previous 3 years, and measures taken to prevent similar mortalities, injuries, damage, or diseases. Significant injuries, damage, or disease outbreaks are those that are permanently debilitating or re-occurring.

(4) Sufficient funding on a long-term basis to cover the cost of maintaining the facility and the specimens imported.

(f) *Incomplete facilities or insufficient staff.* For applications submitted to us before the facilities to hold the specimen are completed or the staff is identified or properly trained, we will:

(1) Review all available information, including construction plans or intended staffing, and make a finding based on this information.

(2) Place a condition on any permit that the import cannot occur until the facility has been completed or the staff hired and trained, and approved by us.

Subpart E—International Trade in Certain Specimens

§ 23.68 How can I trade internationally in roots of American ginseng?

(a) *U.S. and foreign general provisions.* Whole plants and roots (whole, sliced, and parts, excluding manufactured parts, products, and derivatives, such as powders, pills, extracts, tonics, teas, and confectionery) of American ginseng (*Panax quinquefolius*), whether wild or artificially propagated, are included in Appendix II. Cultivated American ginseng that does not meet the requirements of artificially propagated

will be considered wild for export purposes. The import, export, or re-export of ginseng roots must meet the requirements of this section and other requirements of this part (see subparts B and C for prohibitions and application procedures). For specimens that were harvested from a State or Tribe without an approved CITES export program, see § 23.36 for export permits and § 23.37 for re-export certificates.

(b) *Export approval of State and tribal programs.* States and Tribes set up and maintain ginseng management and harvest programs designed to monitor and protect American ginseng from over-harvest. When a State or Tribe with a management program provides us with the necessary information, we make programmatic findings and have specific requirements that allow export under CITES. For wild ginseng, a State or Tribe must provide sufficient information for us to determine that its management program and harvest controls are appropriate to ensure that ginseng harvested within its jurisdiction is legally acquired and that export will not be detrimental to the survival of the species in the wild. For artificially propagated ginseng, a State or Tribe must provide sufficient information for us to determine that ginseng grown within its jurisdiction meets the definition of artificially propagated and the State or Tribe must have procedures in place to minimize the risk that the roots of wild-collected plants would be claimed as artificially propagated.

(1) A State or Tribe seeking initial CITES export program approval for wild or artificially propagated American ginseng must submit the following information on the adoption and implementation of regulatory measures to the U.S. Management Authority:

(i) Laws or regulations mandating licensing or registration of persons buying and selling ginseng in that State or on tribal lands.

(ii) A requirement that ginseng dealers maintain records and provide copies of those records to the appropriate State or tribal management agency upon request. Dealer records must contain: the name and address of the ginseng seller, date of transaction, whether the ginseng is wild or artificially propagated and dried or green at time of transaction, weight of roots, State or Tribe of origin of roots, and identification numbers of the State or tribal certificates used to ship ginseng from the State or Tribe of origin.

(iii) A requirement that State or tribal personnel will inspect roots, ensure legal harvest, and have the ability to determine the age of roots of all wild-collected ginseng harvested in the State or on tribal lands. State or tribal personnel may accept a declaration statement by the licensed or registered dealer or grower that the ginseng roots are artificially propagated.

(iv) A requirement that State or tribal personnel will weigh ginseng roots unsold by March 31 of the year after harvest and give a weight receipt to the owner of the roots. Future export certification of this stock must be issued against the weight receipt.

(v) A requirement that State or tribal personnel will issue certificates of origin for wild and artificially propagated ginseng. Certificates of origin must contain at a minimum:

(A) State of origin.

(B) Serial number of certificate.

(C) Dealer's State or tribal license or registration number.

(D) Dealer's shipment number for that harvest season.

(E) Year of harvest of ginseng being certified.

(F) Designation as wild or artificially propagated.

(G) Designation as dried or fresh (green) roots.

(H) Weight of roots.

(I) Statement of State or tribal certifying official verifying that the ginseng was obtained in that State or on those tribal lands in accordance with all relevant laws for that harvest year.

(J) Name and title of State or tribal certifying official.

(2) In addition, a State or Tribe seeking initial CITES export program approval for wild American ginseng must submit the following information to the U.S. Management Authority:

(i) An assessment of the condition of the population and trends, including a description of the types of information on which the assessment is based, for example, an analysis of population demographics; population models; or analysis of past harvest levels or indices of abundance independent of harvest information, such as field surveys.

(ii) Historic, present, and potential distribution of wild ginseng on a county-by-county basis.

(iii) Phenology of ginseng, including flowering and fruiting periods.

(iv) Habitat evaluation.

(v) If available, copies of any ginseng management or monitoring plans or other relevant reports that the State or Tribe has prepared as part of its existing management program.

(3) A State or Tribe with an approved CITES export program must complete Form 3–200–61 and submit it to the U.S. Management Authority by May 1 of each year to provide information on the previous harvest season.

(c) *U.S. application process.* Application forms and a list of States and Tribes with approved ginseng programs can be obtained from our website or by contacting us.

(1) To export wild or artificially propagated ginseng harvested under an approved State or tribal program, complete Form 3–200–34 or Form 3–200–74 for additional single-use permits under an annual program file.

(2) To export wild ginseng harvested from a State or Tribe that does not have an approved program, complete Form 3–200–32. To export artificially propagated ginseng from a State or Tribe that does not have an approved program, complete Form 3–200–33.

(3) To re-export ginseng, complete Form 3–200–32.

(4) For information on issuance criteria for CITES documents, see § 23.36 for export permits, § 23.37 for re-export certificates, and § 23.40 for certificates for artificially propagated plants.

(d) *Conditions for export.* Upon export, roots must be accompanied by a certificate of origin containing the information specified in paragraph (b)(1)(v) of this section.

§ 23.69 How can I trade internationally in fur skins and and fur skin products of bobcat, river otter, Canada lynx, gray wolf, and brown bear?

