

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Parts 10, 13, 17, and 23**

RIN 1018-AD87

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

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

**SUMMARY:** We propose to revise the regulations that implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a treaty that regulates international trade in certain protected species. CITES uses a system of international permits and certificates to help ensure that trade is legal and does not threaten the survival of wildlife or plant species in the wild. Since the existing regulations were finalized, the CITES Conference of the Parties (COP) has held nine meetings where resolutions have been adopted. We propose to incorporate certain applicable current resolutions into 50 CFR part 23. Revised regulations will help us more effectively promote species conservation, fulfill our responsibilities under the Treaty, and help those affected by CITES understand how to conduct international trade in CITES species.

**DATES:** In preparing the final decision on this proposed rule, we will consider all information and comments received by August 7, 2000.

**ADDRESSES:** Send comments to Ms. Teiko Saito, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. To the extent possible, reference the section of the proposed regulations on which you are commenting. You may also send comments via e-mail to: r9oma—cites@fws.gov. Please reference "Part 23 Comments" and include your name and return address in your e-mail message. Materials received will be available for public inspection by appointment from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Teiko Saito, at the above address, telephone (703) 358-2093, fax (703) 358-2280.

**SUPPLEMENTARY INFORMATION:****Acronyms Used in This Proposed Rule**

APHIS U.S. Department of Agriculture, Animal and Plant Health Inspection Service  
 CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora, also referred to as the Convention or Treaty  
 CFR Code of Federal Regulations  
 COP CITES Conference of the Parties or meeting of the Conference of the Parties  
 DNA Deoxyribonucleic acid  
 ESA Endangered Species Act

**Background**

CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Treaty on September 13, 1973, and it came into force on July 1, 1975, after the required 10 countries had ratified it. Section 8A of the Endangered Species Act (ESA), as amended in 1982, designates the Secretary of the Interior as the U.S. Management Authority and Scientific Authority for CITES. These authorities have been delegated to the Fish and Wildlife Service. 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 that interpret and implement the text of the Treaty and on amendments to the listing of species in the CITES appendices. There are currently 151 Parties (countries that have ratified or acceded to CITES). As a Party to CITES, the United States is committed to fulfilling its obligations under the Treaty, including implementing species listings and appropriate resolutions of the COP.

*Resolution consolidation.* Between 1976 and 1994, at least 190 resolutions were adopted by the Parties. 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 since there were several resolutions on the same or similar subjects adopted at different COP's. As a result of this process, there are currently 82 resolutions in effect. This proposed rule incorporates certain of these consolidated resolutions from COP 2 through COP 10, as appropriate and relevant to U.S. implementation of the Treaty.

*Previous proposed rules.* We published proposed rules on September 24, 1985 (50 FR 38683), to incorporate changes from COP 2 through COP 4, and on April 10, 1986 (51 FR 12350), to incorporate changes from COP 5. These proposed rules were never finalized,

and we are withdrawing them here because of subsequent decisions of the COP.

*Current proposed rule.* We propose to replace the current regulations contained in 50 CFR part 23. In this proposed rule, we retained most of the general information from the current 50 CFR part 23, but we reorganized the sections, added provisions from certain resolutions, and revised text under the Government's plain language initiative to make the regulations clearer and easier to use.

*Stricter national legislation.* 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. 2.6 (Rev.) 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." Resolution Conf. 2.10 (Rev.) recommends that Parties experiencing significant problems in administering or enforcing CITES take stricter national measures to eliminate those problems. We have not incorporated elements of a number of resolutions into this proposal because our stricter national legislation, such as the ESA, the Marine Mammal Protection Act, and the Lacey Act, takes precedence.

*Other resolutions.* Some resolutions deal specifically with other countries and do not impact these regulations, such as Resolutions Conf. 6.5 (Rev.) and 8.2 (Rev.), which deal solely with the European Economic Community. A number of resolutions deal with general topics, including species conservation issues related to Houbara bustards, trade in sharks, and swiftlets. Although these are important resolutions, they are not regulatory in nature and, therefore, have not been addressed in this proposed rule.

**Comments and Information Received**

On August 5, 1997, the Fish and Wildlife Service published a notice of intent to propose rulemaking (62 FR 42093). The notice requested public input for the revision of these regulations. We received eight letters of comment: seven from organizations (Animal Welfare Institute, Busch Gardens Tampa, Defenders of Wildlife, Humane Society of the United States, Safari Club International, TRAFFIC USA, and Wildlife Management Institute) and one from an individual.

Suggested changes reflected diverse viewpoints that, at times, supported opposite courses of action or interpretation. The comments fit into the following general categories.

*Product contents.* Two commenters stated that language should be added to 50 CFR part 23 so that products listing CITES species as ingredients must meet all CITES requirements. We propose to define the term “readily recognizable” to include any specimen that has accompanying documents, packaging, marks, or a label that indicates it contains CITES species.

*Definitions.* Most of the commenters wanted terms in resolutions defined. These included primarily commercial purposes, accompanying personal baggage, hybrid, commercial, bred in captivity, and artificially propagated. We propose to expand the current definitions section (see proposed § 23.5) to include those definitions with unique meanings under CITES.

*Non-detriment.* One commenter suggested that we include criteria for making non-detriment findings in the regulations, and two felt that the public should have the opportunity to comment on non-detriment findings. One commenter wanted regulations to enable us to question scientific non-detriment findings made by other countries for Appendix-II shipments and reject shipments if we find that the finding was inadequate.

In making a non-detriment finding, we use the best information available. We consult with other Federal agencies, State agencies, and experts to ensure that the information we use is current. We agree that the factors considered when making non-detriment findings should be included in the regulations and propose to include a section outlining those factors. In addition, we encourage people with information on a species or trade to send it to us at any time. As recommended in Resolutions Conf. 2.6 (Rev.) and 10.3, we currently request information on scientific findings from another Party when it appears appropriate. We propose to include the recommendations of these resolutions in the proposed section that outlines when a CITES document is valid (see proposed § 23.23).

*Personal effects exemption.* We received several comments concerning the personal effects exemption. Several requested that live wildlife or plants be excluded from this exemption, and some requested that limits be put on the number of items that could be considered as personal effects. We propose to revise the requirements for this exemption to exclude any live specimen, to implement Resolution

Conf. 10.6, to include conditions that qualify what we would consider personal effects, and to provide guidelines for quantities rather than provide specific numbers.

*Quotas for Appendix-I species.* One commenter suggested that we expand our use of quotas for Appendix-I species, and another that we abide by the “plain” language of the Treaty rather than the resolutions concerning Appendix-I hunting trophies. The second commenter considered trophy hunting a primarily commercial industry and argued that the import of Appendix-I hunting trophies should not be allowed. The revisions we are proposing follow the relevant resolutions as well as stricter measures under U.S. laws. In general, we do not consider the import of hunting trophies by the person who killed the wildlife to be primarily commercial, even though commercial activity occurs in the exporting country as part of the hunt.

*Registered operations.* Two commenters wanted us to provide an opportunity for the public to comment on proposed registrations of captive-breeding facilities. We propose to publish notices in the **Federal Register** and invite public comment when we receive requests that U.S. operations be registered.

*Resolutions.* Most of the commenters discussed the inclusion of resolutions into the regulations. We received a wide range of comments, including: (1) Resolutions are confusing and contradictory, and not all of them should be incorporated; (2) resolutions are recommendations and should not be put into regulations; (3) we should only adopt resolutions that the United States supported at the COP's; (4) we should explain which resolutions are being incorporated and why; and (5) we should give a history of any resolution incorporated, including who proposed it and whether or not the United States supported it. We also received a number of comments on specific resolutions that commenters felt should be incorporated into the regulations. We propose to incorporate the resolutions that are regulatory in nature and consistent with U.S. interpretation of its obligations under CITES and under U.S. law. It is the goal of the Parties to adopt resolutions by consensus. The United States works hard at COP's to ensure that it can support the text of any resolution that is adopted.

We have reviewed all of the comments and addressed them wherever appropriate. Since there were conflicting recommendations, not all comments were incorporated into this proposal. Some comments were not

relevant to 50 CFR part 23, but belong in other regulations and will be considered when those regulations are revised.

#### **Analysis of Proposed Changes to 50 CFR Parts 10, 13, and 17**

*Definitions in 50 CFR 10.12:* We propose to revise two definitions in 50 CFR 10.12 because the definitions provided in 50 CFR part 10 apply to all regulations in subchapter B if not separately defined in a specific part. We propose to expand the term “country of origin” to apply to plants as well as wildlife and to update the definition of the “United States” to reflect changes in areas under U.S. jurisdiction.

*General permit procedures in 50 CFR part 13:* We propose to reorganize 50 CFR 13.1 and to revise it to reflect that, under very limited circumstances, permits for non-commercial CITES shipments may be issued after the activity has occurred (see proposed § 23.43 on retrospective documents).

We also propose to revise 50 CFR 13.12 to change the general information required on an application to include an address within the United States. There have been a number of situations where a business in a foreign country has requested a CITES document from us for a shipment it owned that is being shipped out of the United States. If we issue the CITES document showing the exporter's foreign address rather than a U.S. address, it appears that we issued a CITES document for goods that were never in this country. The document can be issued to the owner of the items, but it must include either a U.S. address or the name and address of a U.S. agent. For commercial activities, the name and address of the commercial entity's agent in the United States must be included.

We propose to revise 50 CFR 13.22 that allows continuation of permitted activity during permit renewal. This general provision in 50 CFR part 13 does not apply to CITES documents since they are not considered valid for use upon expiration.

Permittees are required to maintain records. However, our authority to inspect records is limited to areas within the United States. Therefore, to ensure that we are able to carry out our responsibility to inspect records when necessary, we propose to revise 50 CFR 13.46 to require foreign permittees conducting commercial activities within the United States to maintain records in this country.

*Import exemption for threatened, Appendix-II wildlife (50 CFR 17.8):* We propose to add this new section to 50 CFR part 17. Section 9(c)(2) of the ESA sets out an exemption to the import

prohibition for threatened, Appendix-II wildlife when the taking and export meets the provisions of CITES and the import is not made in the course of a commercial activity. The exemption includes sport-hunted trophies that were personally taken from the wild or on a ranch for personal use. We propose to define "sport-hunted trophy" the same as in proposed § 23.5. Handicraft items or items manufactured from the trophy for use as clothing, curios, ornamentation, jewelry, or other utilitarian items would not be allowed.

The purchase in foreign commerce of an item of an ESA species is prohibited under the ESA. Section 9(c)(2) only exempts import; it does not exempt foreign commerce. Thus, the exemption would not include trophy items or other items purchased in curio stores, even if the intended use was personal. It would not apply to species that have a special rule in 50 CFR part 17, such as the argali in 50 CFR 17.40(j). It also would not apply to Appendix-II specimens annotated for a specific use, such as export of hunting trophies for non-commercial purposes, where other specimens of that species are included in Appendix I. The annotation of African elephant populations in Zimbabwe, Namibia, and Botswana is an example of this type of annotation.

#### **Analysis of Proposed Subpart A—Introduction**

We propose to expand this subpart to give a clearer picture of our responsibilities under CITES. The following is a section-by-section description of proposed changes to the current regulations.

*Parties:* The existing regulations (§ 23.4) include a list of countries that are Parties. We propose to omit this list. CITES has grown to include 151 Party countries. To keep this list up to date, we would need to continually revise the list of Parties when more countries join and as contact information for Parties changes. The list of Parties (including addresses and phone/fax numbers) is available on our website, from our fax retrieval system, or by mail or e-mail (see proposed § 23.7). As changes occur, these sources can be more quickly and easily updated than issuing a revised rule.

*Purposes (§ 23.1):* This section provides background information on the Treaty and explains that CITES is implemented in the United States under the ESA. It outlines the aim of CITES as stated in the preamble to the Treaty. The Parties acknowledge that wildlife and plants have aesthetic, scientific, cultural, recreational, and other non-

consumptive values as well as economic importance.

*Scope (§ 23.2):* We have used a table to help people determine if these regulations apply to their proposed activities. The first question to be answered is whether the specimen is regulated by CITES. The reader is referred to the CITES appendices for the list of species. The second and third questions list the few CITES exemptions and refer the reader to the specific sections in the regulations for these exemptions. The fourth question lists the types of international trade regulated by CITES. The fifth question raises the issue of specimens that were illegally acquired or traded in contravention of CITES. The possession and domestic trade of legal specimens is not regulated by CITES unless the specimens were in international trade under specific conditions of a CITES document that still apply. The possession and domestic or international trade of illegally imported specimens, however, is prohibited. Further, any offspring of illegal specimens are also considered illegal.

*Other applicable regulations (§ 23.3):* These regulations detail the requirements for CITES species. However, many CITES species are covered by one or more other laws that have regulations in other parts of subchapter B. This section tells you where to look for information on other requirements.

*Appendices I, II, and III (§ 23.4):* Species are listed at one of three levels of protection, which have different requirements for permits and certificates (CITES documents). This section briefly defines Appendices I, II, and III.

*Definitions (§ 23.5):* We have added a number of definitions that relate to these regulations. In some cases, we could not clearly define a term in one or two sentences. We have provided longer definitions where necessary and/or referenced a section that contains more detailed provisions. Whenever possible we have defined terms using the wording of the Treaty and the resolutions.

We use some basic terms throughout these regulations. We define "import," "export," "re-export," "international trade," and "introduction from the sea" to reflect the way they are used by the Parties. These definitions refer to international movement, whether the purpose is commercial or non-commercial. "Import" and "export" are further defined in 50 CFR part 14. We have also defined the term "shipment" to eliminate confusion.

The text of the Treaty uses the terms "permits" (for import and export) and

"certificates" (for re-export, exemptions, certificates of origin, and introduction from the sea) in referring to documents issued by CITES Management Authorities (a governmental agency officially designated by a Party or non-Party to implement CITES). However, some Parties refer to all CITES documents as "permits." For this reason, we have defined and use the term "CITES documents" to refer to all permits and certificates that are issued by a Management Authority. The definition of "permit" in this section is expanded from the definition in 50 CFR § 10.12 to include documents issued by any Management Authority, not just documents "issued by the Service."

The current regulations (§ 23.3) define the Management Authority in terms of Parties only and do not define Scientific Authority. We propose to define both and to include non-Parties in the definitions. If non-Parties wish to trade with Parties, they need to have entities officially designated as Management and Scientific Authorities to implement CITES and make the findings needed to grant CITES documents.

We used the definition of "specimen" given in the Treaty to clarify that, under this part, the term refers only to species listed under any of the CITES appendices.

Although the term "readily recognizable" is used in the Treaty (Article I), it is not specifically defined in the Treaty. However, Resolution Conf. 9.6 defines the term, and we have based our proposed definition on the text of the resolution.

*Management and Scientific Authorities (§ 23.6):* Under Article IX, each Party must designate a Management Authority and Scientific Authority. In the United States, these authorities have been delegated by the Secretary of the Interior and the Director of the Service to two different offices. We propose to add a section that 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; 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 of our roles is to provide training and technical assistance to countries when possible (Resolution Conf. 3.4 on Technical Cooperation).

*Contact information (§ 23.7):* The table in this section outlines the type of information available from the Office of Management Authority, Office of

Scientific Authority, Office of Law Enforcement, APHIS, and the Secretariat and the different ways you can contact each office. In an effort to serve the public more efficiently, we have developed a website and a fax retrieval system that provide information, such as application forms for CITES documents, the names and addresses of Management and Scientific Authority offices in Party and non-Party countries, and the list of CITES species.

*Information collection (§ 23.8):* Each permit application form that we use must be reviewed and approved by the Office of Management and Budget for information collection under the Paperwork Reduction Act. These forms undergo review every 3 years. This process provides an opportunity for the public to provide input concerning the amount of time that it takes to complete the forms and prepare the information requested on the forms.

#### **Analysis of Proposed Subpart B—Prohibitions, Exemptions, and Requirements**

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

*Prohibitions (§ 23.11):* We propose minor changes to the prohibitions section in the current regulations. We listed “introduction from the sea” separately from “import” to clarify that CITES treats the activities differently. We added the phrase “engage in international trade” to the list of prohibitions to clarify that international trade in specimens in violation of these regulations by any person under U.S. jurisdiction is prohibited even if specimens are not actually imported into or exported from the United States.

*Personal and household effects (§ 23.12):* Article VII(3) provides for the import, export, or re-export of specimens that are personal or household effects without CITES documents under certain circumstances. We propose to clarify the current regulations (§ 23.13(d)) based on our experience in administering the Convention. Since many Parties do not

recognize this exemption and require CITES documents for personal and household effects, we added new paragraphs explaining when CITES documents for personal and household effects may be required.

We also propose to exclude live wildlife and plants (including eggs and non-exempt seeds) and Appendix-I specimens from the exemption. The drafting history of CITES, as well as significant debate that occurred at COP 4 (the resulting resolution was consolidated into Resolution Conf. 10.6), clearly supports the view that this exemption applies only to nonliving items, such as clothing, jewelry, or household effects, that are being used by an individual for personal needs and are not for resale. In addition, few countries allow the import or export of Appendix-I specimens, including personal pets, without CITES documents, even for personal or household effects. In the United States, many Appendix-I species are listed under the ESA, which does not have an exemption for personal or household effects. Therefore, to assist in the enforcement of the Convention and to reduce the risk to Appendix-I species in the wild, we propose to be more restrictive and require CITES documents for all Appendix-I specimens, except for certain worked items made from African elephant ivory (see proposed § 23.12(g)).

The proposed rule clarifies that personal effects must be personally owned by the traveler for exclusively non-commercial purposes, be reasonably appropriate for the purpose of the trip or stay, and either be worn as clothing or accessories or part of accompanying personal baggage. We have encountered a number of instances, both in the United States as well as abroad, where 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 in these cases.

The proposal also clarifies that household effects must be personally owned items that are part of a non-commercial household move. We understand that sometimes it is not possible to ship household goods all at one time. Thus, we propose to allow a person to make as many shipments as needed to accomplish the move as long as they occur within 1 year of the person's change in residence. 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.

At COP 10, the Parties recommended in Resolution Conf. 10.12 that the personal effects exemption for sturgeon caviar be limited to no more than 250 grams for each person. We propose to allow this exemption for caviar from species of Appendix-II sturgeon not listed under the ESA. The caviar must be strictly for personal use, and all other requirements of the personal effects exemption would apply. If a person is bringing in more than 250 grams of caviar, a CITES document is required that covers the entire amount, not just the amount over 250 grams. For example, if a person arrives in a country with 265 grams of sturgeon caviar without a CITES document for 265 grams, he or she will not be allowed to keep 250 grams as personal effects and simply surrender the excess amount. Since he or she did not have the required CITES document, the whole amount would be subject to seizure. All other parts and products of Appendix-II sturgeon species that are not listed under the ESA, such as a mounted fishing trophy, can be traded internationally as personal or household effects if they meet the conditions of the exemption.

The African Elephant Conservation Act is stricter U.S. legislation concerning the import or re-export of African elephant ivory. We propose to allow U.S. residents to travel out of and return to the United States with worked African elephant ivory as personal or household effects under certain conditions. Upon import, travelers would need to show records that they owned the ivory before leaving the United States. The exemption does not include items that are purchased while abroad or intended as gifts. We propose to adopt a definition of “raw ivory” similar to the one in the special rule concerning African elephants in 50 CFR 17.40(e) and Resolution Conf. 10.10. Individuals should contact the Management Authority in the country of their destination to find out about its requirements.

*Urine, feces, and synthetically derived DNA (§ 23.13):* We propose that the international trade of these types of specimens be exempt from CITES requirements. We consider samples of urine and feces to be wildlife by-products, rather than parts and products.

We differentiate between DNA extracted directly from blood or tissue samples and synthetically derived DNA. DNA extracted directly from blood and tissue samples must comply with all CITES permitting requirements. At COP

8, the Parties rejected Denmark's draft resolution to exempt blood and tissue samples to be used for DNA studies. The Parties agreed that such tissues should not be exempt from CITES controls. In 1994, we developed a policy that clarified that we consider synthetically derived DNA as exempt from CITES requirements since it contains no part of the original template. We believe that trade in synthetically derived DNA samples will not adversely affect the conservation of, or effective regulation of trade in, CITES species and their parts and derivatives. We are considering, however, whether we should expand this policy to exempt from CITES requirements DNA that has been extracted directly from tissue. We believe there is little commercial trade in this type of DNA and that exempting it from CITES requirements is of low conservation risk. We will be discussing this issue with other Parties and invite comment to assist us in making a final decision.

Since the Parties have not discussed whether urine, feces, or synthetically derived DNA are regulated by CITES, some countries may require CITES documents for these types of samples. If a country requires CITES documents, we will honor that country's interpretation and process an application.

Although we propose not to regulate these types of specimens under CITES, we believe it is important that researchers collect samples in a manner that does not harm the wildlife and that complies with the laws of the country where the collection occurs. Before collecting samples, researchers should contact the foreign Management Authority or other relevant wildlife or plant authorities to obtain information on collecting and export requirements.

*Diplomats and other customs-exempt persons (§ 23.14):* CITES Decision 10.34 urges the Parties to remind their diplomatic missions, their delegates on mission 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. We propose to add this provision to the regulations to better inform persons who receive duty-free and inspection waiver privileges under customs laws that CITES applies to their activities.

*Required CITES documents (§ 23.15–23.17):* Articles III, IV, and V lay out the types of documents that must accompany Appendix-I, -II, or -III specimens in international trade. Article VII recognizes some exemptions (such as pre-Convention, bred in captivity, and artificially propagated) that usually

require specimens to be accompanied by CITES documents.

We propose to organize the information on what types of CITES documents are required (§ 23.12 and part of § 23.13 in the current regulations) into two decision trees and three tables.

Although the tables include Appendix-I specimens, we developed separate decision trees specifically to address the confusion expressed by the public on the export requirements for Appendix-I wildlife and plants. The decision trees and tables should make it easier for importers and exporters to understand what type of document is needed for a shipment. They refer the user to the section in these regulations that explains the application procedures, provisions, issuance criteria, and conditions. The foreign Management Authority should be contacted for information on how to meet its requirements.

*Reservations (§ 23.18):* Articles XV, XVI, and XXIII allow a Party to take a reservation on a species' listing. Generally, a reserving Party is treated as a non-Party with respect to trade in the reserved species. Some countries take a reservation because they choose not to recognize a listing and wish to continue trading in the species with other reserving Parties or non-Parties. To date, the United States has not taken a reservation. We believe that commercial trade in Appendix-I species by reserving Parties undermines the effectiveness of the Convention. A current list of species' reservations taken by Parties is available from us (see proposed § 23.7).

To clarify the requirements of the Treaty and to promote conservation, we propose to add this new section to emphasize what types of documents are required from Parties that have taken a reservation on a species. We are incorporating Resolution Conf. 4.25, which recommends that Parties who take a reservation when a species is transferred from Appendix II to Appendix I continue to treat the species as if 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 and continue the reserving Party's obligations for the species.

*In-transit (§ 23.19):* 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 marine specimens harvested from international waters may need to move through

waters under the jurisdiction of intermediary countries before reaching their port of introduction. Article VII(1) provides an exemption for specimens that are in-transit through a country while the specimens remain under customs control. We propose to define "in-transit shipment" as the immediate transshipment of a wildlife or plant through an intermediary country when the specimen remains under customs control.

In 1983, the COP recognized the potential for abuse of this provision, such as when importers claimed the exemption and delayed shipment of the transiting specimen in order to find a buyer in a foreign country. In 1989, the COP noted that if a valid CITES export document was required to accompany shipments through intermediary countries, Parties could discover illegal trade. The inspection of in-transit shipments was recommended in 1992. Resolution Conf. 9.7 consolidates the earlier resolutions concerning in-transit shipments (Resolutions Conf. 4.10, 7.4, and 8.8).

To prevent misuse of the in-transit exemption, we propose to revise § 23.13(b) to reflect the recommendations of the COP. In-transit shipments must be accompanied by a valid original CITES document issued by the Management Authority of the exporting or re-exporting country that designates the name of the importer in the country of final destination, a copy of a valid import permit for Appendix-I specimens where required, and transportation routing documents that show that the shipment has been consigned to the importer listed on the CITES documents. In-transit shipments must only stay in an intermediary country for the time necessary to transfer the specimens to the mode of transport used to continue to the final destination; must remain under customs control; and may not be sold, manipulated, or split. In addition to these requirements, shipments of specimens from non-Parties or reserving Parties must be accompanied by CITES documents.

We also propose to add language on 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. A shipment that contains specimens of species protected under these regulations that arrives in the United States before continuing on to another country is considered an import and must meet all import requirements.

In a separate **Federal Register** rulemaking proposal, we plan to

propose a revision of 50 CFR part 14 to clarify that shipments to duty-free shops, free ports, or similar zones, or shipments traveling under a customs carnet are considered imports and are not in-transit shipments.

**Required information on CITES documents (§ 23.20):** Article VI 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. Resolutions Conf. 2.5, 3.6, and 7.3 on permits and certificates were consolidated at COP 9 (Resolution Conf. 9.3) and reorganized at COP 10 into Resolution Conf. 10.2. This comprehensive resolution provides guidance on all aspects of CITES documents.

