DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 10, 13, 17, and 23

RIN 1018-AD87

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

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: In this final rule, we, the Fish and Wildlife Service (FWS), 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. 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. In this final rule, we have retained most of the general information in the current 50 CFR part 23, but reorganized the sections and added provisions from certain applicable resolutions and decisions adopted by the CITES Conference of the Parties (CoP) at its second through thirteenth meetings (CoP2 – CoP13). The 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: This regulation is effective September 24, 2007. Incorporation by reference of CITES's *Guidelines for transport and preparation for shipment of live wild animals and plants* and the International Air Transport Association Live Animals Regulations listed in this rule is approved by the Director of the Federal Register as of September 24, 2007.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Management Authority, Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; telephone, (703) 358-2093; fax, (703) 358-2280; or email, *managementauthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

What Acronyms and Abbreviations Are Used in This Rule?

AECA African Elephant Conservation Act (16 U.S.C. 4201-4245)
APHIS U.S. Department of Agriculture, Animal and Plant Health Inspection Service
ATA A combination of the French and English words ''Admission temporaire/ Temporary Admission'' used in the name of a type of international customs document, the ATA carnet
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 Conference of the Parties or a meeting of the Conference of the Parties
ESA Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)
FOIA Freedom of Information Act (5 U.S.C. 552)
FWS U.S. Fish and Wildlife Service
IATA LAR International Air Transport Association Live Animals Regulations
ISO International Organization for Standardization
USDA U.S. Department of Agriculture
WBCA Wild Bird Conservation Act (16 U.S.C. 4901 *et seq.*)

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 171 countries have ratified, accepted, approved, or acceded to CITES; these countries are known as Parties.

Proposed rule and comments received: We published a proposed rule on April 19, 2006 (71 FR 20167), to revise the regulations that implement CITES. We accepted public comments on the proposed rule for 60 days, until June 19, 2006. In response to several requests from the public, we reopened the public comment period for an additional 30 days on June 28, 2006 (71 FR 36742). The 2006 proposed rule was a reproposal of revisions proposed on May 8, 2000 (65 FR 26664), which were not finalized. We summarized and addressed comments received on the 2000 proposal in the 2006 proposed rule. Please refer to the preamble to the April 19, 2006, proposed rule for a discussion of those comments.

We received 344 letters in response to the 2006 proposed rule (71 FR 20167). We received comments from individuals, organizations, and State natural resource agencies. Of the comments we received, 240 letters were from Bengal cat enthusiasts and breeders, 33 were from State natural resource agencies and regional associations, 21 were from falconers and falconer organizations, and 13 were from fur trapper organizations.

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 78 resolutions in effect. This 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 website (*http://www.cites.org*).

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 (16 U.S.C. 1361-1407), and Lacey Act Amendments of 1981 (16 U.S.C. 3371-3378).

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 website (see § 23.7).

Plain language: We used plain language in writing these regulations to make them clearer and easier to use. We believe the regulations use an appropriate level of language to lay out the technical requirements of a multilateral treaty.

General comments: A number of commenters commended us for revising the U.S. CITES implementing regulations and also provided comments on specific sections of the 2006 proposed rule (71 FR 20167). We have addressed comments specific to a particular section in the appropriate section of this preamble. One State agricultural agency noted that, for the aquaculture industry in that State, our changes will help simplify and clarify the documentation process for dealing with CITES species.

One commenter expressed general opposition to international trade in wildlife. We appreciate the comment, but we will not address it here as it is outside the scope of this rulemaking.

Another commenter suggested changes to specific clearance procedures at a port of entry. Those comments were outside the scope of this rule, and we encourage the commenter to provide input when the FWS proposes changes to 50 CFR part 14, which includes the specific clearance procedures pertaining to the import, export, and transport of wildlife.

One commenter asked that we establish a ''compliance service'' where individuals could receive assistance in filling out and filing the required forms and documents. The commenter noted that the IRS provides such a service and that we should do the same. We believe that such assistance already exists on our website, where we provide information to guide applicants through the required agency permits, answer frequently asked questions, and direct them to the relevant offices for specific information. In addition, applicants can request information and permit application forms from the U.S. Management Authority and wildlife inspection offices. See § 23.7 for contact information.

One commenter argued that all applications for trade in Appendix-I and -II species should be subject to public notice and review. We disagree. Most of the applications we receive involve commonly traded Appendix-II species. As outlined in this rule, the FWS has established specific procedures for making the required determinations under CITES. We do not believe that requesting public comments on all applications involving CITES species would provide a greater level of insight or provide information that is not already available to us.

One commenter recommended adding a provision that would allow for disclosures to be made without penalty and offered the example of identifying merchandise that should have been declared but was not discovered until after the shipment was imported. We did not accept this recommendation because we believe such a provision would undermine our enforcement efforts and our obligations under CITES. 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.

One commenter argued that the regulations should allow for electronic submission of CITES information and payment of permitting fees. We recognize the need to keep pace with technology and are actively pursuing an electronic interface in partnership with other Federal agencies to streamline CITES procedures for the trade community. We are also working on an electronic permitting system that would allow submission of applications for CITES documents and applicable fees. Nothing in these regulations would prevent us from allowing electronic submission when we have the technology in place.

Section-by-Section Analysis

The following parts of the preamble explain the final rule, discuss the substantive issues of sections for which we received comments, outline significant changes from the 2006 proposed rule (71 FR 20167), and provide responses to public comments.

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

Definitions (§ 10.12): We provide a definition of the United States to correctly reflect areas under U.S. jurisdiction. One commenter suggested that the term United States be replaced with regulated territory because of potential confusion due to more common meanings of the term. United States is the term consistently used in conservation statutes administered by the FWS to define the jurisdictional scope of the statute. We believe that consistency between the term used in these regulations and the term used by Congress will reduce, not increase, confusion.

Application procedures (§ 13.11): As noted in our final rule on FWS permit fees (70 FR 18311), we will not charge a fee to any Federal, tribal, State, or local government agency. Therefore, we will not charge a fee to a State or Tribe seeking to gain approval of a CITES export program. We also will not 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 United States fulfill its CITES implementing responsibilities.

Thirty-five commenters, representing individual State natural resource agencies, State natural resource agency organizations, and trapper organizations, supported not requiring application fees to establish a CITES export program. One commenter opposed our decision not to charge a fee to government agencies seeking approval of a CITES export program. It is our longstanding policy not to charge a fee to Federal, tribal, State, or local governments. Another commenter stated that fees should be raised to reflect the actual value of the wildlife specimen in trade and that no applicant should be exempt from paying an application fee. Thirteen trapper organizations did not agree that small-scale trappers should be charged permit application fees. In addition, one commenter argued that publicly supported, nonprofit conservation organizations should be exempt from any application fees. The FWS fee structure is based on the nature of the activities being permitted, as well as the level of complexity and the time required to process applications and maintain active permit files. For further discussion of our application fees see 70 FR 18311, April 11, 2005.

U.S. address for permit applicants (§ 13.12): This section requires 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 may request a CITES document from us for a shipment the entity owns but is shipping 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. Foreign visitors who are requesting a CITES document may provide a temporary address, such as a hotel, since they do not permanently reside within the United States.

For commercial activities conducted by applicants who 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. 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 a commercial activity. However, we do not consider a hunter who exports his or her personal sport-hunted trophy to be involved in a commercial activity under this section.

Two commenters agreed with these requirements, but one of them suggested that, for non-resident applicants who could only provide a temporary address, we should also require their permanent address in their country of residence, as well as a permanent U.S. address of an agent or attorney. We require a permanent U.S. address for the applicant's agent for commercial transactions. We do not require a foreign address for noncommercial transactions. However, most noncommercial transactions carried out by non-U.S. residents consist of personal effects or personally hunted trophies that are being sent to the individual's home, and the applicant's foreign address is typically included on the application.

One commenter asked that we clarify that the U.S. address does not need to be a domiciliary address or residence. For U.S. residents who are applying as individual applicants, the address they provide must be the physical address of their residence. In some cases, however, for permits for personal or household effects being held in the United States pending issuance of a permit, the U.S. address may be a relative, the storage facility, or the agent. For organizations or companies applying for a permit, we require the company's physical address where the records regarding the application are maintained.

One commenter recommended that the requirements of 50 CFR 13.12 be brought into compliance with CBP's Filing Identification Number (FIN) (19 CFR 24.5). We did not accept this suggestion. The CBP Filing Identification Number is associated with account-based import activities specific to the importing requirements of CBP. The application process carried out by the FWS is a transactional-based activity that requires the identification of both companies and individuals. In addition, we do not have access to CBP's database that contains the FIN data, and therefore we could not utilize the system on a daily basis, as would be required to carry out our permitting process.

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

CITES documents, however, do not cover an activity of a continuing nature and are considered void upon expiration. This section clarifies that a permittee may not use a CITES document once it has expired. For other permits of a continuing nature, however, we have retained the process that allows the permittee to conduct permitted activities during renewal if the conditions outlined in 50 CFR part 13 are met. One commenter supported this approach. Another commenter thought we should allow an extension of the period of validity of CITES documents after they have expired, while the renewal process is underway. The commenter did not believe that the Treaty or current resolutions support our policy not to allow extensions. We disagree. Article VI of the Treaty and Resolution Conf. 12.3 (Rev. CoP13) provide specific periods of validity for most permits and certificates. In addition, Resolution Conf. 12.3 (Rev. CoP13) states that, once a CITES document has expired, the permit or certificate is void. While the resolution does not address a period of validity for all of the certificates discussed, for consistency, we have established specific periods of validity for each type of CITES document (see § 23.54). CITES documents that have not been used may be reissued. However, permittees must contact us prior to the expiration date, return the unused permit, and give us sufficient time to review the reissuance request and issue a new permit or certificate.

Maintenance of records (§ 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, § 13.46 outlines the requirement that permittees who reside or are located in the United States, as well as permittees who reside or are located outside the United States but are conducting commercial activities within the United States, maintain records in this country. We received 31 comments in support of this change. One of these commenters also recommended that we establish a timeframe during which permittees must maintain records. A timeframe of 5 years is already codified in § 13.46. However, as discussed under § 23.34, since we must make specific findings based on information provided primarily by an applicant, it may be advisable to maintain records for longer than 5 years in some cases (see discussion on § 23.34).

Import exemption for threatened, Appendix-II wildlife (§ 17.8): This section puts into regulation the exemption under the ESA, section 9(c)(2), for import of CITES Appendix-II wildlife that is also classified as threatened under the ESA, 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 the import prohibitions; 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, 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. This exemption does not apply to species that have a special rule in 50 CFR part 17.

Two commenters voiced their support for this section. Another commenter argued that the exemption for certain threatened species that are also listed in Appendix II is inconsistent with the ESA. As we discussed in the 2006 proposed rule (71 FR 20167), Congress provided this exemption, and we believe that this section accurately implements it.

One commenter suggested that we add a definition of ''in the course of a commercial activity.'' As noted by the commenter, commercial activity is defined in section 3 of the ESA. Therefore, we do not believe it is necessary to define the full term ''in the course of a commercial activity.''

This same commenter suggested that a purchase for scientific use, such as an acquisition by a museum, should be covered by the exemption under 17.8(b) and that the exemption should apply to any specimen used for science as long as the collection and sale are legal in the country of origin. We disagree. The exemption under section 9(c)(2) of the ESA applies only if the importation is not made in the course of a commercial activity, regardless of who is commercializing the specimen. Many imports for scientific use are likely to meet the exemption, but the purchase of

a specimen for scientific use is likely to qualify as commercial and thus require issuance of an ESA permit prior to importation.

Two commenters asserted that the requirement for documentation is overly broad and suggested that the FWS describe the type of documentation that would be acceptable. Because of the wide variety of imports that may qualify, and to provide flexibility to the importer, we did not list what form of documentation would be required. We will accept any documentation from the importer regarding the acquisition of the specimen that shows that it was not acquired in foreign commerce in the course of commercial activity. Such documentation may include, for example: proof of a personal sport hunt, documents related to museum or zoological exchange, inheritance documents, or scientific collecting permits.

One commenter stated that requiring such documentation violates the exemption under section 9(c)(2) of the ESA. We agree that the exemption allows a qualifying specimen to be imported into the United States without first having obtained an ESA import permit, but it remains the burden of the importers to show that they qualify for the exemption, including by obtaining and presenting all required CITES documentation, fulfilling all document requirements under section 9(d), (e), and (f), and showing that the importation is not being made in the course of a commercial activity.

One commenter argued that the exemption should only apply when the importer can prove that both the acquisition of the specimen and the importation are noncommercial. We agree, and we require the importer to meet both criteria in § 17.8(b)(1). In § 17.8(b)(5), we specifically require documentation showing that the specimen was not acquired in foreign commerce in the course of a commercial activity. Importers of any wildlife specimens, whether CITES specimens or not, must show the purpose of import under general government importation requirements. We are able to determine from this documentation whether the import is in the course of a commercial activity. However, documentation showing the specimen was not acquired in foreign commerce does not typically accompany a shipment. Therefore, we specifically require that such documentation be provided to us.

Special rule for threatened crocodilians (§ 17.42(c)): In accordance with this special rule, we allow meat of saltwater crocodiles (*Crocodylus porosus*) originating in Australia and of Appendix-II Nile crocodiles (*C. niloticus*) to be traded without tags, and we clarify that this includes all forms of 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 special rule prohibits import into the United States of live specimens and viable eggs of any threatened crocodilians without an ESA import permit.

One commenter disagreed with our assertion that international trade in meat of saltwater crocodiles originating in Australia and Appendix-II Nile crocodiles poses no significant conservation risk and could therefore be traded without tags. We note that the crocodilian product most common in international trade is skin and U.S. import data for 2002 - 2005 show no imports of saltwater or Nile crocodile meat. Therefore, we continue to believe that this type of trade does not pose a significant conservation threat. In addition, there is no CITES requirement for tagging of crocodilian meat.

The special rule includes reporting requirements for range countries. In our final yacare caiman (*Caiman yacare*) rule published on May 4, 2000 (65 FR 25867), we noted that the FWS depends primarily on range countries to monitor yacare caiman. To assist us in monitoring the status of yacare caiman, we require that the governments of range countries wishing to export specimens to the United States for commercial purposes provide a report every 2 years that includes the most recent information available on the status of the species. This information assists us in determining the current conservation status of the species and is used to determine if the species is recovering and may warrant delisting. We also have 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.

Three commenters supported amendments to the special rule regarding reporting requirements for range countries of the yacare caiman in § 17.42(c). They urged us to include similar reporting requirements if additional crocodilian species are reclassified as threatened under the ESA and are included in the special rule. We will consider monitoring and reporting requirements for other crocodilians on a case-by-case basis, because the conservation needs may vary by species or population.

One commenter argued that we should require yacare caiman monitoring data to be submitted annually instead of biennially and should expand the list of the types of monitoring data required. We believe that the final rule to reclassify the yacare caiman (65 FR 25867, May 4, 2000) adequately justifies reporting requirements for range countries of the species.

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

This subpart describes our responsibilities under CITES.

Scope (§ 23.2): This 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 under 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. 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. Further, we clarify that intrastate or interstate movement of specimens traded contrary to CITES involves possession of unlawfully traded specimens and is, therefore, prohibited. We note that these prohibitions are not new with this final 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.

More than 25 State fish and wildlife resource management agencies and regional fish and wildlife agency associations endorsed our inclusion of a series of questions to assist the regulated community in determining when CITES applies to a proposed activity and our clarification regarding intrastate and

interstate movement of specimens traded contrary to CITES.

One commenter expressed support for the provision making the possession of and trade in illegally acquired specimens and their offspring illegal and encouraged us to specify that requirement in more detail in the regulation. However, another commenter expressed concern regarding our position on the possession of and trade in offspring of illegally imported specimens. The commenter also was concerned about the possible harm to offspring caused by shipping them back to the country of origin. We continue to maintain that any possession of offspring of illegal specimens is considered illegal, and we will take appropriate action when we become aware of such situations. However, we consider the health and well being of a live specimen that has been confiscated or forfeited to us in determining whether to place it in a facility in the United States or return it to the country of origin.

Other applicable regulations (§ 23.3): In this section we reference applicable regulations in other parts of subchapter B and title 50, since many CITES species are covered by one or more other laws. We also notify the public about the possible application of State, tribal, and local regulations. More than 25 State fish and wildlife resource management agencies and regional fish and wildlife agency associations endorsed the addition of a new paragraph notifying the regulated community of the additional requirement for complying with State, tribal, and local requirements when engaging in activities with CITES species.

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. 1535(f); *Man Hing Ivory & Imports, Inc.* v. *Deukmejian*, 702 F.2d 760 (9th Cir. 1983). One commenter disagreed with this assertion and stated that it is contrary to the standard rules regarding the relationship between State and Federal laws. Our statement reflects the decision of the United States Court of Appeals for the Ninth Circuit in the referenced case, which held that section 6(f) of the ESA, together with an FWS regulation on African elephants (*Loxodonta africana*), preempted a State prohibition on trade in African elephant products by a trader who had secured all necessary Federal permits.

Definitions (§ 23.5): Whenever possible we define 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 in which they are used.

Definition of ''applicant'': Although one commenter believed that we should define the term applicant here to be only a person who owns the specimen(s) subject to trade, we have not defined applicant in this part because the general permit regulations in 50 CFR 13.1 provide sufficient guidance. 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 party responsible for meeting the terms and conditions of the permit.

Definitions of ''bred for commercial purposes'' and ''bred for noncommercial purposes'': We defined 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 specimens of species included in Appendix II (see § 23.46). It also provides in Article VII(5) that specimens that are bred in captivity may be issued an exemption certificate (see § 23.41). Although the Treaty does not use the term ''bred for noncommercial purposes'' in paragraph 5, 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 the species.

One commenter sought clarification on whether an Appendix-I animal bred and raised on a U.S. game ranch, where efforts are being made to conserve the species, would constitute a specimen bred for commercial purposes. If the game ranch was conducting activities that would categorize the facility as commercial (e.g., sale, purchase, or exchange of animals resulting in an economic gain), then the animals bred on the ranch would be considered bred for commercial purposes. This would apply even if the game ranch were carrying out activities that benefited the species within its natural range, such as participation in a cooperative conservation program.

One commenter did not understand how any facility breeding Appendix-I species could engage in noncommercial breeding activities. The commenter believed that, due to the difficulty of distinguishing between commercial breeding and noncommercial breeding, the FWS should combine the two activities under a single bred-in-captivity definition and require that all facilities breeding Appendix-I or -II species become registered. We disagree. Since the Treaty does not prohibit or control the commercial breeding of Appendix-II species, there is no reason to establish a registration process for facilities breeding Appendix-II species. We are confident that the application review process established for the export of Appendix-II specimens is adequate to provide the necessary oversight and control of commercial breeding facilities for Appendix-II species. For Appendix-I species, the Treaty makes a distinction between commercial and noncommercial breeding, and the Parties have enacted resolutions to implement this distinction. Consequently, these regulations outline the criteria for determining when a breeding activity is commercial versus noncommercial, and provide a mechanism to register commercial breeding operations with the Secretariat. To eliminate any confusion and underscore the distinction between commercial and noncommercial breeding, we have added a sentence to the definition of ''bred for commercial purposes'' to clarify that any captive-bred Appendix-

I specimen that does not meet the definition of ''bred for noncommercial purposes'' is considered to be bred for commercial purposes. For the same reason, we have made a minor amendment to the definition of ''bred for noncommercial purposes'' to make it clear that to qualify as noncommercial each donation, exchange, or loan of the specimen must be noncommercial.

Definition of ''commercial'': Three commenters argued that the definition of commercial is too broad and that it is inconsistent with the definition of commercial activity in the ESA, which implements the Convention. We disagree. The new regulatory definition is consistent with the term defined in the ESA. The Convention regulates trade in listed species, and commercial activity under the ESA relates to ''all activities of industry and *trade*, including, *but not limited to*, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling.'' The definition of commercial in § 23.5 is also consistent with CITES Resolution Conf. 5.10, which explains that an activity should be considered commercial if its purpose is to obtain an economic benefit, including profit, and is directed toward resale, exchange, provision of a service, or other form of economic use or benefit. The definition is also consistent with the use of the term in Resolution Conf. 12.10. All CITES resolutions that address commercializing a specimen focus on use of the specimen in a manner that results in economic benefit.

A number of commenters provided specific examples of transactions that they thought should qualify as noncommercial, such as purchase of a specimen for scientific purposes at a yard sale or estate sale; purchase from a person who is not a collector; or sale by a museum. Determination of whether a specific use qualifies as commercial or noncommercial must be made on a case-by-case basis taking into consideration all of the facts and circumstances. However, we note that, consistent with Resolution Conf. 5.10, the determination is focused on the use of the specimen, not the nature of the transaction. Trade may involve the exchange of some funds to compensate a party for costs such as care and maintenance of a specimen, storage costs, or taxidermy work, which themselves do not necessarily make the trade commercial.

One commenter argued that for trade to be commercial, both parties must have commercial interests. We disagree. Economic enrichment can result when just the importer or just the exporter is obtaining an economic gain or benefit from the trade. The definitions of commercial and noncommercial in this part are used to distinguish trade and uses of specimens for which commercial uses must be limited from those for which commercial uses are not limited. The FWS cannot fulfill its treaty responsibilities unless it examines all ways in which a specimen can be commercialized.

One commenter argued that including a donation that is used as a tax deduction as commercial in essence amends the Internal Revenue Code and asserted that whether something is eligible for a tax deduction is not a matter for the FWS to decide. We are not interpreting or amending the Internal Revenue Code. We are not describing what may or may not be eligible as a charitable contribution, but rather, we are fulfilling our responsibility not to authorize uses of certain CITES specimens that are primarily commercial in nature. Although we believe that in some cases a tax deduction may qualify as an economic gain or benefit, we have removed the phrase, ''or tax benefits'' from this definition, to eliminate confusion. See also our responses to comments received on § 23.55.

One commenter also challenged that part of the definition that applies to the intended, as well as the actual, use of the specimen. Determinations under CITES cannot be limited to the current, immediate action being taken with the specimen, but may also require consideration of subsequent actions that the person intends to take at the time of the determination. For example, a person may be personally importing a specimen in a manner that at first appears to be noncommercial, but if there is evidence to show that the person intends to sell the specimen and obtain a profit once the specimen is located within the United States,then the purpose is commercial. The definition is written to make clear that the FWS looks at all actions that the person intends to take involving the specimen, not simply the current, most immediate action.