(a) *U.S. and foreign general provisions.* For purposes of this section, *CITES furbearers* means bobcat (*Lynx rufus*), river otter (*Lontra canadensis*), Canada lynx (*Lynx canadensis*), gray wolf (*Canis lupus*), and brown bear (*Ursus arctos*) that are included in Appendix II based on Article II(2)(b) of the Treaty (see § 23.89). The import, export, or re-export of fur skins and fur skin products must meet the requirements of this section and the other requirements of this part (see subparts B and C for prohibitions and application procedures). For specimens that were harvested from a State or Tribe without an approved CITES export program, see § 23.36 for export permits and § 23.37 for re-export certificates.

(b) *Export approval of State and tribal programs.* States and Tribes set up and maintain management and harvest programs designed to monitor and protect CITES furbearers from over-harvest. When a State or Tribe with a management program provides us with the necessary information, we make programmatic findings and have specific requirements that allow export under CITES. A State or Tribe must provide sufficient information for us to determine that its management program and harvest controls are appropriate to ensure that CITES furbearers harvested

within its jurisdiction are legally acquired and that export will not be detrimental to the survival of the species in the wild.

(1) A State or Tribe seeking initial CITES export program approval must submit the following information to the U.S. Management Authority:

(i) An assessment of the condition of the population and a description of the types of information on which the assessment is based, for example, an analysis of carcass demographics, population models, analysis of past harvest levels as a function of fur prices or trapper effort, or indices of abundance independent of harvest information, such as scent station surveys, archer surveys, track or scat surveys, or road kill counts.

(ii) Current harvest control measures, including laws regulating harvest, seasons and methods.

(iii) Total allowable harvest of the species.

(iv) Distribution of harvest.

(v) Indication of how frequently harvest levels are evaluated.

(vi) Tagging or marking requirements for fur skins.

(vii) Habitat evaluation.

(viii) If available, copies of any furbearer management plans or other relevant reports that the State or Tribe has prepared as part of its existing management program.

(2) A State or Tribe with an approved CITES export program must submit a CITES furbearer activity report to the U.S. Management Authority by October 31 of each year that provides information regarding harvest during the previous year. This report may reference information provided in previous years if the information has not changed. A furbearer activity report, at a minimum, should include the following:

(i) For each species, the number of specimens taken and the number of animals tagged, if different.

(ii) An assessment of the status of each species for which export is approved with an indication of whether the population is stable, increasing, or decreasing, and at what rate (if known). If population levels are decreasing, the activity report should include the State or Tribe's professional assessment of the reason for the decline and any steps being taken to address it.

(iii) Information on, and a copy of, any changes in laws or regulations affecting these species.

(iv) If available, copies of relevant reports that the State or Tribe has prepared during the year in question as part of its existing management programs for CITES furbearers.

(c) *CITES tags.* Unless an alternative method has been approved, each CITES fur skin to be exported or re-exported must have a U.S. CITES tag permanently attached.

(1) The tag must be inserted through the skin and permanently locked in place using the locking mechanism of the tag.

(2) The legend on the CITES tag must include the US-CITES logo, an abbreviation for the State or Tribe of harvest, a standard species code assigned by the Management Authority, and a unique serial number.

(3) Fur skins with broken, cut, or missing tags may not be exported. Replacement tags must be obtained before the furs are presented for export or re-export. To obtain a replacement tag, either from the State or Tribe that issued the original tag or from us, you must provide information to show that the fur was legally acquired.

(i) When a tag is broken, cut, or missing you may contact the State or Tribe of harvest for a replacement tag. If the State or Tribe cannot replace it, you may apply to FWS Law Enforcement for a replacement tag. If the tag is broken or cut, you must give us the tag. If the tag is missing, you must provide details concerning how the tag was lost. If we are satisfied that the fur was legally acquired, we will provide a CITES replacement tag.

(ii) A replacement tag must meet all of the requirements in paragraph (c) of this section, except the legend will include only the US-CITES logo, FWS-REPL, and a unique serial number.

(4) Tags are not required on fur skin products.

(d) *Documentation requirements.* The U.S. CITES export permit or an annex attached to the permit must contain all information that is given on the tag.

(e) *U.S. application process.* Application forms and a list of States and Tribes with approved furbearer programs can be obtained from our website or by contacting us.

(1) To export fur skins taken under an approved State or tribal program, complete Form 3–200–26 and submit it to either FWS Law Enforcement or the U.S. Management Authority.

(2) To export fur skins that were not harvested under an approved program, complete Form 3–200–27 and submit it to the U.S. Management Authority.

(3) To re-export fur skins, complete Form 3–200–73 and submit it either to FWS Law Enforcement or the U.S. Management Authority.

(4) For information on issuance criteria for CITES documents, see § 23.36 for export permits and § 23.37 for re-export certificates.

(f) *Conditions for export.* Upon export, each fur skin, other than a fur skin product, must be clearly identified in accordance with paragraph (c) of this section.

§ 23.70 How can I trade internationally in American alligator and other crocodilian skins, parts and products?

(a) *U.S. and foreign general provisions.* For the purposes of this section, crocodilian means all species of alligator, caiman, crocodile, and gavial of the order Crocodylia. The import, export, or re-export of any crocodilian skins, parts, or products must meet the requirements of this section and the other requirements of this part (see subparts B and C for prohibitions and application procedures). For American alligator specimens harvested from a State or Tribe without an approved CITES export program, see § 23.36 for export permits and § 23.37 for re-export certificates.

(b) *Definitions.* Terms used in this section are defined as follows:

(1) *Crocodilian skins* means whole or partial skins, flanks, chalecos, and bellies (including those that are salted, crusted, tanned, partially tanned, or otherwise processed), including skins of sport-hunted trophies.

(2) *Crocodilian parts* means body parts with or without skin attached (including tails, throats, feet, meat, skulls, and other parts) and small cut skin pieces.