The use of standardized documents assists Parties in implementing CITES. Such standardization allows countries to verify that the specimen being shipped is the one listed on the document and helps identify false and invalid CITES documents. It facilitates the collection of information on the volume of trade in wildlife and plants, providing standard information for annual reports and allowing better monitoring of the levels of commercial trade on a species-specific basis. It also facilitates the clearance of shipments at ports of exit and entry by making all necessary information available to the inspector in a familiar format.

We propose this new section to provide detailed information on what all CITES documents must contain. It applies not only to documents issued by the United States, but also to ones issued by Parties and non-Parties. Most of the information is presented in a series of tables, organized alphabetically by key phrase, code, or type of document. This section should help those shipping and receiving specimens to understand what information is needed on CITES documents.

Most of the requirements are taken directly from Resolution Conf. 10.2 and need no further explanation. However, we discuss some here to clarify issues raised in the past.

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

**Description of the specimen:** The use of standard descriptions for a specimen

is needed to do accurate global trade analyses, particularly for purposes of evaluating the impact of trade on the conservation of the species in the wild. We propose to require that descriptions be in English, Spanish, or French (the three working languages of the Treaty) on documents from Parties to assist inspectors in determining if documents match the accompanying shipment. We have experienced difficulties in processing CITES documents written in languages other than English, Spanish, or French, and clearance of some shipments has been delayed. Limiting descriptions to the three languages of the Treaty should help prevent or reduce such delays, while assisting in enforcement efforts.

**Purpose of transaction:** Resolution Conf. 10.2 lists standard transaction codes to be used on documents. These are the same codes used by Parties in their CITES annual reports. Although in some cases more than one code may apply, Parties must assign one code that best describes the overall activity. For example, a specimen may be exported for breeding purposes, but the wildlife was sold and the ultimate use is commercial. In this case, the permit will be marked as "T" for commercial, rather than "B" for breeding in captivity. The Management Authority is responsible for reviewing all information provided in an application and then determining which category best describes the transaction or is most appropriate.

**Quantity:** Many shipments have been presented for clearance with quantities identified as "one box" or "one case." These quantities give little clear information about how much wildlife or plants are actually in the shipment. A box may contain one wildlife or plant specimen, or it may contain hundreds. The unit of measurement should be appropriate for the type of specimen and agree with the preferred or alternative unit to be used in the CITES annual report, if possible. The unit should be in metric measurement. If weight is given, it is important to provide the weight of the specimen, not the packing material. Some items are more accurately reported by volume, such as timber, which should be shown as cubic meters. To effectively monitor trade, we need records on quantities that actually reflect the volume of that trade.

**Scientific name:** We propose that the scientific name of the species on the CITES document must include the subspecies when that information is needed to determine the level of protection of the specimen under CITES and/or the ESA. For example, under CITES, three subspecies of cougar

(*Puma* (= *Felis*) *concolor coryi*, *P. c. costaricensis*, and *P. c. cougar*) are included in Appendix I, while all other subspecies are included in Appendix II. Under the ESA, the Louisiana black bear (*Ursus americanus luteolus*) is listed as a threatened species; while under CITES, the entire species is included in Appendix II with no subspecies included in Appendix I.

The document must contain the scientific name of the species that is of the standard nomenclature as it appears in the CITES appendices or in the references adopted by the COP. CITES has adopted nomenclature references for most, but not all, species. Resolution Conf. 10.22 provides a list of these references for mammals, birds, reptiles, amphibians, and plants. Taxonomy evolves, and different references may use different scientific names for the same organism. Having one standard that we can follow is important to ensure that documents are issued for the correct species. Any changes of adopted nomenclature references would be by a resolution of the COP. The most current list of references is available from us or the Secretariat's website.

Resolution Conf. 10.2 recommends three situations when a higher taxon name (such as genus or family) could be used on a CITES document. We propose to incorporate the recommendations of the resolution as adopted. We would accept a CITES document that uses a higher taxon name only when the COP has agreed to its use, the issuing Party can show it is well justified and has communicated it to the Secretariat, or when the item is a pre-Convention manufactured product containing a specimen that cannot be identified to the species' level.

**Signature:** We propose to implement the CITES requirement that the signatures of individuals authorized to sign CITES documents for a Management Authority must be on file with the Secretariat. This proposed requirement should help us determine if a document is valid and avoid delays in the clearance of shipments.

The proposed 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.

CITES allows phytosanitary certificates to be used in lieu of CITES certificates for Appendix-II and -III artificially propagated plants only and under specific circumstances. Proposed paragraph (f) lists information that is

required on these certificates. At this time, the United States does not use phytosanitary certificates in lieu of CITES certificates.

*Source of the specimen (§ 23.21):* The source of a specimen is needed by Management and Scientific Authorities to make the findings required to issue CITES documents and is an important component in analyzing data and monitoring trade. We are providing a list of standardized codes that Management Authorities use on documents. Each code is defined as to the source of the specimen under CITES. The Management Authority will determine the appropriate code 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" only if the specimen meets the requirements adopted by the COP as "bred in captivity" (see proposed § 23.53). If it is an Appendix-I specimen, it also must have been bred for non-commercial purposes (see proposed § 23.55) to qualify for an exemption certificate (see proposed § 23.33). If a captive-born specimen does not meet these criteria, it is assigned the source code "F" and requires CITES documents under Article III, IV, or V. For an Appendix-I specimen, both import and export permits are required, and the import may not be for primarily commercial purposes.

*Additional information required on non-Party documents (§ 23.22):* Article X provides that a Party may accept documentation from a non-Party if it is issued by a competent authority and substantially conforms with the requirements of CITES. Because the Parties were concerned that the trade of CITES specimens through non-Parties might jeopardize the effectiveness of the Convention, Resolution Conf. 9.5 was adopted. This resolution recommends that Parties accept documents from non-Parties only if they contain certain basic information, including certifications that they have made the findings required under Articles III, IV, and V.

Because of the need for standardized information concerning CITES species from all sources, to ensure that appropriate protection is given to CITES species, and to reduce the risk of detrimental or illegal trade from non-Parties, we propose to be stricter and incorporate the requirements of not only this resolution, but also Resolution Conf. 10.2 on permits and certificates. This proposed policy means that for us to consider a non-Party CITES document valid, it would essentially

need to contain the same information as a Party document. This proposed section would replace § 23.14 in the current regulations.

*Valid CITES documents (§ 23.23):* Article VIII outlines measures that Parties should take to enforce the provisions of the Convention. Resolutions Conf. 2.6 (Rev.), 3.9 (Rev.), 6.4 (Rev.), 7.5, 9.8 (Rev.), 9.9, and 10.2 further detail these measures. For CITES to be effective, shipments must be accompanied by valid CITES documents issued by the appropriate authority and must meet all conditions of those documents. Each Party must have border controls for the inspection and validation of CITES documents. To ensure that specimens traded in violation of CITES are not re-entered into illegal trade, Parties are to consider seizure of specimens, rather than refusal of entry of the shipment. Parties are encouraged to cooperate with other Parties, the Secretariat, and international enforcement organizations to further effective enforcement of the Treaty and provide protection to CITES species.

We propose to include this new section in the regulations to clarify what requirements must be met before CITES documents are considered valid. We present this information in a table arranged alphabetically by key phrase to assist importers and exporters. Most of the requirements are self-explanatory; however, we feel it would be helpful to discuss specific ones.

*Management Authority and Scientific Authority:* We propose to incorporate the recommendation of Resolutions Conf. 3.9 (Rev.), 9.5, and 10.3 that documents should be accepted only from Parties and non-Parties that have designated a Management Authority and Scientific Authority and have provided that information to the Secretariat. If countries have not designated Management and Scientific Authorities, we cannot be sure that the required findings have been made. Without these findings, CITES documents are not valid.

*Ranched:* A number of species have been transferred from Appendix I to Appendix II based on ranching of the species. Resolution Conf. 10.18 recommends that Parties not allow trade in such species from a non-Party or a Party that has taken a reservation on the species. We propose to incorporate this recommendation. Trade in this type of specimen cannot be properly monitored when specimens are traded through non-Parties and Parties that hold reservations and do not require CITES documents.

*Shipment contents:* The proposed language reflects current practice. CITES documents must be obtained before the shipment occurs. Documents are specific to the specimens identified on the document, and the shipper may not substitute a new specimen to replace the one approved. The inspecting official may inspect the shipment and verify that the contents match the specimens described on the document. The official will validate or certify on the CITES document the actual quantities that are being shipped. The quantity may be less than the quantity shown on the document at the time it was issued, but cannot be more than that quantity.

*Quotas:* The COP approves export quotas for some species. For other species, countries determine their own export quotas. The Secretariat notifies the Parties of these quotas each year. We propose to require that the quantity exported may not exceed the quota.

We outline in paragraph (d) of this section the situations when we may request verification of documents from the Secretariat or the Management Authority of any country involved in the shipment. It includes instances when we have reasonable grounds to believe a document is not valid or authentic.

In paragraph (e), we propose to issue an information bulletin if we determine that a country is not effectively implementing CITES. The bulletin would indicate how we will handle shipments involving that country or a species from that country. We may issue such a bulletin if we receive reliable information from the COP, Standing Committee, Secretariat, or other credible source that there are reasonable grounds to believe that documents from a country are not valid. We will consider all available information, including whether the trade is detrimental to the species, the trade is in violation of any foreign law, or if the applicable findings are not being made when CITES documents are issued by a country. We will no longer publish separate notices of information in the **Federal Register**, but will use a number of more timely ways to provide this information to the public. These could include posting the bulletin on our website, mailing it to all import/export license holders and recipients of our CITES updates, and providing it to the media through press releases.

*Presentation of CITES documents at the port (§ 23.24):* Inspecting officials at the ports of exit and entry must verify that shipments are accompanied by valid CITES documents and take enforcement action when shipments do not comply with CITES. To help

importers and exporters, we propose this new section, which provides a table that outlines the type of U.S. and foreign documents that they must present for validation or certification or surrender when importing, introducing from the sea, exporting, or re-exporting CITES species. The general requirements for import and export are given in 50 CFR part 14 for wildlife and 7 CFR part 355 for plants.

#### **Analysis of Proposed Subpart C— Application Procedures, Issuance Criteria, and Conditions**

This proposed subpart expands the current § 23.15(c) through (f) to provide more detailed information on application procedures, decisions on applications, and records needed to apply for U.S. documents. The general requirements of this proposed subpart apply to both U.S. and foreign CITES documents.

*Application procedures (§ 23.25):* This proposed section gives a general overview of the application process for U.S. CITES documents. A number of CITES species are protected under other laws or treaties that we implement. If appropriate, we will accept one application if the applicant provides the information needed under all relevant regulations. Applicants should review the issuance criteria for all relevant regulations when preparing an application to ensure they understand the kinds of information we need. This review should 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 can be met or whether we need to process the application under the standard CITES requirements of Articles III, IV, or V. For example, a person may apply to export a specimen that was born in captivity. We will first look to see if the specimen meets the bred-in-captivity exemption. If the specimen does not meet the issuance criteria for this exemption, we will consider the application under the standard CITES requirements for an export permit.

*Decisions on applications (§ 23.26):* This new proposed section explains the procedures we follow in making a decision on an application. When an application is complete, we review the information under all applicable issuance criteria, including 50 CFR part 13, regulations under other wildlife and plant laws, and the CITES regulations. We may consult with outside experts, scientists, and staff within the Federal Government, State and tribal agencies, the Secretariat, or foreign Management

or Scientific Authorities before we make our findings. The burden of proof in establishing that the issuance criteria are met lies with the applicant. We can issue a CITES document only if we are satisfied that all criteria specific to the proposed activity are met.

*Records (§ 23.27):* When applying for a U.S. CITES document, an applicant must provide documents on the origin of the specimens and/or parental or founder stock. This information must be sufficient for us to make the required findings for the type of document requested. This proposed section summarizes the types of general records that potential applicants should consider keeping for specimens that have been in or may enter international trade. Documents should be maintained as long as a specimen is owned by a potential applicant and should be transferred to any subsequent owner.

*Requirements for standard CITES documents (§§ 23.28–23.31):* The basic requirements for U.S. and foreign CITES documents are the same as in the current regulations (§ 23.15). We have designed U.S. application forms for specific activities and protection levels to make applications easier to complete and to clarify what information is needed. The information provided in paragraph (b) of each of these proposed sections is designed to help an applicant determine which application form to request. The forms can be obtained from our website and fax retrieval system or requested by phone or e-mail. We propose to omit the application information from the regulations since we have made application forms for specific activities available to the public.

The information in paragraph (c) or (d) of each of these proposed sections lists the issuance criteria for each type of document and references the appropriate section for factors we consider in making a decision on certain criteria. The issuance criteria are based on the provisions of the Convention (Articles III, IV, V, and XIV) and resolutions, including Resolution Conf. 10.2 on permits and certificates.

Under Article III, before a Management Authority can issue an export permit for an Appendix-I specimen, it must be satisfied that an import permit has been granted for the specimen. However, some countries have stricter national legislation that requires the export permit be issued before they can issue an import permit. Resolutions Conf. 10.14 and 10.15 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 granted. Thus, we propose in § 23.29(d)(1) that the issuance criteria can be met either by showing that the import permit has been granted or by providing confirmation from the Management Authority of the importing country that the import permit will be granted. We propose the same issuance criteria for the re-export of live specimens as required by Article III(4)(b). 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.

As discussed earlier, to comply with Resolution Conf. 10.2, CITES documents must show the scientific name of the species using the standard nomenclature in the CITES appendices or the references adopted by the COP. Although current regulations (§ 23.15(c)(1)) require that applications include scientific names, they do not mandate use of the nomenclature in the CITES appendices and references. We propose to add this requirement as an issuance criterion to conform with Resolution Conf. 10.2, expedite review of permit applications, and ensure that documents are issued for the correct species.

Because Appendix-I wildlife and plants can be imported only when the intended use is not for primarily commercial purposes, we propose to condition all import permits that the specimen can be imported and subsequently used only for the permitted purpose. If the importer wants to transfer the specimen where it would be used for a different purpose, he or she would need to obtain permission from us. The importer would not be allowed to use or transfer the specimen for commercial purposes once in the United States.

To comply with the intent of Resolution Conf. 9.10 (Rev.), we propose to add an issuance criterion for re-export of confiscated Appendix-II specimens in § 23.29(d)(2). It would require us, before issuing a re-export certificate, to find that the proposed re-export of confiscated specimens would not be detrimental to the survival of the species. Regulations in 50 CFR 12.37 allow for the sale of confiscated Appendix-II and -III wildlife and plants. When specimens have been confiscated and subsequently sold or transferred, we consider them legally acquired. However, because the specimens were imported without the proper CITES documents, we need to make the biological finding (that normally would have been made prior to export) before issuing a re-export certificate.



Current regulations (§ 23.12(b)(2)) provide only general information about certificates of origin. We are proposing a new section (§ 23.30) to provide specific information on the application form and issuance criteria for certificates of origin. These documents allow the export of specimens of species listed in Appendix III when the specimens originate in a non-listing country.

Article XIV(4) and (5) provides a limited exemption for introduction from the sea of 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 entry into force of CITES). Based on this article, we propose in § 23.31(d) to apply this exemption only to specimens that were harvested by a ship registered in the country of introduction.

*Certificates for artificially propagated plants (§ 23.32):* The Parties recognize that a different approach for plants is sometimes necessary because of the unique aspects of plant biology and trade. This proposed section implements Article VII(5) and expands on the current regulations in § 23.15(d)(8). It allows us to issue a certificate for artificially propagated plants for specimens of Appendix-I species and hybrids of annotated Appendix-I species propagated for non-commercial purposes and for hybrids of unannotated Appendix-I species and specimens of Appendix-II or -III species or hybrids propagated for any purpose. It is important to note that there are no annotated Appendix-I plant species at this time, so all hybrids of Appendix-I species that qualify as artificially propagated are eligible for this exemption certificate. (See proposed § 23.39 to export Appendix-I plants propagated for commercial purposes under Article VII(4).) We propose to adopt the conditions of Resolution Conf. 9.18 (Rev.) to decide whether plants qualify as artificially propagated (see proposed § 23.54). This resolution means that not all "cultivated" (see proposed § 23.5) plants grown under controlled conditions qualify as artificially propagated, and the shipper may need a CITES export permit rather than a certificate for artificially propagated plants (see proposed § 23.29). An Appendix-I plant that qualifies for this exemption does not need a CITES import permit.

*Bred-in-captivity certificates (§ 23.33):* Bred-in-captivity wildlife is also covered under Article VII(4) and (5). In adopting Resolutions Conf. 8.15 and 10.16, the Parties recognized the need for a standard interpretation of these

two paragraphs. The Parties have expressed concern that trade in specimens falsely declared as bred in captivity is contrary to the Convention and may be detrimental to the survival of wild populations. (See proposed § 23.38 concerning the registration of operations that breed Appendix-I wildlife for commercial purposes to meet the provisions of Article VII(4).) This proposed section implements Article VII(5) and expands the current regulations in § 23.15(d)(8). It allows us to issue a bred-in-captivity certificate for specimens of Appendix-I species bred for non-commercial purposes and specimens of Appendix-II or -III species bred for any purpose. We propose to adopt the conditions of Resolution Conf. 10.16 for bred in captivity (see proposed § 23.53). Wildlife that is born in captivity, but does not qualify under this criterion, can be shipped only with a CITES export permit (see proposed § 23.29). Appendix-I wildlife that qualifies for a bred-in-captivity certificate does not need a CITES import permit.

*Hybrids.* At COP 2, the Parties recognized that it is difficult to distinguish between purebred and hybrid specimens for trade identification purposes. If hybrids were not subject to CITES controls, persons wishing to avoid the controls of CITES could falsely claim that the specimens in question were hybrids. Resolution Conf. 2.13 recommended that hybrids, even though not specifically listed in any of the appendices, are subject to CITES if one or both parents are listed. The Parties agreed at COP 10 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 (§ 23.34):* Resolution Conf. 9.18 (Rev.) on trade in plants was revised to add a section on trade in plant hybrids. We are proposing a new section in the regulations to implement this resolution. Trade in plant hybrids must meet the requirements of CITES unless the Parties agree to exempt an Appendix-II and -III hybrid by a specific annotation to the appendices. At COP 10 a number of artificially propagated hybrids of some "supermarket" cacti were granted this general exemption. Plant hybrids are subject to CITES controls if one or both parents are in the appendices. If the hybrid includes two CITES species in its lineage, it is listed in the more restrictive appendix of either parent, with Appendix I being the most restrictive. Most plant hybrids are the product of artificial propagation using well-established nursery stocks that have been artificially propagated for

many years. Thus, the Parties agreed to treat artificially propagated hybrids of one or more unannotated Appendix-I species as if listed in Appendix II and allow them to be traded with a certificate for artificially propagated plants.

*Wildlife hybrids (§ 23.35):* In Resolution Conf. 10.17, the Parties agreed that wildlife hybrids with one or more specimens of Appendix-I or -II species in their recent lineage are controlled under CITES as if they were "genetically pure" specimens of the listed species. The term "recent lineage" was discussed during the drafting of this resolution, but a definition was not included in the final version. The term was again discussed at the 14th meeting of the Animals Committee in May 1998. Following the Animals Committee meeting, CITES Notification to the Parties No. 1998/28 advised the Parties that the Animals Committee had agreed that the term "recent lineage" would refer to the previous four generations of a species' ancestry. Because of listing in the CITES appendices of higher taxa, such as falcons or parrots, few commonly hybridized species of wildlife would qualify for this exemption. However, specimens of the domesticated bengal cat could qualify for this exemption, depending on when a wild leopard cat (*Prionailurus (=Felis) bengalensis*) was in a specimen's ancestry.

To confirm that a hybrid is exempt from CITES controls, we propose to require that the specimen be accompanied by a letter issued by the Management Authority of the country of export, or a CITES document if required by the exporting or re-exporting country. The letter would need to certify that the wildlife hybrid contains no CITES specimens in its recent lineage. Since not all countries will be aware of this U.S. requirement, a person who plans to import an exempt wildlife hybrid needs to contact the Management Authority of the exporting or re-exporting country to get the appropriate letter or CITES document before making a shipment. For export or re-export from the United States, once a person provides information to verify the hybrid's lineage and scientific name, we could issue a letter.

*Personally owned live wildlife (§ 23.36):* Article VII(3) provides that, in some circumstances, the provisions of Articles III, IV, and V do not apply to specimens that are personal or household effects. As discussed previously, Parties have generally excluded live wildlife from this exception. However, in Resolution Conf. 10.20, the Parties recommend that the

term "personal and household effects" include personally owned, live wildlife that is registered by the Management Authority in the country where the owner usually resides. To monitor frequent international movement and reduce administrative and technical problems, the Parties agreed to use a certificate of ownership under specific conditions. We propose to implement this resolution, which will simplify the procedure for people who frequently travel internationally with companion animals or wildlife used in non-commercial competitions, such as falconry. The certificate of ownership would act like a passport, but could 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.

*Pre-Convention specimen (§ 23.37):* Under Article VII(2), a specimen acquired before the provisions of CITES applied to the species involved is exempt from Articles III, IV, and V when the Management Authority issues a pre-Convention certificate. Resolution Conf. 5.11 provides guidance on determining pre-Convention dates. This proposed section expands the current regulations in § 23.15(d)(8) and clarifies when a pre-Convention certificate may be issued.

The pre-Convention date for a specimen may vary depending on when a Party joined CITES or on a country's stricter national legislation. Although Parties may differ on the date they consider as pre-Convention for a species, a pre-Convention certificate is valid only if both importing and exporting countries consider the specimen to be pre-Convention. The Parties agreed to put the date the species was acquired on the face of the certificate so the importing country could confirm that the specimen qualifies as pre-Convention for them. Since the United States became a Party to CITES when it first came into force, the pre-Convention date for the United States is always the date a species was first listed in any of the appendices. Thus, we do not consider pre-Convention certificates issued for a specimen acquired after that date as valid for entry into the United States.

We propose that the applicant provide information that the wildlife or plant (including parts or products) was removed from the wild or held in captivity or a controlled environment before the first date that CITES applied to the specimen before we can issue a pre-Convention certificate. A certificate

is also needed to export items that are antiques (over 100 years old).

We are also proposing a voluntary registration of any inventory or stockpile of live specimens or parts and products when species are initially listed on the CITES appendices. We would especially encourage businesses that have an inventory or stockpile in their possession to register it with us before the effective date of a listing. Our experience with certain listings, such as sturgeon and Brazilian rosewood, has shown that it becomes difficult to assess the pre-Convention status of stock over time. It would be advantageous to the exporter to register inventory, since registration would allow us to process applications for pre-Convention certificates faster. Commercial export or re-export of pre-Convention stock that had not been registered would require other convincing evidence that the specimens are pre-Convention.

*Registration of Appendix-I commercial breeding operations (§ 23.38):* Article VII(4) provides that specimens of Appendix-I species bred in captivity for commercial purposes will be regarded as species included in Appendix II. The Parties recognize the potential abuse inherent in this exemption since it is difficult for inspectors to distinguish between specimens bred in captivity and those removed from the wild. They also recognize that captive breeding for commercial and conservation purposes is increasing. The registration of operations that breed Appendix-I species for commercial purposes has been the subject of a series of resolutions (Conf. 4.15, 5.21, and 7.10), which were repealed with the adoption of Resolution Conf. 8.15.

We propose to implement this resolution, which provides guidelines in registering and monitoring these operations. We are proposing application procedures to allow an operation to register each Appendix-I species at the operation. The issuance criteria would include whether the species qualifies as bred in captivity (see proposed § 23.53, which is based on Resolution Conf. 10.16) and whether the founder stock has been legally acquired.

Instead of publishing a detailed notice in the **Federal Register** describing each application received, we propose to publish a notice of receipt that identifies the registration request and invites public comment. This action would allow for a more streamlined process and still give the public an opportunity to comment.

Wildlife from a registered breeding operation can be exported with an Appendix-II export permit under Article

IV. Since no import permit is required, specimens can be used for primarily commercial purposes. To date, only one U.S. operation has chosen to complete the process of registering. We encourage breeders to register their operations if they plan to trade in Appendix-I specimens internationally. Currently most commercial breeders in the United States are applying for permits under Article III, rather than registering and taking advantage of this exemption. Article III, however, allows trade only when the import is not for primarily commercial purposes. The use of Article III is becoming more limited since an increasing number of Parties allow import of Appendix-I wildlife that was bred for commercial purposes only if the specimen originated in an operation registered with the Secretariat.

Debate continues on the best way to implement this exemption. Resolution Conf. 8.15 was discussed at COP 10, where it was referred to the Animals Committee to examine the effectiveness of and need for the existing registration system. This issue will also be discussed at COP 11, and any changes to the registration system that result from that discussion will be considered for incorporation into the regulations.

*Exporting Appendix-I plants commercially (§ 23.39):* 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. Article VII(4) provides that specimens of Appendix-I plants artificially propagated for commercial purposes will be regarded as species included in Appendix II.

At COP 9, the Parties adopted Resolution Conf. 9.19, which recommends guidelines on the registration of nurseries that export artificially propagated Appendix-I plants. At the same time, the Parties recognized that nurseries that are not registered could still export artificially propagated Appendix-I plants using the standard procedures.