Definitions of ''household effects'' and ''personal effects'': One commenter supported our definitions of household effect and personal effect to mean only dead wildlife or plant specimens.

Definition of ''introduction from the sea'': We define this term with the language in Article I(e) of the Treaty. 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 has prepared a document on introduction from the sea, based on discussions at the workshop, for consideration by the Parties at CoP14, to be held in June 2007. We recognize that the Parties may decide on an interpretation of introduction from the sea in the future, but in the meantime the regulations clarify when the prohibition applies, and when and what types of CITES documents are needed for international trade.

One commenter suggested that we adopt the definition of ''the marine environment not under the jurisdiction of any State'' agreed by the 2005 workshop. This definition, although agreed by the workshop, is still under discussion in CITES and will be considered by the Parties at CoP14. We believe it is likely that changes will be made to the definition at the CoP and that it would be premature for us to adopt a definition before it has been accepted by the Parties.

Definition of ''parental stock'': Based on the language in Resolution Conf. 9.19 (Rev. CoP13) on nursery registration and Resolution Conf. 12.10 (Rev. CoP13) on registration of operations that breed Appendix-I wildlife for commercial purposes, we use the term ''parental stock'' to mean the original breeding or propagating specimens that produced subsequent generations of captive or cultivated specimens. Two commenters supported our definition.

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. While the 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. Several commenters supported our definition of precautionary measures. One asked that we provide additional clarification on what information we will use to determine whether or not to issue a permit. Section 23.33 addresses the process we use when evaluating an application. In addition, §§ 23.60, 23.61, and 23.62 address the processes for making the required findings under CITES. We direct the commenters to those sections for more detailed discussion on how we implement the use of precautionary measures.

Definition of ''ranching'': We have not defined this term. At CoP13, the Animals and Plants Committees (committees established by the Parties to provide 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. This work is still ongoing. One commenter suggested that we develop a working definition of ranching until the Parties come to an agreed definition. We believe that it would be premature, and result in additional confusion, to adopt a definition before the production systems discussions are concluded.

Definition of ''readily recognizable'': We base our definition of readily recognizable on Resolution Conf. 9.6 (Rev.). Two commenters supported our definition.

Definition of ''sustainable use'': We 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 to implement the WBCA. The wording has been slightly edited to be consistent with language used in these regulations.

We believe that sustainable use is the essence of a CITES non-detriment finding, and these 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. (See preamble discussion on non-detriment findings (§ 23.61)). Three commenters supported our definition of sustainable use.

One commenter believed that it was unnecessary for us to state in the preamble to the 2006 proposed rule (71 FR 20167) that sustainable use can include adaptive management but that, ''adaptive management does not...imply that when there are gaps in information the assumption would be that trade would be sustainable.'' Our intent is not to minimize the value of adaptive management. However, adaptive management is not the only information considered when determining if trade would be sustainable. When making non-detriment findings, we will consider all relevant biological and trade information (see § 23.61).

One commenter agreed with us that sustainable use is the essence of a CITES non-detriment finding. However, the commenter noted that not all permit applications are for activities that have an impact on wild populations. We agree and take this into consideration when making non-detriment findings. Even if a specimen is considered captive bred under the Treaty, certain conditions must be met, including that the founder stock was acquired legally and in a manner non-detrimental to the survival of the species (see §§ 23.46, 23.63).

One commenter stated that certain phrases in our definition could be interpreted in multiple ways, and asked us to provide additional discussion of several phrases, including ''biologically viable,'' ''long term,'' and ''role or function in its ecosystem.'' We do not believe that these phrases require additional clarification because they are concepts that are inherent to conservation and wildlife management. Furthermore, they are not defined in the Treaty or in resolutions agreed by the Parties. We use these concepts for guidance in making non-detriment findings.

Definition of ''traveling exhibition'': We revised the definition of traveling exhibition for clarity, in response to comments received (see preamble discussion for § 23.49).

Management and Scientific Authorities (§ 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, the Secretary of the Interior is designated as the CITES Management Authority and Scientific Authority, and these authorities have been delegated by the Secretary and the Director of the FWS to different offices within the FWS. This section summarizes 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). Although other Federal agencies, as part of a larger federal involvement in international affairs, also play a role in CITES efforts, for example in communicating with the Secretariat and representing the United States at CITES meetings, they are not part of the Management Authority or the Scientific Authority for the United States.

A number of State fish and wildlife resource management agencies noted that the inclusion of this section summarizing the major roles of the Management and Scientific Authorities was very useful to the regulated community. Additionally, some of these commenters remarked on the need to clarify the process by which a non-Party designates competent authorities to fulfill the role of a Management and Scientific Authority to engage in international trade in CITES species. We decline to make a change in response to this comment because this section is intended to outline the roles of a Management Authority and a Scientific Authority rather than outline the process by which they are designated.

Contact information (§ 23.7): The table in this section outlines the type of information available from the U.S. Management Authority, U.S. Scientific Authority, the FWS Office of 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 noted the absence in this section of the contact information for the appropriate office in the U.S. Department of Agriculture for live animal clearance procedures. Another commenter suggested that we include contact information in this section for APHIS Veterinary Services, National Center for Import and Export (NCIE), and the Centers for Disease Control (CDC) because imports of live wildlife and wildlife products may also be regulated by these offices. The commenter pointed out that this information would be useful to the large number of pet bird owners who travel into and out of the United States with their pet birds. Since neither NCIE nor the CDC has direct responsibility for the inspection or clearance of shipments of live CITES specimens, we have declined to include their contact information in this section.

Information collection (§ 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 (44 U.S.C. 3501 *et seq.*). 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 mistakenly thought that our estimate for the amount of time it takes to complete an application was an estimate of the length of time it takes to obtain a permit.

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

In this 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 must 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 (§ 23.13): This section implements the international trade prohibitions under CITES. We list introduction from the sea separately from import to clarify that CITES treats these activities differently. We include the phrase ''engage in international trade'' in 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.

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.

Three commenters expressed their support for the clarification in § 23.13 that trade in violation of the regulations by a person subject to U.S. jurisdiction is prohibited even if the specimen is not imported into or exported from the United States. They noted that this will ensure that actions by U.S. citizens do not undermine the purposes of CITES outside the United States. One commenter opposed this part of the section, stating that it was contrary to elemental principles of national jurisdiction to hold a U.S. citizen legally responsible for conducting an activity outside the United States that is a violation of U.S. law when the activity is consistent with the law of the foreign country.

As long as a U.S. citizen engages in trade in a CITES specimen outside the United States consistent with all the requirements of CITES and the foreign countries' domestic laws implementing CITES, it would not be a violation of U.S. law. Section 9 of the ESA makes clear that citizens of the United States have a responsibility to comply with all applicable CITES procedures when they engage in trade in CITES specimens outside the United States. Given that 171 countries are parties to CITES, a U.S. citizen trading a CITES specimen between two foreign countries is likely to need CITES documentation from one or both of those countries. Failure to obtain and present the required CITES documentation would be a violation of the ESA.

One commenter was concerned with our response in the 2006 proposed rule (71 FR 20167) to a previous comment that an applicant's failure to provide adequate documentation showing legality of a specimen, while not necessarily evidence that the specimen was traded contrary to CITES, might prevent us from making the required findings or being able to issue the necessary CITES documents for subsequent import, export, or re-export. The commenter suggested that the FWS establish procedures or describe the kinds of evidence we will accept in lieu of positive documentation.

We have not specified the type of documentation that an applicant must present in order for us to make necessary findings and issue the required documents because it is not possible to describe the full variety of information that could be used to show that a proposed activity is consistent with CITES requirements. In each case, the applicant must present enough information to allow the FWS to make the required determination, but the source of this information and the level of detail needed to make the finding will vary. See § 23.34 for more detail.

Personal and household effects (§ 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 clarified the current regulations (§ 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 without CITES documents. 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 defined personal effect and household effect in § 23.5. We clarified that we consider qualifying tourist souvenirs to be personal effects.

Six commenters supported, in general, the clarification regarding personal and household effects, and several of those commenters supported specific provisions regarding Appendix-I and live specimens. They believed the clarification would help prevent abuses of the personal and household effects exemption. Three commenters, however, urged us to ease restrictions on individuals traveling with legally acquired CITES species. Although the commenters did not provide specific suggestions, we note that these regulations already provide an

exemption from CITES documentation for many individuals traveling with legally acquired CITES specimens. Another commenter believed that the trade in specimens under the exemption for personal and household effects creates a loophole that may adversely impact imperiled species. We disagree that this exemption has an adverse effect on listed taxa. As noted above, Article VII(3) provides for this exemption under certain circumstances, and the Parties have adopted additional guidelines through resolution.

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 website (see § 23.7). 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 Amendments of 1981, however, the United States requires an export permit if such a permit is required by the other Party involved in the trade, 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. One commenter believed the United States should impose stricter measures and require CITES documents for all personal and household effects. Such a requirement would be burdensome and provide little conservation value in most cases. Therefore, we declined to make a change based on this suggestion. However, these regulations allow for stricter measures under other U.S. laws (e.g., the ESA) for those species that warrant greater scrutiny. We believe this will allow for greater oversight when there appears to be a conservation value in doing so.

One commenter requested that we provide clarification regarding the restrictions imposed by the Lacey Act Amendments of 1981 and notify other CITES Parties of this requirement. The commenter also argued that the Lacey Act covered all foreign CITES species. We state in § 23.15(b) that the personal and household effects exemption does not apply if the country prohibits or restricts the import, export, or re-export of the item. In addition, we state that a personal or household effects shipment must be accompanied by any document required by a country under its stricter national measures. Both ofthese restrictions are imposed upon shipments because of our obligations under the Lacey Act Amendments of 1981 to provide support for other countries' stricter measures, and actions may be taken based upon information received from those countries about such restrictions.

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, seahorses, crocodilian products, giant clam and queen conch shells, and cactus 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.

One commenter supported our efforts to enforce the quantity limitations and agreed that when the quantities exceed the limit, a CITES document is required for the entire quantity.

We 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 for personal use 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, and so not to create conflicts with U.S. laws, we require CITES documents for all Appendix-I specimens, except for certain worked items made from African elephant ivory (see § 23.15(f)). One commenter requested clarification as to whether Appendix-I species could qualify for the personal or household effects exemption, and if so, indicated that they should only be pre-Convention. Section 23.15(d)(2) states that no specimens from an Appendix-I species are included except for certain worked African elephant ivory. Section 23.15(f) on worked African elephant ivory states that the ivory must be pre-Convention.

We clarify that personal effects must be personally owned by the traveler for exclusively noncommercial purposes, the quantity and nature 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. 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.

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 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 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. 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.

Two commenters believed that allowing 1 year after a move from one country to another to import or export household effects was too long, and allowed for potential abuse of the system. Based upon years of experience with CITES household moves, which have previously had no timeframe under U.S. regulations, we believe the 1–year timeframe is reasonably appropriate for completing the shipment of household goods to a new residence while preventing abuse of the exemption.

The AECA and ESA include stricter U.S. legislation concerning international trade in African elephant ivory. We 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 that the items are registered. 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 must 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 adopted 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.

One commenter did not support this exemption because of concerns regarding the illegal trade in ivory. The commenter believed the exemption sets a bad precedent and should be deleted. We believe that the measures we have put in place, including registration of personally owned pre-Convention worked African elephant ivory before leaving the United States, provide sufficient safeguards.

Urine, feces, and synthetically derived DNA (§ 23.16): International trade in these specimens is 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. We do not believe that trade in urine, feces, and synthetically derived DNA samples will adversely affect the conservation of, or effective regulation of trade in, CITES species and their parts, products, or derivatives.

At CoP12 and CoP13, there were proposals to annotate the Appendices 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. If a country requires CITES documents, we will process an application for these specimens.

Three commenters generally supported and two commenters generally opposed the exemption for urine, feces, and synthetically derived DNA in § 23.16. One commenter agreed that urine and feces should be exempt, but wanted to see a statement to ensure that collection methods for urine or feces posed no harm to listed species. Two commenters expressed concern about the exemption because of the potential need to capture and restrain listed species to collect samples. We have exempted urine and feces from CITES requirements and will therefore not require a statement on collection method. However, as noted in the 2006 proposed rule (71 FR 20167), we believe that it is important that researchers collect samples in a manner that does not harm the wildlife and complies with the laws of the country where the collection occurs. Researchers should contact the foreign Management Authority or other relevant wildlife authorities to obtain information on collection and export requirements prior to collection of urine or feces. Another commenter endorsed the exemption and described non-CITES restrictions placed on U.S. researchers regarding collection of these samples. The commenter added that such research oversight is also prevalent in other countries, often through legislation.

One commenter said that the United States should resist promulgating regulations that are more lenient than those agreed to by the Parties and noted that there is no resolution that provides for this exemption. In the 2006 proposed rule (71 FR 20167), we noted that the Parties have not agreed on whether urine, feces, or synthetically derived DNA are regulated by CITES. Where there is a lack of clarity or no agreement, the United States is left to make its own interpretation of the provisions of the Treaty. In our view, these are byproducts and are not recognizable parts or derivatives as defined in Article I of the Treaty. The commenter was also concerned that this exemption could lead to illegal trade in non-synthetic DNA labeled as synthetically derived DNA. We note that this exemption reflects a practice of the FWS that has been in effect since 1994. We have received no information to indicate that this practice has led to an increase in illegal trade in falsely declared DNA, nor do we expect this to occur in the future.

One commenter asked whether ambergris was covered under the provisions of either CITES or the MMPA. Because it is a byproduct, we do not consider ambergris to be covered by CITES provisions. The applicability of MMPA provisions to trade in ambergris is outside the scope of this rule.

Diplomats and other customs-exempt persons (§ 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 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. One commenter strongly supported the requirement for CITES documentation even if a person receives duty-free or inspection waiver privileges. The commenter further emphasized that U.S. officials have the legal authority to confiscate specimens of CITES species if a diplomat attempts to import or export them, or transit through the United States with them, without appropriate documentation.

Required CITES documents (§§ 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 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 organized the information on what types of CITES documents are required into two decision trees and two tables. 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 the regulations that explains the application procedures, general provisions, issuance and acceptance criteria, and conditions for each type of document. One commenter agreed with this approach and stated that the decision trees and tables in these sections were extremely useful.

One commenter supported the statement in § 23.20(f) that an introduction-from-the-sea certificate must be obtained before conducting the proposed activity and the clarification that international trade following introduction from the sea is considered an export, not a re-export.

Another commenter expressed concern that the document requirements for Appendix-III specimens that originate in a country other than the listing country are not clear. We have addressed this comment under the preamble discussion pertaining to certificates of origin (§ 23.38).

Export of Appendix-I wildlife (§ 23.18): The decision tree clarifies that international trade in Appendix-I wildlife may not be 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 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-for-primarily-commercial-purposes 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 no longer allow the use of Article III of the Treaty to export Appendix-I wildlife unless the export is for noncommercial purposes. We also 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 captive-bred Appendix-I wildlife will be given a source code ''F,'' rather than a ''C,'' and the export will be allowed only if the export is for noncommercial purposes and an import permit has been granted.

One commenter thought that the use of the double negative in the decision tree for export of Appendix-I wildlife in § 23.18 leads the casual reader to assume that noncommercial trade is not allowed. The purpose of the decision tree is to walk the reader through the requirements for trading in Appendix-I specimens under different scenarios, and it is important to read it through in full.

Two commenters strongly supported the requirement that to qualify for an exemption under Article VII(4) and (5) as bred in captivity, the specimen must have been bred at a CITES-registered facility or bred for noncommercial purposes. However, one of these commenters questioned how the terms ''not primarily commercial'' and ''noncommercial purposes'' were used. See the discussion regarding the definition of ''commercial'' in § 23.5.

Reservations (§ 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 such shipments do not transit a Party country. Trade with Parties that have not taken the same reservation requires CITES documents.

This section emphasizes what types of documents are required from Parties that have taken a reservation on a species listing. We incorporated 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 incorporated Resolution Conf. 9.7 (Rev. CoP13), which clarifies the requirements in 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.

We explain how a person can provide relevant information and request that the United States consider taking a reservation. Additionally, we note that if the United States entered a reservation to the listing of a species in Appendix I, we will require a CITES document that meets 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 country has implemented CITES through its domestic legislation 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).

One commenter argued that the United States should prohibit all trade in Appendix-I species involving non-Parties or Parties with a reservation if that trade involves a U.S. citizen or if the specimen is to be imported into, exported from, or otherwise transit a U.S. port. We believe that this comment is adequately addressed in the 2006 proposed rule (71 FR 20167), and refer the commenter to that document for further clarification.

In-transit (§ 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 transshipping them through intermediary countries. 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 define an in-transit shipment as the transshipment 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 § 23.50 for sample collections covered by an ATA carnet. In-transit shipments, other than sample collections (§ 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 valid CITES export documents were 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 regulations reflect the recommendations of the CoP to prevent misuse of the in-transit exemption. A copy of the valid original document may be used for in-transit shipments. However, transshippers should be aware 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.

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, and arrives in the United States before continuing on to another country is considered an import and must meet all import requirements.

One commenter stated that the regulations should require a ''firmer control of original CITES documents by carriers.'' The commenter suggested that the carrier should permit the shipment to be held at the destination for no additional charge when the documents are lost by the carrier. The scope of these regulations does not address how carriers control shipping documents or the charges that are assessed by carriers for storage of shipments pending clearance. One commenter suggested that we include a statement that all in-transit wildlife shipments of CITES species must comply with IATA regulations. As stated in § 23.26, all shipments, including in-transit shipments, must meet the IATA requirements. Therefore, we believe it is unnecessary to restate that in-transit shipments must comply with the humane transport requirements.

Required information on CITES documents (§ 23.23): This section details what information must be included on CITES documents. 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 had concerns regarding our response in the preamble to a comment stating that ''documents that do not contain the required information may be considered invalid and rejected by any Party.'' One commenter requested clarification of specifically what would trigger a rejection by the FWS, and the other commenter indicated that the statement was too ambiguous and left too much discretion to the port official. Section 23.23 of the rule details the information required on a permit, and § 23.26 provides guidance on when we consider a U.S. or foreign CITES document to be valid.

Most of the information in this 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. A number of commenters appreciated the inclusion of this section, and stated that it would provide a ''valuable addition to the regulated community.''

CITES forms (§ 23.23(b)): This section states that CITES documents issued by a Party must be on a form printed in one or more of the three working languages of CITES (English, French, or Spanish). One commenter stated that, to ensure that our customs and wildlife inspectors are able to understand all statements made on the face of a CITES document, we should require that all CITES documents for shipments coming into the United States be printed in English only. Similarly, the commenter stated that each Party should designate one of the three working languages in which all CITES documents accompanying shipments into that Party's country should be printed. While we agree that having English as the only language appearing on incoming documents would be easier for our inspectors, CITES allows for documents to be printed in any of the three working languages and we cannot regulate the activities of foreign countries through our domestic regulations.

Required information (§ 23.23(c)): One commenter raised a concern that, while the customs declaration label that is required on the outside of a container of CITES specimens moving from one registered scientific institution to another registered scientific institution (§ 23.48(e)(5)) may constitute a CITES document, it is unlike other CITES documents with regard to the information it must contain. We agree with the commenter that, like phytosanitary certificates, the customs declaration label must contain specific language and information that is not the same as what is required on other CITES documents. We have amended the language in § 23.23(c) to exclude these labels.

Bill of lading or air waybill (§ 23.23(c)(3)): Although a suggestion was made after we first proposed these regulations in 2000 to require that the air waybill or bill of lading information appear on the face of CITES documents, we declined to make this mandatory because the specific information is not always known at the time the CITES document is validated. One commenter on the 2006 proposed rule (71 FR 20167) supported this approach, agreeing that such information is not always available.

Dates (§ 23.23(c)(4)): Over the years, we have received many questions about the ''valid until'' date. In this final rule, 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. One commenter expressed a concern that, due to situations beyond an importer's control, such as delayed transport or prolonged customs procedures, shipments may not arrive prior to the expiration date of a document. The commenter argued that, if an importer allows a reasonable period of time for the shipment to arrive in the United States, the documents should be accepted regardless of the expiration date. We cannot accept this suggestion. The Treaty establishes the period of validity for some documents, and the Parties, through resolution, have established a specific time period for which other documents are valid. We strongly urge importers and exporters to

be aware of the expiration date of their documents and to request replacement documents if they do not believe that the shipment can be completed before the document expires.

Humane transport (§ 23.23(c)(7)): We require that CITES export and re-export documents for live wildlife contain a specific condition that the document is only valid if the transport complies with certain humane transport standards. One commenter indicated that three sections (§§ 23.23, 23.26, 23.36) do not contain the same language with respect to humane transport. The commenter suggested the language used in § 23.36 should be used in all sections because it reiterates CITES language. We declined to make a change based on this suggestion because each section has a different purpose and requires different language. Section 23.23 provides the wording that must be included on a CITES document, § 23.26 lays out the condition for acceptance of a shipment, and § 23.36 provides the criteria for issuance of a permit.

We do, however, make a change to §23.23(c)(7) to incorporate by reference CITES's *Guidelines for transport and preparation for shipment of live wild animals and plants.* We inadvertently omitted this necessary incorporation by reference in our proposed rule, and we are correcting that omission in this final rule.

Identification of specimen (§23.23(c)(8)): We require that the CITES document accompanying a shipment contain information on any unique number or mark that is used to identify a specimen in that shipment. If the specimen has a microchip, the specific information concerning the code, trademark of the transponder manufacturer, and location of the chip must 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 supported the provision that an importer or exporter must provide equipment to read a microchip, if requested. Another commenter did not support this approach and argued that the FWS should provide any required equipment. This commenter also did not believe that we should require that unique markings or microchip numbers be identified on the face of the CITES documents. The commenter thought this requirement would be burdensome to exporters that use microchips, whereas those exporters who do not use microchips would not have the same documentation burden. On an application for a CITES document, the applicant is asked to identify the specimens to be imported or exported. If the applicant uses a unique mark or microchip as a form of identification, we will use that as a means of identifying the specimen. Because a CITES document is issued for specific specimens, the use of identification marks or microchips ensures that the specimens identified in the application are the specimens presented at the time of import or export. Requiring that the unique marks or microchips be identified on the face of the CITES document allows for such identification. With regard to the FWS purchasing microchip readers, there currently is no industry standard for microchip readers and the cost to purchase every type for each wildlife inspection station would be prohibitive.