(c) *Export approval of State and tribal programs for American alligator.* States and Tribes set up and maintain management and harvest programs designed to monitor and protect American alligators from over-harvest. When a State or Tribe with a management program provides us with the necessary information, we make programmatic findings and have specific requirements that allow export under CITES. A State or Tribe must provide sufficient information for us to determine that its management program and harvest controls are appropriate to ensure that alligators harvested within its jurisdiction are legally acquired and that the export will not be detrimental to the survival of the species in the wild.

(1) A State or Tribe seeking initial CITES export program approval must submit the following to the U.S. Management Authority:

(i) An assessment of the condition of the wild population and a description of the types of information on which the assessment is based, for example, an analysis of carcass demographics, population models, analysis of past harvest levels as a function of skin

prices or harvester effort, or indices of abundance independent of harvest information, such as nest surveys, spotlighting surveys, or nuisance complaints.

(ii) Current harvest control measures, including laws regulating harvest, seasons, and methods.

(iii) Total allowable harvest of the species.

(iv) Distribution of harvest.

(v) Indication of how frequently harvest levels are evaluated.

(vi) Tagging or marking requirements for skins and parts.

(vii) Habitat evaluation.

(viii) Information on nuisance alligator management programs.

(ix) Information on alligator farming programs, including whether collecting and rearing of eggs or hatchlings is allowed, what factors are used to set harvest levels, and whether any alligators are returned to the wild.

(x) If available, copies of any alligator management plans or other relevant reports for American alligator that the State or Tribe has prepared as part of its existing management program.

(2) A State or Tribe with an approved CITES export program must submit an American alligator activity report to the U.S. Management Authority by July 1 of each year to provide information regarding harvests during the previous year. This report may reference information provided in previous years if the information has not changed. An American alligator activity report, at a minimum, should include the following:

(i) The total number of skins from wild or farmed alligators that were tagged by the State or Tribe.

(ii) An assessment of the status of the alligator population with an indication of whether the population is stable, increasing, or decreasing, and at what rate (if known). If population levels are decreasing, activity reports should include the State or Tribe's professional assessment of the reason for the decline and any steps being taken to address it.

(iii) For wild alligators, information on harvest, including harvest of nuisance alligators, methods used to determine harvest levels, demographics of the harvest, and methods used to determine the total number and population trends of alligators in the wild.

(iv) For farmed alligators, information on whether collecting and rearing of eggs or hatchlings is allowed, what factors are used to set harvest levels, and whether any alligators are returned to the wild.

(v) Information on, and a copy of, any changes in laws or regulations affecting the American alligator.

(vi) If available, copies of relevant reports that the State or Tribe has prepared during the reporting period as part of its existing management program for the American alligator.

(3) We provide CITES export tags to States and Tribes with approved CITES export programs. American alligator skins and parts must meet the marking and tagging requirements of paragraphs (d), (e), and (f) of this section.

(d) *Tagging of crocodilian skins.* You may import, export, or re-export any crocodilian skin only if a non-reusable tag is inserted through the skin and locked in place using the locking mechanism of the tag. A mounted sport-hunted trophy must be accompanied by the tag from the skin used to make the mount.

(1) Except as provided for a replacement tag in paragraph (d)(3)(ii) of this section, the tag must:

(i) Be self-locking, heat resistant, and inert to chemical and mechanical processes.

(ii) Be permanently stamped with the two-letter ISO code for the country of origin, a unique serial number, a standardized species code (available on our Web site), and the year of production or harvest. For American alligator, the export tags include the US–CITES logo, an abbreviation for the State or Tribe of harvest, a standard species code (MIS = *Alligator mississippiensis*), the year of taking, and a unique serial number.

(iii) If the year of production or harvest and serial number appear next to each other on a tag, the information should be separated by a hyphen.

(2) Skins and flanks must be individually tagged, and chalecos must have a tag attached to each flank.

(3) Skins with broken, cut, or missing tags may not be exported. Replacement tags must be obtained before the skins are presented for import, export, or re-export. To obtain a replacement tag, either from the State or Tribe of harvest (for American alligator) or from us, you must provide information to show that the skin was legally acquired.

(i) In the United States, when an American alligator tag is broken, cut, or missing you may contact the State or Tribe of harvest for a replacement tag. If the State or Tribe cannot replace it, you may apply to FWS Law Enforcement for a replacement tag. To obtain replacement tags for crocodilian skins other than American alligator in the United States, contact FWS Law Enforcement. If the tag is broken or cut, you must give us the tag. If the tag is missing, you must provide details concerning how the tag was lost. If we are satisfied that the skin was legally acquired, we will provide a CITES replacement tag.

(ii) A replacement tag must meet all of the requirements in paragraph (d)(1) of this section except that the species code and year of production or harvest will not be required, and for re-exports the country of re-export must be shown in place of the country of origin. In the United States, the legend will include the US–CITES logo, FWS–REPL, and a unique serial number.

(e) *Meat and skulls.* Except for American alligator, you may import, export, or re-export crocodilian meat and skulls without tags or markings. American alligator meat and skulls may be imported, exported, or re-exported if packaged and marked or tagged in accordance with State or tribal laws as follows:

(1) Meat from legally harvested and tagged alligators must be packed in permanently sealed containers and labeled as required by State or tribal laws or regulations. Bulk meat containers must be marked with any required State or tribal parts tag or bulk meat tag permanently attached and indicating, at a minimum, State or Tribe of origin, year of take, species, original U.S. CITES tag number for the corresponding skin, weight of meat in the container, and identification of State licensed processor or packer.

(2) Each American alligator skull must be marked as required by State or tribal law or regulation. This marking must include, at a minimum, reference to the corresponding U.S. CITES tag number on the skin.

(f) *Tagging or labeling of crocodilian parts other than meat, skulls, and scientific specimens.* You may import, export, or re-export crocodilian parts when the following conditions are met:

(1) Parts must be packed in transparent sealed containers.

(2) Containers must be clearly marked with a non-reusable parts tag or label that includes all of the information in paragraph (d)(1)(ii) of this section and a description of the contents, the total weight (contents and container), and the number of the CITES document.