To date we have not registered any nurseries. We continue to implement this provision of the Convention by reviewing a nursery's facilities during the application process for CITES documents and issuing export permits. We recognize that there may be some advantages to developing a registration process. However, due to the

complexity of this issue, we propose to not incorporate Resolution Conf. 9.19 into the regulations, but to reserve § 23.39(e) for nursery registration. We anticipate seeking public comment on this issue in a separate **Federal Register** notice at a later date.

*Registered scientific institutions* (§ 23.40): Article VII(6) provides an exemption from strict CITES controls for preserved, dried, or embedded museum specimens, herbarium specimens, and live plant material that carry an approved label. The exemption covers the non-commercial loan, donation, or exchange of these items between scientists or scientific institutions registered by each country's Management Authority. Resolution Conf. 1.4 recommends that Parties encourage their natural history museums and herbaria to inventory their holdings of rare and endangered species. This recommendation was to allow researchers to efficiently borrow specimens for study and reduce any potential adverse impacts that museum needs for research specimens can have on small populations of rare wildlife and plants. In Resolution Conf. 2.14, the Parties recommended guidelines for implementing this exemption.

This proposed section would combine §§ 23.13(g), 23.15(d)(8)(iii), and 23.15(e)(3) in the current regulations and adopt the guidelines of the resolutions. A scientist who wishes to use this exemption must be affiliated with a registered scientific institution. We would broaden the exemption to include frozen museum specimens. Specimens could be used for scientific research, but not for decoration, trophies, or commercial purposes. We are clarifying that preserved, frozen, dried, or embedded biological samples, including blood and tissue samples, that would be partially destroyed during analysis are eligible for this exemption. A portion of each sample would need to be maintained at the museum for future scientific reference. Samples that would be completely destroyed during analysis would not be eligible for this exemption and would require the applicable CITES documents. Since 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 CITES Management Authority before shipping such specimens under a scientific exchange certificate.

We also propose that all specimens for which the exemption is being claimed must have been legally acquired and under the control of a registered scientific institution. 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.

*Traveling live-animal exhibitions* (§ 23.41): Article VII(7) allows for the international movement of pre-Convention or bred-in-captivity specimens that are part of a traveling zoo, circus, menagerie, or other traveling animal exhibition without CITES certificates. The exhibition must register the wildlife with its Management Authority, and the wildlife must be transported and cared for humanely. Parties have agreed, however, to require exhibitions to be accompanied by CITES certificates to verify such registration. To address technical problems and to prevent potential fraud, the Parties adopted Resolution Conf. 8.16. We propose to incorporate the provisions of this resolution into these regulations. The term "traveling live-animal exhibition" is proposed in § 23.4 to include live wildlife used for display or entertainment where the exhibition is temporarily moving internationally. Typically, exhibitions are circuses and performing acts, but trainers that travel across borders with wildlife that perform in movies or television programs could also apply for this exemption. An exhibition certificate would be treated like a passport. The exhibitor would retain the original certificate, which must be validated at each border crossing.

Exhibitors would need to obtain a pre-Convention or bred-in-captivity certificate for each specimen. This exemption does not apply to specimens that do not qualify for one of these exemptions. Since exhibitors currently may have a number of specimens on one document, we propose phasing in this requirement and allowing existing documents to be used until they expire. At that time, the exhibitor would need to obtain a separate certificate for each specimen. This provision facilitates the identification of each specimen in the exhibition and validation of documents by border officials.

We are also proposing a number of conditions to ensure these certificates are used only for temporary cross-border movement by the exhibitor who owns the specimen. For example, a document may not be transferred to another exhibitor, and specimens cannot be sold or otherwise transferred when traveling abroad. Specimens could only be transported internationally for display or entertainment purposes, not for breeding or other purposes.

Many specimens covered by this exemption are Appendix-I specimens. We propose under the general conditions (see proposed § 23.45(a)(7)) to require that all live Appendix-I specimens be uniquely marked. 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.

*Replacement of documents* (§ 23.42): Resolution Conf. 10.2 provides guidelines for replacing documents that are lost, damaged, stolen, or accidentally destroyed. In this section, we propose to incorporate the provisions of this resolution and clarify when replacement documents may be available and how to obtain one. One of the proposed issuance criteria requires a full and reasonable explanation of the circumstances surrounding the lost, damaged, stolen, or accidentally destroyed CITES document. We will also check to see if the exporter has requested a replacement document before and review the circumstances surrounding any previous request.

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 we issue a replacement document for a shipment that has already left the country, we will not validate it because we cannot compare the actual shipment contents to the document. It is important that we issue 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.

*Retrospective documents* (§ 23.43): A retrospective document authorizes an export or re-export after that activity has occurred, but before the shipment is cleared for import.

Resolution Conf. 10.2 recommends that a Party neither issue nor accept retrospective documents, but recognizes limited exceptions. We propose to amend 50 CFR 13.1 to add this new

section to allow for the issuance of retrospective permits for specimens based on this resolution. Retrospective documents would be issued only after both the exporting (or re-exporting) and importing countries have thoroughly investigated the situation and agreed to the issuance of the document. The investigation would need to reveal that the exporter, re-exporter, or importer is not responsible for any irregularities and that the shipment is otherwise in compliance with CITES and the national laws of the involved countries.

This proposed section details the situations when we would consider issuing a retrospective document and gives the issuance criteria. Based on the intent of the original resolution (Resolution Conf. 6.6, which is now part of Resolution Conf. 10.2), we propose to generally limit issuance of retrospective documents for non-commercial items. Eligible individuals would include travelers hand-carrying Appendix-II or -III items with them as personal effects or persons who can demonstrate that they were misinformed by an employee of the Service, APHIS (for plants), or a Management Authority of the foreign country that should have known the CITES requirements. We also are proposing to include live Appendix-II or -III wildlife and plants that are outside the proposed CITES personal effects exemption. Such shipments would need to be limited to no more than two specimens, be for personal use, and accompany the person as personal baggage. Retrospective documents would be allowed for Appendix-I wildlife and plants, including live specimens, parts, and products, only when they are personal pre-Convention specimens. We would issue a retrospective document only if the Management Authority of the importing country agrees to accept it.

*Length of document validity (§ 23.44):* Article VI(2) states that an export permit can be valid only for a period of 6 months from the date of issue. The Convention does not specify validity time frames for other documents. Resolution Conf. 10.2 specifies validity time frames for re-export certificates (6 months), import permits (12 months), and certificates of origin (12 months). We are also proposing that an introduction-from-the-sea certificate be valid for a maximum of 12 months since the activity is similar to import. Resolutions Conf. 8.16 and 10.20 recommend that certificates for traveling live-animal exhibitions and certificates of ownership be valid for no more than 3 years.

We propose to expand the current regulations (§ 23.15(f)) to incorporate

the recommended validity times endorsed in the resolutions. All CITES documents would specify the length of validity. All import and introduction-from-the-sea activities must be completed by midnight (local time at the point of import) of the expiration date indicated on the document. The only situation where an extension of the validity date is authorized is for certain timber species under limited circumstances (see proposed § 23.64).

*CITES document conditions (§ 23.45):* Section 23.15(e) would be replaced by this proposed section, which addresses the topic of CITES document conditions. 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 activity with a species warrants it. All CITES document conditions must be met for a shipment to be lawful.

Resolution Conf. 8.13 recommends that Parties, where possible and appropriate, adopt the use of microchip transponders for the secure identification of live Appendix-I wildlife. The Parties, however, have identified a number of technical issues that need to be addressed and have asked the Animals Committee to monitor this issue. The Animals Committee has drafted a resolution to be considered at COP 11. Thus, we are not proposing that all Appendix-I wildlife be marked with microchips. We propose that all live Appendix-I wildlife be securely marked or uniquely identified to ensure that the wildlife presented with a document is actually the specimen for which the document was issued.

#### **Analysis of Proposed Subpart D— Factors We Consider in Making Certain Findings**

*Legal acquisition (§ 23.50):* One of the issuance criteria in the current regulations at § 23.15(d)(2) is whether the wildlife or plant was acquired lawfully. Under Articles III, IV, and V, we must make a legal acquisition finding before granting 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 granting certain exemption documents under Article VII. These include Resolutions Conf. 2.14 (scientific exchange), Conf. 10.16 and 8.15 (bred-in-captivity wildlife), Conf. 9.18 (Rev.) and 9.19 (artificially propagated plants), and Conf. 10.20 (personally owned live wildlife).

The determination of legal acquisition includes an assessment of whether the

specimen and its founder stock were traded internationally in accordance with CITES and whether they were acquired consistent with national laws for the protection of wildlife and plants. In the United States, these laws include all applicable local, State, Federal, tribal, and foreign laws.

We make the legal acquisition finding on a case-by-case basis considering all available information. Since the applicant is responsible for providing sufficient information to show that the specimen was legally acquired, potential applicants need to keep good records (see proposed § 23.27). General statements that there is no available information or that there is no evidence that the specimen or its founder stock is illegal will not be sufficient for us to make the legal acquisition finding. In addition to the information provided by the applicant, we consider other relevant trade information, scientific literature, and advice of experts. We may consult with foreign Management Authorities, the CITES Secretariat, other U.S. governmental agencies, and non-governmental experts.

We propose to add this section to the regulations to clarify the factors we consider in making a legal acquisition finding. This section should help individuals provide complete information at the time they apply for a CITES document and better understand the kind of records they should be keeping.

Persons who conduct commercial activities involving protected wildlife and plants are held to a high standard in understanding and complying with the requirements of the laws that affect their activities. We expect these persons to provide clear records that each specimen was legally acquired, including a record of the history of ownership, copies of cleared CITES documents, and records of parental or founder stock for specimens bred or propagated in the United States. We apply a lower information requirement, in most instances, for persons who acquired a specimen in the United States and want to travel internationally with it for personal, non-commercial use. We believe this system is appropriate for the limited number of specimens that would be involved, for the low conservation risk posed, and because most specimens are purchased from retailers who, as businesses, are expected to be prepared to comply with the laws. We will, however, request additional information when non-commercial trade in a particular species raises greater conservation concern.

For the export of specimens that are bred or propagated in captivity in the

United States, we consider whether the parental or founder stock was legally acquired. Resolutions Conf. 9.18 (Rev.) and 10.16 require that a Management Authority find that the breeding or propagation stock was established in accordance with CITES and national laws. We propose to define founder stock to mean the original breeding or propagation stock that produced the subsequent generations of captive specimens. This stock includes specimens that are pre-Convention, were previously imported into the United States, or were removed from the wild if the species is native to the United States. Standardized records, such as the International Species Inventory System (ISIS), provide this kind of information. Founder stock may differ from the parental stock, which is the immediate parents of a specimen.

We propose that applicants provide information on parental stock for species of lower conservation risk and information on founder stock for species of higher risk. For some species, we will look at a number of factors to decide if we need founder stock information. These factors include whether the species is uncommon in captivity in the United States, the species has not been documented to breed or propagate readily in captivity, illegal trade in the species is significant, few specimens have been legally imported into the United States, and the range country does not allow commercial export of the species.

We also propose to allow the export or re-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. These donations may be brought in by individuals or left anonymously on the doorstep and may include specimens found sick or injured by well-meaning citizens, pets or plants that are no longer wanted, or specimens that owners fear they may possess in violation of the law. When this occurs, the institution may not be able to obtain reliable information concerning the origin of the specimen. Justifying issuance of a permit under CITES is extremely difficult when there are no data on the origin of the specimen, especially when the donor remains anonymous. We do not wish to open a loophole for laundering specimens that were illegally obtained by the donor or by someone else in the chain of ownership. However, the underlying purpose of CITES is to protect, preserve, and

benefit the listed species. We believe that the provisions proposed will assist in the suitable placement of specimens without leading to illegal or unjustified take of wildlife and plants from the wild.

*Non-detriment findings (§ 23.51):* Under Articles III and IV and Resolution Conf. 10.3, the Scientific Authority must 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 species is not for purposes that would be detrimental to the survival of the species. Although many activities could be considered detrimental or potentially detrimental, we would consider the following, among other things, to be detrimental: non-sustainable use and proposed activities that would pose a net harm to the status of the species in the wild. For Appendix-I species, we would also consider, among other things, whether the proposed activity would stimulate further trade in the species. We are proposing to use the definition of "sustainable use" as provided in 50 CFR part 15 under the Wild Bird Conservation Act. The wording has been slightly edited to be consistent with language used in this part.

Since a permit grants permission to an institution or individual to engage in an otherwise prohibited activity, the applicant must provide sufficient information to satisfy us that the proposed activity is not detrimental to the species concerned. If we can make a finding of non-detriment, and if all other issuance criteria are met, we can issue the relevant CITES document. If, however, the requested activity does not meet the criteria, we will either make a finding of detriment or be unable to determine that the activity is non-detrimental. In either case, we will not issue a CITES document.

Although we are proposing no changes in this proposed rule in how we make a non-detriment finding, we are proposing to list the factors used to determine if the requested import or export of CITES specimens would be non-detrimental to the survival of the species. These factors would be used for all specimens in a single shipment or in multiple shipments if the anticipated international trade is over a given period. Approval on a shipment-by-shipment or multiple-shipment basis is at our discretion. We have the option under CITES to issue our required scientific findings on a shipment-by-shipment basis (a different finding for each individual shipment) or management or conservation program

basis (one finding to cover all shipments from a particular program).

Some Appendix-II species in the United States are listed under Article II(2)(b) because they or their parts and products (such as furs) are similar in appearance to other Appendix-I or -II species. Examples of such species include the river otter (*Lontra canadensis*), bobcat (*Lynx rufus*), and white sturgeon (*Acipenser transmontanus*). These species are listed to ensure that trade in the species to which they are similar is brought under control. Our non-detriment finding for these species takes this issue into consideration. We are obligated, however, to ensure that a species does not decline to the point that it qualifies to be listed in Appendix II under Article II(2)(a). Many of these species are included in State or tribal programs that manage the species and control removal of specimens from the wild. We receive information from the States and Tribes every year that allows us to monitor exports and be assured that exports are not detrimental to the species.

The status of the species in the wild and the degree of risk to the species posed by the proposed activity determine the level of scrutiny we give an application in making a finding. We give greater scrutiny, require more detailed information, and make our decision in a more precautionary manner for proposed activities that pose a greater risk to a species in the wild. In addition, we consider whether a living specimen being imported or exported would have an adverse impact if it was intentionally or accidentally released into the wild. With the adverse impacts that invasive species are having both in the United States and in other countries, it is important that activities conducted under CITES do not further complicate the situation. We consider the cumulative risk, recognizing each aspect of international trade has a continuum of risk associated with it. For example, the export of an Appendix-II, non-native specimen bred in captivity would be less of a conservation risk than the import of an Appendix-I, wild-caught specimen that is being heavily impacted by illegal trade. Likewise, the export of plants grown from exempt seed or flaked seedlings or tissue culture would present a lower conservation risk than plants grown from non-exempt seeds. In all cases, if the species is subject to pressure from high levels of commercial trade or subject to significant illegal trade, the degree of scrutiny increases.

The Parties have agreed that export quotas for the non-commercial use of Appendix-I species can be proposed by

a range country and agreed to by the COP. This situation often pertains to trophy hunting. When making a non-detriment finding for the import of a specimen of a species where a quota has been established, we consider the biological and management factors used as a basis of the export quota. If necessary, we will contact the Scientific and Management Authorities of the exporting country for additional information to complete our finding. We clarify in this proposed section that even when a quota has been established, we will review any application for the import of a specimen of that species and make the required non-detriment finding as required under Article III.

*Primarily commercial purposes* (§ 23.52): Under Article III, import permits or introduction-from-the-sea certificates for Appendix-I species can be issued only when a Management Authority is satisfied that the specimen is not to be used for primarily commercial purposes. Resolution Conf. 5.10 provides details on the interpretation of "primarily commercial purposes," including examples. We consider this resolution to be an accurate interpretation of the Treaty. The United States supports its provisions and has been using the principles and examples set out in the resolution in evaluating applications for import documents for Appendix-I species. We propose to incorporate the provisions of this resolution in these regulations.

For an import or introduction of an Appendix-I specimen to qualify, the non-commercial aspects of the import or introduction must clearly predominate. While the nature of the transaction between the owner and the proposed recipient may be commercial, it is the intended use of the specimen that must not be for primarily commercial purposes. When we determine whether or not an import or introduction is primarily commercial, we must take into consideration all factors involved. Each application is considered on a case-by-case basis. The applicant must provide sufficient information for us to make a finding.

We propose that all applicants provide basic information on intended use, planned public outreach that may increase revenues, planned disposition of offspring, and an assessment of the reasons the proposed activities are not primarily commercial. Under certain circumstances, the commercial nature of the organization or the public appeal of a species would make it more difficult for us to make this finding. Thus, we propose that for-profit applicants would need to provide more detailed

information. We would also ask for more detailed information from any applicant when we find that the proposed activity is with a species that is uncommon in captivity in the United States, has high public appeal, or is capable of generating substantial revenues. The additional information would include a statement from a licensed, independent certified public accountant that the applicant's internal accounting system is sufficient to account for and track funds generated by the proposed activities. We are also proposing that all net profits generated in the United States must be used for the conservation of the Appendix-I species in a range country. It is possible that an import or introduction, although superficially commercial, may qualify based on the overwhelming conservation benefits that will be provided through assistance to range countries, research, or other considerations that result from the import or introduction.

*Bred in captivity* (§ 23.53): Article VII, paragraphs 4 and 5, provides exemptions for wildlife bred in captivity. To establish a standard interpretation of the term "bred in captivity," the Parties adopted Resolution Conf. 2.12, which was revised at COP 10. After much discussion among the Parties, Resolution Conf. 2.12 (Rev.) was repealed and Resolution Conf. 10.16 adopted. We propose to incorporate this resolution into this new section.

In making this finding, we consider the conditions under which an individual specimen is bred and 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 consistently produced offspring of at least second generation (F2) or whether the U.S. captive population is managed in a way that shows it is capable of reliably producing F2 offspring. If a facility has sufficient breeding stock to meet all of the criteria, including consistently producing F2 offspring, then the wildlife at that facility can be considered bred in captivity. Few facilities, however, have sufficient stock to meet the criteria. Alternatively, if the majority of captive specimens of a species within the United States meets the criteria, then specimens bred by any U.S. facility that uses standard management procedures could meet the criteria for bred in captivity. Thus, we have determined that a number of species commonly held in the United States (such as lions, tigers, brown eared

pheasants, and Burmese pythons) qualify as bred in captivity.

*Artificially propagated* (§ 23.54): Article VII, paragraphs 4 and 5, provides exemptions for artificially propagated plants. The Parties recognize the unique aspects of plant biology and trade. Modern developments in plant propagation, such as the use of flaked orchid seedlings, have allowed large quantities of artificially propagated plants to be produced. Resolution Conf. 9.18 (Rev.) addresses ways to reduce the paperwork involved to move plants internationally while maintaining protection of wild plants.

This proposed section expands the current § 23.15(d)(8) and incorporates from that resolution the criteria for artificially propagated. In making this finding, we consider the controlled conditions under which a plant is propagated. 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. For example, we would not consider plants grown from seeds, cuttings, or other propagules collected from wild plants and grown out under controlled conditions as artificially propagated. Hybrid plants must meet the same criteria. Grafted plants can also be considered artificially propagated if both the rootstock and the graft have been artificially propagated according to criteria in this section.

Some plant materials of CITES species are exempt from CITES requirements (see proposed § 23.88(c)). However, plants grown from exempt plant materials are regulated under CITES and are not automatically considered artificially propagated. Since these plant materials can be imported into the United States without any CITES documents, we propose to usually require less information on the origin of the exempt plant material than we would require on the origin of non-exempt plant material. Importers of exempt plant material should keep records that document who sold them the material. In general, we will consider plants grown from flaked seedlings or tissue culture as artificially propagated unless we have reasonable grounds to believe the plants were grown from wild propagules. However, it is more difficult to know if plants grown from exempt seeds meet the criteria for artificially propagated plants. If importers want to ensure plants they have grown from exempt seeds will qualify for a CITES certificate for artificially propagated plants, rather than an export permit, they may want to keep records that document the

cultivated origin of imported exempt seeds. We understand that limited information may be available on the origin of exempt seeds. Therefore, we would typically require less information when determining whether plants grown from exempt seed would be considered artificially propagated. We would consider whether the species is commonly artificially propagated and whether substantial numbers of seeds are collected from the wild.

*Bred or propagated for commercial purposes (§ 23.55):* The Treaty provides in VII(4) that specimens of Appendix-I species bred in captivity or artificially propagated for commercial purposes would be deemed to be in Appendix II. It also provides in VII(5) that specimens that are bred in captivity or artificially propagated may be granted an exemption document. To decide whether to process an application under Article VII(4) or Article VII(5), we must decide whether an Appendix-I specimen was bred or propagated for commercial purposes. We propose this new section to clarify what we consider in making this finding. We would use the definition of "commercial" (*see* proposed § 23.5) provided in Resolution Conf. 5.10. We would assess the purpose of the breeding and propagation activities, considering a variety of information, including the reproductive biology of the species and all aspects of the breeding or propagation program. Although generally we have found non-profit institutions are breeding specimens for non-commercial purposes, there have been instances when we have found they were breeding for commercial purposes. This issue of what is considered "bred for commercial purposes" has been discussed at some length within the Animals Committee and will be discussed at COP 11 in April of 2000.

*Suitably equipped to house and care (§ 23.56):* Under Article III(3)(b) and (5)(b), the Scientific Authority must determine that an individual or institution has facilities that are suitably equipped to house and care for an Appendix-I specimen being imported or introduced from the sea. These requirements are to ensure that rare specimens will have a reasonable chance for survival.

We propose this section to clarify the factors we consider in making this finding. All individuals or institutions that will be receiving specimens must be identified in an application, and their facilities approved by us, including individuals or institutions that are likely to receive specimens within 1 year of the specimen's arrival in the country. We will consider all possible uses that

could be reasonably expected to occur and the housing and care requirements for those uses. For example, if the applicant is importing specimens for display and there was the possibility of offspring being produced, we would consider whether the applicant could provide adequate housing and care for the offspring.

We will base our finding on the best available information on the requirements of the species and information provided by the applicant. We will give closer scrutiny to applications for species with more demanding biological and husbandry or horticultural needs. For a captive-born, commonly held species, like a scarlet macaw, we would be less critical due to the ease with which such a species can be held in captivity and the availability of veterinary care and commercially prepared diets. For a species, such as the Chinese giant salamander, that is not commonly held in captivity and has very restrictive husbandry and housing requirements, we would require a greater level of detail regarding the facilities where the specimen would be held.

We have provided in this proposed section the general and specific factors that we consider in making this finding. We consider whether a facility supplies adequate space, appropriate living conditions, adequate veterinarian or horticultural care, sufficient security, and properly trained staff to care for the specimen. In addition, we consider if appropriate housing and care are available for any potential offspring.

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 to maintain the specimen has been identified or properly trained. In such a case, we can review the information, including construction plans or intended staffing, and make the finding based on that information. We would, however, condition the finding that the import could not occur until the facility has been completed or the staff hired and/or trained and approved by us.

#### **Analysis of Proposed Subpart E— International Trade in Certain Specimens**

This proposed subpart deals with situations that are either covered by specific resolutions or by procedures we have developed to deal with certain heavily traded native CITES species. We need information that allows us to make the required findings before we can issue CITES documents for export or re-export. Where this information is available from a State or tribal

management program and is sufficient to allow us to make our required scientific and management findings, we have made export findings on a State or tribal basis. These findings certify that the programs contain the elements needed to allow us to make the findings required for export under CITES. For Tribes, we can make findings only for Tribes that have full wildlife management authority over the resource. In the past, we have published findings in the **Federal Register** for export of American ginseng, bobcat, river otter, Alaska lynx, Alaska gray wolf, Alaska brown bear, and American alligator. States and Tribes for which findings have been made are requested to submit an annual report to us containing certain information on the previous year's harvest. In some cases, such as for many furbearer species, our findings have been made on a multi-year basis. Annual reports from States allow us to remain assured that our original findings remain valid. In these sections, we are proposing to include the information we request from the States and Tribes on an annual basis. The non-detriment findings we make are based on § 23.51.

Initially, making findings on a State or tribal basis was a new way to address large-scale export of certain native species. If the legal acquisition and non-detriment findings were made on a permit-by-permit basis, it would present a tremendous workload for exporters as well as for our offices. It is standard practice for many Parties to issue findings on an annual basis for species with biologically based management programs. Although the State-and-Tribe-based findings are not a rulemaking, we published them in the **Federal Register** as a convenient way of notifying the public. Since there are now more timely ways to provide this information to the public, we propose to discontinue publication of the findings in the **Federal Register**. A list of States and Tribes that have findings made on a State or tribal basis and copies of the findings would either be posted on our website or be available on request. Any requests to make findings for new States or Tribes will continue to be evaluated on a case-by-case basis.

*American ginseng (§ 23.60):* This proposed section is a revision of § 23.51. Most American ginseng is collected or grown for export and is exported in a much larger volume than any other native CITES plant species. Ginseng that has been collected under State or tribal requirements is certified as legally harvested. The State or tribal certificates accompany the ginseng until the time of

export to document the origin of the material.