Purpose of transaction (§ 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. One commenter expressed confusion over the fact that the regulatory language at § 23.23(c)(11) uses the words ''if possible'' and therefore allows for the possibility that the purpose of the transaction may not appear on the face of a CITES document. We have amended the text to remove the ambiguity and to clarify that the purpose of the transaction must be identified on the face of the CITES document, either through use of one of the purpose of transaction codes in § 23.23(d) or through a written description.

Quantity (§ 23.23(c)(12)): We require that standardized units are used on all documents. 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. To monitor trade effectively, we need records on quantities that accurately reflect the volume of that trade.

One commenter agreed with the requirement that appropriate units be used on documents. However, the commenter believed that we should include a table of all of the units accepted by the Parties. We decline to accept this comment since the accepted units, which are identified by species or commodity, are too numerous to list. The accepted units are identified in the annual report format guidelines that are available on the CITES website or from us (see § 23.7).

Signature (§ 23.23(c)(16)): We require that the signatures of individuals authorized to sign CITES documents for a Management Authority 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. One commenter believed that this requirement would be impractical. We disagree and note that this is not a new requirement. Resolution Conf. 12.3 (Rev. CoP13) recommends that Parties communicate to the Secretariat the names of the persons empowered to sign CITES documents and submit examples of their signatures. The FWS provides this information to the Secretariat for documents issued by the United States and verifies signatures with the Secretariat when questions arise about the validity of foreign documents.

Validation (§ 23.23(c)(21)): We require CITES documents to indicate the actual quantity exported or re-exported, whether the shipment is physically inspected upon export or not. One commenter expressed concerns that this section requires a CITES permit to be validated prior to leaving the country; otherwise it is not considered a valid permit. The commenter stated that the majority of countries do not validate their export permits and that this will become an enforcement burden to the wildlife inspection program to either re-export the shipment for lack of validation or seize the item(s). The commenter questioned if there is a plan to notify all CITES Parties of this new requirement to lessen the burden. We are aware of the lack of implementation of this CITES requirement by some countries, and plan to focus outreach efforts on this issue before the rule enters into effect. However, we are also aware that receipt of a CITES document without validation is not necessarily due to an exporting or re-exporting country having chosen not to validate, but may be because these shipments have evaded export controls. The lack of validation is quite often a violation of the exporting or re-exporting country's CITES laws, and we are committed to ensuring that shipments of CITES species are legally traded.

One commenter had concerns that the FWS would seize specimens if the authorized quantity had been changed without the validation stamp. The commenter suggested that, if a mark-out occurs and a new quantity is written by the Management Authority of the exporting country, the quantity should be verified through a physical inspection by the FWS without action taken against the importer. We disagree with this comment. If any alteration of

the CITES document occurs, this must be identified by the stamp and signature of a person authorized to sign CITES documents for the issuing Management Authority or the document is considered invalid. Without the stamp and signature verifying the originator of the changes, we can only assume such changes were not authorized, and we must take appropriate action.

One commenter raised a concern about requiring validation or certification of a customs declaration label used to identify specimens being moved between registered scientific institutions. We have revised this section to exclude these labels from the validation requirement.

Additional information (§ 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 expressed concern over how quotas are handled by the Parties and believed that this section should include additional language that would provide greater control over quotas. Although we recognize that the Parties are currently evaluating the uses of quotas, this section was not intended to address those concerns. This section provides the additional language required on CITES documents when the specimens identified on the document fall under an established quota. Therefore, we have not made the changes to this section requested by the commenter.

Phytosanitary certificates (§ 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 this time, we do not allow the use of phytosanitary certificates in lieu of CITES certificates for export of plants artificially propagated in the United States. One commenter believed there was a contradiction in this last statement. To clarify, although the United States does not issue phytosanitary certificates in lieu of CITES certificates, we will accept them from other Parties that have issued such documents, provided the phytosanitary certificate was properly issued and meets the requirements set out in this section.

Source of the specimen (§ 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 provide a list of standardized codes that Management Authorities use on CITES documents to identify the source of the specimen. In addition, we provide the definition for each code, and explain that the source code ''O'' for pre-Convention specimens should be used in conjunction with another source code. The U.S. Management Authority will determine the appropriate code to use when issuing a document, based on information provided in an application.

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 for bred in captivity (see § 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 § 23.18.

Two commenters expressed concern that use of the source code ''F'' for Appendix-I specimens that were commercially bred at a facility that was not registered with the CITES Secretariat would negatively impact their commercial operations. As discussed further in § 23.46, specimens that are produced for commercial purposes at a registered commercial breeding operation are afforded a specific exemption under Article VII(4) of the Treaty. These specimens are given the source code ''D'' on CITES documents. If a commercial breeding operation for Appendix-I species does not meet the requirements set out in § 23.46 to be registered with the CITES Secretariat, its specimens would not be eligible for the exemption under Article VII(4), and therefore any international trade of such specimens would be subject to the provisions of Article III of the Treaty.

Additional information required on non-Party documents (§ 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 a 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, they adopted Resolution Conf. 9.5 (Rev. CoP13). This resolution recommends that Parties accept documents from non-Parties only if they contain certain basic information, including certifications that a competent authority has made the findings required under Articles III, IV, or V of the Treaty. Therefore, we have incorporated 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. One commenter expressed concern that a certification from a non-Party that findings have been made in accordance with the Convention did not guarantee that findings were accurate or scientifically sound. We believe that the requirements in Resolution Conf. 9.5 (Rev. CoP13) and Resolution Conf. 12.3 (Rev. CoP13) are sufficient to ensure that trade with non-Parties is conducted in accordance with CITES. As noted elsewhere in this rule, if we have concerns regarding a CITES document issued by another country, we will investigate the situation further.

Valid CITES documents (§ 23.26): Article VIII of the Treaty outlines measures that Parties shall 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 do not re-enter illegal trade, Parties are urged 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.

One commenter stated that the FWS should impose rules that make it clear that a CITES shipment not accompanied by the required CITES documents would be deemed illegal and disposed of pursuant to the FWS laws and policies with all costs borne by the importer, exporter, or re-exporter. We believe the rule clearly identifies the CITES prohibitions. The commenter further stated that if such a rule is not imposed, the FWS should require that countries issuing permits for shipments to the United States should submit electronic copies of the documents to ensure that a record of all trade is available. We disagree with this suggestion because such a requirement has not been agreed upon by the CoP

and would be overly burdensome for both the United States and other CITES Parties.

We included 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, noting that we should accept a document if it is not procured by fraud and meets Article VI of the Treaty. One commenter argued that if we had a dispute with a country about a permit we should address our concerns to that country, and that the Convention does not give us the authority to refuse entry of shipments or reject permits in the absence of fraud or falsification of the permit.

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. In addition, violations of CITES consist of more than fraud or falsified documents, and the Treaty requires Parties to penalize trade in, and possession of, specimens traded contrary to the Convention. As decided by the United States District Court for the District of Columbia in *Castlewood Products* v. *Norton* (Apr. 16, 2003), and affirmed by the Court of Appeals for the District of Columbia Circuit (Apr. 30, 2004), the role of all CITES Parties is to ensure that international trade in CITES specimens meets the provisions of the Convention, and the Government has the authority to decline to accept export permits at face value when reason is shown to doubt their validity. We note that the United States receives thousands of CITES shipments annually for which CITES documents are accepted as issued. We focus our verification efforts on those shipments and CITES documents for which the available information indicates a problem may exist.

One commenter believed that the FWS relies too heavily on the assumption that an exporting or re-exporting country is issuing accurate and scientifically defensible non-detriment findings. The commenter argued that the FWS must mandate import permits for all Appendix-I and Appendix-II wildlife or mandate internal reviewof export permits to make concurrence determinations, with no exceptions. The commenter also stated that the regulations should set specific requirements with which foreign Scientific and Management Authorities must comply when completing and issuing their findings. The imposition of a CITES import permit requirement for Appendix-II wildlife and of specific criteria for other countries to use in making their non-detriment findings goes beyond what is required under the Treaty. We have full authority to question a non-detriment finding when we have reason for concern. Requiring import permits for Appendix-II specimens would add significantly to our workload, but would not provide significant benefit.

Acceptance of CITES documents (§ 23.26(c)): We present the 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.

Annual reports (§ 23.26(c)(2)), Convention implementation (§ 23.26(c)(5)), Legal acquisition (§ 23.26(c)(9)), and Non-detriment (§ 23.26(c)(12)): Three commenters urged us to include regulatory provisions to implement recommended trade suspensions. When the Standing Committee or the CoP recommends a temporary trade suspension, based on the results of the Review of Significant Trade, non-submission of annual reports, the status of adequate national legislation, or ongoing enforcement or implementation problems, Parties are informed of the decision through a Notification to the Parties issued by the Secretariat. All three commenters indicated that temporary suspensions are a valuable tool for ensuring compliance by CITES countries. Two commenters stated that implementation of CITES trade suspensions is a responsibility of the United States in its role as a major importer of CITES species, and one commenter urged regulatory language requiring immediate implementation of CITES trade suspensions. One commenter also suggested that we add a specific key phrase to § 23.26(c) for CITES trade suspensions.

While we believe the regulations as proposed allow us to implement any temporary suspensions of trade, we agree that adding language to § 23.26(c) will provide useful clarification for the public. CITES trade suspensions are based on failure to comply with basic Treaty requirements, and we realize that the basic Treaty requirements are scattered throughout many sections of the regulations. Therefore, to provide clarity, we have added four additional key phrases to § 23.26(c), annual reports, Convention implementation, legal acquisition, and non-detriment, as conditions that must be met before we consider a CITES document valid. The addition of these key phrases also ensures continuity with § 23.26(d) which outlines when we might verify a CITES document with the Secretariat or a foreign Management Authority. Although we indicate that these key phrases form the basis for acceptance of CITES documents, in addition to requirements in other sections, we will not generally question findings made by a Party for each individual shipment. We seek additional information where there is reason to question a shipment or a pattern of trade.

Management Authority and Scientific Authority (§ 23.26(c)(10)): One commenter supported the requirement that non-Parties designate Management and Scientific Authorities.

Quotas (§ 23.26(c)(14)): Quotas may be established voluntarily by Parties, adopted by the CoP through a resolution or proposal to amend Appendix 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 quotas each year, and we require that, for a given species, the quantity exported not exceed the quota. One commenter agreed with this requirement.

Ranched specimen: We received one comment related to a provision that appeared in the 2000 proposed rule (65 FR 26664) regarding not allowing international trade in ranched specimens involving non-Parties or Parties with a reservation on a species downlisted from Appendix I to Appendix II subject to ranching. Resolution Conf. 10.18 included language addressing this potential trade restriction. However, Resolution Conf. 11.16, which replaced Resolution Conf. 10.18, does not include this provision. Since the Parties excluded this provision when revising the ranching resolution, we did not include the restriction in this rule.

Shipment contents (§ 23.26(c)(18)): This paragraph specifies that the contents of the shipment must match the description of specimens on the CITES document and that the shipper may not substitute a new specimen to replace the one authorized. One commenter believed it was reasonable to allow a scientist who had obtained a permit for several specimens of a particular species to substitute different specimens of the same species without having to amend the permit. We

disagree. Findings are made based on information provided by the applicant for specific specimens, and therefore the specimens in a shipment must correspond to what was authorized.

Verification of CITES documents (§ 23.26(d)): This paragraph 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.

Verification of CITES documents can be a lengthy process and depends on the issue, the means of communication, and the cooperation of the countries involved. Failure by a country to respond through normal channels of communication or failure to provide sufficient information to determine validity of documents may result in refusal of a shipment.

We rely on Parties and non-Parties to make appropriate findings, and we seek additional information only when we have a specific reason to do so. The Plants and Animals Committees, through the Review of Significant Trade process, regularly evaluate whether Parties are properly making non-detriment findings. Four commenters questioned why we both rely on Parties and non-Parties to make appropriate findings and also allow the Animals and Plants Committees to regularly evaluate whether Parties are properly making non-detriment findings. The commenters suggested that we delegate the process to the Committees. We wish to clarify that Parties and non-Parties are required under CITES to make legal acquisition and non-detriment findings for the CITES documents they issue. Although the Plants and Animals Committees regularly evaluate whether Parties are properly making non-detriment findings, this is only done for selected species determined to be subject to significant levels of trade. Such evaluations are done at the species level, usually range-wide, not for individual permits, and not at the specific request of a country. Individual permit findings cannot possibly be made by the Plants and Animals Committees, which generally meet only annually. We may request information on non-detriment findings made by other countries, including the underlying basis for quotas established by Parties, when we have a question regarding a shipment or a pattern of trade.

Several commenters indicated that if the United States questions a non-detriment finding there should be official notice to the public and the regulated community before a contrary determination is made. Although we encourage the public to provide relevant information if they have concerns about a finding made for a particular shipment, we decline to add a requirement that we solicit public comment whenever we have reason to question a non-detriment finding. We believe it is unnecessary and would undermine any timely and appropriate enforcement action that may be warranted.

One commenter strongly supported the regulations regarding verification of documents and noted that the issuance of a permit without making the relevant findings is inconsistent with Articles III and IV of the Treaty and therefore constitutes noncompliance. Another commenter recognized that the FWS has the authority to respond to violations, but believed that where a document is apparently valid, and not procured fraudulently, importers should have a reasonable expectation of a procedural standard for ''looking behind'' the document to determine its validity. We agree and have provided detailed information about when we would question the validity of a permit and seek verification. The commenter further stated that the failure to make adequate findings by ignoring, omitting, or failing to review relevant information is no different. The commenter argued that the regulation confirms the FWS' authority to look behind a facially valid permit. The commenter urged us to retain the proposed language in the final rule because it facilitates proper implementation of the Convention and the holding of the United States District Court for the District of Columbia in *Castlewood Products* v. *Norton* (Apr. 16, 2003).

One commenter argued that a CITES export permit must be regarded as the only authorization necessary to trade in CITES species. We agree that as signatories to CITES, the Parties have an obligation to issue export permits in accordance with the requirements of the Convention. However, 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. This position was affirmed by the United States District Court for the District of Columbia in *Castlewood* v. *Norton* and the Court of Appeals for the District of Columbia.

One commenter suggested we include in § 23.26(d)(5) a statement allowing us to request verification of a CITES document when we have reasonable grounds to believe that the specimen was produced from illegally acquired parental stock. We agree and have revised the regulations accordingly.

One commenter stated that the verification process outlined in the 2006 proposed rule (71 FR 20167) would be grossly unfair to importers. We disagree. These regulations provide a greatly expanded explanation of what CITES documents are required for trade, the information that must be contained on a CITES document, when we consider a document valid, and what importers should present at the port of entry. We believe that this section will assist the regulated public in determining what they must do to comply with CITES if they wish to import or export CITES species.

Presentation of CITES documents at the port (§ 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 provide a table outlining the type of U.S. and foreign documents they must present for validation or certification, or that they must surrender, when importing, introducing from the sea, exporting, or re-exporting CITES species.

One commenter made a general statement that we should modify these regulations to reflect reality and allow uniform application of the rules, in particular with respect to the validation and clearance process. We believe the regulations governing the CITES approval and validation process are appropriate as written. Article VIII of the Treaty requires the Parties to establish an inspection process that takes place at the ports of exit and entry to ensure that wildlife shipments are in compliance with CITES. The validation process is an important component of CITES that enables U.S. inspection authorities to confirm the authenticity of permits and ensure that wildlife shipments were legally shipped from the exporting country. Such determinations are needed to ensure the proper enforcement of U.S. laws and regulations. Specific problems with clearance procedures in a foreign country should be addressed to the appropriate Management Authority. One commenter supported our clarification in the 2006 proposed rule (71 FR 20167) that CITES documents for wildlife in personal accompanying baggage should be submitted as soon as possible to the FWS if Customs or Agriculture officials fail to collect the documents at the time of arrival of the passenger.

One commenter correctly noted that the documentation that accompanies shipments of CITES specimens moving between registered scientific institutions is not processed at the port in the same manner as other CITES documents. We have removed the registered scientific institution CITES label from the table in § 23.27(b) and added a new paragraph (§ 23.27(d)) to describe the port requirements for such shipments. In addition, we inadvertently omitted the process for presenting phytosanitary certificates for shipments of artificially propagated plants and have corrected that by adding the necessary language to the table in § 23.27(c).

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

This subpart provides information on how to apply for a U.S. CITES document. It also contains general provisions and criteria that apply to both U.S. and foreign CITES documents.

Application procedures (§ 23.32): This section gives a general overview of the application process for U.S. CITES documents. Much of the information that appears in this section also appears in 50 CFR 13, General Permit Procedures, and is repeated here for the convenience of the regulated public. One commenter appreciated this reiteration of the application process for 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 §§ 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.

One commenter disapproved of our intent in § 23.32(f)(2) to abandon any application after 45 days when the applicant has not responded to our request for additional information and of the fact that we will not re-open an application file once it has been abandoned. This procedure is not new. Part 13 of this subchapter identifies the process for abandoned application files, and it is repeated in this section for emphasis. We receive over 6,000 permit applications annually, and we work closely with applicants to avoid the need to abandon any application file. In the past, we have received requests to re-open files months, and even years, after a file has been abandoned. Such requests are burdensome, and we have found that it is more efficient to create a new file. As a result, once abandoned we will not re-open an application file.

Decisions on applications (§ 23.33): This 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 believed that we were inconsistent when we stated in the 2006 proposed rule (71 FR 20167) that we may consult with outside experts and others before making required findings, yet we also stated that 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 (§ 23.26(d)). We believe that the commenter misunderstood our point in this section with regard to consultation with outside experts. We may consult with outside experts to assist us in making our required findings. This is separate from the issue of whether or not we will accept the findings made by a foreign CITES authority.

One commenter was concerned that the burden of proof is on the applicant to establish that the issuance criteria are met. The commenter noted that the FWS is more likely to have access to certain information than the applicant (e.g., biological status of the species). While it is true that in some cases we may have access to more information than many applicants, we do not believe that it is the burden of the government to obtain the information necessary to prove that the issuance criteria have been met. We inform the applicant of the basis of any denial decision and indicate what information is lacking. If the missing information is difficult for an individual applicant to obtain (e.g., foreign government management plans), we will do our best to obtain such data during the course of reviewing an application. However, it is the applicant's responsibility to prove that he or she meets the issuance criteria.

We received several comments on the process for appeal when an application has been denied. We refer the commenters to the 2006 proposed rule (71 FR 20167), where we addressed this issue, and note that the general permit procedures in part 13 of this subchapter provide the process for review if an application is denied. The procedures in part 13 cover all applications processed by the FWS, including applications for activities under CITES.

Records (§ 23.34): This section provides examples of the kinds of records individuals and businesses may want to keep if they intend to trade in CITES species internationally. 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. 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; or is commonly imported. We give less scrutiny and require less information when there is a low risk that a specimen was illegally acquired and give more scrutiny and require more detailed information when the risk is greater.

One commenter was concerned with our response in the 2006 proposed rule (71 FR 20167) to a previous comment that an applicant's failure to provide adequate documentation showing legality of a specimen, while not necessarily evidence that the specimen was traded contrary to CITES, might prevent us from making the required findings or being able to issue the necessary CITES documents for subsequent import, export, or re-export. The commenter suggested that the FWS establish procedures or describe the kinds of evidence we will accept in lieu of positive documentation.

We have not specified the type of documentation that an applicant must present in order for us to make necessary findings because it is not possible to describe the full range of information an applicant could use to show that their activity is consistent with CITES requirements. In each case, the applicant must present enough information to allow the FWS to make the required determinations, but the source of this information and the level of detail needed to make the findings will vary.

One commenter was concerned that an importer might be unable to show proof of legal import because the documents were retained by CBP and not forwarded to the FWS. The retention of copies by the importer at the time of import is separate from whether CBP transfers paperwork for follow-up investigation or storage by the FWS. Commercial importers must retain copies of documents for their files. Noncommercial importers are encouraged to retain copies of any documents submitted to the government for clearance as an ordinary part of the process whether or not they intend to submit applications in the future. All importers should also be aware that there are recordkeeping obligations under customs laws (19 U.S.C. 1508 and 1509) and customs regulations (19 CFR part 163).

General requirements for standard CITES documents (§§ 23.35–23.39): The basic requirements for U.S. and foreign CITES documents have not changed since the Treaty took effect in 1975. 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 of these sections provides information to help an applicant determine which application form to use. The forms can be obtained from our website or requested by phone, mail, or e-mail (see § 23.7).

These sections list the issuance criteria for each type of document and reference 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.

Prior issuance of an import permit (§ 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), 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 stated that we should require the Management Authority of the exporting country to acquire a copy of the import permit before issuing an export permit or re-export certificate. The commenter was concerned that, due either to limited resources or lack of interest, a country will not make the required findings if they know in advance that the importing country will allow the import. We believe that countries strive to fulfill the requirements of the Treaty to the best of their abilities and that it is unlikely that an importing country would issue an import permit based solely on the fact that the exporting country issued an export permit. The commenter also contended that allowing the importing country to provide a ''letter of intent'' or written assurance that an import permit will be issued will lead to situations where the import permit will not be issued by the time the import actually occurs, placing border officials in a difficult situation. It is the responsibility of the exporter to obtain all the necessary documents before engaging in international trade. We concur with Resolutions Conf. 10.14 (Rev. CoP13) and 10.15 (Rev. CoP12) that allowing importing countries to provide written assurance that an import permit will be issued provides a workable solution that allows the administrative needs of both the importing and exporting countries to be met. If the U.S. Management Authority receives a written confirmation that appears unusual or inappropriate, we will investigate the situation further.

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

Two commenters expressed their support for registering breeding facilities for Appendix-I wildlife and allowing the export of wildlife from these registered facilities for commercial purposes. However, one commenter thought that measures such as registering breeding facilities create loopholes and do not provide benefit to Appendix-I species in the wild. CITES allows for commercial trade in Appendix-I specimens from registered breeding operations, and we do not believe that this requirement creates a loophole. The commenter also wanted assurances that an Appendix-I specimen bred for noncommercial purposes (i.e., not from a registered breeding facility) would only be traded internationally for noncommercial purposes over its lifetime. We will not authorize commercial trade of an Appendix-I specimen that does not qualify for an exemption under which such trade would be allowed. Additionally, we expect that countries that are party to CITES will abide by the provisions of the Convention, however we do not have control over trade that does not involve the United States.