(3) Tags are not required on crocodilian products.

(g) *Documentation requirements.* The CITES document or an annex attached to the document must contain all information that is given on the tag or label.

(h) *U.S. application process.* Application forms and a list of States and Tribes with approved American

alligator programs can be obtained from our Web site or by contacting us.

(1) To export American alligator specimens taken under an approved State or tribal program, complete Form 3–200–26 and submit it to either FWS Law Enforcement or the U.S. Management Authority.

(2) To export American alligator specimens that are not from an approved program, complete Form 3–200–27 and submit it to the U.S. Management Authority.

(3) For information on issuance criteria for CITES documents, see § 23.36 for export permits and § 23.37 for re-export certificates.

(i) *Conditions for import, export, or re-export.* Upon import, export, or re-export, each crocodilian skin must be clearly identified by a tag in accordance with paragraph (d) of this section. Crocodilian parts, other than meat, skulls, and scientific specimens, must be packaged and clearly identified with a parts tag in accordance with paragraph (f) of this section. Crocodilian products do not require a tag. American alligator meat and skulls must be packaged and tagged, labeled, or marked in accordance with paragraph (e) of this section.

§ 23.71 How can I trade internationally in sturgeon caviar?

(a) *U.S. and foreign general provisions.* For the purposes of this section, *sturgeon caviar* means the processed roe of any species of sturgeon, including paddlefish (Order Acipenseriformes). The import, export, or re-export of sturgeon caviar must meet the requirements of this section and the other requirements of this part (see subparts B and C for prohibitions and application procedures).

(b) *Labeling.* You may import, export, or re-export sturgeon caviar only if labels are affixed to containers prior to export or re-export in accordance with this paragraph.

(1) The following definitions apply to caviar labeling:

(i) *Non-reusable label* means any label or mark that cannot be removed without being damaged or transferred to another container.

(ii) *Primary container* means any container in direct contact with the caviar.

(iii) *Secondary container* means the receptacle into which primary containers are placed.

(iv) *Processing plant* means a facility in the country of origin responsible for the first packaging of caviar into a primary container.

(v) *Repackaging plant* means a facility responsible for receiving and repackaging caviar into new primary containers.

(vi) *Lot identification number* means a number that corresponds to information related to the caviar tracking system used by the processing plant or repackaging plant.

(2) The caviar processing plant in the country of origin must affix a non-reusable label on the primary container that includes all of the following information:

(i) Standardized species code; for hybrids, the species code for the male is followed by the code for the female and the codes are separated by an ''x'' (codes are available on our website).

(ii) Source code.

(iii) Two-letter ISO code of the country of origin.

(iv) Year of harvest.

(v) Processing plant code and lot identification number.

(3) If caviar is repackaged before export or re-export, the repackaging plant must affix a non-reusable label to the primary container that includes all of the following information:

(i) The standardized species code, source code, and two-letter ISO code of the country of origin.

(ii) Year of repackaging and the repackaging plant code, which incorporates the two-letter ISO code for the repackaging country if different from the country of origin.

(iii) Lot identification number or CITES document number.

(4) The exact quantity of caviar must be indicated on any secondary container along with a description of the contents in accordance with international customs regulations.

(c) *Documentation requirements.* Unless the sturgeon caviar qualifies as a personal or household effect under § 23.15, the CITES document or an annex attached to the document must contain all information that is given on the label. The exact quantity of each species of caviar must be indicated on the CITES document.

(d) *Export quotas.* Commercial shipments of sturgeon caviar from stocks shared between different countries may be imported only if all of the following conditions have been met:

(1) The relevant countries have established annual export quotas for the shared stocks that were derived from catch quotas agreed among the countries and based on an appropriate regional conservation strategy and monitoring regime.

(2) The quotas have been communicated to the CITES Secretariat and the Secretariat has confirmed that the quotas have been agreed by all relevant countries.

(3) The CITES Secretariat has communicated these annual quotas to CITES Parties.

(4) The caviar is exported during the calendar year in which it was harvested and processed.

(e) *Re-exports.* Any re-export of sturgeon caviar must occur within 18 months from the date of issuance of the original export permit.

(f) *Pre-Convention.* Sturgeon caviar may not be imported, exported, or re-exported under a pre-Convention certificate.

(g) *Pressed caviar.* Pressed caviar, the combined roe of one or more species remaining after the processing and preparation of higher-quality caviar, may only be imported into or exported from the United States if the exact quantity of roe from each species is known and is indicated on the CITES document.

(h) *U.S. application forms.* Application forms can be obtained from our website or by contacting us. For CITES document requirements, see § 23.36 for export permits and § 23.37 for re-export certificates. For export, complete Form 3–200–27 and submit it to the U.S. Management Authority. For re-export, complete Form 3–200–26 and submit it to FWS Law Enforcement.

§ 23.72 How can I trade internationally in plants?

(a) *U.S. and foreign general provisions:* In addition to the requirements of this section, the import, export, or re-export of CITES plant specimens must meet the other requirements of this part (see subparts B and C for prohibitions and application procedures).

(b) *Seeds.* International shipments of seeds of any species listed in Appendix I, except for seeds of certain artificially propagated hybrids (see § 23.92), or seeds of species listed in Appendix II or III with an annotation that includes seeds must be accompanied by a valid CITES document. International shipments of CITES seeds that are artificially propagated also must be accompanied by a valid CITES document.

(c) *A plant propagated from exempt plant material.* A plant grown from exempt plant material is regulated by CITES.

(1) The proposed shipment of the specimen is treated as an export even if the exempt plant material from which it was derived was previously imported. The country of origin is the country in which the specimen ceased to qualify for the exemption.

(2) Plants grown from exempt plant material qualify as artificially

propagated provided they are grown under controlled conditions.

(3) To export plants grown from exempt plant material under controlled conditions, complete Form 3–200–33 for a certificate for artificially propagated plants.