Under CITES, ginseng is considered either artificially propagated or wild. However, the industry has a number of other designations. In order to obtain more accurate information from exporters, we propose to include a chart in the regulations that describes different types of ginseng, such as wild simulated and cultivated woodsgrown, within the broad categories of wild and artificially propagated.

*Native furbearers (§ 23.61):* This proposed section consolidates and revises §§ 23.52–23.56. The bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear are included in Appendix II under the provisions of Article II(2)(b) because their parts and products are difficult to distinguish from certain similar CITES Appendix-I and -II species. Approved States and Tribes have procedures for placement of CITES export tags on skins (including furs and pelts) that were legally taken. The presence of a tag on a skin provides us with reasonable assurance that the skin was obtained legally and provides a basis for our legal acquisition finding. We review the information we receive annually from each State or Tribe to determine if there is a need to reevaluate our State-or Tribe-based finding or if the species needs closer monitoring.

*Crocodylians (including American alligator) (§ 23.62):* This proposed section revises § 23.57 and expands it to incorporate Resolution Conf. 9.22 concerning tagging of all crocodylians. The proposed revision extends the tagging requirements to all crocodylian skins that are being imported, exported, or re-exported. This action would ensure that our requirements for trade in all crocodylians are consistent with the resolution and the international practices of all countries exporting native crocodylians. This standardization of requirements will assist with inspection efforts, reduce risk to wild crocodylian populations, and standardize procedures for importers and exporters. The requirements of the special rules in 50 CFR part 17 concerning the American alligator and certain threatened crocodylians must be met in addition to the requirements of this section. The current requirements for export of American alligator skins remain the same.

*Sturgeon caviar (§ 23.63):* At COP 10, all sturgeon that were not already included in the CITES appendices were added to Appendix II. Resolution Conf. 10.12 provides recommendations to the Parties to assist in the conservation of

these vulnerable species. One specific recommendation is that Parties “monitor the storage, processing and re-packaging of sturgeon specimens in Customs free zones and free ports, and for airline and cruise line catering.” Under the ESA, a shipment is considered an import as soon as it is in an area under the jurisdiction of the United States, whether or not it is considered an import under Customs law.

Caviar is regularly served to passengers on airplanes and cruise ships. Although the caviar is exported from the United States, the intent is not to import it into another country, but to serve it for consumption during the trip. We propose to provide specific guidelines to the travel industry on what quantities can be loaded on board and when a CITES document is required. Industry officials will need to carefully determine the amount likely to be consumed on an airplane or cruise ship since any unconsumed caviar that is on board at the foreign destination may be considered an import, even if left on board, and would require CITES documents.

According to industry sources, caviar is perishable and has a normal shelf life of 1 year. Since all sturgeon have been included in the CITES appendices since 1997, we no longer accept pre-Convention certificates for caviar. This practice is consistent with the CITES Notification No. 1999/23, which recommended that no permits or certificates declaring caviar as pre-Convention should be accepted after April 1, 1999. In order to be imported legally into the United States, shipments of sturgeon caviar must be accompanied by the appropriate export or re-export document (see our policy in the December 6, 1999, *Federal Register* (64 FR 68113)).

*Timber (§ 23.64):* The Parties recognize that trade in timber may require some variations on standard CITES procedures.

Resolution Conf. 10.13 discusses the implementation of the Convention for timber species. Resolution 10.2 incorporates specific recommendations for timber species listed in Appendix II or III that have an annotation regulating only the trade in logs, sawn wood, and veneer sheets. It allows that under specific circumstances the period of validity for CITES documents for timber may be extended for a maximum of 6 months. It also includes provisions for changing the ultimate consignee for a shipment after export or re-export. We propose to incorporate these recommendations into this section.

*Personal sport-hunted trophies (§ 23.65):* Some countries allow limited take of Appendix-I species as part of an overall management plan. The export of Appendix-I hunting trophies requires both export and import permits under Article III (see proposed § 23.28). This practice is reaffirmed in Resolution Conf. 2.11(Rev.). Because imports of Appendix-I species cannot be for primarily commercial purposes, Resolutions Conf. 10.14 and 10.15 recommend that trophies of Appendix-I species must be acquired by the owner in the country of export, are being imported as personal items, and will not be sold in the country of import.

We propose to incorporate these requirements into 50 CFR part 23 and clarify what is considered a trophy. In a number of instances, large numbers of fully manufactured products, such as briefcases, handbags, and golf bags, have been imported as part of a “hunting trophy.” Manufactured items of Appendix-II and -III species may be imported with the appropriate CITES export or re-export documents, which specifically describe the individual items, rather than including them under a general description of “trophy.” It is unlikely that the requirements for import of Appendix-I species could be met for such items. We also would require Appendix-I specimens not be used or transferred for a commercial purpose for those trophies imported for personal use. We would include the specific conditions for leopard hunting trophies as provided in Resolution Conf. 10.14. These requirements would be in addition to any requirements in 50 CFR part 17. A hunter would not be allowed to import more than two leopard trophies in one calendar year, and any skin would need to meet tagging requirements.

#### **Analysis of Proposed Subpart F— Disposal of Confiscated Live Wildlife and Plants**

*Confiscated live specimens (§ 23.70):* Article VIII(4) and (5) outlines the requirements for disposal of confiscated live specimens, and the Parties have adopted Resolution Conf. 10.7 which sets out detailed guidance. For the United States, the general procedures for disposal of forfeited or abandoned property are in 50 CFR part 12. These procedures apply to CITES as well as the other laws that we enforce. We are not proposing to revise 50 CFR part 12, but to add a section to these regulations on the process we use in making a decision to dispose of confiscated live CITES wildlife and plants that have been forfeited or abandoned to our Division of Law Enforcement or APHIS.



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

Many factors must be considered when live specimens are seized. The most important of these factors is the welfare of the wildlife or plants. Resolution Conf. 10.7 details a number of options for disposal as well as the difficulties associated with each option. We propose to consult this recommended guidance as necessary in making a decision. For wildlife, the options discussed include maintenance in captivity, return to the wild, and euthanasia. For plants, the resolution discusses maintenance in cultivation, return to the wild, and destruction.

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

It is rare that confiscated specimens can or should be returned to the wild. Before return to the wild should be considered, a country must decide if that action would make a significant contribution to the conservation of the species or might be harmful to the conservation of species in the wild. Specimens held in captivity and/or transported may be exposed to a variety of diseases and parasites. Reintroduction of these specimens to the wild could result in introduction of diseases with potentially catastrophic effects. It is also unlikely that the exact point of collection could be determined. Therefore, the specimens could not be returned to their home areas. Introduction into other areas may result in genetic pollution and adverse impacts on the species native to that area. Sometimes range countries request return of confiscated wildlife or plants for educational or related purposes. The least popular solution to disposal of

confiscated wildlife, euthanasia, may often be the simplest and most humane option available.

*Participation in the Plant Rescue Center Program (§ 23.71):* We propose to add this section on how a public institution can participate in our Plant Rescue Center Program. Whenever a shipment of plants arrives in the United States in violation of CITES and the plants are confiscated or seized, the plants are transferred to a participating center. We have enlisted more than 60 public institutions, such as non-profit botanical gardens, arboretums, zoological parks, and research institutions in the United States, to cooperate with us in this program.

#### **Analysis of Proposed Subpart G—CITES Administration**

*Roles of the Secretariat and the committees (§ 23.75):* This proposed section adds to the information in subpart D of the current regulations. It outlines the responsibilities of the Secretariat, which is established under Article XII, and the committees, which were established under resolutions (Resolution Conf. 9.1 (Rev.), which repeals Resolutions Conf. 6.1 and 7.1). The committees provide administrative and technical support to both the Parties and the Secretariat. The resolution also outlines how regional representatives are selected to serve on the various committees and their responsibilities.

*Conference of the Parties (COP) (§ 23.76):* We propose to add basic information on what a COP entails, how COP locations and dates are determined, and who can attend the meetings.

*Notice of a COP (§ 23.77):* This proposed section revises §§ 23.31–23.39 to clarify how we provide information to the public concerning a COP and how the public may participate in preparations for it. We propose to continue publishing notices in the **Federal Register** as soon as information is available concerning the location, dates, agenda, proposed amendments to the appendices, proposed resolutions for a COP, and public meetings. Since each notice will provide current information on participation in the public meetings, including the correct address for submission of any written comments and a telephone number for further information, we propose not to include the address and telephone number in 50 CFR part 23.

*Development of U.S. negotiating positions (§ 23.78):* We propose to reorganize the information in §§ 23.33, 23.35, and 23.38 to show the process we follow in developing our negotiating positions, including how the public can participate in this process. We will

continue to publish proposals that the United States is considering and our proposed negotiating positions on agenda items and proposals. We will also continue to hold public meetings to discuss these issues. We propose to no longer publish our final negotiating positions in the **Federal Register**, but rather to make them available in more timely ways, such as posting them on our website and mailing them to people upon request. Some issues are extremely complex and require extensive coordination, and our final negotiating positions may not be available prior to the COP. We also propose to delete § 23.39 of the current regulations and no longer publish an official report after each COP. Information on the results of a COP is available from a number of sources, such as our website or CITES Update, much sooner than an official report could be published and printed. We propose to delete § 23.36 as a separate section since this information is incorporated into other newly proposed sections.

#### **Analysis of Proposed Subpart H—List of Species**

*Listing criteria for Appendix I or II (§ 23.85):* CITES lists species in one of three levels of protection depending on the degree of threat to the survival of the species and the protection in international trade believed to be necessary by the Parties (see proposed § 23.4). In 1992 at COP 8, the Parties directed the Standing Committee to undertake, with the assistance of the Secretariat, a revision of the criteria for amending the appendices in Resolution Conf. 1.1 (referred to as the Berne criteria). This review, carried out in consultation with the Parties, was based on initial technical work done by IUCN in collaboration with species experts. A joint meeting of the Plants and Animals Committees addressed all aspects of this review, in association with the Standing Committee, held in Brussels in September 1993.

From this review, the Parties adopted Resolution Conf. 9.24, which establishes specific criteria for listing species. This proposed section basically adopts this resolution as it is written. When considering any proposal to amend Appendix I or II, the Parties should apply a precautionary approach so that scientific uncertainty should not be used as a reason for failing to act in the best interest of the conservation of the species. We propose to define the term “precautionary measures” in proposed § 23.5.

Under Article II, Appendix II should include species that could be threatened with extinction if trade is not monitored

(Article II(2)(a)) and species where trade should be monitored because the species resembles another listed species and could be misidentified while in trade (Article II(2)(b)). In both cases, we are concerned that international trade does not adversely affect the listed species and that it does not develop to a level that is detrimental to the species in the wild. We are concerned that trade does not get to a level where the species would meet the criteria for listing in Appendix I and that the species is maintained at a level consistent with its role in its ecosystem.

To monitor the effectiveness of protection offered by the Convention, range countries in cooperation with the Animals Committee or the Plants Committee are to regularly review the status of species included in Appendices I and II. The Parties will fully review the listing criteria in Resolution Conf. 9.24 before COP 12 (approximately 2002) with regard to the scientific validity of the criteria, definitions, notes, and guidelines and their applicability to different groups of organisms.

*Listing criteria for Appendix III (§ 23.86):* Article II(3) sets out that Appendix III includes native species that a Party lists to obtain international cooperation in controlling trade. Under Article XVI, a party can include a species in Appendix III by submitting information to the Secretariat. No vote of the Parties is required. The criteria to list a species in Appendix III includes that the species must be native to the listing country, be protected under that country's regulations to prevent or restrict exploitation and control trade, and be in international trade, with an indication that cooperation of other Parties would help to control illegal trade. The listing Party can request the species be removed from Appendix III at any time. By listing a species in Appendix III, trade data and other relevant information can be gathered to assist policy makers in a country determine whether the species should be proposed for inclusion in Appendix II, removed from Appendix III, or retained in Appendix III.

This proposed section incorporates Resolution Conf. 9.25 by outlining the criteria that a country must address to list a species in Appendix III. In addition, it gives a general description of the process we will use to decide if a species native to the United States should be listed in Appendix III. At this time, we have not listed any species in Appendix III, but we proposed several species in the January 26, 2000, **Federal Register** (65 FR 4217).

*Organization of the list and exemptions (§§ 23.87–23.88):* These proposed sections are a revision and reorganization of current § 23.23. In addition, we propose to discontinue publication of the unofficial list in the CFR, but continue to provide information concerning exempt wildlife or plants and their parts or products in proposed § 23.88. The official CITES list is the one maintained by the Secretariat. It is based on decisions by the Parties and is available from the Secretariat's website or from our office. Although the unofficial list would no longer be in the CFR, we would continue to maintain it because it is in a more detailed and easier to use format. This list would be available on our website and as a printed publication.

### Required Determinations

#### *Regulatory Planning and Review*

This proposed rule has been reviewed by OMB under Executive Order 12866.

a. This proposed rule will not have an annual economic effect of \$100 million or negatively affect a part of the economy, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The purpose of this proposed rule is to clarify and update the regulations that carry out 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 145 Parties, must follow under the Treaty. As of October 15, 1999, our records showed 5,368 currently valid CITES documents that we have issued (the period of validity for a document ranges from 6 months to 4 years).

The majority of our trading partners for wildlife and plants are CITES Parties. Because most of these Parties are currently implementing the resolutions, the proposed rule should cause little or no change to the way importers are currently doing business. The foreign suppliers are already required by their own country's laws and international customary law to follow the consensus interpretations embodied in the resolutions. In addition, if an importer were to receive a shipment that did not comply with all of the requirements of the country of shipment, the import may violate the Lacey Act Amendments of 1981.

Exporters need to comply with the requirements of the receiving country in addition to U.S. requirements. As a result, many are already complying with the recommendations and interpretations in the CITES resolutions.

If a shipment is not in compliance with all applicable resolutions, it may be seized or detained at the destination. The proposed revisions will assist exporters in determining what procedures they need to follow to trade internationally.

These proposed revisions incorporate existing trade requirements that have not previously been published, but are required internationally by a treaty. The publication of the proposed revisions will assist U.S. businesses in complying with the requirements under CITES and in engaging in international trade.

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

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

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

d. This proposed rule will not raise novel legal or policy issues because it only updates and clarifies existing regulations that implement CITES. As a member of CITES, the United States is committed to implementing the consensus interpretations of the Treaty that are embodied in the resolutions collectively approved by the Parties. This proposed rule would clarify the requirements for the import, introduction from the sea, export, and re-export of shipments of CITES specimens and would provide individuals and businesses access to current, clearly written regulations.

#### *Regulatory Flexibility Act*

The proposed 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 final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

The overwhelming majority of the entities that import, export, or re-export CITES specimens are considered small as defined under the Regulatory

Flexibility Act. This proposed rule provides these businesses with updated and more clearly written regulations for the import, export and re-export of shipments of CITES specimens. The authority to enforce CITES requirements already exists under the Endangered Species Act and is carried out by regulations contained in 50 CFR part 23.

a. Many 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, Alaska lynx, Alaska brown bear, and Alaska wolf. The majority of consumer products made from these species are processed overseas. In 1997, approximately \$24 million in wildlife species and \$79 million in ginseng were exported from the United States under CITES. We are not proposing any changes from the existing export regulations and, therefore, do not anticipate any economic effect to the current level of activity.

We recognize that the States have the right and responsibility to manage their wildlife. Many States have monitored the harvest of CITES species since before the Treaty came into effect. Because of this, we have worked with States and Indian Tribes to use the information they collect to make CITES findings on a State-by-State or Tribe-by-Tribe basis where export approval is requested. This system allows us to make findings for all specimens of a particular species from a State or Tribe rather than requiring each applicant to supply the information we need to make legal acquisition and non-detriment findings. When we are able to make State- or Tribe-based findings, at no charge we supply those States and Tribes with CITES export tags. These tags are placed on each skin under State- or Tribe-monitored conditions. The presence of a tag on a skin provides us with reasonable assurance that the skin was acquired legally. By making these administrative findings on a State-wide or reservation-wide basis, we considerably reduce the amount of paperwork required and allow exporters of these species to use streamlined procedures.

In the proposed revisions, we provide the criteria we use in making decisions concerning administrative findings. However, these criteria are the same as we have used since the beginning of such findings. The proposed revisions would provide the public details on how these findings are made.

The proposed changes to the CITES regulations will assist those that rely on income from the export of certain native

CITES species to remain competitive when conducting business in international markets. This proposed rule provides the importing and exporting community a better opportunity for obtaining economic gain from international business in CITES specimens.

b. CITES Resolution Conf. 8.16 requires that each wildlife specimen in a traveling live-animal exhibition (often a circus) must be covered by a CITES document specific to that specimen. Currently, many circuses have one document that covers several specimens. Under the proposed revisions, when a document covering multiple specimens expires, the permittee would need to obtain one document for each specimen. As a result, this proposed rule may result in increased permit application processing fees (\$25 per application) for a small number of importers and exporters who trade in CITES species. The requirement will be phased in as current documents expire. We estimate that approximately 70 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.

c. CITES Resolution Conf. 10.6 (which incorporates Resolution Conf. 4.12) specifically states that the personal effects exemption that covers tourist souvenirs does not apply to live specimens. In addition, most Parties require CITES documents for all live specimens, even if they are personal items. Resolution Conf. 10.20 provides for the issuance of certificates for personal live wildlife that would be valid for a period of 3 years and allow for multiple imports, exports, and re-exports of the specimens. Current U.S. regulations do not advise the reader of this. However, if an individual leaves the United States with their pet that is protected under CITES (such as a parrot), they risk having the pet seized upon import into another CITES Party. The proposed revisions would advise travelers that they must have a CITES document in order to travel with their CITES pet and provide for the issuance of a 3-year document. In addition, individuals importing live CITES wildlife as pets will be required under this proposed rule to obtain a CITES document prior to arriving in the United States. In most cases, this requirement would ensure that they are not inadvertently violating the Lacey Act by exporting their pet from a CITES Party without an export document since most Parties require CITES documents for all live specimens. On the average between

1996 and 1998, we issued 21 retrospective documents for personal shipments, including live wildlife, annually. Since recipient Parties required individuals to obtain retrospective documents before allowing import of the live wildlife, this requirement will not place an additional paperwork or financial burden, but may actually save time and money.

The proposed regulations will create no other substantial fee or paperwork changes in the permitting process. The changes discussed above are not major in scope and will create only a modest financial or paperwork burden on the affected members of the general public. Therefore, we do not believe that this proposed rule will have a significant economic effect on a substantial number of small entities.

#### *Small Business Regulatory Enforcement Fairness Act*

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

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

This proposed rule will affect all importers and 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, or local government agencies, or geographic regions. This proposed rule will clarify and update the regulations to carry out CITES, and as such, will provide benefits to all permit applicants in terms of time savings. This proposed rule may result in a small increase in the number of permit applications and permit processing fees for some circuses and pet owners.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule 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 proposed revisions to the regulations, the U.S. importing and exporting community may not be able to effectively compete with foreign-based companies in the international trade of CITES specimens. This proposed rule will assist U.S. businesses in ensuring that they are meeting all required CITES resolutions and decrease the possibility that shipments may be delayed or even seized in another country that has implemented applicable CITES resolutions.

*Unfunded Mandates Reform Act*

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

a. This proposed rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. As the lead agency for carrying out CITES in the United States, we are responsible for monitoring imports and exports of CITES wildlife and plants, including their parts and products, and issuing import and export documents under CITES. This proposed rule affects States only as described in 2.a. above, concerning export of certain native CITES species. Therefore, this proposed rule has no effect on small government's responsibilities.

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

*Takings*

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

*Federalism*

These proposed revisions to CFR part 23 do not contain provisions that have Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. These proposed regulations cover U.S. responsibilities under CITES which is an international agreement that focuses on international trade in protected species. The activities of import and export are national in scope and are not sovereign powers reserved to the States. The portions of the proposed regulations which have direct links to the States are basically unchanged and were initially developed after extensive consultation with the States and with the International Association for Fish and Wildlife Agencies.

*Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this proposed rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize 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 and Information Collection*

This proposed rule contains information collections for which approvals are required under the Paperwork Reduction Act. The majority of the information collection associated with this proposed rule is covered by OMB approval number 1018-0093 (Forms 3-200-19 through 3-200-49, 3-200-52, and 3-200-53). Any comments on this record collection should be directed to the Information Collection Clearance Officer, Mail Stop 222, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

We are proposing ten new forms (listed below). These proposed forms are

based on forms that are already approved and would require only submission of information specific to the activity covered by the form. The collection of information described for those forms has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (Public Law 104-13). 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 proposed information collection will be used to evaluate applications for CITES documents. We will use the information to review applications and make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance, suspension, revocation, or denial of CITES documents. Your response is required to obtain a CITES document. We estimate the public reporting burden for these reporting requirements to vary from 30 minutes to 40 hours per response with an average of 1 hour per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms.

Comments on this proposed information collection should be directed to the attention of the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. A copy of the comments should also be sent to the Information Collection Clearance Officer, Mail Stop 222, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240. The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. The new forms and the estimated reporting burdens are as follows:

Form No.	Activity	Total number of respondents	Estimated completion time (hours)	Total annual burden hours	Regulation
3-200-54 .....	Certificate of Ownership for Personally Owned Wildlife	1,000	0.5	500	50 CFR 23.11, 23.36, 23.50.
3-200-55 .....	Registration of Appendix-I Commercial Breeding Operations.	.....	.....	.....	50 CFR 23.11, 23.38, 23.50.
	a. Application & Report .....	10	4.5	45	
	b. Non-native species study .....	5	40	200	
3-200-56 .....	Replacement Documents .....	50	0.5	25	50 CFR 23.11, 23.42.

Form No.	Activity	Total number of respondents	Estimated completion time (hours)	Total annual burden hours	Regulation
3-200-57	Issuance of a Letter for an Exempt Hybrid	10	0.5	5	50 CFR 23.11, 23.35.
3-200-58	Retrospective Documents	30	0.5	15	50 CFR 23.11, 23.43.
3-200-59	Voluntary Registration of Pre-Convention Stocks	15	1.0	15	50 CFR 23.11, 23.37.
3-200-60	Participation in the Plant Rescue Center Program	5	1.0	5	50 CFR 12.30, 23.70, 23.71.
3-200-61	Reports for the American Ginseng CITES Export Programs.	24	1.0	24	50 CFR 23.11, 23.60.
3-200-62	Reports for the Furbearer CITES Export Programs	49	0.5	24.5	50 CFR 23.11, 50 CFR 23.61.
3-200-63	Reports for the American Alligator CITES Export Programs.	9	0.5	4.5	50 CFR 23.11, 23.62.
Totals		1,202	863		

Form No.	Activity	Total number of respondents	Application processing/fee	Total annual costs
3-200-54	Certificate of Ownership for Personally Owned Wildlife	1,000	\$25	\$25,000
3-200-55	Registration of Appendix-I	10	25	250
	Commercial Breeding Operations—Annual Report	10	1	10
3-200-56	Replacement Documents	50	25	1,250
3-200-57	Issuance of a Letter for an Exempt Hybrid	10	25	250
3-200-58	Retrospective Documents	30	25	750
3-200-59	Voluntary Registration of Pre-Convention Stocks	15	25	375
3-200-60	Participation in the Plant Rescue Center Program	5	N/A	5
3-200-61	Reports for the American Ginseng CITES Export Programs	24	N/A	24
3-200-62	Reports for the Furbearer CITES Export Programs	49	N/A	49
3-200-63	Reports for the American Alligator CITES Export Programs	9	N/A	9
Totals		1,202		27,972

We are specifically seeking public comments as to:

- a. Whether the collection of information is necessary for the proper performance of the functions of the Service, including whether the information will have practical utility;
- b. The accuracy of the Service's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- c. The quality, utility, and clarity of the information to be collected; and
- d. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

*National Environmental Policy Act*

The Department of the Interior has determined that the issuance of this action is categorically excluded under the Department's NEPA procedures in 516 DM 2, Appendix 1.10.

*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 participate in international trade of CITES species.

**Public Comments Solicited**

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

a manner that the public can easily understand and use.

**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, Marine mammals, Plants, Reporting and recordkeeping requirements, Transportation, Treaties, Wildlife.

**Proposed Regulations**

For the reasons given in the preamble, Title 50, Chapter I, Subchapter B of the CFR, is proposed to be amended to read 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. 1531–1544; 16 U.S.C. 1361–1407; 16 U.S.C. 742a–742j–1; 16 U.S.C. 3371–3378.

2. In § 10.12, the definitions of *Country of origin* and *United States* are revised to read as follows:

**§ 10.12 Definitions.**

\* \* \* \* \*

*Country of origin* means the country where the wildlife or plant (including parts and products such as manufactured goods) was taken from the wild or was born or propagated in captivity.

\* \* \* \* \*

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

\* \* \* \* \*

**PART 13—[AMENDED]**

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

**Authority:** 16 U.S.C. 668a, 704, 712, 742j–1, 1382, 1538(d), 1539, 1540(f), 3374; 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; E.O. 11911, 41 FR 14583; 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 50 CFR 23.43 for certain non-commercial shipments under CITES.