We address the exemption in Article XIV(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. One commenter appreciated the clarification in § 23.36(d) of the requirements for CITES documents for certain marine specimens exempted under Article XIV(4) and (5).

We added a new application form to the table in (b) for export of caviar or meat from wild-caught sturgeon and paddlefish (Form 3-200-76). This form was developed after the 2006 proposed rule (71 FR 20167) was published.

Certificate of origin (§ 23.38): A certificate of origin allows the export of a specimen of a species listed in Appendix III when the specimen originated in a non-listing country. This

section provides specific information on the application form and issuance criteria for a certificate of origin.

One commenter expressed concern regarding documentation requirements for trade in Appendix-III specimens. While he believed that the requirements were clear for specimens originating in the listing country, he stated that there is no uniform format for certificates of origin, which results in considerable variation in these documents, with some countries no longer issuing any documents for the export of Appendix-III specimens. He also noted that acceptance of these documents by the United States varies at different ports of entry and asked that we ''formulate clear rules which reflect the ongoing customs and regulations of other countries.''

Sections 23.23 to 23.27 provide clear descriptions of the information requirements for CITES documents, including certificates of origin. These requirements implement the current resolution on permits and certificates, and therefore reflect what has been agreed by the CITES Parties. Some countries have taken reservations for certain Appendix-III species, and we refer the commenter to § 23.21 for an explanation of document requirements when a country has elected to take a reservation on an Appendix-III listing.

Introduction from the sea (§ 23.39): Article XIV(4) and (5) 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(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.

One commenter was concerned that allowing the use of other treaties, conventions, or international agreements to exempt specimens from CITES requirements may reduce their overall protection by allowing trade that may not be permissible under CITES. He stated that the FWS should identify all such agreements in force on July 1, 1975, and provide an analysis comparing and contrasting requirements imposed by these other agreements in relationship to CITES requirements. We disagree. The exemption in Article XIV(4) and (5) for certain Appendix-II marine species is limited in scope and was purposely written into the Treaty to avoid conflicts with pre-existing treaties, conventions, and agreements. Changing or eliminating this exemption would require amending the Treaty, which we do not believe is practicable or warranted.

Another commenter believed that guidance was lacking on when an introduction-from-the- sea certificate is required. Introduction from the sea is defined in § 23.5, and § 23.20(f) and § 23.39 explain clearly that unless the specimen qualifies for an exemption under Article XIV(4) and (5), the introduction from the sea of an Appendix-I or -II specimen requires an introduction- from-the-sea certificate. Criteria for issuance and acceptance of introduction-from-the-sea certificates are provided in § 23.39.

Bred-in-captivity certificates (§ 23.41): This 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 § 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 adopted 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 will be allowed only when the export is for noncommercial purposes (see the discussion in the preamble for § 23.18). We also adopted the recommendations of Resolution Conf. 10.16 (Rev.) for specimens bred in captivity (see § 23.63). Appendix-I wildlife that qualifies for a bred-in-captivity certificate does not need a CITES import permit.

One commenter asked if we could issue bred-in-captivity certificates for Appendix-II and -III specimens that are part of a traveling exhibition, or for Appendix-I specimens in foreign-based traveling exhibitions performing in the U.S. As stated above, such certificates may be issued for any purpose, including traveling exhibitions, for Appendix-II or -III specimens. However, we generally do not issue bred-in-captivity certificates for specimens in a traveling exhibition. Traveling exhibitions are addressed by Article VII(7) of the Treaty and we refer the commenter to the procedures for traveling exhibitions described in § 23.49. The same commenter asked whether we could issue a bred-in-captivity certificate to facilitate import of an Appendix-I specimen that had been bred for noncommercial purposes in a foreign country. A Party cannot issue a bred-in-captivity certificate for a specimen outside of its national jurisdiction.

The commenter also expressed concern that issuance of a bred-in-captivity certificate bypasses the requirements in Article III, IV, and V to make a legal acquisition finding and the requirements in Article III and IV to make a finding that the export would not be detrimental to the survival of the species. These findings are made through our adoption of the standard interpretation of the term ''bred in captivity'' in Resolution Conf. 10.16 (Rev.). We refer the commenter to § 23.63 on the procedures for evaluating the breeding stock from which the specimen was derived.

The Parties have agreed that facilities that are breeding Appendix-I species for noncommercial purposes must be participating in a cooperative conservation program with one or more range countries for the species. The commenter noted that we have not provided a specific definition of what constitutes a cooperative conservation program. We amended the definition in § 23.5 slightly to make it clear that the program must be conducted in cooperation with one or more of the range countries for the species. However, we defined ''cooperative conservation program'' in general terms because we did not want to limit what might be considered under such a program. These programs may include a wide variety of activities, and we cannot adequately address every variation in this rule. Instead, using our professional judgment and through communication with range countries and species experts, we will evaluate each breeding situation to determine if the activities being conducted constitute active participation in a cooperative conservation program.

The commenter also expressed concern that the issuance of bred-in-captivity certificates would facilitate fraudulent activities by providing a loophole for the international movement

of wild-caught specimens. We disagree. We believe that the procedures we use to review applications for bred-in-captivity certificates and our close coordination with law enforcement, both domestically and internationally, are a strong deterrent to such fraudulent activities.

General information on hybrids (§§ 23.42 and 23.43): At CoP2, the Parties recognized that it can be difficult to distinguish between purebred and hybrid specimens in trade. 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 (§ 23.42): Resolution Conf. 11.11 (Rev. CoP13) contains provisions on trade in plant hybrids. 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 § 23.92). 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.

Two commenters stated that plant hybrids should be exempt from CITES document requirements. See the general discussion of hybrids above for the basis of applying CITES requirements to hybrids of CITES species. The same commenters believed that the exemption for certain hybrids when the specimens are traded in shipments containing 20 or more plants of the same hybrid is unfair to small growers. This exemption was adopted by the Parties as a listing annotation for certain orchid species. The appropriateness of specific species listings and listing annotations is addressed by the CoP and is beyond the scope of these regulations.

Wildlife hybrids (§ 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. Therefore, in general, wildlife hybrids of CITES species must be accompanied by a CITES document, issued by the Management Authority of the country of export or re-export.

The Parties agreed to a limited exception for certain wildlife hybrids under specific conditions. When the hybrid specimen is a cross between a CITES species and a non-CITES species, and no purebred CITES specimen appears in the previous four generations of its ancestry, it is exempt from CITES requirements. A hybrid of species included in a higher-taxon listing, such as parrots, falcons, or sturgeons, would not be exempted under this provision because the crosses are generally between two CITES species within that higher-taxon listing. We expect that the wildlife hybrid exemption will apply only rarely.

A specimen that qualifies as an exempt wildlife hybrid does not require CITES documents. However, at the time of import, export, or re-export you must provide sufficient information to demonstrate to CITES border officials that your wildlife specimen contains no purebred CITES species in the previous four generations of its lineage, and you must follow the clearance requirements for wildlife in part 14 of this subchapter.

Initially, we had proposed that either a CITES document or an ''excluded hybrid letter,'' issued by a Management Authority, must accompany any exempt wildlife hybrid being imported into or exported from the United States. One commenter questioned how the United States could require that a CITES document or a letter accompany an exempt hybrid when other CITES Parties do not require such documentation. After further review, we have decided to eliminate this document requirement. However, as previously stated, individuals traveling with or shipping exempt wildlife hybrids should be aware that they must provide information to clearly demonstrate to border officials that the specimen qualifies as an exempt wildlife hybrid.

We received over 200 comments in support of this section as proposed. While not specifically stated in most of these comments, it was clear that the commenters were under the impression that Bengal cats, a hybrid cross between domestic cats and Asian leopard cats (*Prionailurus bengalensis*), would be automatically exempt from CITES document requirements. Although some Bengal cat specimens may qualify as exempt hybrids, if you cannot clearly demonstrate that your specimen meets the qualifications for the exemption, you must obtain a CITES document for international trade.

One commenter expressed a need for a clear definition of when an exotic specimen becomes domesticated. While we recognize the possible value of this comment, this rule is not intended to address that issue.

Some commenters stated that hybrid falcons should be exempt from CITES controls because international trade in such specimens has no impact on the conservation of wild raptor populations. Trade in hybrids is controlled by CITES because of the difficulty in distinguishing purebred and hybrid specimens. See the general discussion of hybrids above for the basis of applying CITES requirements to hybrids of CITES species.

Personally owned live wildlife (§ 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 agreed that personally owned, live wildlife that is registered by the Management Authority in the country where the owner usually resides may be moved internationally using a certificate of ownership, under specific conditions.

We have implemented 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.

Five commenters supported the idea of issuing certificates of ownership, or ''passports.'' One commenter, while supporting the concept, stated that the certificates should be called ''certificates of stewardship'' since wildlife should not be ''owned,'' but should only be held in ''trust.'' We decline to make a change based on this suggestion since the title of this CITES document was agreed upon by the Parties.

Seven other commenters also supported the issuance of certificates of ownership, but did not believe that the owners of birds covered under the MBTA should be required to notify us when their birds have died or been sold since they must report such events to their Regional Migratory Bird Management office via Form 3-186A. While we are working with the regional migratory bird offices to ensure quick and accurate exchange of information, we have not developed a reliable means

to share data that are submitted by permittees on Form 3-186A. As a result, and because of the different records management systems for handling information submitted by permittees and different uses of the data, it is necessary that both the Division of Migratory Bird Management and the U.S. Management Authority are notified of deaths or transfers. Many CITES ''passports'' are issued for bird species that are not covered by the MBTA, and therefore would not require the submission of information to a Regional Migratory Bird Management office. We require that all ''passport'' holders notify us of any change in the status of their personally owned live wildlife.

Two additional commenters supported the issuance of ''passports,'' but questioned the length of validity of such documents. Both commenters believed that certificates of ownership should be valid until the animal dies or has been transferred. They stated that a 3–year period of validity would create a burden on the permittee. The 3–year period of validity was agreed upon by the Parties and is specified in Resolution Conf. 12.3 (Rev.CoP13). We therefore cannot issue these certificates for longer than 3 years.

Two commenters believed that the process for obtaining certificates of ownership and for moving animals across international borders should be simplified. In particular, the commenters stated that the movement of CITES pets across the U.S.-Canadian border should not require clearance by an FWS Wildlife Inspector, but should be handled solely by CBP officials. While we strive to minimize any inconvenience at the port, this particular comment cannot be addressed by these regulations. The clearance process is addressed in 50 CFR 14, which is not being revised as part of this rulemaking.

Two commenters believed that the issuance of certificates of ownership, particularly for raptors, would facilitate the illegal movement of specimens that were not obtained legally. They did not think that the process under which these certificates are issued would allow for adequate control of specimens, particularly of Appendix-I species, since only the exporting country needs to issue a certificate. The applicant must provide adequate documentation to show that the specimen was legally obtained before a certificate of ownership can be issued. In addition, when applying for a certificate of ownership, the applicant must confirm that he or she does not intend to sell or transfer the specimen while outside of the United States. Finally, since border officials of both the exporting/re-exporting and the importing countries must inspect the wildlife and the accompanying certificate, fraudulent activity would be detected. We believe that this provides sufficient control of the trade in these specimens to minimize illegal activities.

One commenter stated that live specimens should not be considered personal or household effects. We agree and refer the commenter to the definitions of these terms in § 23.5. The commenter also suggested that § 23.44(d)(5) be amended to state that the applicant ''will not sell, donate, or transfer the wildlife while traveling internationally'' instead of ''does not intend to sell, donate, or transfer the wildlife while traveling internationally'' and that this restriction should also be expanded to limit sale, donation, or transfer within the applicant's usual country of residence. Section 23.44(d) lists criteria for the issuance and acceptance of certificates of ownership and indicates that an applicant must provide sufficient information for us to determine that he or she *does not intend* to sell or otherwise transfer the wildlife while traveling internationally (§ 23.44(d)(5)). Section 23.44(e) lists U.S. standard conditions for certificates of ownership, including § 23.44(e)(3), which states that the certificate holder ''*must not* sell, donate, or transfer the specimen while traveling internationally.'' Expansion of this restriction to cover activities within an applicant's country of residence is beyond the scope of CITES and these regulations.

Pre-Convention specimen (§ 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. One commenter supported the use of the date on which the species was first listed in the Appendices to determine the pre-Convention status of a specimen, as recommended in the resolution. We define the term ''pre-Convention'' in § 23.5 and clarify in this section the general provisions that apply to the acceptance and issuance of pre-Convention documents.

The pre-Convention status applies to the specimen, not to when it was possessed by the current owner. 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.

Even antiques that are at least 100 years old that clearly qualify as pre-Convention must be accompanied by pre-Convention documents. 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.

We 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, and provide sufficient documentation of legal acquisition and the date when the cell line was established. Although most cell lines do not qualify as pre-Convention, they may qualify for other types of CITES exemption certificates.

One commenter expressed concern that international trade will be restricted if cell lines are not traded as pre-Convention specimens. The commenter also argued that our suggestion in the 2006 proposed rule (71 FR 20167) that these specimens may qualify for trade under another CITES exemption document, such as a bred-in-captivity certificate, would be confusing because it differs from the interpretation of other authorities. As discussed previously, the pre-Convention status applies to a specimen that was removed from the wild or born or propagated in a controlled environment before the first date that CITES applied to the specimen. Cell lines that are continually growing and being harvested would therefore not qualify for a pre-Convention certificate. We believe that this is an accurate interpretation of the Treaty requirements and disagree that it will result in a restriction of trade.

Based on our experience with this trade, we do not believe that shipping cell lines under another type of CITES document, other than a pre-Convention certificate, will be problematic for foreign CITES authorities or that it will create difficulties for the industry.

Registration of commercial breeding operations for Appendix-I species (§ 23.46): Article VII(4) of the Treaty provides that specimens of Appendix-I species bred for commercial purposes will be deemed to be specimens of species included in Appendix II for CITES document requirements. A Management Authority may grant an export permit or a re-export certificate without requiring the prior issuance 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 both commercial and conservation purposes is increasing. These regulations 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 include whether the species qualifies as bred in captivity (see § 23.63).

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, very few U.S. operations have chosen to complete the process of registering. Most U.S. commercial breeders are applying for permits under Article III of the Treaty. We will 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 § 23.18).

One commenter opposed the registration requirement for commercial captive-breeding operations for Appendix-I species because of the ongoing discussion among CITES Parties about which facilities should be registered, the conservation value of registration, and obstacles to registration. In addition, the commenter noted the refusal of the European Union to implement the registration requirement. Another commenter opposed our implementation of Resolution Conf. 12.10 (Rev. CoP13) because it would weaken the protection of Appendix-I species. The United States has always supported the registration system and worked with other Parties to craft the current language in the resolution. We recognize that certain Appendix-I species are widely bred in captivity to the second generation without the addition of wild stock. The registration system encourages the captive breeding of Appendix-I species, discourages take of specimens from the wild, may provide conservation benefits, and is the only mechanism by which such species can be traded commercially.

Several commenters argued that small falcon breeders should not be required to register. The Parties agreed, in Resolution Conf. 12.10 (Rev. CoP13), that the exemption in Article VII(4) should be implemented through the registration of operations breeding Appendix-I species for commercial purposes. Therefore, any breeding operation, regardless of size, that wishes to qualify for the exemption and engage in commercial international trade of Appendix-I species, must be registered.

One commenter suggested that § 23.46(d)(7) should include ''in the wild'' or ''*in situ*'' at the end of the sentence to clarify that any breeding operation for Appendix-I species should benefit *in situ* conservation. We decline to adopt this suggestion because we believe that both *in situ* and *ex situ* activities can contribute to improving the conservation status of wild populations. The commenter also requested that we list guidelines or provide examples of appropriate conservation activities. We have not included a list because meaningful conservation activities will vary by taxon.

Several commenters urged us to amend § 23.46(b)(12) to permit the take of wild breeding stock of Appendix-I birds by registered facilities to augment the captive population, as provided for in § 23.63 for noncommercial breeders. These birds would be used for maintaining genetic diversity and providing birds for conservation efforts, such as State reintroduction programs for peregrine falcons (*Falco peregrinus*). In the United States, take of wild specimens may be authorized with appropriate permits (e.g., State permits, Migratory Bird Treaty Act permits). However, under Article III(3)(c), wild stock may not be imported to augment the captive population of a registered commercial breeding operation, and we therefore decline to make a change based on this suggestion. We have amended § 23.46(d)(4) to clarify that, where the establishment of a commercial breeding operation for Appendix-I wildlife involves the removal of animals from the wild, it may only be allowed under exceptional circumstances and only for native species.

Three commenters opposed our decision not to publish the receipt of an application to register commercial breeding operations for Appendix-I species in the **Federal Register**, which would allow the public to comment. Another commenter suggested we publish the first application received for a species. As described in the 2006 proposed rule (71 FR 20167), there is no legal requirement to obtain public comments on CITES applications, we make determinations on whether specimens qualify as bred in captivity for other CITES documents without obtaining public comments, and further review is conducted by the CITES Secretariat and the CITES Parties. Publication in the **Federal Register** would result in delays in the registration process. Once the Secretariat makes the application available, the Parties have 90 days in which to comment. Thus, even without a public comment period within the United States, registration of an operation may take a minimum of several months. We acknowledge that members of the public will not have an opportunity to comment on the applications. However, we will consult outside experts if necessary, and we believe that the evaluation by the FWS, the Secretariat, and the Parties is sufficient to make a determination as to whether an operation qualifies to be registered.

One commenter expressed concern that registered captive-breeding operations could be used to launder illegal specimens and that the Service should develop strict regulations for identifying specimens bred at a registered operation. We believe that the criteria and oversight provided in § 23.46 and the marking requirements in § 23.56(a)(4) minimize the potential for laundering and appropriately implement Resolution Conf. 12.10 (Rev. CoP13).

Exporting Appendix-I plants commercially (§ 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 specimens of species included 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 issuance 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.

Two commenters thought that a registration system should be provided for facilities that propagate Appendix-I plants, similar to the registration system for wildlife. This issue was addressed in the 2006 proposed rule (71 FR 20167). Although we recognize that there may be some advantages to developing a registration process, we have not incorporated such a process into the regulations due to the complex issues resulting from the decentralized system of regulating nurseries in the United States. Instead, we have reserved § 23.47(e) for nursery registration, because we will need to work with nurseries, other State and Federal 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 these specimens.

Registered scientific institutions (§ 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 allows 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 section incorporates the standards 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 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.

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.

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 § 23.3).

We received two comments on this section. One commenter was philosophically opposed to the use of CITES species by a scientific institution for research, but supported the statement that CITES specimens obtained by scientific institutions cannot be used for commercial purposes. Both commenters supported the requirement that specimens be permanently recorded as being part of an institution's collection but not necessarily formally acquisitioned by the sending institution. However, the commenters expressed concern that the requirement that Appendix-I specimens be centrally and permanently housed means that the specimens must be kept segregated from other specimens in the institution's collection and would preclude the donation of such specimens to other institutions. We interpret this requirement to mean that Appendix-I specimens are to be maintained in a way that they will not be used in a manner incompatible with the principles of CITES. Appendix-I specimens do not need to be separated from the rest of the collection provided that they are incorporated into the institution's record system. They may reside anywhere that is under the control of the registered scientific institution. This may include field stations, offsite storage facilities, or other facilities managed by the institution. As noted in the 2006 proposed rule (71 FR 20167), a specimen could be donated to another registered institution provided a record of the transaction is maintained.

Both commenters supported allowing the use of samples or subsamples from specimens that are maintained by registered institutions. One commenter was concerned that exchange of such samples could be inhibited by other countries' Management Authorities. We agree that this is a possibility and recommend that foreign Management Authorities be consulted prior to shipment. The other commenter suggested that we add a definition of ''sample.'' We do not think such a definition is necessary as the meaning of this term is commonly understood.

Traveling exhibitions (§ 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. 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 prevent potential fraud. At CoP12, the Parties agreed to extend these provisions to all traveling exhibitions, not just traveling live-animal exhibitions. We describe provisions for traveling exhibitions in this section and define the term ''traveling exhibition'' in § 23.5.

A traveling-exhibition certificate acts like a passport. The exhibitor (i.e., the entity responsible for the specimens in a traveling exhibition) must obtain a separate certificate for each live animal. In the 2006 proposed rule (71 FR 20167), we specified that the certificate could only be issued to an exhibitor who owns the specimens. Based on comments received, we have revised our definition and the language in this section to indicate that the entity responsible for the specimens in a traveling exhibition may obtain the certificate. 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 include a number of conditions to ensure that these certificates are used only for temporary cross-border movement by the exhibitor. A certificate 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 listed in Appendix I. We require under the general conditions (see § 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.

We received four comments on this section. One commenter welcomed the incorporation of the traveling-exhibition certificate into the regulations, stating that it will streamline the permitting process and result in smoother border crossings and more reliable recordkeeping. Another commenter strongly supported the requirement that the cross-border movement authorized under a traveling-exhibition certificate may not be for any purpose other than exhibition and the requirements in § 23.49(d)(6) regarding marking.

Another commenter requested that this section be amended to allow the use of traveling- exhibition certificates for activities other than exhibition, including research and conservation of museum specimens. We decline to make a change based on this suggestion. Article VII(7) provides an exemption for traveling exhibitions and the Parties agreed in Resolution Conf. 12.3 (Rev. CoP13) that traveling-exhibition certificates should be issued ''for exhibition purposes only.'' Article VII providesother exemptions and special provisions that may be appropriately used for other purposes, including international transport of museum specimens and specimens for research.

The same commenter stated that it was not always clear who should obtain the traveling- exhibition certificate, particularly when a specimen is loaned for an exhibition hosted by one or more institutions, rather than by the owner of the specimen, and suggested that the certificate should be issued to the owner of the specimen rather than to the traveling exhibition. The resolution specifies that the certificate be issued for specimens that are part of a traveling exhibition; it does not specify that the owners of the specimens must receive the certificates. Since there must be an entity responsible for the traveling exhibition and its specimens, a certificate is issued to that entity, which we refer to as the ''exhibitor.'' We have amended § 23.49 to clarify that it is the exhibitor who must obtain the certificate and to ensure that the terms ''exhibitor,'' ''traveling exhibition,'' and ''exhibition'' are used consistently. We likewise revised the definition of ''traveling exhibition'' in § 23.5 so that it corresponds more precisely to use of the term in this section.