(d) *Salvaged plants.* (1) For purposes of this section, *salvaged plant* means a plant taken from the wild as a result of some environmental modification in a country where a Party has done all the following:

(i) Ensured the environmental modification program does not threaten the survival of CITES plant species, and that protection of Appendix-I species *in situ* is considered a national and international obligation.

(ii) Established salvaged specimens in cultivation after concerted attempts have failed to ensure that the environmental modification program would not put at risk wild populations of CITES species.

(2) International trade in salvaged Appendix-I plants, and Appendix-II plants whose entry into trade might otherwise have been considered detrimental to the survival of the species in the wild, may be permitted only when all the following conditions are met:

(i) Such trade would clearly benefit the survival of the species in the wild or in captivity.

(ii) Import is for the purposes of care and propagation.

(iii) Import is by a *bona fide* botanic garden or scientific institution.

(iv) Any salvaged Appendix-I plant will not be sold or used to establish a commercial operation for artificial propagation after import.

§ 23.73 How can I trade internationally in timber?

(a) *U.S. and foreign general provisions:* In addition to the requirements of this section, the import, export, or re-export of timber species listed under CITES must meet the other requirements of this part (see subparts B and C for prohibitions and application procedures).

(b) *Definitions.* The following definitions apply to parts, products, and derivatives that appear in the annotations to certain timber species in the CITES Appendices. These definitions are based on the tariff classifications of the Harmonized System of the World Customs Organization.

(1) *Logs* means all wood in the rough, whether or not stripped of bark or sapwood, or roughly squared for processing, notably into sawn wood, pulpwood, or veneer sheets.

(2) *Sawn wood* means wood simply sawn lengthwise or produced by a profile-chipping process. Sawn wood normally exceeds 6 mm in thickness.

(3) *Veneer sheets* means thin layers or sheets of wood of uniform thickness, usually 6 mm or less, usually peeled or sliced, for use in making plywood, veneer furniture, veneer containers, or similar products.

(4) *Plywood* means wood material consisting of three or more sheets of wood glued and pressed one on the other and generally disposed so that the grains of successive layers are at an angle.

(c) The following exceptions apply to Appendix-II or -III timber species that have a substantive annotation that designates either logs, sawn wood, and veneer sheets, or logs, sawn wood, veneer sheets, and plywood:

(1) *Change in destination.* When a shipment of timber destined for one country is redirected to another, the Management Authority in the country of import may change the name and address of the importer indicated on the CITES document under the following conditions:

(i) The quantity imported is the same as the quantity certified by a stamp or seal and signature of the Management Authority on the CITES document at the time of export or re-export.

(ii) The number of the bill of lading for the shipment is on the CITES document, and the bill of lading is presented at the time of import.

(iii) The import takes place before the CITES document expires, and the period of validity has not been extended.

(iv) The Management Authority of the importing country includes the following statement in block 5, or an equivalent place, of the CITES document: ''Import into [name of country] permitted in accordance with [cite the appropriate section number from the current permit and certificate resolution] on [date].'' The modification is certified with an official stamp and signature.

(v) The Management Authority sends a copy of the amended CITES document to the country of export or re-export and the Secretariat.

(2) *Extension of CITES document validity.* A Management Authority in the country of import may extend the validity of an export permit or re-export certificate beyond the normal maximum of 6 months after the date of issue under the following conditions:

(i) The shipment has arrived in the port of final destination before the CITES document expires, is being held in customs bond, and is not considered imported.

(ii) The time extension does not exceed 6 months from the date of expiration of the CITES document and no previous extension has been issued.

(iii) The Management Authority has included in block 5, or an equivalent place, of the CITES document the date of arrival and the new date of expiration on the document, and certified the modification with an official stamp and signature.

(iv) The shipment is imported into the country from the port where the Management Authority issued the extension and before the amended CITES document expires.

(v) The Management Authority sends a copy of the amended CITES document to the country of export or re-export and to the Secretariat.

§ 23.74 How can I trade internationally in personal sport-hunted trophies?

(a) *U.S. and foreign general provisions.* Except as provided for personal and household effects in § 23.15, the import, export, or re-export of sport-hunted trophies of species listed under CITES must meet the requirements of this section and the other requirements of this part (see subparts B and C for prohibitions and application procedures).

(b) *Sport-hunted trophy* means raw or tanned parts of a specimen that was taken by a hunter, who is also the importer, exporter, or re-exporter, during a sport hunt for personal use. It may include the bones, claws, hair, head, hide, hooves, horns, meat, skull, teeth, tusks, or any taxidermied part, including, but not limited to, a rug or taxidermied head, shoulder, or full mount. It does not include articles made from a trophy, such as worked, manufactured, or handicraft items for use as clothing, curios, ornamentation, jewelry, or other utilitarian items.

(c) *Use after import.* You may use your sport-hunted trophy after import into the United States as provided in § 23.55.

(d) *Quantity and tagging.* The following provisions apply to the issuance and acceptance of U.S. and foreign CITES documents:

(1) The number of trophies that may be imported in any calendar year for the following species is:

(i) No more than two leopard (*Panthera pardus*) trophies.

(ii) No more than one markhor (*Capra falconeri*) trophy.

(iii) No more than one black rhinoceros (*Diceros bicornis*) trophy.

(2) Each trophy imported, exported, or re-exported must be marked or tagged in the following manner:

(i) Leopard and markhor: Each raw or tanned skin must have a self-locking tag

inserted through the skin that indicates the country of origin, the number of the specimen in relation to the annual quota, and the calendar year in which the specimen was taken in the wild.

(ii) Black rhinoceros: Parts of the trophy, including, but not limited to, skin, skull, or horns, whether mounted or loose, should be individually marked with reference to the country of origin, species, the number of the specimen in relation to the annual quota, and the year of export.

(3) The export permit or re-export certificate or an annex attached to the permit or certificate must contain all the information that is given on the tag.

Subpart F—Disposal of Confiscated Wildlife and Plants

§ 23.78 What happens to confiscated wildlife and plants?