(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 must be met.

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

5. 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, street address, county, home and work telephone numbers, fax number, and e-mail address, and—

(i) If the applicant resides or is located outside the United States, a street 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, 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 person responsible for the permit (such as president, principal officer, or director);

\* \* \* \* \*

6. 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 issued under 50 CFR part 23, which is void upon expiration.

\* \* \* \* \*

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

**§ 13.46 Maintenance of records.**

• \* \* \* If the permittee is conducting commercial activities and resides or is located outside the United States, records shall be maintained at a location in the United States that is available for inspection.

**PART 17—[AMENDED]**

8. 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]**

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

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

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

Except as provided in paragraph (a) of this section, all prohibitions of § 17.31 and exemptions of § 17.32 shall apply to any specimen of a threatened species of wildlife:

(a) *Import.* Subject to the provision in paragraph (b) of this section, live specimens, or parts and products, of a species listed as threatened under this part may be imported without a threatened species permit under § 17.32 provided the following conditions are met:

(1) The species is listed in Appendix II of CITES (see 50 CFR part 23);

(2) The wildlife was taken from the wild or on a ranch by or for the importer for non-commercial use;

(3) If the specimen is a sport-hunted trophy (see paragraph (c) of this section), the CITES listing is not subject to an annotation for sport-hunted trophies where other specimens of the species are treated as included in Appendix I of CITES (see 50 CFR part 23);

(4) The number of specimens to be imported is reasonably appropriate for the nature of the import;

(5) The specimen is accompanied by a valid CITES document (see 50 CFR 23.23);

(b) *Special rules.* Stricter provisions of any special rule in this part apply in addition to this section; and

(c) *Sport-hunted trophy* means raw or tanned parts of a specimen that was taken by the hunter, who is also the importer, during a sport hunt for personal, non-commercial use. It may include the hide, head, skull, tusks, horns, hair, teeth, claws, meat, bones, or any taxidermied part, including, but not limited to, a 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.

11. Part 23 is revised to read as follows:

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

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

**Subpart A—Introduction**

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

(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 to ensure it is legal and does not threaten the survival of wildlife and plant species in the wild. Countries that have ratified or acceded to CITES (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) *Domestic legislation.* We, the Service, implement CITES through the U.S. 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, and hybrids, whether wild-collected or bred, born, grown, or propagated in captivity) listed in Appendices I, II, or III of CITES?	(1) YES. Continue to paragraph (b) of this section. (2) NO. The regulations in this part do not apply.
(b) Is the part, product, or manufactured article a personal or household effect?	(1) YES. See § 23.12. (2) NO. Continue to paragraph (c) of this section.
(c) Is the sample urine, feces, or synthetically derived DNA (deoxyribonucleic acid)?	(1) YES. See § 23.13. (2) NO. Continue to paragraph (d) of this section.
(d) 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 (e) of this section.
(e) Was the specimen that you possess, or want to put in intrastate or interstate commerce, unlawfully acquired, illegally traded, or otherwise subject to conditions set out on the CITES document?	(1) YES. See § 23.11(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.

(b) If you are applying for a permit, you must comply with the general permit procedures in 50 CFR part 13.

(c) If you are importing (including introduction from the sea), exporting, or re-exporting wildlife or plants, you must comply with the regulations in 50 CFR part 14 for wildlife or 50 CFR part 24 for plants. Activities with plants are also regulated by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), in 7 CFR parts 355 and 356.

(d) Many CITES species are also covered by one or more parts of this subchapter and have additional requirements:

(1) 50 CFR parts 10 and 21 (migratory bird list and permits).

(2) 50 CFR part 15 (Wild Bird Conservation Act).

(3) 50 CFR part 16 (injurious wildlife).

(4) 50 CFR part 17 (endangered and threatened species).

(5) 50 CFR part 18 (marine mammals).

(6) 50 CFR part 22 (eagle permits).

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

Species are listed by the Parties at one of three levels of protection (referred to as appendices, see subpart H of this part), which have different requirements. Parties regulate trade in specimens (live and dead) of Appendix-I, -II, or -III species and their hybrids, parts, and products 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. Requirements to trade in specimens of Appendix-I species include:

(1) Trade must be subject to particularly strict regulation to avoid further endangering their survival and must be authorized only in exceptional circumstances.

(2) The import or introduction from the sea may not be for primarily commercial purposes.

(3) A shipment requires an import permit and an export permit or re-export certificate unless the specimen is accompanied by either a valid CITES exemption document issued by the exporting or re-exporting country or an introduction-from-the-sea certificate.

(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.

(1) CITES does not require import permits for Appendix-II species.

(2) For specimens of Appendix-II species to be traded, each shipment must be accompanied by a CITES document from the exporting or re-exporting country or an introduction-from-the-sea certificate.

(c) *Appendix III* includes species listed by a range country to obtain international cooperation in controlling trade. For specimens of Appendix-III species to be traded, each shipment must be accompanied by an export

permit, certificate of origin, or a re-export certificate.

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

In addition to the definitions contained in Article I of the Treaty and 50 CFR part 10, and unless the context requires, in this part:

*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 (“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 taxa and the type of specimens, such as live wildlife or plants or certain parts or products that can be traded. It may include export quotas.

*Artificially propagated* means a plant (including parts and products) grown under controlled conditions from a legally obtained seed, cutting, division, callus tissue, other plant tissue, spore, or other propagule that meets the criteria in § 23.54.

*Bred in captivity* means wildlife (including parts and products) that meets the criteria in § 23.53 and is the offspring of legally obtained parents that either mated or otherwise transferred egg and sperm under controlled conditions if reproduction is sexual; or of parents that were maintained under controlled conditions when development of the offspring began if reproduction is asexual.

*Certificate* means a CITES document designated as a re-export or other certificate.

*CITES document or CITES exemption document* means any certificate, permit,



or other document issued by a Management Authority of a Party or a non-Party whose name and address is on file with the Secretariat to authorize the international movement of CITES specimens.

*Commercial* means an activity whose purpose is to obtain economic benefit, including profit (whether in cash or in kind) and is directed toward resale, exchange, provision of a service, or other form of economic use or benefit.

*Conference of the Parties (COP)* refers to the meetings of the Parties to consider amendments to the appendices and resolutions to improve the implementation of CITES

*Cultivar* means a horticulturally derived variety where humans select for specific morphological, physiological, or other characteristics, such as color, a large flower, or disease resistance.

*Cultivated* refers to a plant that is grown, tended, or fostered by humans for human use. A cultivated plant can be treated as artificially propagated under CITES only if it meets the criteria in § 23.54.

*Export* means to send or carry out of a country (for export from the United States, see 50 CFR part 14).

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

*Founder stock* means the original breeding or propagating specimens that produced the subsequent generations of captive specimens and can be either pre-Convention, previously imported into the United States, or removed from the wild if the species is native to the United States.

*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 § 23.34 for plant hybrids and § 23.35 for wildlife hybrids.

*Import* means to bring or carry into a country (for import into the United States, see 50 CFR part 14).

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

*In-transit shipment* means the immediate transshipment of any wildlife or plant through an intermediary country when the specimen remains under customs control.

*Introduction from the sea* means to directly transport into a country any specimen that was taken in the marine environment not under the jurisdiction of any country, including the air above

the sea, the sea-bed, and subsoil beneath the sea.

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

*Parental stock* mean the wildlife or plants that are the immediate parents of a specimen.

*Party* means a country that has ratified or acceded to CITES.

*Permit* means a CITES document designated as an export or import permit.

*Precautionary measures* mean that the actions we take 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 removed from the wild or held in captivity or a controlled environment before the date the species was first listed on any appendix of CITES.

*Primarily commercial purposes* means an activity whose non-commercial aspects do not clearly predominate (see § 23.52).

*Propagule* means a structure, such as a cutting, seed, or spore, that propagates a plant.

*Ranching* means the rearing in a controlled environment of eggs or juvenile wildlife specimens taken from the wild.

*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 or product of any CITES wildlife or plant, unless such part or product is specifically exempt from the provisions of CITES or this part.

*Re-export* means to send or carry out of a country any wildlife or plant (including parts and products) previously imported or introduced from the sea into that country, whether or not the specimen was altered since import or introduction.

*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 § 23.18).

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

*Secretariat* means the entity designated by the Treaty to perform

certain administrative functions (see § 23.75).

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

*Species* means any species, subspecies, variety, or geographically separate population of that species.

*Specimen* means any wildlife or plant, whether alive or dead. For Appendix-I and -II wildlife and Appendix-I plants, this term includes any readily recognizable part or product. For Appendix-III wildlife and Appendix-II and -III plants, all readily recognizable parts or products are included, except as annotated in the appendices.

*Sport-hunted trophy* means raw or tanned parts of a specimen that was taken by the hunter, who is also the importer, exporter, or re-exporter, during a sport hunt for personal, non-commercial use. It may include the hide, head, skull, tusks, horns, hair, teeth, claws, meat, bones, or any taxidermied part, including, but not limited to, a 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.

*Sustainable use* means the use of a species in a manner and at a level that maintain 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.

*Traveling live-animal exhibition* means an entity that uses live wildlife for display or entertainment, such as a circus or performing act, where the exhibition 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 name and address of these offices must be sent to the Secretariat to be included in the Directory. In the United States, different offices within our agency have been designated the Management and

Scientific Authority and do the following:

Roles	Scientific authority	Management authority
(a) Provide scientific advice and recommendations, including advice on biological findings for applications for certain CITES documents. Evaluate the conservation status of species to determine if a species listing or change in listing is warranted .....	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) Monitor trade .....	X	X
(e) Produce annual reports on CITES trade .....		X
(f) Coordinate with State conservation and Federal agencies on CITES issues, such as the status of native species, development of policies, negotiating positions, and law enforcement activities .....	X	X
(g) 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
(h) Represent the United States at the meetings of the Conference of the Parties (COP), on committees (see subpart G of this part), and on CITES work 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
(i) Provide assistance for the enforcement of CITES, including the inspection and clearance of shipments. Cooperate with enforcement officers at the Secretariat, International Criminal Policy Organization—Interpol, and World Customs Organization to facilitate the exchange of information between enforcement bodies and for training purposes .....		X
(j) 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 one of the following offices to receive information about CITES:

Type of information	Office to contact
(a) <i>CITES administrative and management issues:</i> CITES documents, including application forms Information on the COP List of CITES species Names and addresses of other countries' Management and Scientific Authority offices Notifications, resolutions, and decisions Standing Committee documents and issues	Office of 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: r9IA_OMA@fws.gov Fax retrieval system: (800) 770-0150 or (703) 358-2348 Website: international.fws.gov

Type of information	Office to contact
(b) <i>Scientific issues:</i> Animals Committee documents and issues Findings regarding suitability of facilities Listing of species in the appendices and relevant resolutions Names and addresses of other countries' Scientific Authority offices and scientists involved with CITES-related issues Non-detriment and other scientific findings Plants Committee documents and issues	Office of Scientific Authority U.S. Fish and Wildlife Service 4401 North Fairfax Drive, Room 700 Arlington, Virginia 22203 Tel: (703) 358-1708 Fax: (703) 358-2276 E-mail: r9osa@fws.gov Website: international.fws.gov
(c) <i>Wildlife clearance procedures:</i> Information about wildlife port office locations Procedures for the import (including introduction from the sea), export, and re-export of wildlife, including the inspection and clearance of shipments, and filing a Declaration of Importation or Exportation of Fish or Wildlife (Form 3-177) Validation of CITES wildlife documents	Office of Law Enforcement U.S. Fish and Wildlife Service P.O. Box 3247 Arlington, Virginia 22203 Tel: (703) 358-1949 Fax: (703) 358-2271 Website: www.le.fws.gov
(d) <i>Plant clearance procedures:</i> Information about plant port office locations Procedures for the import (including introduction from the sea), export, and re-export of plants, including the inspection and clearance of shipments Validation of CITES plant documents	U.S. Department of Agriculture APHIS/PPQ 4700 River Road Riverdale, Maryland 20737-1236 Toll Free: (877) 770-5990/permit questions Tel: (301) 734-5371/other CITES issues Fax: (301) 734-5786/permit questions Fax: (301) 734-8693/other CITES issues Fax retrieval system: (301) 734-4327 Website: www.aphis.usda.gov/ppq
(e) <i>Official list of CITES species:</i>	CITES Secretariat Website: www.cites.org

### § 23.8 What are the information collection requirements?

(a) The Office of Management and Budget approved the information collection requirements for application forms 3-200-19 through 3-200-53 contained in this part under 44 U.S.C. 3507 and assigned OMB Control Number 1018-0093. New application forms 3-200-54 through 3-200-63 have been submitted to OMB for assignment of an approval number.

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

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

(d) We are also collecting information to review State and tribal management programs for CITES species to streamline the permitting process for species taken under these programs.

(e) You must respond to our request for information in order to get or retain a CITES document.

(f) We estimate the public reporting burden for the collection of information under this part to vary from 20 minutes to 40 hours per response with an average of 1 hour. This estimate includes time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms.

(g) You may direct comments on this information collection to the attention of the Desk Officer for the Interior Department, Office of Management and Budget, 1849 C Street, NW, Washington, DC 20503, with a copy to the Information Collection Clearance Officer, Mail Stop 222, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

### Subpart B—Prohibitions, Exemptions, and Requirements

#### § 23.11 What is prohibited?

If you are subject to the jurisdiction of the United States, it is unlawful for you to conduct any of the following activities unless you 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.

#### § 23.12 How may I travel internationally with my personal or household effects?

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

(b) *Stricter national legislation.* 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 legislation.

(2) In the United States, this exemption does not relieve you from obtaining 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 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 (g) of this section.

(d) *Personal effects.* You do not need a CITES document to import, export, or re-export any part, product, or manufactured article of a legally acquired Appendix-II or -III wildlife or plant, including a tourist souvenir, 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 item from an Appendix-I species is included, except for certain worked African elephant ivory as provided in paragraph (g) of this section.

(3) No sturgeon caviar (Order *Acipenseriformes*) is included except as provided in paragraph (f) of this section.

(4) You personally own and possess the item for non-commercial purposes, including any item intended as a personal gift.

(5) The item and quantity of items is reasonably necessary or appropriate for the nature of your trip or stay.

(6) You are either wearing the item 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, car, or train as you.

(7) The item was not mailed or shipped separately.

(e) *Household effects.* You do not need a CITES document to import, export, or re-export any part, product, or manufactured article of a legally acquired Appendix-II or -III wildlife or plant 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) No live wildlife or plant (including eggs or non-exempt seeds) is included.

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

(3) No sturgeon caviar (Order *Acipenseriformes*) is included.

(4) You personally own the item and are moving it for non-commercial purposes.

(5) The item and quantity of items is reasonably necessary or appropriate for household use.

(6) You import or export your household effects within 1 year of moving your residence.

(7) The shipment, or shipments if you cannot move all of your household effects at one time, contains only items purchased, inherited, or otherwise acquired before you moved.

(f) *Sturgeon caviar.* You may import, export, or re-export 250 grams or less of caviar of Appendix-II sturgeon (in the Order *Acipenseriformes* and not listed as endangered or threatened under the ESA) without a CITES document as a personal effect if it meets the requirements in paragraph (d) of this section. To import, export, or re-export more than 250 grams of caviar, you must have a valid CITES document for the entire quantity.

(g) *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 you meet all of the following:

(1) The worked ivory is a personal or household effect that meets the requirements of paragraph (d) or (e) of this section, except it is not a gift.

(2) You are a U.S. resident, owned the worked ivory before leaving the United States, and intend to bring the item back to the United States.

(3) The ivory is substantially worked and is not raw. Raw ivory means a tusk, or a piece of tusk, which is polished or unpolished, unaltered, or minimally carved, including ivory mounted on a stand or part of a trophy.

(4) When you return, you are able to provide records, receipts, or other documents to show that you possessed the ivory before you left the United States.

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

(a) *CITES documents.* We do not regulate any sample of urine, feces, or synthetically derived DNA under CITES but some countries may.

(1) You must obtain any collection permit and/or 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, we will treat the sample as regulated and you must apply for a CITES document.

(b) *Urine and feces.* Except as provided in paragraph (a) of this section, we consider urine and feces to be wildlife by-products, rather than parts or products, 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.

### § 23.14 What are the requirements for diplomatic, consular, military, and other persons eligible for waiver privileges under customs law?

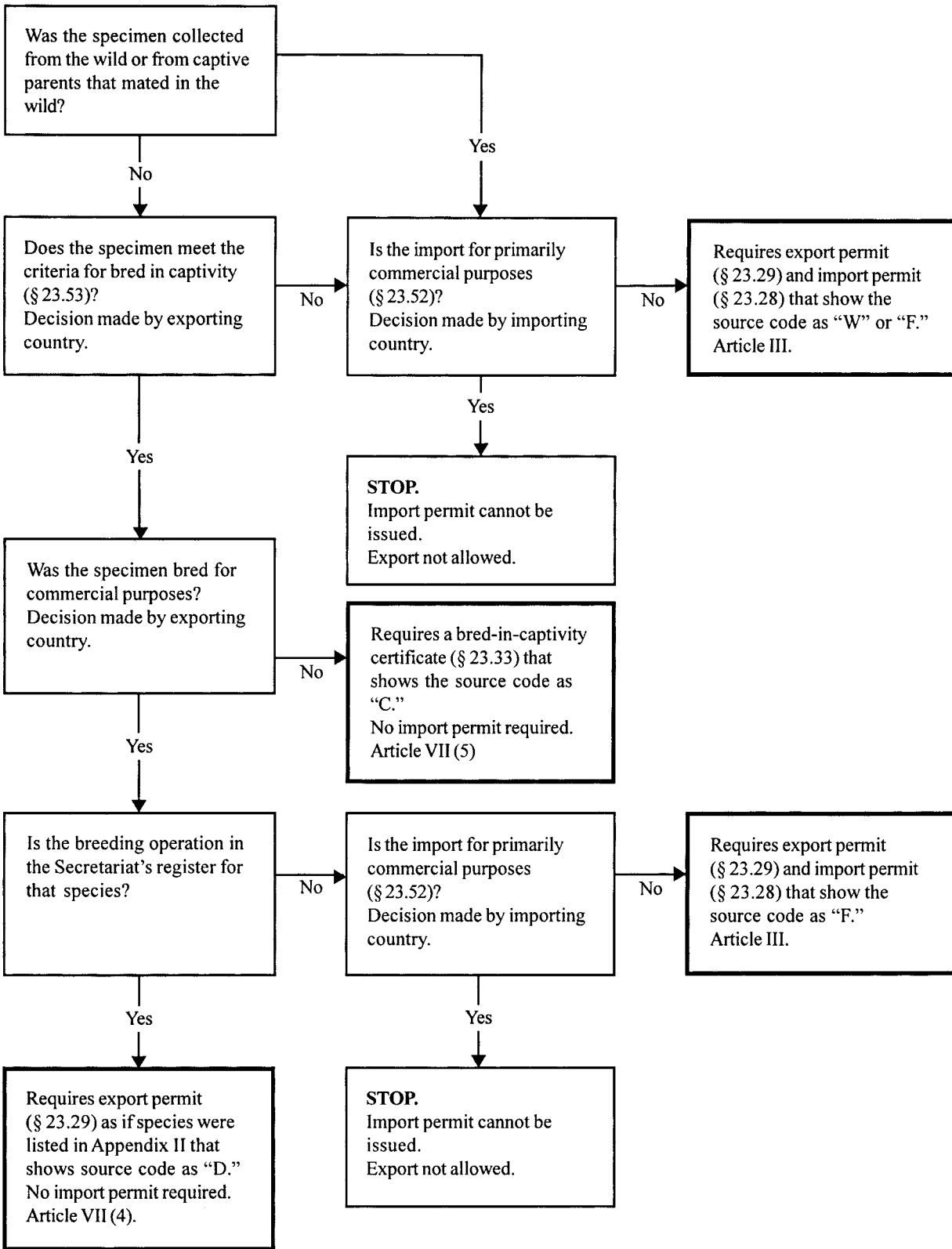
A person receiving duty-free and inspection waiver privileges under customs laws is not exempt from the requirements of CITES or the regulations in this part.

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

Answer the questions in the following decision tree to find out the section in the regulations in this part that applies to the type of CITES document you need to export Appendix-I wildlife:

BILLING CODE 4310-55-P

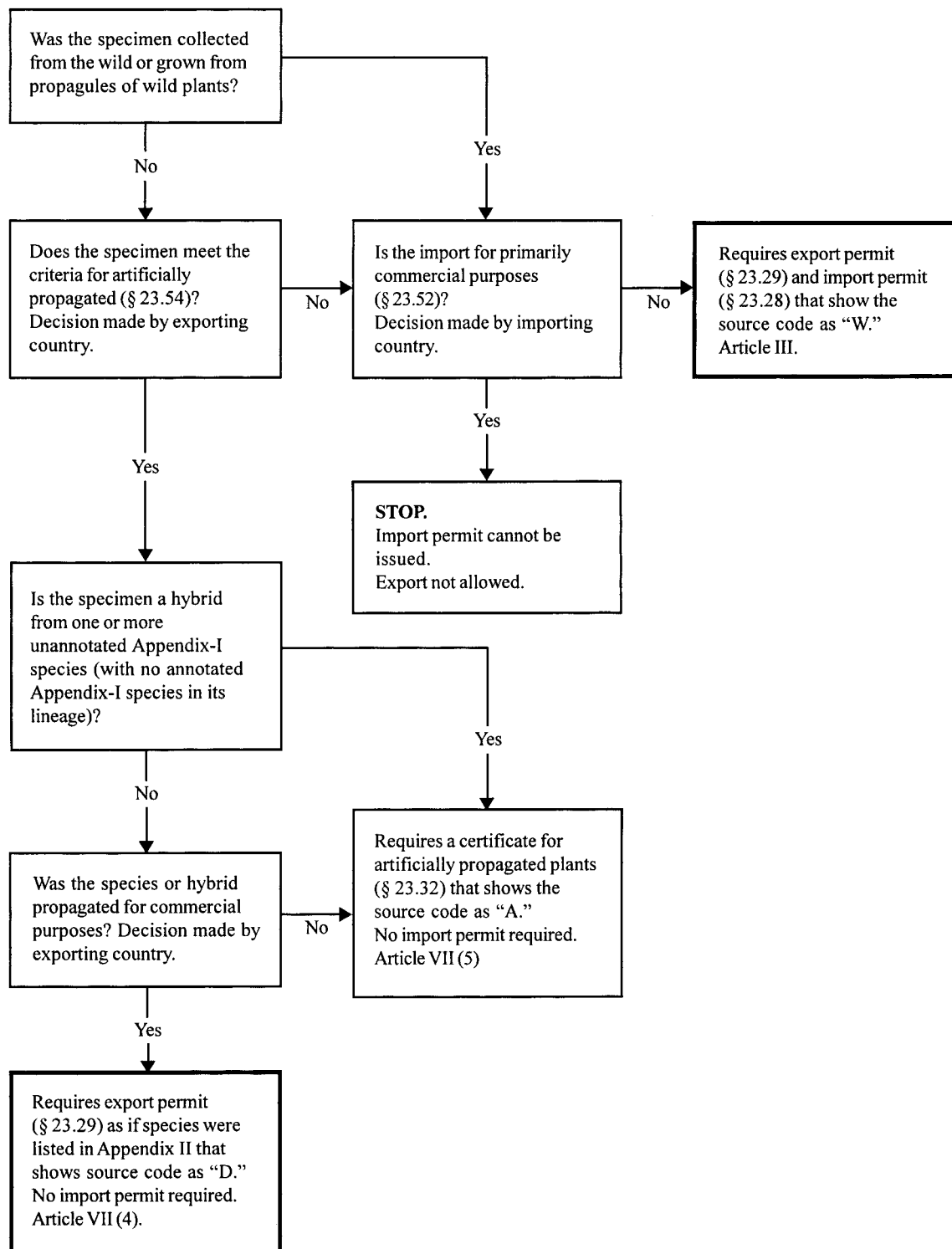
## Decision Tree for Export of Appendix-I Wildlife



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

Answer the questions in the following decision tree to find out the section in the regulations in this part that applies to the type of CITES document you need to export Appendix-I plants:

### Decision Tree for Export of Appendix-I Plants



**§ 23.17 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. Article VII recognizes some exemptions and provides that a CITES document must accompany most exempt specimens.

(b) *Stricter national legislation.* 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 legislation.