The same commenter believed the word ''frequent'' should be deleted from the criteria for issuance and acceptance of traveling-exhibition certificates as it is not required by Resolution Conf. 12.3 (Rev. CoP13). We agree and have amended § 23.49(d)(1) accordingly.

Another commenter suggested that we strengthen the requirement for humane transport by including a reference to IATA LAR and the CITES' *Guidelines for transport and preparation for shipment of live wild animals and plants* in this section and requiring that any animal covered by a traveling-exhibition certificate also have a health certificate issued by a licensed veterinarian. Section 23.23(c)(7) requires that transport conditions for live animals comply with the CITES'*Guidelines for transport and preparation for shipment of live wild animals and plants* or, for air transport, with IATA LAR. We do not believe it is necessary to repeat those requirements here. The issuance of health certificates is beyond the scope of these regulations, but we note that § 23.3 informs the public that in addition to the requirements in part 23, they may also need to comply with other Federal, State, tribal, or local requirements.

The same commenter suggested that we ''explicitly require'' the exhibitor to return with the same number of specimens as originally exported, that the specimens be microchipped, and that the exhibitor provide the necessary equipment to read the chips. Section 23.49(e) requires that an entity may not sell or otherwise transfer a specimen covered by a traveling-exhibition certificate while traveling internationally. We do not believe that we need to require that all specimens be microchipped because the regulations as written provide sufficient means for border officials to ensure that each specimen exported or imported is the specimen indicated on the certificate.

Sample collections § 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 these 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. One commenter supported the provisions allowing the movement of merchandise subject to CITES regulations on an ATA carnet.

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. For import into and export or re-export from the United States, the shipment must comply with the FWS requirements for wildlife in part 14 of this subchapter and APHIS/CBP requirements for plants in part 24 of this subchapter and 7 CFR parts 319, 355, and 356.

Partially completed CITES documents (§ 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 implement these procedures and issue single-use documents that are partially completed under specific circumstances for exports that are repetitive in nature (i.e., when the same types of specimens or the same specimens are exported shipment after shipment).

An applicant should submit the appropriate application form for the proposed activity (see §§ 23.18–23.20) and show that the use of this type of document is beneficial and appropriate. Upon review of the application, if appropriate, we will create a master file or annual program file for native species that contains all of the relevant information about the proposed activity. We will 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.

We received two comments on this section. While both commenters generally supported the concept of partially completed documents, one suggested limiting the use of such documents to pre-Convention specimens due to concern that wild-caught live animals could be mislabeled and shipped fraudulently as captive-bred animals. Further, the commenter suggested that such documents should not be used for animals in traveling exhibitions. We did not adopt these suggestions. Partially completed documents are issued for specific taxa and specific types of specimens. The permittee is authorized to fill in the destination and, in the case of specimens from an approved-taxa list, the quantity of specimens in the shipment and an inventory page.

The other commenter requested that we consider the use of partially completed documents for import of scientific specimens that were removed from the wild under the authority of the exporting government's wildlife management offices. The regulations as written allow us to issue and accept documents issued under the provisions of this section for wild-collected scientific specimens in limited situations.

Replacement documents (§ 23.52): We adopted 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 them. One of the 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.

A replacement document must indicate on its face the reason the document was replaced. Since we sometimes receive a replacement document that does not provide this information, we may verify the validity of such a document with the issuing Management Authority before deciding if we will accept the document as a valid replacement. 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.

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.

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 will 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 FWS Wildlife Declaration (Form 3-177) or a copy of the validated CITES document for plants, and include a condition on the document describing this policy so the importing country can accept it as valid.

One commenter requested that we allow copies of the stamped original CITES document and the FWS Wildlife Declaration (Form 3-177) to be used for clearance purposes when documents are misplaced at the port after declarations have been submitted to the FWS. We decline to address this request since the provision proposed by the commenter is outside the scope of these regulations and has already been addressed through changes in port procedures.

Retrospective documents (§ 23.53): A retrospective document authorizes an export or re-export after that activity has occurred, but before the shipment is cleared for import. 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 arrive at the port and 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. This section allows for the issuance and acceptance of retrospective documents based on the resolution. We generally limit issuance of retrospective documents to noncommercial items and, even then, only in certain prescribed circumstances, which are clarified in this section. 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 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.

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.

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 § 23.7(e)).

We will issue a retrospective document only if the Management Authority of the importing country agrees to accept it. The provision applies not only to the issuance of retrospective documents, but to the acceptance of such documents. We note that a number of 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.

Several commenters supported the general concept and appreciated the recognition that there are circumstances when issuance of retrospective documents is warranted. Two other commenters were opposed to the issuance of retrospective documents except to ensure humane treatment of live specimens. While we agree that issuance of retrospective documents should be very limited, we believe it is warranted under the specific circumstances described in § 23.53.

Two commenters asked howshipments are treated pending review of the circumstances to determine whether a retrospective permit can be issued. These determinations are made by our enforcement officials on a case-by-case basis. We refer the commenters to the general import/export requirements for wildlife in part 14 of this subchapter and the requirements for plants in part 24 of this subchapter and 7 CFR parts 319, 355, and 356.

One commenter asked why we limited the issuance of retrospective permits for Appendix-I specimens to certain shipments for personal use. The Parties have agreed that Appendix-I specimens must be subject to particularly strict regulation and that trade in these specimens should be authorized only in ''exceptional circumstances.'' As stated in the 2006 proposed rule (71 FR 20167), we expect commercial traders to know the laws that apply to their business, including CITES requirements, and to carefully inspect their documents for technical errors. Consequently, we limit the issuance of retrospective permits for Appendix-I specimens to certain pre-Convention Appendix-I specimens for personal use that meet the requirements in § 23.53(d)(7). Another commenter suggested that we add to the rule the language from the preamble stating that we expect commercial importers and exporters to know the law. We decline to adopt this suggestion because we believe that § 23.53(b)(7) adequately describes that expectation.

Another commenter suggested that we clarify that the provision restricting sale of specimens within 6 months following import under a retrospective document (§ 23.53(b)(5)(iii)) applies only to Appendix-II and –III species. We decline to adopt this suggestion. The restriction on sale applies only to specimens imported for personal use and therefore may apply to a pre-Convention Appendix-I specimen under certain circumstances (see § 23.53(d)(7)).

Two commenters requested clarification and additional details regarding the issuance process and what kind of information an applicant would need to provide to obtain a retrospective document. We refer the commenters to the discussion on this section in the 2006 proposed rule (71 FR 20167).

One commenter incorrectly stated that the provisions in this section would ''absolutely eliminate'' any possibility for a hunter to receive a retrospective permit if he or she had ever received a CITES permit before. While we generally will not issue a retrospective document to an individual who has received CITES documents in the past, we recognize that there may be situations where the importer or exporter was not responsible for whatever irregularity occurred and may therefore qualify for a retrospective document (see § 23.53(b)(7)).

Period of document validity (§ 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 the period of validity 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.

This section incorporates the recommended periods of validity established in the Treaty and the resolutions. We also 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 period 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 period of validity is authorized is for certain timber species under limited circumstances (see § 23.73).

Several commenters suggested that the periods of validity specified in this section for permits and certificates are too short. Another stated that the period of validity for traveling-exhibition certificates is too long. One commenter acknowledged that the periods of validity for CITES documents are set out in the Treaty and in Resolution Conf. 12.3 (Rev. CoP13), but urged us to ask the Parties to revisit this issue. We believe the established timeframes are reasonable for the activities permitted, and we do not believe it is appropriate to amend the Treaty or necessary to amend the resolutions in this regard.

Another commenter believed that the use of the phrase ''no longer than...'' in

§ 23.54(b) to describe the period of validity of CITES documents creates uncertainty for the regulated public. The commenter requested that the section be amended to state that a document is valid for 6 months, 3 years, etc., as appropriate, unless the FWS places a special condition on the document to address some unusual circumstance. In general, we issue CITES documents for the maximum period of validity allowed for the activity. We did not adopt the commenter's suggestion because § 23.54 provides the maximum period of validity for a CITES document, but a document may be issued for a shorter period of time.

Use of CITES specimens after import (§ 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 leopard, Resolution Conf. 10.15 (Rev. CoP12) for markhor, and Resolution Conf. 13.5 for black rhinoceros).

This section provides conditions for the import and subsequent use of certain CITES specimens. The import and subsequent use of Appendix-I specimens and certain Appendix-II specimens, including transfer, donation, or exchange, may be only for noncommercial purposes. Such imports are conditioned that the specimen and all its parts, products, and derivatives may not be imported and subsequently used for any commercial purpose. 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 noncommercial purposes.

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.

Two commenters supported the restriction on subsequent use of most imported Appendix-I species and Appendix-II species with an annotation prohibiting commercial trade as an important means of conserving these species. One of these commenters was concerned, however, that there is no mechanism, such as a reporting requirement, by which the FWS will track use of specimens over time. We have decided against adding any type of periodic reporting requirement on subsequent use of imported specimens. The regulations are clear, however, that such specimens may be used only for noncommercial purposes, and any use inconsistent with this standard would be a violation of the regulations. As noted in the 2006 proposed rule (71 FR 20167), the FWS will investigate any situation for which we receive information that such an imported specimen is being commercialized.

The same commenter expressed confusion over statements in the 2006 proposed rule (71 FR 20167) that certain specimens may only be imported when they are not to be used for primarily commercial purposes and that such specimens may be used only for noncommercial purposes. This commenter asked for clarification for what appeared to be two different standards.

Prior to importation of an Appendix-I specimen, the Management Authority must be satisfied that the specimen is not to be used for primarily commercial purposes. We cannot make a finding of not for primarily commercial purposes if the specimen could be commercialized following import. Therefore, this section is clear that any subsequent use of such specimens must be noncommercial.

One commenter argued that provisions in this section would prevent future donations of specimens for educational purposes. As explained in the 2006 proposed rule (71 FR 20167), certain specimens may only be imported when the use is not for primarily commercial purposes. Thus, any subsequent use may be only for noncommercial purposes. Nothing in the section prevents a person from donating or transferring an Appendix-I specimen or a specimen of a species listed in Appendix-II with an annotation prohibiting commercial trade. These specimens can still be donated, consistent with any other requirements of law, as long as there is no economic use, gain, or benefit by either the person or institution receiving the donation or the person making the donation. (See also the discussion in the preamble under § 23.5 on the definition of ''commercial.'')

Another commenter argued that it is only the purpose of the import at the time of import that is regulated by CITES and any later use is irrelevant. Nothing in the language of the Convention requiring the finding that the specimen ''is not to be used for primarily commercial purposes'' indicates that this examination is limited to the immediate use by the importer. As we indicated in the 2006 proposed rule (71 FR 20167), the commercialization of Appendix-I specimens following import can result in further demand, which is contrary to the intent of allowing trade in Appendix-I specimens only under ''exceptional circumstances.'' Appendix-II species that are annotated to allow trade only for noncommercial purposes face similar commercial pressures. We can only determine that the use will not be for ''primarily commercial purposes'' when we know that the specimen will not be subsequently used for economic gain or benefit.

One commenter disagreed with the provisions in paragraph (d) of the table that allow for any use with certain types of Appendix-I specimens and questioned how concerns regarding commercialization of Appendix-I species will not be realized if commercial use of such specimens is not prohibited. All of the situations listed under § 23.55(d) represent provisions under Article VII of the Convention that provide exemptions from the requirements otherwise imposed for Appendix-I species under Article III. These exemptions represent situations in which the Parties have found that commercialization, or the potential for commercialization, of certain types of specimens does not pose a threat to species whose trade must otherwise be limited to noncommercial uses.

CITES document conditions (§ 23.56): 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 requiring that all Appendix-I wildlife be marked with microchips. We do require, 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 supported the requirement that Appendix-I specimens be securely marked or uniquely identified.

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

Legal acquisition (§ 23.60): 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 wildlife bred in captivity; Conf. 9.19 (Rev. CoP13) and 11.11 (Rev. CoP13) on artificially propagated plants; Conf. 10.20 on personally owned live wildlife; and Conf. 11.15 (Rev. CoP12) on scientific exchange.

There are two types of legal acquisition determinations: (a) whether a specimen and its parental stock were traded internationally under the provisions of CITES and (b) whether they were acquired consistent with relevant 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 a number of general and specific factors (see the preamble to Subpart E for a discussion of legal acquisition for State or tribal programs). 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 captivity or cultivation 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 countries allow 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, while it is the responsibility of the applicant to provide sufficient information for us to make this finding, 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 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 a person who acquires a specimen in the United States and wants to travel internationally with it for personal use. One commenter disagreed with this approach and stated that all trade, whether commercial or noncommercial, should be subject to the same level of scrutiny. We believe this system for individuals traveling internationally with their personal items or personally owned live wildlife is appropriate for the limited number of specimens involved, for the low conservation risk posed. 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 relevant 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 demonstrate that the parental stock was legally acquired. We defined the terms ''parental stock,'' ''breeding stock,'' and ''cultivated parental stock'' (see §§ 23.5, 23.63, and 23.64,respectively).

We also allow the export of donated CITES specimens of unknown origin by public institutions on a case-by-case basis under limited circumstances. In some instances, public institutions, primarily zoos, aquariums, and botanical gardens, receive unsolicited donations of wildlife and plants. When this occurs, the institution may not be able to obtain reliable information concerning the origin of the specimen. It is extremely difficult to issue a permit when no data exist on the origin of the specimen, especially when the donor remains anonymous. The underlying purpose of CITES is to protect, conserve, and benefit the listed species. We believe that these regulations, rather than opening a loophole for laundering illegally obtained specimens, will assist in the suitable placement of specimens without leading to illegal or unjustified removal of wildlife and plants from the wild. We emphasize that this provision is only for limited, noncommercial international trade in CITES species.

We received over 40 comments on this section, all of which were supportive. One commenter was concerned about how we would obtain data on the volume of illegal trade since there is no centralized source of data on all illegal trade. It is true that there is not a single, central source of illegal trade data, but we do have the ability, through consultation with other Parties, the CITES Secretariat, nongovernmental organizations, and law enforcement agencies to obtain data on illegal trade. It is through the review of these data that we are able to make a determination on the presumed level of illegal trade in CITES species.

We removed ''volume of legal trade'' from the list of factors in § 23.60(d)(5) because the risk associated with the volume of legal trade is not a continuum but rather must be considered on a case-by-case basis when making a legal acquisition finding.

Non-detriment findings (§ 23.61): Under Articles III and IV of the Treaty and Resolution Conf. 10.3 we must make a non-detriment finding before issuing export permits and introduction-from-the-sea certificates for Appendix-I and-II wildlife and plants and import permits for Appendix-I wildlife and plants. This section explains how the U.S. Scientific Authority makes its non-detriment findings.

We 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. 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. 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. We amended 23.61(g)(5) so that it reads ''from high to low occurrence of legal trade'' because high volumes of trade, either legal or illegal, create potential for detriment. Species subject to high volumes of trade may be selected as candidates for the Review of Significant Trade to assess whether non-detriment findings are being made appropriately.

One commenter asked us to further clarify our statement that a non-detriment finding must take into account ''no *net* harm'' to the species rather than ''no harm'' to individuals within a species. Two commenters strongly supported our view. One supporter noted that it has become increasingly necessary to engage in conservation activities that result in a net benefit to the species, but which at the same time may result in some negative impact on a limited number of individuals. Our approach follows the requirement of the Treaty, which focuses on species rather than individual specimens with regard to non-detriment findings.

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.

This 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. The higher-risk, 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 survival of 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 findthat 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.

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.

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, we 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 use the best available biological information, not just the information used as the basis for the quota.

Most commenters agreed with our description of how we make non-detriment findings. We received many comments endorsing our statement that controlled trade may create incentives for conservation and our consideration of adaptive management in making non-detriment findings. Several commenters supported our recognition of the potential ecological harm caused by importation of invasive species under CITES permits. One supporter asked why disease transmission is a factor considered in making the findings when invasive potential is not. We consider disease transmission because we are examining the potential effects disease could have on other members of the imported or exported species, whether in the wild or in captivity. Invasive potential describes the effects the imported or exported species could have on other species, so it is not relevant to whether or not the trade is detrimental to the survival of the species being imported or exported.

One commenter said that the FWS should not collect information to make a non-detriment finding for imports of sport-hunted trophies of Appendix-I species if the trophy is covered by an export quota reported by the range country to the Secretariat and the exporting country has issued its own non-detriment determination. We and several commenters disagree. This was also discussed in the 2006 proposed rule (71 FR 20167). Resolution Conf. 2.11 (Rev.), on trade in hunting trophies of species listed in Appendix I, recommends that the Scientific Authority of the importing country make an independent non-detriment finding in accordance with Article III of the Convention. Resolution Conf. 9.21 (Rev. CoP13) regarding interpretation and application of quotas for species included in Appendix I also gives Parties the flexibility to evaluate scientific and management data to determine whether the quota adequately ensures the sustainability of the species. The commenter objected to § 23.61(f)(4) because we indicate that, where insufficient information is available to make the non-detriment finding, we take a precautionary approach and state that we are unable to find non-detriment. He suggests that, in such situations, we use Resolution Conf. 8.3 (Rev. CoP13), which recognizes the socioeconomic and conservation benefits of trade in wildlife. We note that Resolution Conf. 8.3 (Rev. CoP13) indicates that there are benefits of wildlife trade only ''when carried out at levels that are not detrimental to the survival of the species in question.''

Three commenters stated that we should not treat non-detriment determinations for imports and exports of Appendix-I species in the same manner. We addressed this comment in the 2006 proposed rule (71 FR 20167) and refer the commenters there for additional clarification. One commenter suggested we add language to the regulations to consider the cumulative effects of past and likely future imports of specimens on the survival of the species. This is generally considered in § 23.61(e)(3).

A few commenters recommended adding a provision that would accommodate a streamlined process for making non-detriment findings under circumstances where a range-wide population assessment for a particular Appendix-II species has been completed. We agree that a range-wide population assessment would be very useful in making non-detriment findings. It may even expedite the process by providing much of the information needed to make the finding; however, such an assessment would still need to be reviewed as part of our independent process of determining non-detriment.

One commenter suggested that we modify § 23.61(e)(1) to allow consideration of the risk of extinction for both the species as a whole and the population from which the specimen was obtained when making a non-detriment finding. Another commenter asked that the FWS only consider the species as a whole in making the finding. We maintained the text ''species as a whole or the population from which the specimen was obtained'' because, if during the course of our review of the species throughout its range we determine that there is cause for focusing on a specific region or population from which the specimen was removed, we may consider the more local threats. There may be instances where the species is abundant throughout parts of its range, yet may be threatened in other parts. In addition, Article IV of the Treaty states that the Scientific Authority should ensure that the export of specimens listed in Appendix II is controlled in order to maintain the species throughout its range at a level consistent with its role in the ecosystems in which it occurs.

One commenter provided a list of additional biological factors to consider when making non-detriment findings. Many of these suggested factors are already considered under the more general factors in § 23.61; others are not relevant. The commenter also requested regulatory changes that are not consistent with the Treaty, such as requiring countries exporting specimens to the United States to provide copies of their non-detriment findings to the U.S. Scientific Authority for review prior to export. As we explained previously, our determination of non-detriment for Appendix-I species is independent of the finding made by the exporting country. Although the exporting country is not required to send copies of its non-detriment finding on Appendix-II species to the importing country, if there is reason to suspect that appropriate and valid findings are not being made, a country or species can be considered for the Review of Significant Trade by the CITES Animals or Plants Committee. The commenter also suggested that non-detriment findings should not be limited to the survival of the species, but should require that there is a conservation benefit to the species from the import or export. We disagree because the requirement for a conservation benefit would be beyond the requirements of the Treaty.

Two commenters requested that the public be able to comment on Appendix-I and Appendix-II applications. We responded to similar comments in the 2006 proposed rule (71 FR 20167).

Not for primarily commercial purposes (§ 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 will not be used for primarily commercial purposes. The Parties interpreted ''primarily commercial purposes'' in Resolution Conf. 5.10. We incorporated the provisions of this resolution in this section and defined ''commercial'' and ''primarily commercial purposes'' in § 23.5.

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. 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 the intended use of the specimen after import or introduction from the sea for us 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.

Instead of a specific list of information that each applicant must provide, we describe 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. As with legal acquisition (§23.60) and non-detriment (§23.61) findings, we use a risk assessment approach in evaluating the level of information needed to make our finding. We require less detailed information when the import or introduction from the sea has a low risk of being primarily commercial, and require more detailed information when the proposed activity poses greater risk. For activities with a high risk of being primarily commercial, we will analyze anticipated measurable increases in revenue and other economic value associated with the proposed import or introduction from the sea. Based on our experience, we anticipate that we will rarely receive an application that involves activities with anticipated high net profits. We expect that only in rare instances will we need to ask the applicant for the detailed analysis described in § 23.62(e)(4).

Two commenters indicated that we had not provided a clear enough explanation of what we consider a ''high-risk activity.'' Although we do not specifically define this term, we provide a list of the factors we consider (see § 23.62(d)) in making our finding and the risk, from high to low, associated with each factor. We 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 disagreed with the use of a risk assessment process under this section. Another commenter stated that the risk assessment approach penalizes public display facilities that are interested in obtaining specimens that have high public appeal or are not common in the United States, thus raising the ''risk'' that the import is commercial in nature. The risk assessment approach is a tool to facilitate review of applications. By using such an approach, we are able to lower the documentation burden on some applicants, without eliminating the possibility that for other applications we need more documentation than normally requested. We 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 makes it more difficult for us to find that specimens involved in a proposed import or introduction from the sea will not be

used for primarily commercial purposes. In all cases, however, we make the required findings on a case-by-case basis taking intoaccount all available information.

One commenter disagreed with the statement in § 23.62(b)(5) that we will consider the purpose of the export in making a not-for-primarily-commercial-purposes finding and asserted that conservation benefits to range States should not be considered as part of this finding. The same commenter argued that commercial enterprises, such as public display facilities, should never be allowed to import an Appendix-I specimen by claiming that the purpose is for conservation or education. We disagree. 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 will be offset by conservation benefits provided through assistance to range countries, research, or other considerations that result from the import or introduction from the sea.