(a) *Purpose.* Article VIII of the Treaty provides for confiscation or return to the country of export of specimens that are traded in violation of CITES.

(b) *Disposal options.* Part 12 of this subchapter provides the options we have for disposing of forfeited and abandoned live and dead wildlife and plants. These include maintenance in captivity either in the United States or in the country of export, return to the wild under limited circumstances, and sale of certain Appendix-II or -III specimens. Under some conditions, euthanasia or destruction may be necessary.

(1) We use a plant rescue center program to dispose of confiscated live plants. Participants in this program may also assist APHIS, CBP, and FWS Law Enforcement in holding seized specimens as evidence pending any legal decisions.

(2) We dispose of confiscated live wildlife on a case-by-case basis at the time of seizure and forfeiture, and consider the quantity, protection level, and husbandry needs of the wildlife.

(c) *Re-export.* We may issue a re-export certificate for a CITES specimen that was forfeited or abandoned when the certificate indicates the specimen was confiscated and when the re-export meets one of the following purposes:

(1) For any CITES species, the return of a live specimen to the Management Authority of the country of export, placement of a live specimen in a rescue center, or use of the specimen for law enforcement, judicial, or forensic purposes.

(2) For an Appendix-II or -III species, the disposal of the specimen in an appropriate manner that benefits enforcement and administration of the Convention.

(d) *Consultation process.* FWS and APHIS may consult with the Management Authority in the country of export or re-export and other relevant governmental and nongovernmental experts before making a decision on the disposal of confiscated live specimens that have been forfeited or abandoned to FWS, APHIS, or CBP.

§ 23.79 How may I participate in the Plant Rescue Center Program?

(a) *Purpose.* We have established the Plant Rescue Center Program to place confiscated live plants quickly to prevent physical damage to the plants.

(b) *Criteria.* Institutions interested in participating in this program must be:

(1) Nonprofit, open to the public, and have the expertise and facilities to care for confiscated exotic plant specimens. A participating institution may be a botanical garden, arboretum, zoological park, research institution, or other qualifying institution.

(2) Willing to transfer confiscated plants from the port where they were confiscated to their facilities at their own expense.

(3) Willing to return the plants to the U.S. Government if the country of export has requested their return. The U.S. Government will then coordinate the plants' return to the country of export.

(4) Willing to accept and maintain a plant shipment as a unit until it has received authorization from us to incorporate the shipment into its permanent collection or transfer a portion of it to another participating institution.

(c) *Participation.* Institutions wishing to participate in the Plant Rescue Center Program should contact the U.S. Management Authority. They must provide a brief description of the greenhouse or display facilities, the names and telephone numbers of any individuals authorized to accept plants on behalf of the institution, and the mailing address where the plants should be sent. In addition, interested institutions must indicate if they are limited with regard to the type of plants they are able to maintain or the quantities of plants they can handle at one time.

Subpart G—CITES Administration

§ 23.84 What are the roles of the Secretariat and the committees?

(a) *Secretariat.* The Secretariat is headed by the Secretary-General. Its functions are listed in Article XII of the Treaty and include:

(1) Arranging and staffing meetings of the Parties.

(2) Performing functions as requested in relation to listings in the Appendices.

(3) Undertaking scientific and technical studies, as authorized by the CoP, to contribute to implementation of the Convention.

(4) Studying reports of the Parties and requesting additional information as appropriate to ensure effective implementation of the Convention.

(5) Bringing to the attention of the Parties matters relevant to the Convention.

(6) Periodically publishing and distributing to the Parties current editions of the Appendices as well as information on the identification of specimens of species listed in the Appendices.

(7) Preparing annual reports to the Parties on its work and on the implementation of the Convention.

(8) Making recommendations for the implementation of the aims and provisions of the Convention, including the exchange of scientific and technical information.

(9) Performing other functions entrusted to it by the Parties.

(b) *Committees.* The Parties have established four committees to provide administrative and technical support to the Parties and to the Secretariat. The CoP may charge any of these committees with tasks.

(1) The Standing Committee steers the work and performance of the Convention between CoPs.

(i) This committee oversees development and execution of the Secretariat's budget, advises other committees, appoints working groups, and carries out activities on behalf of the Parties between CoPs.

(ii) Regional representatives are countries that are elected by their respective geographic regions at the CoP.

(2) The Animals Committee and the Plants Committee provide advice and guidance to the CoP, the other committees, working groups, and the Secretariat on all matters relevant to international trade in species included in the Appendices.

(i) These committees also assist the Nomenclature Committee in the development and maintenance of a standardized list of species names; provide assistance with regard to identification of species listed in the Appendices; cooperate with the Secretariat to assist Scientific Authorities; compile and evaluate data on Appendix-II species that are considered significantly affected by trade; periodically review the status of wildlife and plant species listed in the Appendices; advise range countries on

management techniques when requested; draft resolutions on wildlife and plant matters for consideration by the Parties; deal with issues related to the transport of live specimens; and report to the CoP and the Standing Committee.

(ii) Regional representatives are individuals, who are elected by their respective geographic regions at the CoP.

(3) The Nomenclature Committee is responsible for developing or identifying standard nomenclature references for wildlife and plant taxa and making recommendations on nomenclature to Parties, the CoP, other committees, working groups, and the Secretariat. The Nomenclature Committee is made up of one zoologist and one botanist, who are appointed by the CoP.

§ 23.85 What is a Meeting of the Conference of the Parties (CoP)?

(a) *Purpose.* Article XI of the Treaty provides general guidelines for meetings of the countries that have ratified, accepted, approved, or acceded to CITES. The Parties currently meet for 2 weeks every 3 years. At these meetings, the Parties consider amendments to the Appendices and resolutions and decisions to improve the implementation of CITES. The Parties adopt amendments to the lists of species in Appendix I and II and resolutions by a two-thirds majority of Parties present and voting. The Secretariat or any Party may also submit reports on wildlife and plant trade for consideration.