(c) *CITES documents.* Except as provided in the regulations in this part, you must have a valid CITES document to engage in international trade with 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. The first column alphabetically lists the type of specimen. The last column indicates the section of this part that contains information on the application procedures, provisions, issuance criteria, and conditions specific to each CITES exemption document, as follows:

Type of specimen	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 .....	<sup>1</sup> CITES document with source code "A" ...	23.32
(2) Artificially propagated plant from a country that has provided copies of the certificates, stamps, and seals to the Secretariat.	II or III .....	<sup>1</sup> Phytosanitary certificate with CITES statement.	23.20(f)
(3) Bred-in-captivity wildlife (see paragraph (d)(5) of this section for Appendix-I wildlife bred for commercial purposes).	I,II, or III .....	<sup>1</sup> CITES document with source code "C" ...	23.33
(4) Commercial propagation of an Appendix-I plant.	I .....	<sup>1</sup> CITES document with source code "D" ...	23.39
(5) Commercial registered breeding operation for Appendix-I wildlife.	I .....	<sup>1</sup> CITES document with source code "D" ...	23.38
(6) Hybrid .....	I, II, or III .....	<sup>1</sup> CITES document or certification letter from a Management Authority.	23.34 23.35
(7) In-transit shipment .....	I, II, or III .....	CITES document designating importer and country of final destination.	23.19
(8) Introduction from the sea under a pre-existing treaty, convention, or international agreement for that species.	I or II .....	Document required by applicable treaty, convention, or international agreement.	23.31(d)
(9) Personally owned live wildlife for multiple cross-border movement.	I, II, or III .....	<sup>2</sup> CITES certificate of ownership .....	23.36
(10) Pre-Convention specimen .....	I, II, or III .....	<sup>1</sup> CITES document indicating pre-Convention status.	23.37
(11) Registered scientific institution for non-commercial loan, donation, or exchange of specimens.	I, II, or III .....	<sup>3</sup> 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.	23.40
(12) Traveling live-animal exhibition .....	I, II, or III .....	<sup>2</sup> CITES document indicating pre-Convention or bred-in-captivity status.	23.41

<sup>1</sup> Issued by the Management Authority in exporting or re-exporting country.

<sup>2</sup> Issued by the Management Authority in the exporting country.

<sup>3</sup> Registration codes assigned by the Management Authorities in both exporting and importing countries.

(e) *Import permits, export permits, re-export certificates, and certificates of origin.* You must obtain the following

valid CITES documents before conducting the proposed activity, unless one of the exemptions in paragraph (d)

of this section or introduction from the sea in paragraph (f) of this section applies:

Appendix	Import permit (§ 23.28)	Export permit, Re-export Certificate, (§ 23.29) or Certificate of Origin (§ 23.30)
I .....	<sup>1</sup> Required .....	Required.
II .....	Not Required	Required.
III .....	Not Required	Required: <ul style="list-style-type: none"> <li>• An export permit if coming from a country that listed the species.</li> <li>• A re-export certificate if being re-exported from any country.</li> <li>• A certificate of origin if originating in a country other than the listing country or as annotated in the listing.</li> </ul>

<sup>1</sup> The Management Authority of the importing country has granted the import permit or confirmed that it will be granted before an export permit for a live or dead specimen or a re-export certificate for a live specimen can be issued. A re-export certificate for a dead specimen can be issued without confirmation that the import permit has been issued, but the import permit is required before the import can be allowed.

(f) *Introduction-from-the-sea documents.* For introduction from the sea, you must obtain the following valid CITES documents before conducting the proposed activity, unless the exemption in paragraph (d)(8) of this section applies:

Appendix	Either	Or	Import Permit (§ 23.28)
	Introduction-from-the-Sea Certificate (§ 23.31)	Re-export Certificate (§ 23.29)	
I .....	Required .....	<sup>1</sup> Required .....	Required
II .....	Required .....	<sup>1</sup> Required .....	Not required
III .....	Not required .....	<sup>2</sup> Required .....	Not required

<sup>1</sup> The export of a specimen that was previously introduced from the sea will be treated as a re-export.

<sup>2</sup> Although an Appendix-III specimen taken from the marine environment beyond any country's jurisdiction does not require any CITES document to be introduced from the sea, the subsequent export of the specimen would require the issuance of a certificate of origin.

**§ 23.18 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 specific reservation to be entered on a species included in Appendix I, II, or III, or on parts or products from a species included in Appendix III.

(b) *General provision.* A Party or a country in the process of acceding to

CITES can enter a reservation as follows:

(1) A Party must provide written notification to the Depository Government (Switzerland) on a specific new or amended listing in the appendices within 90 days after the COP that adopted the listing.

(2) A country must provide written notification on a specific species' listing when it ratifies or accedes to CITES.

(c) *Required CITES documents.*

Except as provided in (c)(2) of this paragraph, Parties treat a reserving Party as if it were a non-Party for trade in the species concerned (including parts and products). A shipment must be accompanied by a valid CITES document, as follows:

If:	Then the CITES document must indicate the specimen is listed in:
(1) The trade between a Party and a reserving Party .....	The appendix in which the species is listed in the CITES is appendices.
(2) A shipment is between a reserving Party and another reserving Party or non-Party and is transiting a Party.	(i) Appendix II if the species is listed in Appendix I. (ii) Appendix II if the species is listed in Appendix II. (iii) Appendix III if the species is listed in Appendix III.

**§ 23.19 What are the requirements for in-transit shipments?**

(a) *Purpose.* Article VII(1) of the Treaty allows for in-transit shipments. To control any illegal trade Parties are to take measures to check for valid CITES documents when a shipment is moving through an intermediary country.

(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) A 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, unless the item qualifies as a personal or household effect (see § 23.12).

(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 (b)(1) of this paragraph is an CITES exemption document (see § 23.17).

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

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

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

(2) At any time during transit, not be sold, manipulated, or split.

(d) *Reserving Party or non-Party.* All the requirements of this section apply to shipments to or from a reserving Party or non-Party that are being transhipped through a Party. The CITES document

must treat the specimen as listed in the appendix as provided in § 23.18(c).

(e) *Specimen protected by other regulations.* Shipment of a specimen that is also listed as a migratory bird (50 CFR part 10), injurious wildlife (50 CFR part 16), endangered or threatened species (50 CFR parts 17 and 217–227), marine mammal (50 CFR parts 18 and 216), or bald or golden eagle (50 CFR part 22), and is moving through the United States is considered an import, and cannot be traded as an in-transit shipment.

**§ 23.20 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 any false or invalid document, a CITES document, including any CITES exemption document, must contain standardized information to allow a Party to verify that the specimen being

shipped is the one listed on the document.

(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 § 23.22.

(c) *Required information.* Except for a phytosanitary certificate used as a CITES certificate for artificially propagated plants in paragraph (f) of this section, 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 only valid with the following information:

Key phrase	Required information
(1) Appendix .....	The appendix of CITES on which the species, subspecies, or population is listed. A certificate of origin is valid only for Appendix-III specimens and is not required to list the appendix.
(2) Applicant's signature .....	The applicant's signature, if the CITES document includes a place for it.
(3) Bill of lading or air waybill.	As applicable for export or re-export by ocean or air, the bill of lading or air waybill number as recorded on the CITES waybill document by the inspecting official at the port, if the document includes a place for it.
(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 § 23.44 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.
(6) Document number ..	A unique control number. We use a unique 12-character number. The first two characters are the last two digits of the year of issuance, the next two are the two-letter ISO country code, followed by a six-digit serial number, and two digits or letters used for national informational purposes.
(7) Humane transport of live wildlife.	If the CITES document covers the export or re-export of live wildlife, a statement that the permit is only valid if the live wildlife transport conditions comply with the CITES Guidelines for Transport of Live Animals (available from the Office of Management Authority, see § 23.7) or, in the case of air transport, with the International Air Transport Association Live Animal Regulations. The shipment must comply with container requirements of the Live Animal Regulations (LAR), 26th edition, October 1, 1999, by the International Air Transport Association (IATA). The incorporation by reference of the LAR was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from IATA in Montreal, Canada, by calling 800-71-66-32-60 or ordering through the Internet at <a href="http://www.iataonline.com">http://www.iataonline.com</a> . Copies may be inspected at the Office of Management Authority (see § 23.7) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.
(8) Identification of the specimen.	Any unique identification number or mark (such as a tag, band, ring, microchip, and serial number), including any mark required under a CITES resolution.

Key phrase	Required information
(9) Management Authority .....	The complete name and address of the issuing Management Authority as included in the CITES Directory, which is available from the Office of Management Authority (see § 23.7).
(10) Name and address	The complete name and address, including country, of the exporter (consignor) and importer (consignee).
(11) Purpose of transaction .....	The purpose of the transaction, using one of the codes given in paragraph (d) of this section, if possible. 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 to be in the shipment and, if appropriate, the unit of measurement, which should be in metric: <ul style="list-style-type: none"> <li>(i) The unit of measurement should be appropriate to the type of specimen and, if possible, agree with the preferred or alternative unit that is to be used in the CITES annual report. General descriptions such as "one case" or "one batch" are not acceptable.</li> <li>(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.</li> <li>(iii) Volume, when used for timber, should be in cubic meters.</li> <li>(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.</li> </ul>
(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 or the ESA, 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 us or the Secretariat's website (see § 23.7). A CITES document may contain higher taxon names in lieu of the species name only under one of the following circumstances: <ul style="list-style-type: none"> <li>(i) When the COP has agreed that the use of a higher taxon name is acceptable for use on CITES documents.</li> <li>(ii) When the issuing Party can show the use of a higher taxon name is well justified and has communicated the justification to the Secretariat.</li> <li>(iii) The item is a pre-Convention manufactured product containing a specimen that cannot be identified to the species level.</li> </ul>
(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 is 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. Each page of an attached annex must also contain a stamp that is canceled and recorded.
(16) Signature .....	An original signature of a person authorized to sign CITES documents for the issuing Management Authority. The signature must be on file with the Secretariat.
(17) Source .....	The source of the specimen, except for a certificate of origin which must certify that the specimen originated in the exporting country. See § 23.21 for a list of codes.
(18) Treaty name .....	Either the full name, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, or the CITES logo.
(19) Type of CITES document .....	The type of CITES document (import, export, re-export, or other). If marked "other," the CITES document must indicate the type of document, such as introduction-from-the-sea, pre-Convention, bred-in-captivity, scientific exchange, certificate of ownership, or artificially propagated. If multiple types are authorized on one CITES document, the type that applies to each specimen must be clearly indicated.
(20) Validation or certification .....	The actual quantity of specimens exported or re-exported: <ul style="list-style-type: none"> <li>(i) Using the same units of measurement as those on the CITES document.</li> <li>(ii) Validated or certified by the stamp or seal and signature of the authority that carried out the inspection at the time of export or re-export.</li> </ul>

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

Code	Purpose of transaction
B .....	Breeding in captivity or artificial propagation
E .....	Education

Code	Purpose of transaction
G .....	Botanical garden
H .....	Hunting trophy
L .....	Law enforcement
M .....	Biomedical research
N .....	Reintroduction or introduction into the wild
P .....	Personal
Q .....	Circus and traveling exhibition
S .....	Scientific purpose
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) Amended or renewed CITES document (see §§ 13.22 and 13.23).	The number and date of issue of the amended CITES document and reason for the change.
(2) Annex (such as an attached inventory conditions, or continuation pages of a CITES document).	The page number, document number, and date of issue on each page of an annex that is attached as an integral part of a CITES document. The signature and ink stamp or seal, preferably embossed, of the Management Authority issuing the CITES document must also be included on each page of the annex. The CITES document must indicate the total number of pages.
(3) Certificate of origin .....	A statement that the specimen originated in the country that issued the certificate.
(4) Copy .....	Where a copy of a CITES document is used in place of the original, a statement on the face of the document by the Management Authority authorizing the use of a copy.
(5) Export permit for a commercial registered breeding operation or nursery— Appendix-I specimens.	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.
(6) Export permit with species' quota .....	Numbers of specimens, such as 500/1000, that were: (i) Exported thus far in the current calendar year, including those covered by the permit. (ii) Included in the current annual quota.
(7) Import permit (Appendix-I specimen)	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.
(8) Lost, damaged, stolen, or accidentally destroyed CITES document.	When a CITES document is issued to replace an already issued CITES document, the number and date of issue of the CITES document that was replaced and reason for replacement.
(9) Pre-Convention certificate .....	(i) An indication that the specimen covered by the CITES document is pre-Convention. (ii) A date that shows the specimen was acquired before the pre-Convention date (see § 23.5).

Type of document	Additional required information
(10) Re-export certificate .....	(i) The country of origin, the number of the export permit of that country, and the date of issue. (ii) If previously re-exported, the country of last re-export, the number of the re-export certificate of that country, 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 .....	A clear statement that the CITES document is issued retrospectively and the reason for issuance.

(f) *Phytosanitary certificate*. A Party that uses a phytosanitary certificate as a CITES document for the export of artificially propagated Appendix-II and -III plants and artificially propagated hybrids of unannotated Appendix-I plants must include all of the following information:  
(1) 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.  
(2) The type (such as live plant or bulb) and quantity of the specimen authorized to be in the shipment.  
(3) A stamp, seal, or other specific indication stating that the specimen is

artificially propagated as defined by CITES (see § 23.54).

**§ 23.21 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:

Source of specimen	Code
(a) Artificially propagated plants: (1) An Appendix-II or -III artificially propagated plant (see § 23.54) or hybrid of unannotated Appendix-I species or other taxa whether artificially propagated for commercial or non-commercial purposes, as well as parts and products. (2) An Appendix-I plant species or hybrid of annotated Appendix-I species artificially propagated for non-commercial purposes, as well as parts and products.	A
(b) Bred-in-captivity wildlife: (1) Appendix-II or -III wildlife bred in captivity (see § 23.53) for commercial or non-commercial purposes, as well as parts and products. (2) Appendix-I wildlife bred in captivity for non-commercial purposes, as well as parts and products.	C
(c) Propagated or bred for commercial purposes: (1) An Appendix-I plant species or hybrid of annotated Appendix-I species artificially propagated for commercial purposes, as well as of parts and products. (2) Appendix-I wildlife bred in captivity for commercial purposes, as well as parts and products, at an operation registered with the Secretariat.	D
(d) Wildlife born in captivity of parents that mated in captivity (first (F1) or subsequent generations) that do not qualify as bred in captivity (see § 23.53), as well as parts and products.	F
(e) Confiscated or seized specimens .....	I
(f) Ranched wildlife (wildlife that originated from a ranching operation) .....	R
(g) Source unknown (must be justified on the face of the CITES document) .....	U
(h) Specimens 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 plants, it includes a specimen grown in captivity from a propagule collected from a wild plant.	W

**§ 23.22 What additional information is required on non-Party CITES documents?**

(a) *Purpose*. Under Article X of the Treaty, a Party may accept a CITES document issued by competent

authorities in a non-Party only if the document substantially conforms to the requirements of the Treaty.  
(b) *Additional certifications*. In addition to the information in § 23.20(c)

through (e), CITES documents issued by non-Parties must contain the following certifications on the face of the document:

Activity	Certification
(1) Export .....	(i) The Scientific Authority has advised that the export will not be detrimental to the survival of the species. (ii) The Management Authority is satisfied that the specimen was legally acquired.
(2) Export or re-export of a live plant.	The live plant will be transported so as to minimize the risk of injury or damage to the health of the specimen.
(3) Import .....	The import will be for purposes that are not detrimental to the survival of the species.

**§ 23.23 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 certified true copy

of a CITES document must be issued before the import, introduction from the sea, export, or re-export and must accompany each shipment of specimens.

No copy may be used in place of an original except when endorsed on its face by the issuing Management

Authority. Fax or electronic copies are not acceptable.

(c) *Acceptance of CITES documents.* We will accept a CITES document as valid for import, introduction from the sea, export, and re-export only if the document meets the requirements of §§ 23.20 and 23.22, subparts C and E of this part, 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 (by rubbing or scratching out), added to, or modified in any way unless the change is validated on the document by the stamp and signature of the issuing Management Authority.
(2) Commercial registered breeding operation for Appendix-I wildlife from a Party.	(i) The operation is in the Secretariat's register. (ii) Each specimen is specifically marked and the mark is described on the CITES document.
(3) Commercial registered nursery for Appendix-I plants from Parties.	The operation is in the Secretariat's register.
(4) Conditions .....	All conditions on the CITES document are met.
(5) Extension of validity .....	The validity of a CITES document may not be extended except as provided in § 23.64 for certain timber species.
(6) Humane transport .....	(i) The live wildlife was transported in compliance with the CITES Guidelines for Transport of Live Animals or, in the case of air transport, the International Air Transport Association Live Animal Regulations. (ii) The live plant was transported so as to minimize the risk of injury or damage to the health of the specimen.
(7) Management Authority and Scientific Authority.	The CITES document was issued by a Party or non-Party that has designated a Management Authority and Scientific Authority and has provided information on these authorities to the Secretariat.
(8) Name of importer and exporter.	A CITES document is specific to the name on the face of the document and may not be transferred or assigned to another person.
(9) Phytosanitary certificate ....	A phytosanitary certificate can be used as a certificate for artificially propagated plants only if the issuing Party has provided copies of the certificates, stamps, and seals to the Secretariat.
(10) Pre-Convention .....	For a CITES document designating the specimen as pre-Convention, the date of acquisition must be before the date the species was first listed in the CITES appendices, and the specimen must be considered pre-Convention by both the importing and exporting countries.
(11) Ranched .....	For any ranched specimen of a species transferred from Appendix I to Appendix II because of ranching, international trade cannot involve a non-Party or a Party that holds a reservation on the species. Check our website for a list of these species (see § 23.7).

Key phrase	Conditions for an acceptable CITES document
(12) Registered scientific institutions.	Both importing and exporting scientific institutions are in the Secretariat's register for scientific exchange.
(13) Shipment contents .....	The contents of the shipment match the description of specimens provided on the CITES document, including the quantity, units, and species. A shipment cannot contain more specimens or different species than certified or validated on the CITES document at the time of export or re-export. The quantity of each specimen may be less than, but not more than, the quantity stated for that specimen on the CITES document at the time of issuance.
(14) Quotas .....	For species with a quota on file with the Secretariat, the quantity exported from a country does not exceed the quota.
(15) Wild-collected wildlife specimens.	Wild-collected wildlife specimens (indicated on the CITES document with a source code of "W") are not coming from a country that is outside the range of the species, unless we have information that shows the species has been established in the wild in that country through accidental introduction or other means.

(d) *Verification of CITES documents.* We may request verification of CITES documents from the Secretariat or a foreign Management Authority before deciding whether to accept a CITES document under some circumstances, including, but not limited to, the following:

(1) We receive reliable information from the COP, Standing Committee, Secretariat, or other credible source that indicates the improper implementation of CITES by the country concerned.

(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 the applicable Scientific Authority finding has not been made.

(3) If 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 or has unauthorized changes.

(5) We have reasonable grounds to believe that the specimens identified as

bred in captivity or artificially propagated are wild specimens.

(6) The import of a specimen designated as bred in captivity or artificially propagated is from a non-Party. For an Appendix-I specimen, we must consult with the Secretariat.

(7) For a retrospectively issued CITES document, if both the importing and exporting or re-exporting countries' Management Authorities have not agreed to the issuance of the document.

(e) *Information bulletin.* If we determine, based on reliable information received from the Secretariat, Standing Committee, or other sources that a country is not effectively implementing or complying with CITES, we will issue an information bulletin indicating what action we will take on shipments involving that country. We may restrict the acceptance of CITES documents from that country, either for all CITES species or for only certain species.

**§ 23.24 What CITES documents do I present at the port?**

(a) *Purpose.* Article VIII of the Treaty provides that Parties establish an

inspection process that takes place at a port of exit and entry. Inspecting officials must verify that valid CITES documents accompany shipments and take enforcement action when shipments do not comply with the Convention.

(b) *Process.* Officials in each country inspect the shipment and validate or certify the CITES document. In the United States, you must follow the clearance requirements for wildlife in 50 CFR part 14 or plants in 7 CFR 355.22. The table in this paragraph (b) provides information on:

(1) The types of original CITES documents you must present to be validated or certified by the inspecting official in order 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 introduction from the sea
Artificially propagated plants .....	Required .....	Required .....	Required.
Bred-in-captivity wildlife (for Appendix-I species, only includes wildlife bred for non-commercial purposes).	Required .....	Required .....	Required.
Certificate of origin .....	Required .....	Required .....	Required.
Certificate of ownership .....	Required .....	Required .....	Not required; submit copy.
Commercial registered breeding operation .....	Required .....	Required .....	Required.
Commercial registered nursery .....	Required .....	Required .....	Required.
Export permit .....	Required .....	Required .....	Required.
Hybrid .....	<sup>1</sup> Required .....	Required .....	Required.
Import permit .....	Not required .....	Required .....	Required.

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 introduction from the sea
Introduction from the sea .....	Not applicable .....	Not applicable .....	Required.
Multiple-use permit .....	Required .....	Required .....	Not required; submit copy.
Pre-Convention document .....	Required .....	Required .....	Required.
Re-export certificate .....	Required .....	Required .....	Required.
Registered scientific institution CITES label .....	Not required .....	Not required .....	Not required.
Replacement document where a shipment has been made and is in a foreign country.	Not required .....	Not required .....	Required.
Replacement document where a shipment has not left the United States.	Required .....	Required .....	Required.
Retrospective document .....	Not required .....	Not required .....	Required.
Traveling live-animal exhibition .....	Required .....	Required .....	Not required; submit copy.

<sup>1</sup> Certification letter may not require validation.

**Subpart C—Application Procedures, Issuance Criteria, and Conditions**

**§ 23.25 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 with the processing fee, unless you are fee exempt (see 50 CFR 13.11(d)), to one of the following offices (see § 23.7):

Type of CITES document	Contact office
(1) All types of CITES documents .....	Office of Management Authority.
(2) Export of furs or skins of bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear, and American alligator (see § 23.61).	Division of Law Enforcement at certain designated ports or regional offices.
(3) Re-export of Appendix-II and -III wildlife (unless a permit is required under any other part in this subchapter).	Division of Law Enforcement at certain designated ports or regional offices.
(4) Export of a sport-hunted trophy, its parts or products, of the Alaskan population of black bear ( <i>Ursus americanus</i> ).	Division of Law Enforcement at certain ports in Alaska.

(b) If you do not know the type of CITES document you need for your shipment, go to §§ 23.15–23.17.

(c) If a species is also listed under another part of this subchapter (such as endangered or threatened, see § 23.3), the requirements of all parts must be met. You may submit a single application that contains all the information needed to meet the requirements of CITES and other applicable parts.

(d) You must also follow the general permit procedures in 50 CFR part 13.

(e) You should review the issuance criteria of 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 place your application in our inactive files. When you provide the additional information, you may ask that we reactivate your application.

**§ 23.26 How do we decide 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 50 CFR 13.21(b) 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 of these findings).

(b) As needed, we will forward a copy of the application to the Office of Scientific Authority, State or other Federal government agencies, or other applicable experts. We may also query the Secretariat or foreign Management or Scientific Authorities for information to use in making the required findings.

(c) You must provide 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.

**§ 23.27 What records do I need to apply for a U.S. CITES document?**

(a) When you apply for a U.S. CITES document, you will be asked to provide information that shows the origin of the specimen.

(1) You need to provide sufficient information for us to determine if the issuance criteria in this part are met (see

the section in this subpart for each type of CITES document).  
 (2) Depending on the type of CITES document, you will need records to show that the specimen or founder stock was legally acquired (see § 23.50), that founder stock was acquired without detriment to the species, and that the proposed activity will not be detrimental to the survival of the species (see § 23.51).  
 (b) Documents to be provided in permit applications include, but are not limited to, the following:

Source of specimen	Types of records to keep
(1) Born, bred, grown, or propagated in captivity (see wild-collected 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 grown in captivity from a propagule collected from a wild plant).	(i) Records that identify the breeder or propagator: (A) Signed and dated statement that the specimen was bred or propagated by the breeder or propagator. (B) Name and address of the breeder or propagator. (C) Identification of the specimen, including birth, hatch, or propagation date. For wildlife the identifying information could include sex, size, band number, or other markings. (ii) Examples of documents that help identify a breeder or propagator: (A) International Species Inventory System (ISIS) records. (B) Veterinary certificates. (C) Plant nursery licenses and USDA General Permit. (iii) Records that document the breeding or propagating of specimens at the facility: (A) Number of wildlife (by sex and age- or size-class) and plants at the facility. (B) How long the facility has been breeding or propagating the specimens. (C) Annual production and mortalities. (D) Number sold or transferred annually. (E) Number added from other sources annually. (F) Transaction records with the date, 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. (iv) If a plant is propagated from exempt plant material (see § 23.88(c)), records that document the name and address of the person who sold you the plant material. If you will be seeking a certificate for artificially propagated plants for plants grown from exempt seeds, records that document the cultivated origin of the seed.
(2) Confiscated or seized .....	Copy of remission decision, legal settlement, or disposal action after forfeiture or abandonment that demonstrates the applicant's legal possession.
(3) Imported previously .....	(i) Copies of canceled CITES documents that accompanied shipments into the United States. (ii) For wildlife, copies of a cleared Declaration for Importation or Exportation of Fish or Wildlife (Form 3-177) for each shipment.
(4) Multiple ownership/purchased .....	(i) Records that show the specimen's origin (pre-Convention, previously imported, wild-collected, or born, bred, grown, or propagated in captivity in the United States). (ii) Records that document the history of all transfers in ownership. (iii) Each record needs to specifically identify the specimen and give the name and address of the owner.
(5) Ranched or farmed .....	Records documenting that the specimens were taken under a State-approved program and that all State requirements were met.
(6) Wild-collected .....	Records, such as permits, licenses, and/or tags, that the specimen or the founder stock was legally removed from the wild under relevant foreign, Federal, tribal, State, or local wildlife or plant conservation laws or regulations:



Source of specimen	Types of records to keep
	(i) If taken on private or tribal land, permission of the landowner. (ii) If taken in a national, State, or local park, refuge, or protected area, permission from the applicable agency. (iii) If taken on public land and no permit is required, a statement from the appropriate State or other governmental agency.