In the 2006 proposed rule (71 FR 20167), we stated that all net profits generated from activities associated with the import or introduction from the sea of an Appendix-I species must be used for conservation of the species in a range country. Two commenters strongly supported this requirement. Two other commenters voiced strong opposition, citing a belief that there is no legal basis for such a requirement and that it would be more appropriate as part of an enhancement finding under the ESA. The same issue was raised earlier and addressed in our 2006 proposed rule (71 FR 20167). One of these commenters also stated that requiring a permittee to give up profits is a disincentive to participation in conservation activities, amounts to an illegal tax or fee, and violates the ''takings clause'' of the Fifth Amendment.

Before we can issue a CITES document, we need sufficient information to make the required findings. We have determined that for activities with a high risk of being primarily commercial (i.e., activities that are anticipated to generate revenue above the operating cost of maintaining the specimen), the purpose of the import would be considered primarily commercial if the institution or individual that imported the specimen utilized the profits for any purpose other than for the conservation of the species. We do not agree with the commenter that this requirement is a violation of the U.S. Constitution.

However, after additional analysis, we believe that requiring all net profits generated in the United States from such activities be used for the conservation of the Appendix-I species in a range country may not be reasonable, or even desirable, in some cases. We are aware that there are situations where *ex situ* conservation efforts, such as research or captive breeding, may provide greater benefit to a species than attempting to carry out *in situ* conservation in a country where the logistical or political situation would make such activities unworkable. As a result, we have modified § 23.62(b)(7). We will still require that net profits be used for conservation of the species, but will not specifically require that these funds be used in a range country. We will continue to request information on how revenue generated by the import of the Appendix-I specimen would be utilized, including a description of any funded conservation project and its monitoring plan, for consideration when making our finding.

One commenter argued against the economic analysis described in § 23.62(e). Another commenter supported an extensive review of all profits associated with the import and use of an Appendix-I specimen, but requested an explanation of how we intend to conduct such comprehensive reviews and how we intend to monitor a facility to ensure that it continues to use any profits generated from the import in the manner required by the regulations.

As stated previously, we do not anticipate that there will be many cases in which the importer would need to provide in-depth, ongoing financial reporting. As both commenters correctly noted, the onlycurrent reporting of this type is for giant pandas. We believe that the reporting requirements are being successfully implemented by the four U.S. zoos that currently hold pandas. To date, the reporting has provided clear documentation to support our finding that the import was not for primarily commercial purposes and has allowed us to monitor the activities to ensure that our initial findings remain valid.

One commenter suggested that this section should be revised to make it consistent with our definition of commercial and argued that, if we interpreted the concept correctly, we could not consider the import of sport-hunted trophies to be not for primarily commercial purposes. We allow the import of Appendix-I sport-hunted trophies only for personal use, which is not a primarily commercial purpose. The Parties have recognized that trade in certain Appendix-I specimens and annotated Appendix-II specimens is allowable provided that the specimen is a personally hunted trophy that will not be used for commercial purposes. We believe our definition of sport-hunted trophies, as written, is in line with the intent of the Parties (see discussion in the preamble for § 23.74).

Bred in captivity (§ 23.63): Article VII(4) and (5) 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 incorporated 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.

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. 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 significant 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 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.

One commenter requested clarification of whether animals bred and raised on a U.S. game ranch would qualify as bred in captivity under these regulations. To meet the definition of bred in captivity, a specimen must be bred in a controlled environment that is actively manipulated to produce specimens, enclosed to prevent the movement of specimens out of the environment, and have characteristics such as artificial housing, waste removal, provision of veterinary care, protection from predators, and artificially supplied food. In general, we would consider a controlled environment as being a small enclosure (less than a few acres) where an animal could not survive without direct human assistance. While it may be possible that animals could be held in a controlled environment, as defined by the regulations, on a game ranch, we would not normally consider a large (over a few acres) area surrounded by a game fence to be such a controlled environment. Typically, game ranches in the United States consist of hundreds of acres of open area where there is limitedhuman interaction, and the animals can survive without direct human assistance. However, if you believe specimens on your game ranch meet the requirements, we will evaluate your request to designate animals bred at your facility as bred in captivity.

One commenter suggested that there should be an allowance for noncommercial breeders of Appendix-I species to periodically augment their programs with wild stock. The commenter noted that this is particularly important for rare species, so that best-suited individuals are maintained in captivity and for re-introduction, if required. This section of the rule allows the occasional introduction of wild specimens and lists conditions that are similar to those required by Resolution Conf. 10.16 (Rev.). The purpose of the augmentation must be to prevent or alleviate deleterious inbreeding or to dispose of confiscated animals. However, wild Appendix-I specimens may not be imported for the purpose of augmenting a commercial captive-breeding operation because this would be a violation of Article III. We added a reference to § 23.46(b)(12) in § 23.63(d) to highlight this restriction.

Two commenters were critical of § 23.63(c)(3)(iv) because they thought it appeared to be stricter, and thus more difficult to meet, than Resolution Conf. 10.16 (Rev.). They believed our addition of ''consistently'' and ''has produced first-generation offspring'' to the criteria in § 23.63(c)(3)(iv) went beyond the intent of the resolution. We addressed this in the 2006 proposed rule (71 FR 20167) and believe that this section as written is consistent with Article VII(4) and (5) of the Treaty and the intent of Resolution Conf. 10.16 (Rev.). We will base our determination of whether a breeding operation has achieved consistent production or second or subsequent generations on the life-history characteristics of the taxon involved. Some species mature quickly, have short gestation periods, and produce many offspring, whereas other species take many years to mature, have long gestation periods, and produce few offspring. Thus, fewer offspring could indicate consistent production in species that take many years to reproduce when compared to species that would be expected to reproduce earlier and more frequently. If an operation has not consistently produced specimens to the second or subsequent generations, we require that it has produced first-generation offspring and is using husbandry methods demonstrated to result in the production of second and subsequent generations. We cannot determine that a breeding operation is able to implement methods for producing second-generation offspring if it has not demonstrated its ability to reproduce the species at all.

One commenter was concerned that the bred-in-captivity provisions could allow for fraudulent labeling of wildlife as captive-bred. To show that specimens qualify as bred in captivity, applicants must demonstrate that they meet the criteria in § 23.63. Past applicants have included breeding records, photographs of the breeding facility, and documentation of the origin of the founder stock. If we receive reports of fraudulent documentation or other illegal activity, we will work with our Office of Law Enforcement to take appropriate action. The commenter also mentioned that we do not include a marking requirement for captive-bred specimens. However, the regulation is consistent with Resolution Conf. 10.16 (Rev.), which recommends that trade in a specimen bred in captivity be permitted only if it is marked in accordance with resolutions adopted by the Parties. We have incorporated those resolutions in the appropriate sections of these regulations.

Artificially propagated (§ 23.64): Article VII(4) and (5) of the Treaty provide exemptions for artificially propagated plants. 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 section is based on Resolution Conf. 11.11 (Rev. CoP13), and incorporates criteria we use to decide whether plants, including cuttings or divisions, grafted plants, and timber, qualify as artificially propagated. To qualify as artificially propagated, a plant must have been grown under controlled conditions. 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. Plants grown from exempt plant material, including exempt seeds that may have been collected from the wild, are considered artificially propagated when grown under controlled conditions.

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 that the collection of the seeds or spores was not detrimental to the survival of the species in the wild, and further 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 noted that the definition and application of the term ''artificially propagated'' was too restrictive for wild seeds. The commenter suggested that growers of woodsgrown American ginseng should have the option of using locally harvested seeds from wild plants. As described in the 2006 proposed rule (71 FR 20167), we are applying the criteria of CITES Resolution Conf. 11.11 (Rev. CoP13) to determine whether plants qualify as artificially propagated. If seeds from CITES plant species are exempt from CITES control, as is the case for American ginseng, then plants grown from exempt seed in controlled conditions are considered artificially propagated according to the criteria of Resolution Conf. 11.11 (Rev. CoP13). However, this is a separate issue from whether States allow ginseng seed to be harvested from the wild for such purposes or whether we consider collection of wild seed for the production of artificially propagated ginseng to be undermining the conservation of the species.

Suitably equipped to house and care for (§ 23.65): Under Article III(3)(b) and (5)(b) of the Treaty, we must determine that any individual or institution receiving a live Appendix-I specimen being imported or introduced from the sea is suitably equipped to house and care for that specimen. These requirements are to ensure that rare specimens will survive following import.

This 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, whether or not they are the actual importers of the specimens, 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 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 base our finding on the best available information on the requirements of the species and information provided by the applicant. We give closer scrutiny to applications for species with more demanding biological and husbandry or horticultural needs. We would give less scrutiny for a captive-born, commonly held species, like a scarlet macaw (*Ara macao*), 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 (*Andrias davidianus*), which is not commonly held in captivity and has very restrictive husbandry and housing requirements, we will 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 (temperature, light, etc.), adequate veterinary or horticultural care, sufficient security, and properly trained staff to care for the specimen being imported. We also assess whether a facility has had a reasonable survival rate of specimens of the same or similar species previously in its care. We believe 3 years of data on numbers of animals or plants maintained at the facility, mortalities, and occurrence of significant disease generally provides sufficient information for us to consider. The 2006 proposed rule (71 FR 20167) included language that suggested that we would consider a facility's ability to reproduce or propagate specimens in making a finding under this section. We have deleted those references in paragraphs (d)(1) and (e)(3) because the purpose of the finding is to determine if a facility is able to house and care for a specimen, not whether a facility is capable of breeding or propagating it.

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.

Three commenters supported the provisions in this section. One commenter encouraged us to maintain an open dialogue with experts experienced with individual taxa because the ''state of the art'' in animal and plant care is constantly changing. These regulations are designed to allow such flexibility. We welcome the input of experts to keep us informed about the most recent advances in animal and plant care and husbandry.

Two commenters noted that many imported animal specimens are covered by the Animal Welfare Act (AWA), which is administered by the USDA. One commenter argued that this makes our regulations duplicative, and another asked whether the FWS or the USDA regulations would take precedence in determining whether or not a facility is suitably equipped to house a particular species. The AWA is limited to warm-blooded vertebrates and does not cover all instances in which we would be required to make a finding under this provision. We consider whether or not the applicant is USDA-licensed and consult with the USDA about recent inspection reports. In cases where it is applicable, we will use information from the USDA to inform our decision about a particular facility.

The commenter also requested that we develop stringent species-specific animal care regulations and include regular inspections of facilities that receive imported specimens. We believe that this is unnecessary. Our regulations allow for the evaluation of the housing and care of the specimens of any taxon under a variety of conditions. The FWS staff may visit facilities, and if there is reason to suspect that animal care and housing is not what was reported, we can notify USDA inspectors or our Office of Law Enforcement. The commenter encouraged us to consider making the finding for all imported specimens regardless of how the species is listed and whether or not the specimen is captive bred. We have limited the regulations in this section to implementing Article III (3)(b) and (5)(b) of the Treaty. There is no basis for making such a finding for Appendix-II or -III species.

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

This 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. One commenter suggested that we add a section in this subpart to address international trade in raptors and another commenter requested the addition of a section on trade in live animals to address humane transport issues in greater detail. We believe that requirements for trade in raptors and other live specimens are sufficiently described in this rule as written, and

that separate sections covering such specimens are not necessary.

Export of heavily traded native species (§§ 23.68–23.70): Certain native species (American ginseng (*Panax quinquefolius*), bobcat (*Lynx rufus*), river otter (*Lontra canadensis*), Canada lynx (*Lynx canadensis*), gray wolf (*Canis lupus*), brown bear (*Ursus arctos*), and American alligator (*Alligator mississippiensis*) that are managed by a State or tribal conservation program are traded internationally, sometimes in high volumes. As for all CITES Appendix-I and -II species, before we can issue a CITES document to allow export, we must find that the specimens were legally acquired and that the export will not be 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 permit by permit. 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 and thereby approve 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 some furbearer species, we make multi-year findings. 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 programs. 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 website or will be available from us (see § 23.7).

Many commenters supported the provisions for approval of State and tribal export programs, but would like the FWS to make range-wide non-detriment findings, rather than State-by-State or Tribe-by-Tribe assessments. We approve programs for the export of American ginseng, furbearers, and crocodilians on a State-by-State or Tribe-by-Tribe basis because they are managed by individual States or Tribes. We require specific information about the population status and management of the species on those specific State and tribal lands. As discussed in § 23.61, a range-wide population assessment would be useful in making non-detriment findings because it would place the State or tribal programs in the context of species management and population status throughout its range. However, in making a non-detriment finding, we must determine whether there are effects from the export, including locally, that will impact the survival of the species. Generally, the information provided to the FWS by a State or Tribe is limited to the species' status in that State or tribal management area. If, however, sufficient information is provided by States and Tribes within the range of a particular species, we may review the information, in conjunction with other available information, on a range-wide basis. We have, for example, made a range-wide non-detriment finding for bobcat. We added provisions in § 23.69(b) to accommodate situations where the Scientific Authority has made a range-wide non-detriment finding.

The same commenters suggested that re-evaluation periods for range-wide findings should be no less than every 5 years. As discussed in the 2006 proposed rule (71 FR 20167), subsequent to programmatic approval for a State or Tribe, exports are approved as long as the periodic submission of information by the State or Tribe shows that there is no significant change in status or management of the species that might lead to different treatment of the species.

One commenter requested stronger language to mandate that States and Tribes provide relevant reports, and that the FWS disclose whether it has detected tag fraud for furbearers and alligators issued to the States and Tribes. We review the CITES furbearer and alligator activity reports received from each approved State or Tribe to determine if our programmatic findings remain correct or if the species needs closer monitoring. If an assessment of the information indicates that the population may be declining, we may request additional information from the States or Tribes to conduct a more comprehensive review to ensure that our findings are still valid. Violations in the use of tags are monitored by the Office of Law Enforcement and disclosure is subject to the rules and regulations governing release of investigative information.

American ginseng roots (§ 23.68): 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.

We use two categories for ginseng, 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.

States or Tribes no longer provide us in their annual reports an estimate of the average age of wild-harvested plants. Instead, the U.S. Scientific Authority uses roots-per-pound information provided by the States as an index to indicate shifts in age structure of harvested roots.

One commenter suggested that we modify § 23.68 (b)(1)(iii) so that State or tribal personnel would only inspect and certify wild-collected ginseng for export and not all wild-collected ginseng harvested on State or tribal lands. Since the majority of wild-collected ginseng is exported, having State or tribal officials inspect all ginseng harvested in a particular State will minimize the likelihood of under-aged or illegally obtained wild-collected roots being exported. Additionally, some States do not require inspection of wild-collected

ginseng for personal use, and ginseng that does not enter international commerce is not subject to CITES requirements.

One commenter asked us to provide the list of States and Tribes with approved ginseng programs in the regulations as well as on the FWS website (see § 23.7). It is easier to update the FWS website quickly, and therefore, we will provide the list of approved States and Tribes there. We do not believe it is necessary to provide the list in the regulations as well.

In the 2006 proposed rule (71 FR 20167), we proposed changing 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. Three commenters suggested that we not change the annual reporting date from May 31 to May 1, because it would require States to revise their existing ginseng laws and would decrease the amount of time ginseng dealers, States, and Tribes have to prepare the requested information. One of the commenters strongly supported our intention to complete the required CITES findings early. However, the commenter noted that the annual reports are one of many references the FWS considers in making the findings. The commenter is correct in that we consider additional information as well as information provided in the annual reports when making our non-detriment findings. However, under CITES we must also make a legal acquisition finding, which is largely based on information contained in the State reports. Based on further review of our requirements, and in consultation with the State program coordinators, we have decided to maintain the current May 31 reporting date.

CITES furbearers (§ 23.69): We define ''CITES furbearers'' to include bobcat, river otter, Canada lynx, and the Alaskan populations of 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 species listed under Article II(2)(a) of the Treaty. These species are listed to ensure that trade in the species to which they are similar is effectively controlled. We are obligated, however, by the Treaty to ensure that such 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 § 23.7). 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 demonstrate 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 must be as reliable as the current system. Many State fish and wildlife agencies and fur trapper associations endorsed efforts to develop an alternative to tags. We will continue to work with States and Tribes to explore other ways to provide evidence of legal acquisition.

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 (i.e., they are not designated as being listed under Article II(2)(a) or II(2)(b)), 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).

Crocodilians (including American alligator) (§ 23.70): This section incorporates Resolution Conf. 11.12 and 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. 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.

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 on how many alligators were taken during the wild harvest and how many alligators were harvested from farming facilities.

One commenter questioned why the requirements for marking of American alligator meat and skulls are different from those for other crocodilians. When we incorporated the marking requirements from the special rules in part 17 into this section, we did not change those requirements. The marking requirements for American alligator meat and skulls were developed to accommodate different State marking requirements.

Two commenters asked us to develop a system to expedite issuance of export permits for American alligator skins, similar to the process in place for Appendix-III turtles. The system in place for Appendix-III wildlife is not appropriate for Appendix-II wildlife. Export of specimens listed in Appendix III, including certain turtle taxa native to the United States, requires only a legal acquisition finding. By contrast, American alligators are listed in Appendix II, and therefore, we must make a non-detriment finding in addition to a legal acquisition finding before issuing an export permit.

Sturgeon caviar (§ 23.71): At CoP10, all sturgeons that were not already included in the CITES Appendices were added to Appendix II. This section implements Resolution Conf. 12.7 (Rev. CoP13), including requirements for 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 require that any re-export of caviar take place within 18 months from the issuance date of the original export permit. We also clarify that caviar and caviar products that contain the roe of more than one species may only be imported into or exported from the United States if each species is identified and the quantity of each species is specified on the CITES document. In the final rule, we amended § 23.71(g) to more clearly describe this requirement and to underscore that we include products made with caviar under this paragraph.

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 allow import of sturgeon caviar from shared stocks subject to quotas only during the calendar year in which it was harvested.

Personal sport-hunted trophies (§ 23.74): This 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 § 23.55). Some countries allow limited take of Appendix-I species as part of an overall management plan. The Parties have agreed to allow international movement of such trophies provided they are for the hunter's personal use. The export of Appendix-I hunting trophies requires both export and import permits under Article III of the Treaty (see § 23.35). This practice is re-affirmed in Resolution Conf. 2.11 (Rev.).

We defined ''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.''

Two commenters supported our definition, but one did not agree that sport-hunted trophies should be considered personal effects. This commenter suggested that we remove the phrase ''for personal use'' from the definition. As stated above, the Parties have recognized that trade in certain Appendix-I specimens and annotated Appendix-II specimens is allowable provided that the specimen is a personally hunted trophy that will not be used for commercial purposes. We believe our definition, as written, supports the intent of the Parties. The same commenter encouraged us to add this definition to the general definition section (§ 23.5) as well. We defined some terms that apply to a specific type of trade, such as ''sport-hunted trophy,'' in the sections where they are used rather than in the general definition section (§ 23.5) for efficiency. We do not believe it is appropriate to restate the definition in two places.

Two commenters believed that items manufactured from a trophy should be included in the definition. They expressed concern that our definition would preclude hunters from bringing such items into the United States because they would be considered commercial. We do not agree that utilitarian items manufactured from a trophy should be considered a trophy. 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.'' 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.

We also included 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. We added a description of tag locking requirements and tagging requirements for mounted sport-hunted trophies to § 23.74(d)(i). These requirements are in addition to any requirements in 50 CFR part 17. One commenter requested that we clarify that the limits on the number of certain sport-hunted trophies that may be imported in a given year apply to an individual hunter. We amended § 23.74(d) accordingly.

Two commenters were opposed to all trophy hunting and recommended that we prohibit the import of all sport-hunted trophies listed in the CITES Appendices. This issue was addressed in the 2006 proposed rule (71 FR 20167). CITES did not intend to ban the trade in sport-hunted trophies, and we do not have the authority to impose a ban on the import of any CITES species without legal or scientific justification.

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

Confiscated specimens (§ 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 set out detailed guidance. Our general procedures for disposal of forfeited or abandoned property, under CITES as well as other U.S. laws, are contained in 50 CFR part 12, 7 CFR part 356, and 19 CFR part 162. Section 23.78 outlines the process we use in making a decision on how to dispose of confiscated live CITES wildlife and plants that have been forfeited or abandoned to FWS Law Enforcement, APHIS, or CBP.

We consider a number of factors, and consult the guidance in Resolution Conf. 10.7, when determining how to dispose of confiscated live specimens. The most important factor we consider is the welfare of the wildlife or plants. Generally, the disposal options are maintenance in captivity or cultivation, return to the wild, and euthanasia or destruction. In the absence of other options, euthanasia or destruction may be the most humane or appropriate option. Although under Article VIII of the Treaty, returning confiscated live specimens to the country of export is one available option, we cannot always return them. 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.

Return to the wild of confiscated specimens is rarely possible. It can carry 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 considering return to the wild, 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 are donated to zoos, aquariums, or botanical gardens. This option may not be available when a seizure involves a large number of common species. Both the botanical and zoological communities recognize that placing specimens of low conservation value in limited space may benefit those individuals, but may detract from conservation efforts as a whole.

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 included an issuance criterion for re-export of confiscated specimens in § 23.37(c)(5). It requires 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 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 must make the biological finding, which normally would have been made prior to export, before issuing a re-export certificate.

Two commenters urged us to develop an action plan for the disposal of confiscated live specimens, as is recommended in Resolution Conf. 10.7. As noted in the 2006 proposed rule (71 FR 20167), due to the complexity of issues involved in placing seized specimens, the FWS makes disposition decisions on a case-by-case basis.

One commenter asserted that we should strictly control the breeding and disposition of any progeny for any wildlife specimen placed with a zoo, sanctuary, or care facility. All live wildlife placed with a zoo, sanctuary, or similar care facility is accompanied by a loan or donation document as described in 50 CFR part 12 that may include restrictions on use or disposition of the animal. We may also place restrictions on breeding of the animal or disposition of the animal and any progeny, as appropriate.

One commenter urged us to place confiscated specimens in scientific collections with restrictions on their transfer rather than re-export them back to the country of export. Another commenter expressed concern regarding the option of selling confiscated Appendix-II and -III specimens. Under these regulations, as well as under 50 CFR part 12, the FWS disposes of confiscated specimens on a case-by-case basis after considering the most appropriate option. See 50 CFR part 12, subpart D, for the criteria we use when considering the appropriate disposition of abandoned and forfeited wildlife and plants, including the order of preferred disposal methods.