(b) *CoP locations and dates.* At a CoP, Parties interested in hosting the next meeting notify the Secretariat. The Parties vote to select the location of the next CoP. Once a country has been chosen, it works with the Secretariat to set the date and specific venue. The Secretariat then notifies the Parties of the date for the next CoP.

(c) *Attendance at a CoP.* All Parties may participate and vote at a CoP. Non-Party countries may participate, but may not vote. Organizations technically qualified in protection, conservation, or management of wildlife or plants may participate in a CoP as observers if they are approved, but they are not eligible to vote.

(1) International organizations must apply to the CITES Secretariat for approval to attend a CoP as an observer.

(2) National organizations must apply to the Management Authority of the country where they are located for approval to attend a CoP as an observer.

§ 23.86 How can I obtain information on a CoP?

As we receive information on an upcoming CoP from the CITES Secretariat, we will notify the public either through published notices in the **Federal Register** or postings on our website. We will provide:

(a) A summary of the information we have received with an invitation for the public to comment and provide information on the agenda, proposed amendments to the Appendices, and proposed resolutions that they believe the United States should submit for consideration at the CoP.

(b) Information on times, dates, and locations of public meetings.

(c) Information on how international and national organizations may apply to participate as observers.

§ 23.87 How does the United States develop documents and negotiating positions for a CoP?

(a) In developing documents and negotiating positions for a CoP, we:

(1) Will provide for at least one public meeting.

(2) Consult with appropriate Federal, State, and tribal agencies, foreign governmental agencies, scientists, experts, and others.

(3) Seek public comment through published **Federal Register** notices or postings on our website that:

(i) Solicit recommendations on potential proposals to amend the Appendices, draft resolutions, and other documents for U.S. submission to the CoP.

(ii) Announce proposals to amend the Appendices, draft resolutions, and other documents that the United States is considering submitting to the CoP.

(iii) Provide the CoP agenda and a list of the amendments to the Appendices proposed for the CoP, a summary of our proposed negotiating positions on these items, and the reasons for our proposed positions.

(4) Consider comments received in response to notices or postings provided in paragraph (a)(3) of this section.

(b) We submit the following documents to the Secretariat for consideration at the CoP:

(1) Draft resolutions and other documents at least 150 days before the CoP.

(2) Proposals to amend the Appendices at least 150 days before the CoP if all range countries have been consulted, or 330 days before the CoP if the range countries are not consulted.

(c) The Director may modify or suspend any of these procedures if they would interfere with the timely or appropriate development of documents for submission to the CoP and U.S. negotiating positions.

(d) We may receive additional information at a CoP or circumstances may develop that have an impact on our tentative negotiating positions. As a result, the U.S. representatives to a CoP may find it necessary to modify, reverse, or otherwise change any of those positions where to do so would be in the best interests of the United States or of the conservation of the species.

§ 23.88 What are the resolutions and decisions of the CoP?

(a) *Purpose.* Under Article XI of the Treaty, the Parties agree to resolutions and decisions that clarify and interpret the Convention to improve its effectiveness. Resolutions are generally intended to provide long-standing guidance, whereas decisions typically contain instructions to a specific committee, Parties, or the Secretariat. Decisions are often intended to be implemented by a specific date, and then they expire.

(b) *Effective date.* A resolution or decision adopted by the Parties becomes effective 90 days after the meeting at which it was adopted, unless otherwise specified in the resolution or decision.

Subpart H—Lists of Species

§ 23.89 What are the criteria for listing species in Appendix I or II?

(a) *Purpose.* Article XV of the Treaty sets out the procedures for amending CITES Appendices I and II. A species must meet trade and biological criteria listed in the CITES resolution for amendment of Appendices I and II. When determining whether a species qualifies for inclusion in or removal from Appendix I or II, or transfer from one Appendix to another, we will:

(1) Consult with States, Tribes, range countries, relevant experts, other Federal agencies, and the general public.

(2) Utilize the best available biological information.

(3) Evaluate that information against the criteria in paragraphs (b) through (f) of this section.

(b) *Listing a species in Appendix I.* Any species qualifies for inclusion in Appendix I if it is or may be affected by trade and meets, or is likely to meet, at least one biological criterion for Appendix I.

(1) These criteria are:

(i) The size of the wild population is small.

(ii) Area of distribution is restricted.

(iii) There is an observed, inferred, or projected marked decline in the population size in the wild.

(2) Factors to be considered include, but are not limited to, population and range fragmentation; habitat availability or quality; area of distribution; taxon-specific vulnerabilities due to life history, behavior, or other intrinsic factors, such as migration; population structure and niche requirements; threats from extrinsic factors such as the form of exploitation, introduced species, habitat degradation and destruction, and stochastic events; or decreases in recruitment.

(c) *Listing a species in Appendix II due to actual or potential threats.* Any species qualifies for inclusion in Appendix II if it is or may be affected by trade and meets at least one of the criteria for listing in Appendix II based on actual or potential threats to that species. These criteria are:

(1) It is known, or can be inferred or projected, that the regulation of trade is necessary to avoid the species becoming eligible for inclusion in Appendix I in the near future.

(2) It is known, or can be inferred or projected, that the regulation of trade in the species is required to ensure that the harvest of specimens from the wild is not reducing the wild population to a level at which its survival might be threatened by continued harvest or other influences.

(d) *Listing a species in Appendix II due to similarity of appearance or other factors.* Any species qualifies for inclusion in Appendix II if it meets either of the criteria for listing in Appendix II due to similarity of appearance or other factors. These criteria are:

(1) The specimens of the species in the form in which they are traded resemble specimens of a species listed in Appendix II due to criteria in paragraph (c) of this section or in Appendix I, such that enforcement officers who encounter specimens of such similar CITES species are unlikely to be able to distinguish between them.

(2) There are compelling reasons other than those in paragraph (d)(1) of this section to ensure that effective control of trade in currently listed species is achieved.