(c) You should keep records for as long as you possess the specimen, and, if you sell, donate, or transfer ownership of the specimen, you should provide records to the new owner on the origin of the specimen.

**§ 23.28 What are the requirements for import permits?**

(a) *Purpose.* Article III(3) of the Treaty sets out the conditions under which a Management Authority can grant an import permit.

(b) *U.S. application forms.* Complete and submit the appropriate form for the proposed activity to the Office of Management Authority (see § 23.7):

Type of application for import permits for Appendix-I specimens	Form No.
CITES:	
African Elephant and Leopard Sport-hunted Trophies .....	3-200-19
Appendix-I Plants .....	3-200-35
Appendix-I Wildlife .....	3-200-31
Appendix-I Wildlife Biological Samples .....	3-200-38
Endangered Species Act and CITES:	
ESA Plants .....	3-200-36
ESA Wildlife .....	3-200-37
Marine Mammal Protection Act and CITES:	
Marine Mammals .....	3-200-43
Wild Bird Conservation Act and CITES:	
Personal Pet Bird .....	3-200-46
Scientific Research or Zoological Breeding/Display .....	3-200-47
Under an Approved Cooperative Breeding Program .....	3-200-48

(c) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Issuance criteria for import permits for Appendix-I specimens	Section
(1) The proposed import would be for purposes which are not detrimental to the survival of the species .....	23.51
(2) The purpose of the import is not for primarily commercial purposes .....	23.52
(3) The recipient is suitably equipped to house and care for the live wildlife or plants to be imported. ....	23.56
(4) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP .....	23.20
(5) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen .....	23.20

(d) *Standard conditions.* In addition to the conditions in § 23.45, you must meet all of the following:

(1) You may import and subsequently use the wildlife or plant only for the purposes stated in your application and specifically approved and conditioned in the permit. To ensure that the specimen will not be used for primarily commercial purposes after import, you

must get a letter of approval from us to use the specimen for a different purpose or transfer the specimen where it will be used for a different purpose.

(2) You may not import, subsequently use, or transfer the specimen for any commercial purpose.

(3) The specimen may not be used by you or any other person to establish or participate in an operation or nursery

that is breeding or propagating the species for commercial purposes.

**§ 23.29 What are the requirements for export permits and re-export certificates?**

(a) *Purposes.* Articles III, IV, and V of the Treaty set out the conditions under which a Management Authority may grant an export permit or re-export

certificate for Appendix-I, -II, and -III specimens.  
 (b) *U.S. application forms.* Complete and submit the appropriate form for the proposed activity to the Office of Management Authority or Form 3-200-26 to the Division of Law Enforcement at certain designated ports or regional offices (see § 23.7):

Type of application for export permits and re-export certificates	Form No.
CITES:	
American Ginseng .....	3-200-34
Captive-born Raptors—Export only .....	3-200-25
Captive-born Wildlife (except raptors)—Export only .....	3-200-24
Furs or Skins of Bobcat, River Otter, Alaska lynx, Alaska Gray Wolf, Alaska Brown Bear, or American Alligator .....	3-200-26
Plants .....	3-200-32
Trophies of Alaska Black Bear .....	3-200-26
Trophies by Taxidermists .....	3-200-28
Wildlife .....	3-200-27
Wildlife—Re-export only of Appendix-II and -III specimens from some Law Enforcement offices .....	3-200-26
Wildlife Biological Specimens .....	3-200-29
Endangered Species Act and CITES:	
ESA Plants .....	3-200-36
ESA Wildlife .....	3-200-37
ESA Wildlife Biological Samples .....	3-200-29
Marine Mammal Protection Act and CITES:	
Marine Mammals .....	3-200-53

(c) *A plant propagated from exempt plant material.* A plant grown from exempt plant material (see § 23.88(c)) 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 into the United States.

(2) When you apply for a CITES document, the plant may be eligible for an export permit under this section or a certificate for artificially propagated plants (§ 23.32) depending on the species and the records you have on the origin of the exempt plant material. See § 23.27 for the type of records you need.

(3) See § 23.54(f) on what we consider in deciding if a plant grown from exempt plant material qualifies as artificially propagated.

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) For an export permit:

Issuance criteria for export permits	Appendix			Section
	I	II	III	
(i) The wildlife or plant was legally acquired .....	Yes .....	Yes .....	Yes .....	23.50
(ii) The proposed export would not be detrimental to the survival of the species.	Yes .....	Yes .....	N/A .....	23.51
(iii) An import permit has already been granted or the Management Authority of the importing country has confirmed that it will be granted.	Yes .....	N/A .....	N/A .....	23.17
(iv) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.	Yes .....	Yes .....	YES .....	23.20
(v) The live wildlife or 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 .....	23.20
(vi) For Appendix-III, the specimen originated in a country that listed the species.	N/A .....	N/A .....	Yes .....	23.17

(2) For a re-export certificate:

Issuance criteria for re-export certificates	Appendix			Section
	I	II	III	
(i) The wildlife or plant was legally acquired .....	Yes .....	Yes .....	Yes .....	23.50
(ii) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.	Yes .....	Yes .....	Yes .....	23.20
(iii) For live specimens, an import permit has already been granted or the Management Authority of the importing country has confirmed that it will be granted.	Yes .....	N/A .....	N/A .....	23.17
(iv) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen.	Yes .....	Yes .....	Yes .....	23.20
(v) For re-export of specimens introduced from the sea under an international treaty, convention, or agreement that was in force for the species' protection on July 1, 1975, the specimens were taken in accordance with that treaty, convention, or agreement.	Yes .....	Yes .....	N/A .....	23.31
(vi) For re-export of confiscated Appendix-II specimens only, the proposed re-export would not be detrimental to the survival of the species.	N/A .....	Yes .....	N/A .....	23.50

(e) *Confiscated specimen.* A Management Authority may issue a re-export certificate for a confiscated specimen when the certificate indicates the specimen was confiscated and when the re-export is for one of the following:

(1) For any CITES species, the return of a live specimen to the country of export (see subpart F), placement of a live specimen in a rescue center, or judicial use.

(2) For an Appendix-II or -III species, the disposal of the specimen in the best manner possible to benefit enforcement and administration of the Convention.

**§ 23.30 What are the requirements for certificates of origin?**

(a) *Purpose.* Article V(3) of the Treaty explains when a shipment of Appendix-

III specimens must be accompanied by a certificate of origin.

(b) *U.S. application forms.* For a certificate of origin to export specimens that are listed in Appendix III by another country, but originated in the United States, complete and submit one of the following forms to the Office of Management Authority (see § 23.7):

(1) Application Form 3-200-27 for wildlife.

(2) Application Form 3-200-32 for plants.

(c) *Issuance criteria.* 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 United States.

(2) The scientific name of the species is the standard nomenclature in the

CITES appendices or the references adopted by the COP.

(3) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen.

**§ 23.31 What are the requirements for introduction-from-the-sea certificates?**

(a) *Purpose.* Articles III(5), IV(6), and IV(7) of the Treaty set out the conditions under which a Management Authority may grant a certificate of introduction from the sea.

(b) *U.S. application form.* Complete and submit Form 3-200-31 to the Office of Management Authority (see § 23.7).

(c) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Issuance criteria for introduction-from-the-sea certificates	Appendix		Section
	I	II	
(1) The proposed introduction from the sea would not be detrimental to the survival of the species.	Yes .....	Yes .....	23.51
(2) The purpose of the import is not for primarily commercial purposes .....	Yes .....	N/A .....	23.52
(3) The recipient is suitably equipped to house and care for live wildlife or plants .....	Yes .....	N/A .....	23.56
(4) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.	Yes .....	Yes .....	23.20
(5) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen.	Yes .....	Yes .....	23.20

(d) *Exemption.* As allowed under Article XIV(4) and (5) of the Treaty, you

may directly transport 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 to the United States.

(3) The specimen was taken in accordance with the international treaty, convention, or agreement, including any quotas.

(4) The shipment is accompanied by any official document required under the international treaty, convention, or agreement or otherwise required by U.S. law.

(5) To re-export specimens, you must obtain a certificate from the Office of Management Authority (see § 23.7) that

the specimens were taken in accordance with the provision of the pre-CITES international treaty, convention, or agreement.

(e) *Appendix III*. Introduction-from-the-sea certificate requirements do not apply to Appendix-III species.

**§ 23.32 What are the requirements for certificates for artificially propagated plants?**

(a) *Purpose*. Article VII(5) of the Treaty, grants an exemption to plants that are artificially propagated and a Management Authority grants a certificate.

(b) *General provisions*. We may grant a certificate for plants artificially propagated at your facility or acquired from another facility provided we find that the criteria in paragraph (d) of this section are met.

(1) For an Appendix-I plant species or a hybrid of an annotated Appendix-I species, only specimens that are artificially propagated for non-commercial purposes are eligible for this exemption. See § 23.39 for export of Appendix-I plants artificially propagated for commercial purposes.

(2) The certificate and any subsequent re-export certificate (§ 23.29) must show the source code as “A” for artificially propagated.

(3) For Appendix-I specimens that satisfy the requirements of this section, no CITES import permit is required.

(c) *U.S. application form*. Complete and submit Form 3–200–33 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria*. You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Issuance criteria for certificates for artificially propagated plants	Appendix			Section
	I	II	III	
(1) The plant was legally acquired .....	Yes .....	Yes .....	Yes .....	23.50
(2) The plant was artificially propagated .....	Yes .....	Yes .....	Yes .....	23.54
(3) The Appendix-I species and hybrids of annotated Appendix-I species were propagated for non-commercial purposes.	Yes .....	N/A .....	N/A .....	23.32
(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 .....	23.20
(5) The live plant will be prepared and shipped so as to minimize risk of injury or damage to the health of the specimen.	Yes .....	Yes .....	Yes .....	23.20

(e) *Standard conditions*. In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) You may not export or re-export plants removed from the wild or grown directly from wild seed, and their parts and products under this certificate.

(2) You may not export specimens of Appendix-I species and hybrids of annotated Appendix-I species propagated for commercial purposes under this certificate.

(3) You may export native plants 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 specimens under a higher taxon name only if you identified the taxon in your application and we approved it on this certificate.

**§ 23.33 What are the requirements for bred-in-captivity certificates?**

(a) *Purpose*. Article VII(5) of the Treaty grants an exemption to wildlife that is bred in captivity and a Management Authority grants a certificate.

(b) *General provisions*. We may grant a certificate for wildlife bred in captivity at your facility or acquired from another facility provided we find that criteria in paragraph (d) of this section are met.

(1) For Appendix-I wildlife, only specimens that are bred in captivity for

non-commercial purposes are eligible for this exemption. See § 23.38 for registration of an Appendix-I commercial breeding operation.

(2) The certificate and any subsequent re-export certificate (§ 23.29) must show the source code as “C” for bred in captivity.

(3) For Appendix-I specimens that satisfy the requirements of this section, no CITES import permit is required.

(c) *U.S. application form*. Complete and submit Form 3–200–24 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria*. You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Issuance criteria for bred-in-captivity certificates	Appendix			Section
	I	II	III	
(1) The wildlife was legally acquired .....	Yes .....	Yes .....	Yes .....	23.50

Issuance criteria for bred-in-captivity certificates	Appendix			Section
	I	II	III	
(2) The wildlife was bred in captivity .....	Yes .....	Yes .....	Yes .....	23.53
(3) The Appendix-I species were bred for non-commercial purposes <sup>1</sup> .....	Yes .....	N/A .....	N/A .....	23.33
(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 .....	23.20
(5) The live wildlife will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen.	Yes .....	Yes .....	Yes .....	23.20

<sup>1</sup> This issuance criterion does not apply to live wildlife that is part of a traveling live-animal exhibition.

**§ 23.34 What are the requirements for plant hybrids?**

(a) *General provisions.* Except as provided in paragraph (b) of this section, the export, re-export, or import of a plant hybrid must be accompanied by a valid CITES document, as follows:

If the plant is:	Then the specimen is:
(1) An artificially propagated hybrid of one or more unannotated Appendix-I species or other taxa.	Treated as if listed in Appendix II.
(2) A hybrid that includes two or more CITES species in its lineage and is not a specimen covered in paragraph (a)(1) of this section.	Considered to be listed in the more restrictive appendix, with Appendix I being the most restrictive and Appendix III the least.
(3) A hybrid that includes one CITES species in its lineage and is not a specimen covered in paragraph (a)(1) of this section.	Considered to be listed in the appendix in which the species is listed in the CITES appendices.

(b) *Exception.* Plant hybrids may be excluded from CITES controls by an annotation in Appendix II or III (see § 23.88).

**§ 23.35 What are the requirements for wildlife hybrids?**

(a) *Definition of recent lineage.* Recent lineage for the purposes of this section means the last four generations of that specimen's ancestry (direct line of descent).

(b) *General provisions.* Except as provided in paragraph (c) of this section, the export, re-export, or import of a wildlife hybrid must be accompanied by a valid CITES document that shows the hybrid listed in the following appendix:

If at least one specimen in the recent lineage is included in:	Then the specimen is included in:
(1) Appendix I .....	Appendix I.
(2) Appendix II, and an Appendix-I species is not included in the recent lineage .....	Appendix II.
(3) Appendix III, and an Appendix-I or -II species is not included in the recent lineage .....	Appendix III.

(c) *Exempt wildlife hybrid.* Shipment of a wildlife hybrid that does not have CITES specimens in its recent lineage (exempt wildlife hybrid) must be accompanied by either a CITES document or a letter issued by us or a foreign Management Authority. The letter must describe the specimen, provide the scientific name, and certify that the wildlife contains no CITES specimens in the last four generations of its ancestry.

(d) *U.S. application for an exempt wildlife hybrid.* To apply for a hybrid

exemption letter, provide the following to the Office of Management Authority (see § 23.7), or complete and submit application Form 3-200-57:

- (1) A signed and dated request for a hybrid exemption letter.
- (2) Your name and address.
- (3) The name and address of the recipient in the foreign country.
- (4) The scientific and common names of the species in the hybrid.
- (5) Description of the wildlife, including sex and birth date, if known.

(6) Information that shows a CITES species does not occur in the last four generations of the specimen's ancestry. This includes, but is not limited to, a pedigree or official registration showing direct lineage.

(7) The U.S. port through which the export or re-export will occur.

(e) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The wildlife hybrid does not include any CITES specimen in its recent lineage.

(2) The scientific name of the CITES specimen that is in the lineage of the hybrid is standard nomenclature in the CITES appendices or references adopted by the COP.

**§ 23.36 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 approves cross-border movements of personally owned live wildlife.

(b) *General provisions.* You, the owner of live wildlife, may apply for a certificate of ownership if you frequently take the wildlife with you for companionship or a non-commercial competition to another country.

(1) You must obtain the certificate from the Management Authority in the country where you usually live.

(2) If offspring are born or you acquire specimens while you are traveling in another country, you 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.

(3) Upon return home, you may apply for a certificate of ownership for wildlife born or acquired overseas.

(c) *U.S. application form.* Complete and submit Form 3-200-54 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) You own the live wildlife and the cross-border movement is for personal companionship or use in a non-commercial competition, such as falconry.

(2) You usually live in the United States.

(3) The wildlife was legally acquired (see § 23.50).

(4) You do not intend to sell or otherwise transfer the wildlife while traveling internationally.

(5) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.

(6) The Management Authority of the country of import has agreed to the cross-border movement.

(7) The wildlife is appropriately identified or securely marked.

(8) The wildlife is transported and cared for in a way that minimizes risk of injury, damage to the health, or cruel treatment of the specimen.

(e) *Standard conditions.* In addition to the conditions in § 23.45, all of the following conditions must be met:

(1) You may transport the wildlife for non-commercial purposes only.

(2) You must accompany the wildlife during any cross-border movement.

(3) You may not sell or otherwise transfer the specimen while traveling internationally.

(4) You must retain the original certificate and have it validated 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 (see § 23.42).

(6) If you no longer own the live wildlife, the original certificate must be immediately returned to the issuing Management Authority.

**§ 23.37 What are the requirements for pre-Convention specimens?**

(a) *Purpose.* Article VII(2) of the Treaty allows international trade in pre-Convention specimens 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) *General provisions.* The following general provisions apply:

(1) Trade in specimens under the pre-Convention exemption is only possible if the specimen is considered pre-Convention by both the importing and exporting countries.

(2) When a species is transferred from one appendix to another (such as Appendix II to Appendix I), the pre-Convention date is the date the species was first listed under CITES.

(3) For qualifying Appendix-I specimens, no CITES import permit is required.

(4) The pre-Convention exemption does not apply to offspring of any wildlife or plants born or propagated after the date the species was first listed under CITES.

(c) *U.S. application form.* Complete and submit Form 3-200-23 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The wildlife or plant (including parts and products) was removed from the wild or held in captivity or a controlled environment before the date CITES first applied to it.

(2) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.

(3) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the 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 acquired (see § 23.50).

(e) *U.S. inventory.* If you possess an inventory or stockpile of specimens of species newly listed, the following applies:

(1) You may register with us the inventory or stockpile that you possessed before the effective date of the listing. Complete and submit application form 3-200-59 to the Office of Management Authority (see § 23.7). This registration will expedite the review of applications for pre-Convention certificates.

(2) If you wish to commercially export or re-export pre-Convention stock after the effective date of listing and have not registered your inventory, we will require convincing evidence that the specimens are pre-Convention. This evidence may include information from your recordkeeping system that shows an audit trail of initial stock and quantities exported, re-exported, sold or disposed of domestically, and new stock acquired since the listing.

**§ 23.38 What are the requirements for registering an Appendix-I commercial breeding operation?**

(a) *Purpose.* Article VII(4) of the Treaty provides that Appendix-I specimens that are bred in captivity for commercial purposes shall be treated as if they were listed in Appendix II.

(b) *General provisions.* If you are breeding Appendix-I wildlife for commercial purposes, you may apply to register your operation.

(1) If you are proposing to breed non-native species, you must conduct a study of ecological risks that the escape of specimens may pose to the ecosystem and native species and how to prevent any negative effects.

(2) In the United States, upon receipt of a complete registration request from a U.S. operation, we will publish a notice of receipt in the **Federal Register**. Each notice will invite interested entities to submit written data, views, or comment with respect to the registration request within 30 days after the date of the notice.

(3) If we are satisfied that the operation meets the conditions for registration, we will send the request from a U.S. operation to the Secretariat or provide comments to the Secretariat on requests by other Parties.

(4) If the request is the first registration for a species, the Secretariat will refer it to the appropriate experts for advice and notify the Parties of the registration request. If any Party objects to the registration within a 120-day comment period, approval of the registration will require a two-thirds majority vote by 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 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 submitting Management Authority with an explanation of the reasons for rejection and indicate the specific

conditions that must be met before the registration can be accepted.

(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) A Management Authority may apply special criteria for the registration of operations intending to breed specimens of species that are known to be difficult to breed in captivity, species that have specific requirements for successful breeding in captivity, or specimens that are known to be difficult to distinguish from wild-taken specimens when in trade.

(10) 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.

(11) The registering Management Authority must monitor registered operations to ensure that they continue to meet the registration requirements.

(12) A Party may unilaterally request the removal of a registered operation within its jurisdiction by notifying the Secretariat.

(c) *U.S. application to register.* Complete and submit Form 3-200-55 to the Office of Management Authority (see § 23.7).

(d) *Criteria.* For your breeding operation to be registered, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for registering an Appendix-I breeding operation	Section
(1) The specimen was bred for commercial purposes .....	23.38
(2) The founder stock was legally acquired .....	23.50
(3) The wildlife was bred in captivity .....	23.53
(4) Where the establishment of a breeding operation involves the removal of animals from the wild (allowable only under exceptional circumstances), the operation must demonstrate to the satisfaction of the Management Authority and the Secretariat that the removal is or was not detrimental to the conservation of the species .....	N/A
(5) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP .....	23.20
(6) The breeding operation will make a continuing, meaningful contribution to the conservation of the species, as warranted by the conservation needs of the species .....	N/A

(e) *Standard conditions of the registration.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) You must uniquely mark, as proposed at the time of registration, all specimens from the breeding operation. Birds must have closed bands.

(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 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) *Export procedure for registered operations.* Appendix-I species bred at a

registered operation are treated as if listed in Appendix II.

(1) The export permit (see § 23.29) may be granted 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.

(2) The export permit must show the source code as "D" and give the identification number of the registered breeding operation where the specimens originated.

(3) Any subsequent re-export certificates (§ 23.29) for these specimens must also show the source code as "D" and give the number of the breeding operation.

(4) No CITES import permit is required for qualifying specimens.

**§ 23.39 What are the requirements for export of Appendix-I plants 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 treated as if they were listed in Appendix II.

(b) *General provisions.* An export permit can be issued for specimens of Appendix-I species and hybrids of annotated Appendix-I species artificially propagated for commercial purposes at your facility or acquired from other facilities when the species meets the criteria in paragraph (d) of this section. These artificially propagated specimens are treated as if listed in Appendix II.

(1) The export permit is valid for only 6 months and must show the source code as "D" for plants artificially propagated for commercial purposes.

(2) Any subsequent re-export certificate (§ 23.29) for these specimens must also show the source code as "D."  
 (3) No CITES import permit is required for qualifying specimens.

(c) *U.S. application form.* Complete and submit Form 3–200–33 to the Office of Management Authority (see § 23.7).  
 (d) *Issuance criteria.* You must provide sufficient information for us to

find that your proposed activity meets all of the following criteria:

Issuance criteria for export permits	Section
(1) The specimen was propagated for commercial purposes .....	23.39
(2) The founder stock was legally acquired .....	23.50
(3) The proposed export would not be detrimental to the survival of the species .....	23.51
(4) The plant was artificially propagated .....	23.54
(5) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP .....	23.20
(6) The live plant will be prepared and shipped so as to minimize risk of injury or damage to the health of the specimen .....	N/A

(e) *Nursery registration.* [Reserved]

**§ 23.40 What are the requirements for registered scientific institutions?**

(a) *Purpose.* Article VII(6) of the Treaty grants an exemption that allows international trade in certain specimens for non-commercial loan, donation, or exchange between scientific institutions.

(b) *General provisions.* Scientific institutions must register with the Management Authority in their country. Scientists who wish to use this exemption must be affiliated with a registered scientific institution.

(1) The Management Authority 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.

(2) The Management Authority communicates the name, address, and assigned code to the Secretariat, who maintains a list of registered scientific institutions and provides that information to all Parties.

(3) A registered scientific institution does not need separate CITES documents for the non-commercial loan, donation, or exchange of preserved, frozen, dried, or embedded museum specimens, herbaria specimens, or live plant material with another registered institution. The shipment must have an external label that contains specified information.

(c) *U.S. application to register.* To register, complete and submit application Form 3–200–39 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You, a registered scientific institution, must provide sufficient information for us to find that

your proposed activity 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) Records are properly accessioned in a permanent catalog.

(4) Records are permanently maintained for loans and transfers to other institutions.

(5) Specimens are acquired primarily for research that is to be reported in scientific publications.

(6) Collections are prepared and arranged in a way that ensures their utility.

(7) Specimen labels, permanent catalogs, and other records are accurate.

(8) Specimens are lawfully acquired and possessed under a country's national wildlife and plant laws.

(9) Appendix-I specimens are permanently and centrally housed under the direct control of the institution that manages them in a way that prevents their use for decoration, trophies, or commercial purposes.

(e) *Standard conditions.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) You are only authorized to send and receive preserved, frozen, dried, or embedded museum specimens, herbaria specimens, or live plant material as a non-commercial loan, donation, or exchange.

(2) You and the receiving or sending scientific institution must be registered by the applicable Management Authorities, and the registrations must be on file with the Secretariat.

(3) You must ship specimens only for scientific research and not for use as decoration, trophies, or commercial purposes.

(4) You must affix a customs declaration label 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 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.

(5) You must have information to show that specimens were legally acquired in the country of origin and/or legally imported.

(6) You are only authorized to receive specimens that are under the authority of a registered scientific institution and have been permanently and accurately recorded by the sending institution.

(7) You are authorized to import, export, or re-export preserved, frozen, dried, or embedded biological tissue samples, including blood and tissue samples, that will be partially destroyed during analysis provided a portion of the sample is maintained at the museum for future scientific reference. This does not include samples that will be completely destroyed during analysis.

**§ 23.41 What are the requirements for traveling live-animal exhibitions?**

(a) *Purpose.* Article VII(7) of the Treaty grants an exemption for specimens that qualify as bred in



captivity or pre-Convention and are part of a traveling live-animal exhibition.

(b) *General provisions.* You, as an exhibition wishing to travel internationally with live wildlife, must register with the Management Authority in the country where the exhibition is usually based.

(1) You must obtain an original pre-Convention or bred-in-captivity certificate for each specimen that indicates it is part of a traveling live-animal exhibition (see § 23.5).

(2) Parties should not collect the original certificate at their borders but should treat this CITES document like a passport for export and re-export from each country.