One commenter remarked on the impracticality of re-exporting seized specimens to the country of export. The commenter cited an instance where seized specimens were re-exported to the country of origin, but despite efforts to maintain the specimens, they could not be salvaged once they arrived in the country of export and had to be discarded. The commenter recommended that the FWS place seized specimens in scientific collections in the United States and restrict the use of the specimens to prevent them from being transferred to the intended importer.

We believe that the re-export of confiscated specimens to the country of origin or re-export is an appropriate option for certain specimens. Although the commenter cited an instance where specimens could not be salvaged, we have successfully re-exported many confiscated specimens to the country of export. We decline to incorporate a mandate for the placement of confiscated specimens only with scientific institutions. We must retain the ability to determine the most appropriate disposition of confiscated specimens based on specific facts of the case.

Two commenters argued against returning confiscated live specimens to the wild. One maintained that returning raptors is only successful in the context of a well-organized and carefully implemented translocation program. The other commenter noted that reintroduction programs require careful organization and implementation. That commenter also noted that returning confiscated live wildlife to the country of origin was often not realistic, noting that adequate facilities for caring for the live specimens may not exist. We have clarified under what limited circumstances we would return confiscated specimens to the wild. With regard to the return of confiscated live specimens to the country of origin, Resolution Conf. 9.10 (Rev. CoP13) recommends that confiscated specimens be returned to the country of origin or re-export when the Scientific Authority of the confiscating State deems it in the interest of the specimens to do so, and the country of origin or re-export requests that the specimens be returned. The United States follows this recommendation in determining if it is appropriate to return confiscated specimens to the country of origin or re-export.

One commenter argued that we should not allow confiscated live wildlife specimens to be given to scientific institutions unless the institution does not intend to use the specimen for invasive scientific research. The commenter further argued that we should not place such specimens with any organization that operates a traveling exhibition. The commenter noted particular concern regarding the regulations in 50 CFR part 12 that allow for the sale of confiscated Appendix-II and -III wildlife and plants. The commenter believed that this option might cause the FWS to overlook other disposal options such as return to the country of origin. As previously discussed, the options available in 50 CFR part 12 are ordinarily exercised in the order in which the methods are outlined. Sale and destruction are the final options to be exercised, and any sale must be in accordance with Federal Property Management Regulations and Interior Property Management regulations.

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

Development of U.S. documents and negotiating positions for a CoP (§ 23.87): This section outlines 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 website (see § 23.7). We will also hold one or more public meetings to discuss these issues. However, we will not 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 no longer publish an official report after each CoP because information on the results of a CoP is available from a number of sources, such as the CITES website (see § 23.7). Consequently, the production of a separate report has become duplicative and unnecessary.

One commenter noted that we did not indicate a timeframe for providing a summary of our proposed negotiating positions in preparation for a CoP. The commenter suggested that we provide our proposed negotiating positions at least 2 weeks prior to the start of a CoP to allow sufficient time for public input and comment. Although we make every effort to provide our proposed negotiating positions sufficiently in advance of a CoP, it is not always possible, and we have declined to adopt this suggestion.

Another commenter opposed our proposal not to make our final negotiating positions available prior to a CoP. We believe that this comment is adequately addressed in the 2006 proposed rule (71 FR 20167) and refer the commenter to that document for further clarification.

Resolutions and decisions (§ 23.88): This section provides the legal basis and purpose of resolutions and decisions. We have implemented 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.

One commenter recommended that we clarify that the effective date of resolutions and decisions adopted at a CoP is 90 days after the last day of the meeting at which they were adopted. We agree with the commenter and have revised the final rule accordingly.

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

Listing criteria for Appendix I or II (§ 23.89): 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.

A number of falconers argued that not all Falconiformes should be included under CITES, but only those species that are endangered or threatened. These regulations do not address specific listings in the Appendices. However, through a series of **Federal Register** notices and public meetings, individuals and organizations have an opportunity to participate in U.S. preparations for a CoP and should provide information on potential listing proposals through those means.

One commenter questioned our statement regarding the use of precautionary measures to ensure that scientific uncertainty is not a reason for failing to act in the best interest of the conservation of the species when considering a listing proposal. The commenter argued that if adequate information to evaluate conservation needs is lacking, it is difficult to determine those needs. The commenter asked how proposals under these circumstances should be evaluated. The statement to which the commeter refers is taken from the concept described in Annex 4 to Resolution Conf. 9.24 (Rev. CoP13). In evaluating the need to list a species in the Appendices, we use the best available information. However, in applying precautionary measures, we may still take a listing action when the best available information suggests the action is warranted despite incomplete information.

Exemptions (§ 23.92): This section provides details on what materials are exempt. Upon import, export, or re-export, you may be required to demonstrate that your specimens qualify as exempt under this section. One commenter stated that tissue, blood, and serum collected at the time of necropsy for diagnostic testing should not require permits under CITES. Although Parties have proposed exempting such specimens in the past, no consensus has been reached on such an exemption. Consequently, tissue, blood, and serum are not exempt from CITES requirements.

Another commenter indicated that our text regarding annotated Appendix-III wildlife (§ 23.92 (b)(1)) and Appendix-II or -III plant species (§ 23.92 (b)(2)) was confusing. Upon review of this section we realized these paragraphs did not accurately reflect our current practice. As a result, we combined (b)(1) and (b)(2) from the 2006 proposed rule (71 FR 20167) into one paragraph so that it is clear that for Appendix-III wildlife and Appendix-II or -III plant listings we consider all parts, products, or derivatives to be covered (and thus to require CITES documents) unless they are annotated to indicate otherwise. We also added references in (b)(2) and (b)(3) to the section on artificially propagated plants to underscore the fact that these specimens must qualify as artificially propagated under § 23.64.

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 rule has been reviewed by OMB.

a. This 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 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 170 Parties, must follow under the Convention. As of February 1, 2007, our records show there are approximately 9,800 active U.S. CITES documents (the period of validity for documents ranges from 6 months to 3 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 Convention and the current CITES resolutions and decisions, this 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 Convention as well as the current 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 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 revisions. Revisions that would impact current business practices are addressed below.

We do not expect that this rule will 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 rule will result in changes in levels of trade, permit applications, or permit issuance or denial that are statistically significant.

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 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 will 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 cooperativeconservation 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 no longer allow the use of Article III of the Treaty for commercial export of Appendix-I wildlife. This 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; it also does not preclude the export of specimens when the export is not commercial, such as for scientific, conservation, or personal use.

Wildlife may be exported with a certificate under the bred-in-captivity exemption of Article VII(5). However, at CoP12, the Parties agreed that for facilities to qualify as breeding Appendix-I species for noncommercial purposes, they must be participating in a cooperative conservation program with one or more of the range countries for that species. Otherwise, if a facility is not cooperating with a range country, they are considered to be breeding for commercial purposes. We adopted this new provision to ensure that trade in Appendix-I species will not be detrimental to the survival of the species in the wild. Many Appendix-I species also are listed under the ESA, and an export permit may be issued only when the activity will provide for the conservation of the species. Thus, we do not expect administrative costs to increase for facilities that want to export Appendix-I species bred for noncommercial purposes.

Unless an Appendix-I wildlife or plant specimen qualifies for an exemption under Article VII of the Treaty, it may be imported only when the intended use is not for primarily commercial purposes. In addition, the Parties agreed that Appendix-I trophies may 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 incorporated 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 applies 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 this rule, these types of trophies may be imported for personal use only and may not be sold or otherwise transferred for economic use, gain, or benefit after import into the United States. From 2001 to 2005, the number of African elephant trophies imported into the United States annually ranged from 265 to 352. During the same time period, annual imports of leopard trophies ranged from 413 to 507.

We implemented changes in requirements for trade in sturgeon caviar agreed at CoP12 and CoP13. We 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 this final rule will assist U.S. businesses in complying with CITES requirements when engaging in international wildlife trade. Many of the benefits associated with the 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 personally owned live wildlife (e.g., 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, and (8) exempting certain wildlife hybrids and urine, feces, and synthetically derived DNA from CITES requirements. These benefits are presented qualitatively below.

We expect the regulations to provide relief by streamlining the CITES document procedures for traveling exhibitions. At CoP8, the Parties agreed to issue CITES documents for live animals that qualify as pre-Convention or bred in captivity and that travel internationally as part of an exhibition. The document is to be treated like a passport and allows 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 3 years rather than 6 months like a standard export permit. At CoP12, the Parties agreed to extend these provisions to all traveling exhibitions, not just traveling live-animal exhibitions. We incorporated provisions for traveling exhibitions into these regulations and defined 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 have also implemented Resolution Conf. 12.10 (Rev. CoP13) and established application procedures for an operation breeding Appendix-I wildlife species for commercial purposes to become registered 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 operations breeding Appendix-I species for commercial purposes. During 2005 and 2006, these four facilities combined exported a total of 18 shipments per year. We anticipate that 15-20 operations would seek to be registered initially.

We adopted 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 2006, we issued about 200 CITES documents to export Appendix-I specimens.

We exempted 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 willaccept 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 website or from us (see § 23.7). We anticipate that the use of this standardized nomenclature and the exemption of coral sand and coral fragments from CITES requirements will 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 provides for the issuance of certificates for personally owned live wildlife that would be valid for a period of 3 years and allow for multiple imports, exports, and re-exports of the covered specimens. The final rule advises travelers that they must have a CITES document to travel with their CITES-listed personally owned live wildlife, and it provides procedures for the issuance of these CITES documents. Individuals importing live CITES wildlife for personal use are required under this rule to obtain a CITES document prior to arriving in the United States. Since most Parties require CITES documents for international trade of all live specimens, this requirement will ensure that pet owners are not inadvertently violating the Lacey Act Amendments of 1981 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 will not impose an additional paperwork or financial burden on pet owners or falconers, but may actually save time and money by clearly informing travelers of CITES requirements.

This rule will 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 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 have implemented streamlined procedures adopted at CoP12 and issue partially completed documents under specific circumstances. We do this by establishing a master file for a permittee and then issue multiple documents based on information in the master file. The permittee is authorized to complete specifically identified boxes on the document and is required to sign the document to certify that the information entered is true and correct. For U.S. documents, an applicant must 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 can 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 2005, we issued approximately 3,200 partially completed documents. In 2006, the number increased to around 9,300 documents. Although the creation of a master file has somewhat increased the initial burden for applicants, the subsequent issuance of documents under a master file is streamlined. In addition, this process has brought our procedures into line with most other CITES Parties, which will no longer accept multiple-use export documents.

This final rule will provide relief to applicants whotravel 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 can issue a CITES document that will 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 will benefit from this simplified procedure.

Under this rule, we require CITES documents to accompany most wildlife hybrids that are imported, exported, or re-exported. Certain wildlife hybrids will no longer require CITES documents if they meet a limited exemption. We generally receive fewer than 50 inquiries concerning exempt hybrids annually.

We have exempted urine, feces, and synthetically derived DNA of CITES species 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 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 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 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 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, $394 million in 2003, $1.5 billion in 2004 (including one export of a single panda to China with a declared value of $1 billion), and $737 million in 2005.

These new regulations 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 will vary from 6 minutes to 30 minutes per response, and new application fees range from free to $100. The 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 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 ESA 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 will 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.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

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

a. Does not have an annual effect on the economy of $100 million or more. This 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 rule will not have a negative effect on this part of the economy.

This final rule will affect all importers, exporters, and re-exporters equally, and the benefits of having updated guidance on complying with CITES requirements will 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 rule clarifies and updates the regulations that implement CITES and, therefore, will provide benefits to all permit applicants in terms of time savings. However, this rule may result in a small increase in the number of applications and processing fees for circuses, pet owners trading in CITES animal species, commercial breeding operations for appendix-I species, 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 commercial breeding operations for Appendix-I species ($100). We anticipate fewer than 30 applicants will be affected annually by these new 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 rule will 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 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 rule will 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 final 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 rule has no effect on small governments' responsibilities. This rule affects States only as described below, concerning export programs for certain native species listed under CITES.

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 2001-2005, annual exports of animal skins under the CITES export programs ranged from approximately $29 to $61 million. Annual exports of American ginseng during the same timeframe ranged from approximately $41 to $111 million. We have not changed the existing regulations for export from these programs (although, in the future, we may eliminate the need for export tags on skins of 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 under 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 survival of the species.

In this rule, we provide the criteria we use in making decisions to approve a program. These criteria are consistent with those that we currently employ in making such findings, and program approval will continue to function as it does now. This final rule provides the public with information on how the Service makes findings regarding State and tribal programs.

These updated CITES regulations will assist those who rely on income from the export of certain native CITES species by providing clear, updated requirements for international trade, thus allowing them to remain competitive when conducting business in international markets. This final rule provides the importing and exporting community a better opportunity for obtaining economic gain from international business in CITES specimens.

b. This rule will not produce a Federalrequirement 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 rule does not have significant takings implications. A takings implication assessment is not required. This 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 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: The 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 final 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 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 final 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 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 rule has been approved under OMB control number 1018-0093. 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, 3-200-61, 3-200-64 through 3-200-66, 3-200-69, 3-200-70, 3-200-73, and 3-200-76.

We 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. We requested approval of the new information collections, including forms 3-200-74 and 3-200-75, from OMB for a 3–year period. The OMB control number for the new information collections is 1018-0137. The new information collections and the estimated reporting burdens are indicated in the following table.

NEW INFORMATION COLLECTIONS ASSOCIATED WITH THE FINAL RULE

Form Number	Activity	Total Number of Respondents	Total Number of Responses	Estimated Completion Time (Hours)	Total AnnualBurden Hours	$ Value of Burden Hours	Application Processing Fee	Total AnnualNon-Hour $ Cost Burden	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).

We have made changes to the requirements for trade in sturgeon caviar (which includes paddlefish caviar). The majority of these requirements are already implemented by other CITES Parties that are either exporting caviar to the United States or receiving imports of caviar from the United States. Therefore, our codification of these existing requirements will not impose a new burden on traders. We require the labeling of containers of caviar being imported into or exported or re-exported from the United States. Resolution Conf. 12.7 (Rev. CoP13) recommends guidelines for a universal labeling system 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 2005 and 2006, we issued approximately 200 CITES documents annually 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 new regulations, when a document covering multiple specimens qualifying as pre-Convention or bred in captivity specimens expires, the permittee will need to obtain one document for each specimen. As a result, this rule may result in increased permit application processing fees ($100 per application) for a small number of importers and exporters. This requirement will 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 rule, including those already approved under OMB control numbers 1018-0093 and 1018-0130, will vary from 6 minutes to 85 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.

During the proposed rule stage, we solicited comments on the new information collections (FWS Forms 3-200-74 and 3-200-75). While we did not receive any comments specifically for the new collection requirements, we did receive several comments pertaining to other information collection requirements in the rule (recordkeeping, reporting, fees, etc.), which we summarize and discuss in this preamble. We did not make any changes to our burden estimates as a result of these comments.

At any time, interested members of the public and affected agencies may comment on the information collection requirements contained in this rule. Please send such comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358-2269 (fax); or *hope_grey@fws.gov* (e-mail).

We particularly invite your comments on: (1) whether or not the collection of information is necessary for the proper performance of the functions of the Service, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this collection; (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 applicants..

National Environmental Policy Act (NEPA): The FWS has determined that this final rule is categorically excluded from further NEPA review as provided by 516 DM 2, Appendix 1.9, of the Department of the Interior National Environmental Policy Act Revised Implementing Procedures (FR Volume 69, No. 45, March 8, 2004). No further documentation will be made.

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 revises the current regulations in 50 CFR part 23 that implement CITES. The 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 final rule is considered a significant regulatory action under Executive Order 12866, it will not 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.

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.

Regulation Promulgation

■ For the reasons given in the preamble, we 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 Atoll, Navassa Island, Palmyra Atoll, and Wake Atoll, and 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 in § 23.53 of this subchapter for retrospective permits 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. Removing the first two sentences in paragraph (d)(1) and adding in their place the three new sentences set forth below; 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				CFR 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 Commercial Breeding Operations for Appendix-I wildlife				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 as § 17.9]

■ 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. Section 17.42 is amended as set forth below by:

a. Republishing the heading for paragraph (a);

b. Revising paragraphs (a)(1), (a)(2)(ii)(A), and (a)(2)(ii)(B) to read as set forth below;

c. Removing (a)(2)(ii)(C), (a)(2)(iii), and (a)(2)(iv);

d. Adding paragraphs (a)(3) and (a)(4) to read as set forth below;

e. Revising paragraph (c) to read as set forth below; and

f. Removing and reserving paragraph (g).

§ 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 part 14 of this subchapter 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 part 14 of this subchapter. 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 (c)(2)(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 on trade of specimens of threatened crocodilians if any ofthe 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) *Biennial 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 biennial 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 2 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 2 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 biennial 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 manmade 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)

Subpart A—Introduction

Subpart B—Prohibitions, Exemptions, and Requirements

Subpart C—Application Procedures, Criteria, and Conditions

Subpart D—Factors Considered in Making Certain Findings

Subpart E—International Trade in Certain Specimens

Subpart F—Disposal of Confiscated Wildlife and Plants

Subpart G—CITES Administration

Subpart H—Lists of Species

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora (March 3, 1973), 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended, 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 specimen that you possess or want to enter into 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 (b) of the ESA (16 U.S.C. 1538(c)(1) and 1540(a) and (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 to the Treaty (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 included in or excluded from the listing, such as certain parts, products, or derivatives. 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 treated as if they are 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.

ATA carnet means a type of international customs document (see § 23.50). ATA is a combination of the French and English words ''Admission Temporaire/Temporary Admission.''

Bred for commercial purposes means any specimen of an Appendix-I wildlife species bred in captivity for commercial purposes. Any Appendix-I specimen that does not meet the definition of ''bred for noncommercial purposes'' is considered to be bred 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 of the specimen is noncommercial and 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 bred-in-captivity criteria (see § 23.63).

*Certificat*e 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).

Cooperative conservation program means a program in which participating captive- breeding facilities produce Appendix-I specimens bred for noncommercial purposes and participate in or support a recovery activity for that species in cooperation with 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.

ISO country code means the two-letter country code developed by the International Organization for Standardization (ISO) to represent the name of a country and its subdivisions.

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 or cultivated 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, which 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 a display of live or dead wildlife or plants for entertainment, educational, cultural, or other display purposes that 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

Roles	U.S. Scientific Authority	U.S. Management Authority
(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
(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; lists of registered scientific institutions and operations breeding Appendix-I wildlife for commercial purposes; 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* Website: *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* Website: *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 Website: *http://www.fws.gov/le*

Type of information	Office to contact
(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)(2) 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) 734-8891/other CITES issues Fax: (301) 734-5786/permit questions Fax: (301) 734-5276/other CITES issues Website: *http://www.aphis.usda.gov/plant_health*
(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 Agriculture Programs and Liaison 1300 Pennsylvania Avenue, NW, Room 2.5 B Washington, DC 20229 Tel: (202) 344-3298 Fax: (202) 344-1442
(f) *General information on CITES:* (1) CITES export quota information (2) CITES' *Guidelines for transport and preparation for shipment of live wild animals and plants* (3) Information about the Secretariat (4) Names and addresses of other countries' Management and Scientific Authority offices (5) Official documents, including resolutions, decisions, notifications, CoP documents, and committee documents (6) Official list of CITES species and species database (7) Text of the Convention	CITES Secretariat Website: *http://www.cites.org*

§ 23.8 What are the information collection requirements?

The Office of Management and Budget approved the information collection requirements for application forms and reports contained in this part and assigned OMB Control Numbers 1018–0093 and 1018–0137. We cannot collect or sponsor a collection of information and you are not required to provide information unless it displays a currently valid OMB control number.

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
Fishes	(ii) *Hippocampus* spp. (seahorses)	Dead specimens, parts, products (including manufactured items), and derivatives	4

Major group	Species (Appendix II only)	Type of specimen	Quantity[1]
Reptiles	(iii) Crocodylia (alligators, caimans, crocodiles, gavial)	Dead specimens, parts, products (including manufactured items), and derivatives	4
Molluscs	(iv) *Strombus gigas* (queen conch)	Shells	3
Molluscs	(v) Tridacnidae (giant clams)	Shells, each of which may be one intact shell or two matching halves	3 shells, total not 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 type of specimen 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, or 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) Customs 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.