(e) *Other issues.* We will evaluate any potential changes to the Appendices, taking into consideration other issues, including but not limited to, split-listing, annotation, listings of higher taxa and hybrids, and specific listing issues related to plants and commercially exploited aquatic species.

(f) *Precautionary measures.* We will evaluate any potential transfers from Appendix I to II or removal of species from the Appendices in the context of precautionary measures.

(g) *Proposal.* If a Party determines that a taxon qualifies for inclusion in or removal from Appendix I or II, or transfer from one Appendix to another, a proposal may be submitted to the Secretariat for consideration by the CoP.

(1) The proposal should indicate the intent of the specific action (such as inclusion in Appendix I or II); be specific and accurate as to the parts and derivatives to be included in the listing; ensure that any proposed annotation is consistent with existing annotations; state the criteria against which the proposal is to be judged; and provide a justification for the basis on which the species meets the relevant criteria.

(2) The proposal must be in a prescribed format. Contact the U.S. Scientific Authority for a copy.

§ 23.90 What are the criteria for listing species in Appendix III?

(a) *Purpose.* Article XVI of the Treaty sets out the procedures for amending Appendix III.

(b) *General procedure.* A Party may unilaterally, at any time, submit a request to list a species in Appendix III to the CITES Secretariat. The listing will become effective 90 days after the Secretariat notifies the Parties of the request.

(c) *Criteria for listing.* For a Party to list a species in Appendix III, all of the following criteria must be met:

(1) The species must be native to the country listing the species.

(2) The species must be protected under that country's laws or regulations to prevent or restrict exploitation and control trade, and the laws or regulations are being implemented.

(3) The species is in international trade, and there are indications that the cooperation of other Parties would help to control illegal trade.

(4) The listing Party must inform the Management Authorities of other range countries, the known major importing countries, the Secretariat, and the Animals Committee or the Plants Committee that it is considering the listing and seek their opinions on the potential effects of the listing.

(d) *Annotation.* The listing Party may annotate the Appendix–III listing to include only specific parts, products, derivatives, or life stages, as long as the Secretariat is notified of the annotation.

(e) *U.S. procedure.* The procedure to list a species native to the United States in Appendix III is as follows:

(1) We will consult with and solicit comments from all States where the species occurs and all other range countries.

(2) We will publish a proposed rule in the **Federal Register** to solicit comments from the public.

(3) If after evaluating the comments received and available information we determine the species should be listed in Appendix III, we will publish a final rule in the **Federal Register** and notify the Secretariat of the listing.

(f) *Removing a species from Appendix III.* We will monitor the international trade in Appendix–III species listed by us and periodically evaluate whether each species continues to meet the listing criteria in paragraph (c) of this section. We will remove a species from Appendix III provided all of the following criteria are met:

(1) International trade in the species is very limited. As a general guide, we will consider removal when exports involve fewer than 5 shipments per year or fewer than 100 individual animals or plants.

(2) Legal and illegal trade in the species, including international trade or interstate commerce, is determined not to be a concern.

(g) *Transferring a species from Appendix III to Appendix I or II.* If, after monitoring the trade and evaluating the status of an Appendix–III species we listed, we determine that the species meets the criteria in § 23.89(b) through (d) of this section for listing in Appendix I or II, we will consider whether to submit a proposal to amend the listing at the next CoP.

§ 23.91 How do I find out if a species is listed?

(a) *CITES list.* The official CITES list includes species of wildlife and plants placed in Appendix I, II, and III in accordance with the provisions of Articles XV and XVI of the Treaty. This list is maintained by the CITES Secretariat based on decisions of the Parties. You may access the official list from the CITES website (*http://www.cites.org*).

(b) *Effective date.* Amendments to the CITES list are effective as follows:

(1) Appendix–I and –II species listings adopted at the CoP are effective 90 days after the last day of the CoP, unless otherwise specified in the proposal.

(2) Appendix–I and –II species listings adopted between CoPs by postal procedures are effective 120 days after the Secretariat has communicated comments and recommendations on the listing to the Parties if the Secretariat does not receive an objection to the proposed amendment from a Party.

(3) Appendix–III species listings are effective 90 days after the date the Secretariat has communicated such listings to the Parties. A listing Party may withdraw a species from the list at any time by notifying the Secretariat.

The withdrawal is effective 30 days after the Secretariat has communicated the withdrawal to the Parties.

§ 23.92 Are any wildlife or plants, and their parts, products, or derivatives, exempt?

(a) All living or dead wildlife and plants in Appendix I, II, and III and all their readily recognizable parts, products, and derivatives must meet the requirements of CITES and this part, except as indicated in paragraph (b) of this section.

(b) The following are exempt from the requirements of CITES and do not need CITES documents:

(1) *Appendix–III wildlife.* Any part, product, or derivative of an Appendix–III wildlife species that is specifically excluded by an annotation in the CITES list.

(2) *Appendix–II or –III plants.* Any part, product, or derivative of an Appendix–II or –III plant species that is not specifically included by an annotation in the CITES list.

(3) *Plant hybrids.*

(i) Seeds and pollen (including pollinia), cut flowers, and flasked seedlings or tissue cultures of Appendix–I artificially propagated hybrids produced from one or more Appendix–I species or taxa that are not annotated to specifically include hybrids in the CITES list.

(ii) Appendix–II or –III plant species or taxon, and its parts, products, and derivatives, with an annotation that specifically excludes hybrids.

(4) *Flasked seedlings of Appendix–I orchids.* Flasked seedlings of an Appendix–I orchid species that has been artificially propagated.

(5) *Marine specimens listed in Appendix II that are protected under another treaty, convention or international agreement which was in force on July 1, 1975* as provided in § 23.39 (d).

(6) *Coral sand and coral fragments* as defined in § 23.5.

(7) *Personal and household effects* as provided in § 23.15.

(8) *Urine, feces, and synthetically derived DNA* as provided in § 23.16.

Dated: November 30, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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