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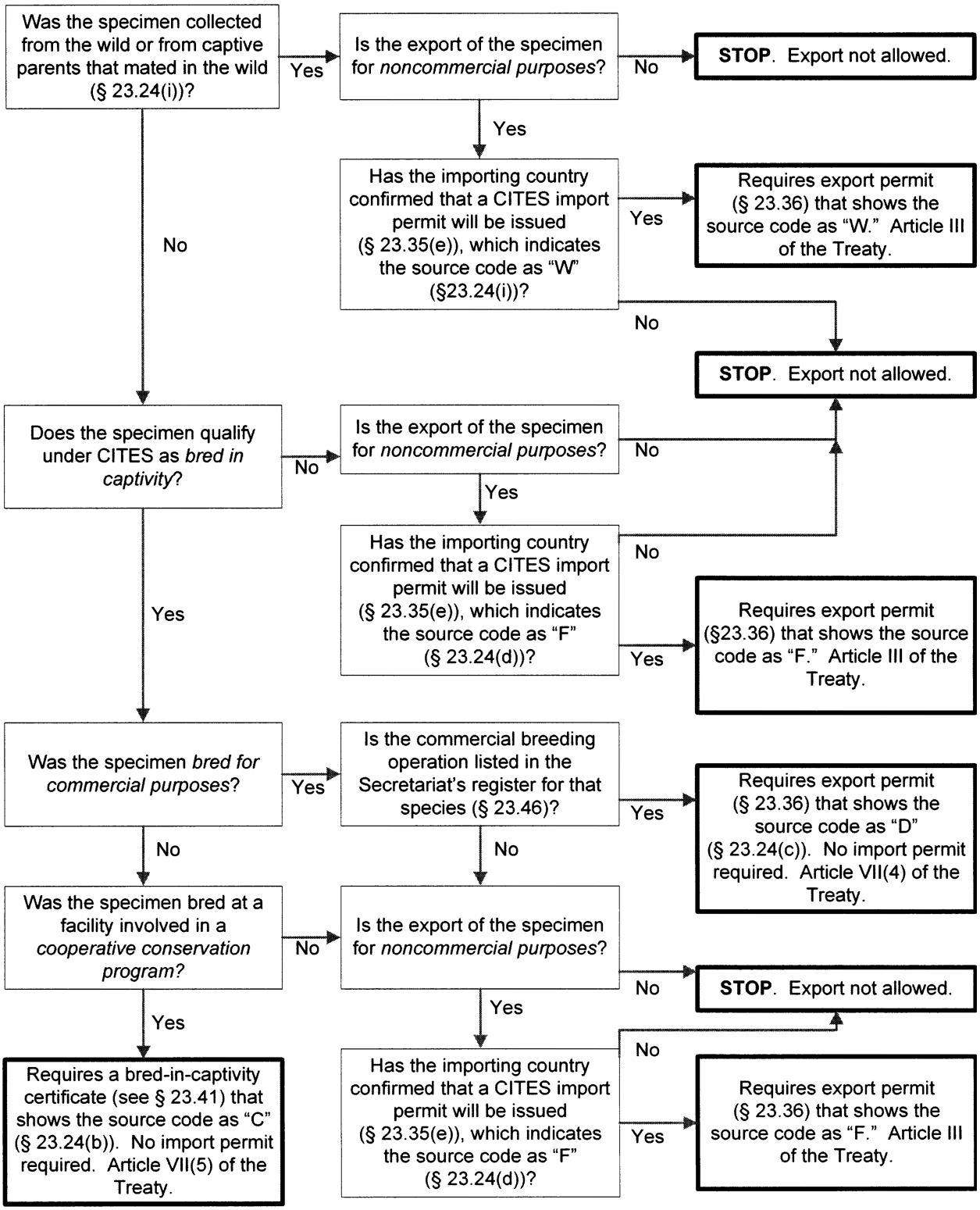
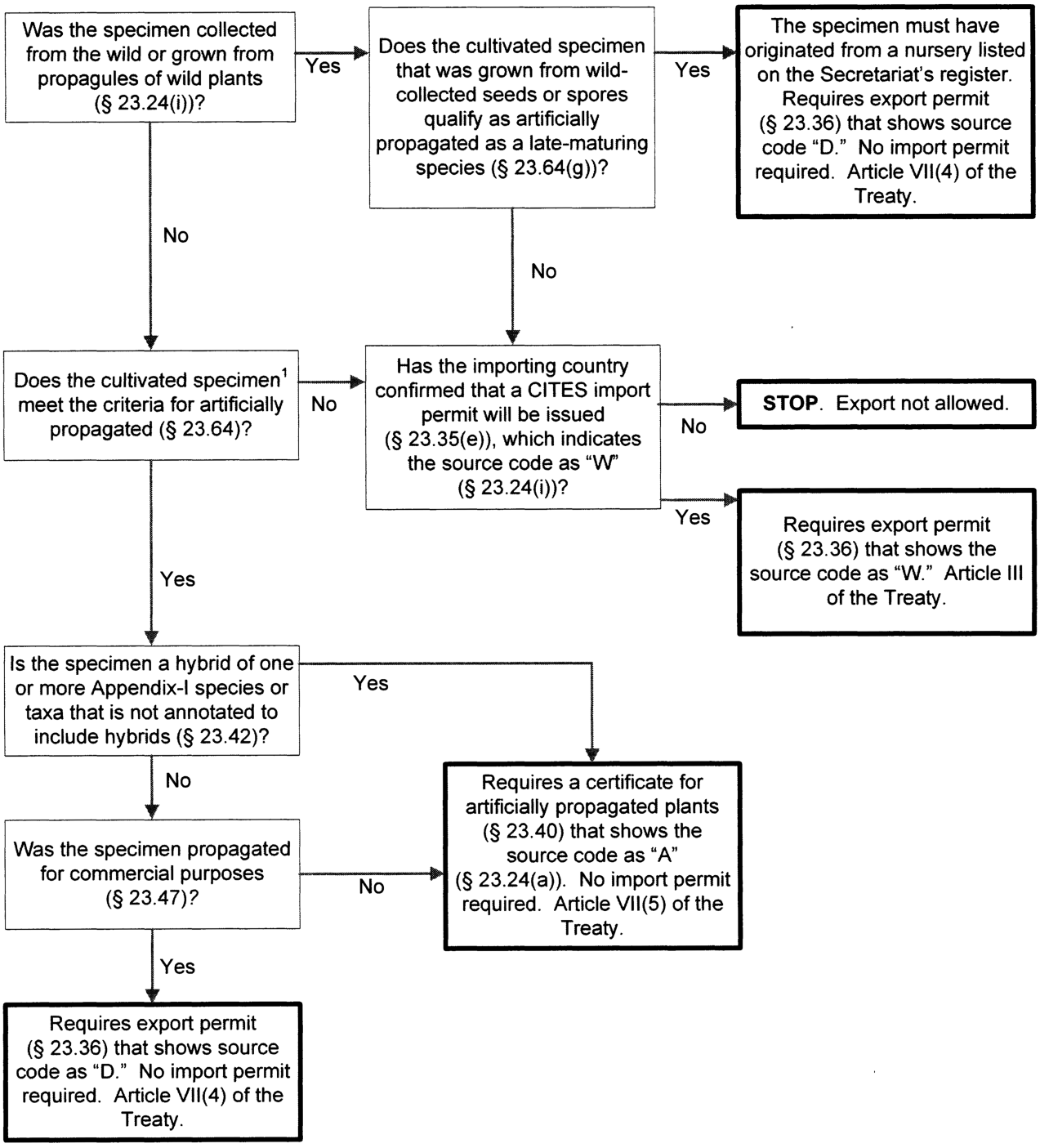
Decision Tree for Export of Appendix-I Wildlife



§ 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.

B

BILLING CODE 4310–55–C

§ 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 III	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 in captivity 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 plants	I, II, or III	CITES document unless the specimen qualifies as an exempt plant hybrid	23.42
(8) Hybrid wildlife	I, II, or III	CITES document unless the specimen qualifies as an exempt wildlife hybrid	23.43
(9) In-transit shipment (see paragraph (d)(14) 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 movements	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 specimens qualify as pre-Convention, bred in captivity, or artificially propagated[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 either an export permit (§ 23.36) or re-export certificate (§ 23.37)
II	Export permit (§ 23.36) or re-export certificate (§ 23.37)
III	Export permit (§ 23.36) 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 certificates.* 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, § 23.36(e) and § 23.39(e) for export of exempt specimens, or § 23.37 for re-export). Although an Appendix-III specimen does not require a CITES document to be introduced from the sea, the subsequent international trade of the specimen would be considered an export. For export of an Appendix-III specimen that was introduced from the sea you must obtain an export permit (§ 23.36) if the export is from the country that listed the species in Appendix III, a certificate of origin (§ 23.38) if the export is from a country other than the listing country, or a re-export certificate for all re-exports (§ 23.37).

§ 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(s) (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 website or contact us (see § 23.7) 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 items in 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 for inspection or enforcement purposes.

(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 transshipped 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 a customs declaration label used to identify specimens being moved between registered scientific institutions (§ 23.48(e)(5)), 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 air 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 (see § 23.7).
(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.

Required information	Description
(7) Humane transport of live wildlife	If the CITES document authorizes the export or re-export of live wildlife, a statement that the document is valid only if the transport conditions comply with CITES' *Guidelines for transport and preparation for shipment of live wild animals and plants*, 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 CITES'*Guidelines for transport and preparation for shipment of live wild animals and plants*, adopted by the Parties in 1979 and revised in 1981, or, in the case of air transport of wildlife, the Live Animals Regulations (LAR), 33rd edition, October 1, 2006, by the International Air Transport Association (IATA), Reference Number: 9105-33, ISBN 92-9195-818-2. The incorporation by reference of these documents 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 of CITES' *Guidelines for transport and preparation for shipment of live wild animals and plants* may be obtained from the CITES Secretariat, International Environment House, Chemin des Anémones, CH-1219, Châtelaine, Geneva, Switzerland, or through the Internet at *http://www.cites.org/eng/resources/transport/E-TranspGuide.pdf*. Copies of the IATA LAR 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 of these documents may be inspected at the U.S. Management Authority, Fish and Wildlife Service, 4401 N. Fairfax Dr., Arlington, VA 22203 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.
(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 (see § 23.7).
(10) Name and address	The complete name and address, including country, of the exporter and importer.
(11) Purpose of transaction	The purpose of the transaction identified either through a written description of the purpose of the transaction or by 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 (see § 23.7). 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 (see § 23.7). 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 (see § 23.7). (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.

Required information	Description
(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 certificate for artificially propagated plants, certificate for wildlife bred in captivity, certificate of origin, certificate of ownership, introduction-from-the-sea certificate, pre-Convention certificate, sample collection covered by an ATA carnet, scientific exchange certificate, or traveling-exhibition certificate. (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.

(d) *Purpose of transaction*. If the purpose is not identified by a written description, the CITES document must 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
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. An authorized 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 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 for Appendix-I specimens (see § 23.46)	The registration number of the operation or nursery assigned by the Secretariat, and if the exporter is not the 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.

Type of document	Additional required information
(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 a person authorized to sign CITES documents for 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 ATA carnet. (ii) The number of the accompanying ATA carnet 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 are 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

Source of specimen	Code
(d) Captive-bred wildlife (§ 23.36): (1) An Appendix-II or -III wildlife species that is captive-bred. (2) An Appendix-I wildlife species that is one of the following: (i) Captive-bred. (ii) Bred for commercial purposes, but the commercial breeding operation is not registered with the Secretariat. (iii) Bred for noncommercial purposes, but the facility does not meet the definition in § 23.5 because it is 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) For Appendix-I and -II specimens, 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	For Appendix-I specimens, 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, or 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 authorized 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) Annual reports	The Party issuing the CITES document has submitted annual reports and is not subject to any action under Article VIII paragraph 7(a) that would not allow trade in CITES species.
(3) CITES document	U.S. and foreign CITES documents must meet the general provisions and criteria in subparts C and E.
(4) Conditions	All conditions on the CITES document are met.
(5) Convention implementation	The Party issuing the CITES document is not subject to any action under Article VIII or Article XIII paragraph 3 that would not allow trade in the species.
(6) Extension of validity	The validity of a CITES document may not be extended except as provided in § 23.73 for certain timber species.

Key phrase	Conditions for an acceptable CITES document
(7) Fraudulent CITES document or CITES document containing false information	The CITES document is authentic and does not contain erroneous or misleading information.
(8) Humane transport	Live wildlife or plants were transported in compliance with CITES' *Guidelines for transport and preparation for shipment of live wild animals and plants*or, in the case of air transport of wildlife, the *International Air Transport Association Live Animals Regulations*. (See § 23.23(c)(7).)
(9) Legal acquisition	The Party or non-Party issuing the CITES document has made the required legal acquisition finding.
(10) 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.
(11) 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.
(12) Non-detriment	The Party or non-Party issuing the CITES document has made the required non-detriment finding.
(13) Phytosanitary certificate	A phytosanitary certificate may be used to export artificially propagated plants only if the issuing Party has provided copies of the certificates, stamps, and seals to the Secretariat.
(14) Quota	For species with a quota on file with the Secretariat, the quantity exported from a country does not exceed the quota.
(15) Registered commercial breeding operation for Appendix-I wildlife	(i) The operation is included in the Secretariat's register. (ii) Each specimen is specifically marked, and the mark is described on the CITES document.
(16) Registered commercial nursery for Appendix-I plants	The operation is included in the Secretariat's register.
(17) Retrospective CITES documents	A CITES document was not issued retrospectively except as provided in § 23.53.
(18) 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 specimens validated or certified may be less, but not more, than the quantity stated at the time of issuance.
(19) Wild-collected specimen	A wild-collected 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, was produced from illegally acquired parental stock, 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, 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) *U.S. port requirements.* In the United States, you must follow the clearance requirements for wildlife in part 14 of this subchapter and for plants in part 24 of this subchapter and 7 CFR parts 319, 352, and 355, and the specific requirement in paragraphs (c) and (d) of this section.

(c) *General validation or certification process.* Officials in each country inspect the shipment and validate or certify the CITES document. The table in this paragraph (c) 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 certification	Surrender copy upon export or re-export	Surrender original upon import or introductionfrom the sea
Bred-in-captivity certificate	Required	Required	Required
Certificate for 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
Import permit	Not required	Required	Required
Introduction-from-the-sea certificate	Not applicable	Not applicable	Required
Multiple-use document	Required[1]	Required	Not required; submit copy
Phytosanitary certificate	Required	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
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] Original must be available for inspection, but permit conditions will indicate whether an original or copy is to be validated.

(d) *Customs declaration labels.* The customs declaration label used to identify specimens being moved between registered scientific institutions (§ 23.48) must be affixed to the shipping container. The label does not require export or re-export validation or certification at the port.

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 species, 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 your application is abandoned and 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 Species Information 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, which 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 cleared Declarations for Importation or Exportation of Fish or Wildlife (Form 3–177) associated with each specimen.
(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 noncommercial purposes	A complete description of the circumstances under which the specimen was acquired (where, when, and from whom 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 non-exempt 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, you should provide such records on the origin of the specimen to the new owner.

§ 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
Caviar/Meat of Paddlefish or Sturgeon, Removed from the Wild	3–200–76
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 a commercial breeding operation for Appendix-I wildlife 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 provisions 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 for certain exempt marine specimens.* 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).

(3) The ship that harvested the specimen is registered in the exporting country.

(4) 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.

§ 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

Criteria for a re-export certificate	Appendix of the specimen			Section
	I	II	III	
(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 wild.

(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 an introduction-from-the-sea certificate.

(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) through (g).

(f) *Appendix III.* Appendix-III species introduced from the sea do not require introduction-from-the-sea certificates. However, the subsequent international trade of an Appendix-III specimen introduced from the sea would be considered an export requiring a CITES document (see § 23.20(f)).

§ 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 Appendices 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.
(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 (f) of this section, the import, export, or re-export of a hybrid CITES wildlife specimen must be accompanied by a valid CITES document.

(c) *CITES documents.* All CITES documents must show the wildlife 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

(d) *U.S. application for wildlife hybrid.* To apply for a CITES document, 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.

(f) *Exempt wildlife hybrids.* The following provisions apply to import, export, or re-export of exempt wildlife hybrids:

(1) A hybrid between a CITES species and a non-CITES species may be exempt from CITES document requirements if there are no purebred CITES species in the previous four generations of the specimen's ancestry (direct line of descent). Under this section, a hybrid between two CITES species is not exempt.

(2) For import, export, or re-export of an exempt wildlife hybrid without CITES documents, you must provide information at the time of import or export to clearly demonstrate that your specimen has no purebred CITES species in the previous four generations of its ancestry. Although a CITES document is not required, you must follow the clearance requirements for wildlife in part 14 of this subchapter, including the prior notification requirements for live wildlife.

§ 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 country 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 a commercial breeding operation for Appendix-I wildlife 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 commercial breeding operations for Appendix-I wildlife:

(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 commercialbreeding 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 commercial breeding operations for Appendix-I wildlife. 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 a commercial breeding operation for Appendix-I wildlife	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 and only for native species), 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 does 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 according to 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 a commercial operation for Appendix-I wildlife 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 acquired 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 scientificexchange 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 live wildlife and plants, or their parts, products, or derivatives in an exhibition that travels internationally:

(1) The Management Authority in the country of the exhibitor'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 traveling exhibition 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 makes multiple cross-border movements, and will return 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 traveling 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 traveling exhibition.

(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 U.S. Management Authority.

(7) If you no longer own the wildlife or plants, or no longer plan to travel as a traveling exhibition, the original certificate must be immediately returned to the U.S. Management Authority.

(8) You must return the traveling exhibition to the United States before the certificate expires.

§ 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 in captivity 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 or re-export from the United States, the shipment must comply with the requirements for wildlife in part 14 of this subchapter and for plants in part 24 of this subchapter and 7 CFR parts 319, 352, and 355.

(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 toanother 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 a person authorized to sign CITES documents for 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) 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 that was not prompted by the applicant.

(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 ManagementAuthority 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) *Period of validity.* CITES documents are valid only if presented for import or introduction from the sea within the period 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 period 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. (b) Appendix II with an annotation for noncommercial purposes where other specimens of that species are treated as if listed in Appendix I. (c) Appendix II and threatened under the ESA, except as provided in a special rule in §§ 17.40 through 17.48 or under a permit granted under §§ 17.32 or 17.52.	The specimen may be used, including a transfer, donation, or exchange, only for noncommercial purposes.
(d) Appendix I, and 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. (e) Appendix II, other than those in paragraphs (b) and (c) of this section. (f) Appendix III.	The specimen may be used for any purpose, except if the regulations in this part or other parts of this subchapter or a permit condition allowed the import only for noncommercial purposes, then the import and subsequent use must be only for noncommercial purposes.

§ 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 CITES'*Guidelines for transport and preparation for shipment of live wild animals and plants*or, in the case of air transport of live wildlife, with *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 (see § 23.34) 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 nonnative species from other countries.

(5) *Volume of illegal trade*: From high to low occurrence of illegal trade.

(6) *Type of trade*: From commercial to noncommercial.

(7) *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.

(8) *Occurrence of the species in a controlled environment in the United States*: From uncommon to common in a controlled environment in the United States.

(9) *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.

(10) *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 parentalstock 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 for purposes that would not be detrimental to the survival of the species.

(b) *Types of detriment*. Detrimental activities, depending on the species, could include, among other things, unsustainable 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. We make a non-detriment finding in the following way:

(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 moredetailed 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 nonnative species.

(5) *Volume of legal trade*: From high to low 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 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 activities involving an anticipated measurable increase in revenue and other economic value associated with 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 activities associated with the import of an Appendix-I species must be used for conservation of that species.

(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 of the specimen for economic benefit 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 theimporter 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 or its offspring 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 entity.

(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 activities with a high risk of being primarily commercial.

(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 thatsuch 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 (for Appendix-I specimens see also § 23.46(b)(12)):

(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 exemptions that allow for 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 must meet 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 belimited 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.

(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 atthe facility, 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 and re-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 for wild and artificially propagated ginseng. These certificates 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 driedor 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, such as 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 31 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 (see § 23.7).

(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 State or tribal certificate containing the information specified in paragraph (b)(1)(v) of this section.

§ 23.69 How can I trade internationally in fur skins 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*), and Canada lynx (*Lynx canadensis*), and the Alaskan populations of gray wolf (*Canis lupus*), and brown bear (*Ursus arctos*). These species 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, except as provided in paragraph (b)(2) of this section:

(i) An assessment of the condition of the population and a description of the types of information on which the assessment is based, such as 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, camera traps, 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) If the U.S. Scientific Authority has made a range-wide non-detriment finding for a species, a State or Tribe seeking initial approval for a CITES export program for that species need only submit the information in (b)(1)(ii) and (vi) of this section.

(3) 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 as to whether or not the population status or management of the species has changed within the State or tribal lands. This report may reference information provided in previous years if the information has not changed. Except as provided in paragraph (b)(4) of this section, a furbearer activity report should include, at a minimum, the following:

(i) For each species, the number of specimens taken and the number of animals tagged, if different.

(ii) An assessment of the condition of the population, including trends, and a description of the types of information on which the assessment is based. 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 changesin 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.

(4) When the U.S. Scientific Authority has made a range-wide non-detriment finding for a species, the annual furbearer activity report from a State or Tribe with an approved export program for that species should include, at a minimum, a statement indicating whether or not the status of the species has changed and the information in paragraph (b)(3)(iii) and (iv) of this section. Range-wide non-detriment findings will be re-evaluated at least every 5 years, or sooner if information indicates that there has been a change in the status or management of the species that might lead to different treatment of the species. When a range-wide non-detriment finding is re-evaluated, States and Tribes with an approved export program for the species must submit information that allows us to determine whether our finding remains valid.

(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 (see § 23.7).

(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 (*Alligator mississippiensis*) 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, such as 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 though 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 website; see § 23.7), 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 withState 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 and skulls.* You may import, export, or re-export crocodilian parts other than meat and skulls 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.

(4) Tags are not required on scientific specimens except as required in paragraphs (d) and (e) of this section.

(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 website or by contacting us (see § 23.7).

(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 specimen must meet the applicable tagging requirements in paragraphs (d), (e), and (f) 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; see § 23.7).

(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 thedate 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) *Mixed caviar.* Caviar and caviar products that consist of roe from more than one species 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 (see § 23.7). For CITES document requirements, see § 23.36 for export permits and § 23.37 for re-export certificates. For export, complete Form 3–200–76 and submit it to the U.S. Management Authority. For re-export, complete Form 3–200–73 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 of the following:

(i) Ensured that 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 cultivation.

(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 authorized 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 one hunter may import 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 and permanently locked in place using the locking mechanism of the tag. The tag must indicate 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. A mounted sport-hunted trophy must be accompanied by the tag from the skin used to make the mount.

(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 the 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 (see § 23.7). 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 (see § 23.7). 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 we have consulted all range countries, or 330 days before the CoP if we have not consulted the range countries. For the latter, the additional time allows for the range countries to be consulted through the Secretariat.

(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 when to do so would be in the best interests of the United States or 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 last day of 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 (see § 23.7).

§ 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 and Tribes 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 (see § 23.7).

(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. You may be required to demonstrate that your specimen qualifies as exempt under this section. For specimens that are exempt from CITES requirements, you must still follow the clearance requirements for wildlife in part 14 of this subchapter and for plants in part 24 of this subchapter and 7 CFR parts 319, 352, and 355.

(1) *Appendix-III wildlife and Appendix-II or -III plants.*

(i) Where an annotation designates what is excluded from CITES requirements, any part, product, or derivative that is specifically excluded.

(ii) Where an annotation designates what is covered by the Treaty, all parts, products, or derivatives that are not designated.

(2) *Plant hybrids.*

(i) Seeds and pollen (including pollinia), cut flowers, and flasked seedlings or tissue cultures of hybrids that qualify as artificially propagated (see § 23.64) and that were produced from one or more Appendix-I species or taxa that are not annotated to specifically include hybrids in the CITES list.

(ii) Specimens of an Appendix-II or -III plant taxon with an annotation that specifically excludes hybrids.

(3) *Flasked seedlings of Appendix-I orchids.* Flasked seedlings of an Appendix-I orchid species that qualify as artificially propagated (see § 23.64).

(4) *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).

(5) *Coral sand and coral fragments* as defined in § 23.5.

(6) *Personal and household effects* as provided in § 23.15.

(7) *Urine, feces, and synthetically derived DNA* as provided in § 23.16.

(8) *Certain wildlife hybrids* as provided in § 23.43.

Dated: May 17, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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