(3) Parties should check specimens closely to determine that the specimen matches the certificate and ensure that each specimen is being transported and cared for in a manner that minimizes the risk of injury, damage to the health, or cruel treatment of the specimen.

(4) If offspring are born or you acquire specimens while traveling in another country, you must obtain the appropriate CITES document for the export or re-export of the wildlife from the Management Authority of that country (for persons subject to the jurisdiction of the United States, the purchase in foreign commerce or import of any ESA species also requires a permit from the Office of Management Authority, see 50 CFR part 17).

(5) Upon return home, you may apply for a traveling live-animal exhibition certificate for wildlife born or acquired overseas.

(c) *U.S. application form.* Complete and submit Form 3-200-30 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) You own the live wildlife, and the cross-border movement is for display or entertainment purposes, and not for breeding or other purposes.

(2) You are based in the United States.

(3) The specimen meets the issuance criteria for a pre-Convention certificate in § 23.37(d) or a bred-in-captivity certificate in § 23.33(d).

(4) You do not intend to sell or otherwise transfer the wildlife while traveling internationally.

(5) The wildlife is securely marked or identified in such a way that border officials can verify that the certificate and specimen correspond.

(e) *Standard conditions.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) The certificate may be used by you, but must not be transferred or assigned to another person or traveling live-animal exhibition.

(2) You must transport internationally the specimen only for display or entertainment purposes, not for breeding or other purposes.

(3) You must retain the original certificate and have it validated at each border crossing.

(4) You must not sell or otherwise transfer the specimen while traveling internationally.

(5) If the certificate is lost, stolen, or accidentally destroyed, you must obtain a replacement certificate only from the

issuing Management Authority (see § 23.42).

(6) If you no longer own the wildlife, the original certificate must be immediately returned to the issuing Management Authority.

**§ 23.42 What are the requirements to replace lost, damaged, stolen, or accidentally destroyed CITES documents?**

(a) *General provisions.* A Management Authority may issue duplicate CITES documents to replace lost, damaged, stolen, or accidentally destroyed CITES documents under the following general provisions:

(1) For commercial shipments, the issuing Management Authority should immediately inform the Management Authority in the country of destination and the Secretariat or send them a copy of the replacement CITES document.

(2) The replacement CITES document must indicate that it is a “true copy of the original” and include the number and expiration date of the document being replaced and the reason for replacement.

(b) *U.S. application procedures.* To amend or renew a CITES document, see 50 CFR part 13. To apply for a replacement CITES document, you must provide all of the following:

(1) Complete and submit application Form 3-200-56 to the Office of Management Authority (see § 23.7).

(2) Submit an application processing fee unless you are fee exempt (see 50 CFR 13.11(d)).

(3) 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) For wildlife, the validated CITES document and cleared Declaration for Importation or Exportation of Fish or Wildlife (Form 3-177). (B) For plants, the validated CITES document. (C) Any correspondence you have had with the shipper or importing country’s Management Authority concerning the shipment.
(ii) The original CITES document no longer exists.	Submit a signed, dated, and notarized statement that: (A) Refers to the permit 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.

(c) *Issuance criteria.* For us to issue or accept a replacement CITES document,

you must provide sufficient information

for us to find that your proposed activity meets all of the following criteria:

(1) You have fully explained the circumstances responsible for the lost, damaged, stolen, or accidentally destroyed CITES document and they are reasonable.

(2) If the shipment has already been made, the Management Authority of the importing country has indicated it will accept the replacement CITES document.

(d) *Standard conditions.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) If the original CITES document is found, you must return it to the issuing Management Authority.

(2) A CITES document issued for a shipment that has already occurred does not require validation.

(e) *Validation.* For an export or re-export that has not left the United States, follow the procedures in § 23.24. If the shipment has been made and is in a foreign country, submit the original un-validated 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.

#### § 23.43 What are the requirements for retrospective CITES documents?

(a) *General provisions.* Except as provided in paragraph (b) of this section, a Management Authority will not:

(1) Issue CITES documents retrospectively.

(2) Provide exporters, re-exporters, and/or consignees in importing countries with declarations about the legality of specimens exported or re-exported from their countries without the required CITES document.

(3) Provide exporters, re-exporters, and/or consignees in importing countries with declarations about the legality of CITES documents that at the time of export, re-export, or import did not meet the requirements of CITES.

(4) Accept CITES documents, including ones for in-transit shipments, that were issued retrospectively.

(b) *Special provisions.* A Management Authority can issue or accept a retrospective CITES document only if the Management Authorities of the importing and exporting countries, after a prompt and thorough investigation and in close consultation, are satisfied that all the following conditions are met:

(1) The request for a retrospective CITES document is being made at the time the shipment is being imported.

(2) The exporter, re-exporter, or importer is not responsible for the irregularities.

(3) The export, re-export, or import of the specimens are otherwise in compliance with CITES and the relevant national legislation of the countries involved.

(4) The Management Authority sends a copy of any retrospective CITES document to the Secretariat. It must contain a statement that it was issued retrospectively and give the reason for the issuance.

(c) *U.S. application.* You must provide the following information to the Office of Management Authority (§ 23.7):

(1) A completed application Form 3–200–58.

(2) A completed application form for the type of activity you conducted (see § 23.17).

(d) *Issuance criteria.* For us to issue or accept a retrospective CITES document, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The wildlife or plant has been exported, re-exported, or introduced from the sea without a valid CITES document and was presented to the appropriate official for inspection at the time of import.

(2) The wildlife or plants would have qualified for the applicable CITES document if you had applied for it before importing, introducing from the sea, exporting, or re-exporting the specimen.

(3) The import, introduction from the sea, export, or re-export did not require a U.S. permit under another part of this subchapter.

(4) As provided in paragraph (e) of this section, the irregularities are not attributable to you or an agent on your behalf.

(5) The importing Management Authority has agreed to accept the retrospectively issued CITES document.

(e) *Irregularities.* In the United States, irregularities include one of the following:

(1) You tried to find out the requirements and can show that you were misinformed about CITES requirements by an employee of the U.S. Fish and Wildlife Service, APHIS (for plants), or the Management Authority in the foreign country that should have informed you about CITES documents.

(2) The wildlife or plant item qualifies as a personal or household effect (see § 23.12).

(3) For live Appendix-II or -III wildlife or plants, the specimen is owned by you for your personal use, accompanied you as personal baggage, and number no more than two.

(4) For a pre-Convention Appendix-I wildlife or plant, you own the specimen

for your personal use and it accompanied you as personal baggage.

(f) *Validation.* Submit the original un-validated retrospective CITES document to the appropriate foreign authorities. We will not validate the retrospective CITES document for a shipment that has already been shipped to a foreign country.

#### § 23.44 How long is a CITES document valid?

(a) *Purpose.* Article VI(2) of the Treaty sets the time period within which an export permit is valid. Validity periods for other CITES documents are prescribed in this section.

(b) *Time of validity.* CITES documents are valid only if presented for import or introduction from the sea within the time of validity (before midnight of 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 certificate for traveling live-animal exhibitions and certificate of ownership will be valid for no longer than 3 years from the issuance date.

(4) Other CITES documents will state the length of their validity, but no U.S. CITES document will be valid for longer than 4 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 § 23.64.

#### § 23.45 What CITES document conditions do I need to follow?

(a) *General conditions.* You must comply with all of the following general conditions:

(1) For a U.S. CITES document, you must comply with the provisions of 50 CFR part 13 as conditions of the document. You must comply with all applicable foreign, local, State, tribal, or Federal wildlife or plant conservation laws, as well as the regulations in this subchapter, including, but not limited to, any that require permits.

(2) For export and re-export of live wildlife, the CITES document is only valid if the transport conditions comply with the CITES Guidelines for Transport of Live Animals or, in the case of air transport, with the International Air Transport Association Live Animal Regulations.

(3) For export and re-export of live plants, you must prepare and ship the

specimens so as to minimize the risk of injury or damage to health. You must ensure that living specimens to be shipped are healthy.

(4) 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.

(5) 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.

(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 condition a CITES document with special conditions 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 We Consider in Making Certain Findings**

**§ 23.50 What factors do we consider 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 granting export permits and re-export certificates.

(b) *Legal acquisition.* Legal acquisition refers to both:

(1) Whether the specimen and its founder stock were traded internationally in accordance with the provisions of CITES.

(2) Whether the specimen and its founder stock were 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.

(c) *General provisions.* We must make a finding that a specimen was legally acquired before we can issue certain kinds of CITES documents.

(1) We make this decision on a case-by-case basis considering all available information.

(2) As provided in paragraphs (d) through (j) of this section, you, the applicant, must provide sufficient information to establish the origin of the specimen and whether it was legally acquired (see § 23.27 for details on recordkeeping or the applicable application form referenced in subpart C of this part).

(3) For States and Tribes that have requested export approval on a State-wide or reservation-wide basis and that have management programs that provide us with the information necessary to make administrative findings, we make legal acquisition findings on a State or tribal basis. Permit applications for exports under these administrative findings must be

accompanied by information showing that the specimens were legally acquired under State or tribal requirements.

(4) As necessary, we consult with foreign Management or Scientific Authorities, the CITES Secretariat, State conservation agencies, enforcement staff within our agency and APHIS, and other appropriate experts.

(d) *Personal use.* To establish legal acquisition of any specimen to be exported or re-exported for your personal use, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria (If any of the following criteria do not apply, then you must comply with paragraphs (e) through (i) of this section.):

(1) You acquired the specimen in the United States and personally own and possess it for strictly non-commercial purposes.

(2) The number of specimens is reasonably appropriate for the nature of your export or re-export as personal use.

(3) There is no persuasive evidence of illegal transactions involving the specimen.

(4) You must provide information on the origin of parental or founder stock, if we request it as provided in paragraph (f)(2) of this section.

(5) You must provide information to show legal acquisition:

If the specimen was:

Then you must provide:

(i) Born, bred, propagated, or grown in captivity in the United States (see wild-collected 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 grown in captivity from a propagule collected from a plant).	A signed breeder's or propagator's statement (see § 23.27) or a statement with the name and address of breeder or propagator, date of sale or transfer, species, and birth or hatch date for wildlife.
(ii) Imported previously by someone other than the applicant.	Copies of a canceled CITES or other import documents under which the specimen was exported or re-exported.
(iii) Of unknown origin .....	A complete description of the circumstances under which you acquired it (such as where, when, and from whom you acquired the specimen), including your efforts to obtain information on the origin of the specimen.
(iv) Taken from the wild in the United States .....	Information showing the specimen was legally removed from the wild under relevant wildlife or plant conservation laws or regulations.

(e) *Multiple ownership.* In addition to meeting the requirements of paragraphs (f) through (i) of this section, if you were not the importer, collector from the wild, or breeder or propagator, you must show a clear record of the history of ownership that identifies the specimen and, if applicable under paragraph (f) of

this section, its founder stock through each owner.

(f) *Born, bred, grown, or propagated in captivity.* For the export of specimens that are born, bred, grown, or propagated in captivity, we need reasonable proof that the founder stock or parental stock was legally acquired. For wildlife that was born in captivity

from an egg collected from the wild from parents that mated or exchanged genetic material in the wild, or a plant that was grown in captivity from a propagule collected from a wild plant, go to paragraph (h) of this section.

(1) You must provide information as follows:

If the species is listed in:	Then you must establish that:
(i) Appendix I .....	The founder stock was legally acquired.
(ii) Appendix II or III and the founder stock was collected from the wild in the United States.	The founder stock was legally acquired.
(iii) Appendix II or III and the founder stock was not collected from the wild in the United States, except for a plant grown from exempt plant material (see § 23.88(c)).	The parental stock was legally acquired and, if requested under paragraph (f)(2) of this section, founder stock was legally acquired.

(2) You must also provide information to establish that the founder stock was legally acquired if we request it based on any of the following factors:

- (i) The species is uncommon in captivity in the United States.
- (ii) The species has not been documented to breed or propagate readily in captivity.
- (iii) There is significant illegal trade in the species.
- (iv) There is little or no record of legal import of the species into the United States.

(v) Range countries do not allow commercial export, or allow only limited, non-commercial export, of the species.

(g) *Imported previously.* For the re-export of specimens that were previously imported into the United States:

(1) You must provide information to satisfy us that the specimen was legally imported.

(2) We consider any reliable, relevant information we receive concerning the validity of a CITES document, regardless of whether the specimen has been imported and the shipment cleared by us or APHIS.

(h) *Wild-collected in the United States.* For specimens collected from the wild in the United States:

(1) You must provide information showing the legal collection of any specimen.

(2) 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 whether permission of the appropriate management agency or landowner was obtained to collect the specimen.

(i) *Confiscated specimens.* We may issue CITES documents to export or re-export confiscated Appendix-II and -III wildlife or plants under the following circumstances:

(1) You must provide a copy of the legal document that shows the transfer of the confiscated specimen to you and shows that any conditions on the document have been met.

(2) If the specimen is offspring of the confiscated wildlife or plant, you must

provide information that it is the offspring of the documented confiscated specimen.

(3) All CITES findings must be made, including the finding by the Office of Scientific Authority that the export or re-export will not be detrimental to the survival of the species (see § 23.51).

(j) *Donated specimens of unknown origin.* We may issue CITES documents to export or re-export donated wildlife or plants of unknown origin under the following circumstances:

(1) You are a public institution (see 50 CFR 10.12) that did not solicit the donation.

(2) You follow standard recordkeeping practices and make reasonable efforts to obtain supporting information on the origin of the specimen.

(3) You provide information to show you made a reasonable effort to find a suitable recipient in the United States.

(4) The export or re-export will provide a conservation benefit to the species.

(5) There is no persuasive information of illegal transactions involving the specimen.

(6) The export or re-export is non-commercial, with no money or barter exchanged except for shipping costs.

(7) There is no history of institutions receiving a series of rare and valuable specimens or a large quantity of wildlife or plants of unknown origin.

(8) All other CITES findings must be made, including the finding by the Office of Scientific Authority that the export or re-export will not be detrimental to the survival of the species (see § 23.51).

#### **§ 23.51 What factors do we consider 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 species is not for purposes that would be detrimental to the survival of the species.

(b) *Types of detriment.* Detrimental activities, depending on the species, could include, among other things, non-sustainable use (see § 23.5) and proposed 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) There is scientific information that demonstrates the proposed activity represents sustainable use.

(2) The removal of the animals or plants from the wild is part of a scientifically based sustainable-use management plan, if established, that is designed to eliminate over-utilization of the species.

(3) If there is no sustainable-use management plan established, the removal of the plants or animals 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 be unsustainable or 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 species' recovery.

(3) Would 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, or other scientific management information.

(1) We consult with the States, other Federal agencies, 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 act in a precautionary manner 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, require more detailed information, and make our decisions in a more precautionary manner 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 specimens to captive or cultivated specimens that cannot be considered artificially propagated or bred in captivity to specimens that are artificially propagated or bred in captivity.

(3) From plants grown from non-exempt seeds or seedlings to plants grown from exempt seeds or seedlings.

(4) From native species to non-native species.

(5) From high potential for invasive effects to limited potential for invasive effects.

(6) From high volume of commercial trade to low volume of trade.

(7) From commercial shipment to non-commercial shipment.

(8) From high occurrence of illegal trade to low occurrence of illegal trade.

(9) From high risk of disease transmission to limited risk of disease transmission.

(10) From listed under Article II(1) or II(2)(a) of the Treaty to listed under Article II(2)(b).

(h) *Quotas for Appendix-I species.* When an export quota has been set by the COP for an Appendix-I species, we will consider the scientific and management aspects used as the basis of the quota when we make our non-detriment finding. We will contact the Scientific and Management Authorities of the exporting country for further information if needed.

#### **§ 23.52 What factors do we consider in making a finding of primarily commercial purposes?**

(a) *Purpose.* Under Article III, paragraphs 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.

(b) *General principles.* We will follow these general principles in making a decision on whether a proposed activity is for primarily commercial purposes:

(1) Trade in Appendix-I species must be subject to particularly strict regulation and authorized only in exceptional circumstances.

(2) The definition of "commercial" in § 23.5 applies.

(3) We will look at all aspects of the intended use of the import or introduction from the sea. If the non-commercial aspects do not clearly predominate, we will consider the import or introduction to be primarily commercial.

(4) The burden of proof for showing that the intended use is clearly non-commercial is on you, the applicant.

(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 may be commercial, it is the intended use of the specimen that must not be for primarily commercial purposes.

(6) All net profits generated in the United States must be used for the conservation of the Appendix-I species in a range country.

(7) Net profit includes 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, to the extent that such funds or other valuable considerations exceed the reasonable expenses that are properly attributable to the proposed activity.

(c) *Examples.* The following are examples of categories of transactions in which the non-commercial aspects 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 the circumstances commonly encountered. They do not cover all situations where import or introduction could be found not to be for primarily commercial purposes.

(1) *Purely private use.* A specimen that is imported or introduced purely for private use is not considered to be 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 of an Appendix-I specimen may be permitted in situations where it is being imported or introduced by a scientist or scientific institution and the resale, commercial exchange, or exhibit for economic benefit of the specimen is not the primary intended use.

(3) *Conservation, education, or training.* Generally an Appendix-I specimen may be imported or introduced by government agencies or non-profit institutions for purposes of conservation, education, or training. For example, a specimen could be imported or introduced primarily to train customs staff in effective CITES control.

(4) *Biomedical industry.* Import or introduction 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 to develop and sell products that promote public health for profit. However, if the importer clearly shows that the sale of products is only incidental to public health research and not for the primary purpose of economic benefit or profit, then such an import or introduction 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 programs.* As a general rule, import or introduction of an Appendix-I specimen for a captive-breeding program must have as a priority, the long-term protection and recovery of the species in the wild. The

captive-breeding 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 operation plans to sell surplus specimens to help offset the costs of its program, import or introduction would only be allowed if any profit would be used to support the captive-breeding 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 by a professional dealer who states a general intention to eventually sell the specimen to an undetermined recipient would be considered to be for primarily commercial purposes. However, import or introduction 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 granting of permits, is in place.

(d) *For-profit entities.* Commercial organizations may be considered for an import permit or introduction-from-the-sea certificate, but the nature of these kinds of organizations to carry out activities in the pursuit of gain or profit, makes it more difficult for us to find that a proposed import or introduction is not to be used for primarily commercial purposes.

(e) *General information.* As provided in paragraphs (b) and (c) of this section, you must provide sufficient information to establish that the intended use of the specimen is not for primarily commercial purposes. This includes, but is not limited to:

(1) A description of your proposed activities, including any public outreach that may increase revenue and the disposition of any offspring.

(2) A statement of the reasons you believe your proposed activities are not primarily commercial.

(3) If there is any anticipated net profit, a description of 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, time frames for accomplishing tasks, and anticipated benefits to the species).

(4) A plan to monitor any proposed conservation project, including expenditure of funds or completion of tasks.

(5) You must also provide the additional information in paragraph (f)

of this section if you are a for-profit entity or if we request it based on any of the following factors:

(i) The species is uncommon in captivity in the United States.

(ii) The species has high public appeal.

(iii) The proposed use of the specimen could be capable of generating substantial revenues.

(f) *Additional information.* You must provide a statement from a licensed, independent certified public accountant that your internal accounting system is sufficient to account for and track funds generated by the proposed activities.

You must also provide one of the following:

(1) A detailed analysis of expected revenue (both direct and indirect) and expenses to show any anticipated net profit and how you will track funds.

(2) A description of how your proposed activities will benefit the Appendix-I species in its native range and how the costs of providing that conservation benefit equal or exceed any net profit anticipated from the proposed activities.

#### **§ 23.53 What factors do we consider in making a bred-in-captivity finding?**

(a) *Purpose.* Article VII, paragraphs 4 and 5 of the Treaty, provides exemptions that allow for the special treatment of wildlife that was bred in captivity (see §§ 23.33 and 23.38).

(b) *Definitions.* The definition of "bred in captivity" relies on the following terms:

(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 which may include artificial housing, waste removal, provision of veterinary care, protection from predators, and artificially supplied food.

(2) A *first-generation (F1) offspring* is a specimen produced in a controlled environment from parents at least one of which was conceived in or taken from the wild.

(3) An *offspring of second generation (F2) or subsequent generations* is a specimen produced in a controlled environment from parents that were also produced in a controlled environment.

(4) The *breeding stock* of an operation means the ensemble of all the wildlife in the operation used for reproduction.

(c) *Bred-in-captivity criteria.* For a specimen to qualify as bred in captivity, we must find 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 parents were in a controlled environment when development of the offspring began.

(3) The breeding stock meets the criteria in paragraph (d) of this section.

(d) *Breeding stock.* The breeding stock must meet all of the following criteria:

(1) Was established according to 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 with only occasional introduction of wild specimens as provided in paragraph (e) of this section.

(4) Has consistently produced offspring of second generation or subsequent generations in a controlled environment or the captive population of the species in the United States is managed in a way demonstrated to be capable of reliably producing second-generation offspring.

(e) *Addition of wild specimens.* A breeder may introduce a very limited number of wild specimens (including eggs or gametes) into the breeding stock provided all of the following conditions are met:

(1) The specimen was acquired in accordance with the provisions of CITES and relevant national laws.

(2) The specimen was acquired in a manner not detrimental to the survival of the species in the wild.

(3) The specimen was added either to prevent or alleviate deleterious inbreeding, with the amount of such addition determined by the need for new genetic material, or to dispose of confiscated animals according to § 23.70.

#### **§ 23.54 What factors do we consider in making an artificially propagated finding?**

(a) *Purpose.* Article VII, paragraphs 4 and 5, of the Treaty provides exemptions for the special treatment of plants that were artificially propagated (see §§ 23.32 and 23.39).

(b) *Controlled conditions* means a non-natural environment that is intensively manipulated by human intervention for the purpose of producing selected species or hybrids. General characteristics of controlled conditions may include, but are not limited to, tillage, fertilization, weed control, irrigation, or nursery operations such as potting, bedding, or protection from weather.

(c) *Artificially propagated criteria.* For a plant specimen to qualify as

artificially propagated, we must find all the following criteria are met:

(1) A plant (including parts and products) must be grown from a seed, cutting, division, callus tissue, other plant tissue, spore, or other propagule under controlled conditions.

(2) The cultivated parental stock used for artificial propagation must have been established according to the provisions of CITES and relevant national laws;

(3) The cultivated parental stock must have been established in a manner not detrimental to the survival of the species in the wild; and

(4) The cultivated parental stock must be managed so that long-term maintenance of the cultivated stock is guaranteed.

(d) *Seeds.* A seed of a species listed in Appendix I or listed in Appendix II or III with an annotation to include seeds is artificially propagated only when the criteria in paragraph (c) of this section are met.

(e) *Grafted plant.* A grafted plant is artificially propagated only when both the rootstock and the graft have been artificially propagated according to paragraph (c) of this section.

(f) *Exempt plant material.* A plant grown from:

(1) A flaked seedling or tissue culture is considered artificially propagated, provided we have reasonable grounds to believe the specimen did not originate from wild propagules.

(2) A plant from an exempt seed will not be considered artificially propagated if the seed is of wild origin. If limited information is available on the origin of the seeds, we will consider whether the species is commonly artificially propagated and the expected level of seed collection from the wild, in making a finding of whether the plant qualifies as artificially propagated.

(g) *Timber.* Timber taken from trees grown in a monospecific plantation is considered artificially propagated.

**§ 23.55 What factors do we consider in making a finding of bred or propagated for commercial purposes?**

(a) *General provisions.* To decide whether to grant an exemption under Article VII(4) or Article VII(5) of the Treaty, we must make a finding on whether an Appendix-I specimen was bred or propagated for commercial purposes.

(1) We make this decision on a case-by-case basis considering all available information.

(2) The definition of "commercial" in § 23.4 applies.

(3) We assess the total circumstances surrounding the intention of the public, private, non-profit, or commercial (for-

profit) entity in carrying out the captive breeding or propagation activity.

(4) We consider the reproductive biology of the species and all aspects of the breeding or propagation program at the facility.

(5) As necessary, we consult with experts.

(b) *Required information.* You, the applicant, must provide sufficient information to establish whether you have bred or propagated a specimen for commercial purposes. This includes, but is not limited to:

(1) A description of the overall goals and objectives of the breeding or propagation program.

(2) Information on the program, such as management of genetic stock, size of breeding or propagation stock, approximate number of specimens produced each year, maximum number of individuals that can be maintained at the facility, how you decide stock is surplus, and how you plan to dispose of any surplus stock.

(3) Information demonstrating the commercial or non-commercial nature of the proposed trade. This includes the number of specimens of the species you placed outside your facility in the last 5 years, purpose of each transaction, any net profit gained, and anticipated transactions in the next year.

**§ 23.56 What factors do we consider 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 a live specimen of an Appendix-I species can be issued only if we are satisfied that the proposed recipient is suitably equipped to house and care for it.

(b) *General principles.* We will follow these general principles in making a decision on whether an individual or institution has facilities that would provide proper housing to maintain the specimens for the intended purpose, and whether persons caring for the specimen have the expertise to provide proper care and husbandry or horticultural practices.

(1) All individuals or institutions that would be receiving a specimen must be identified in an application and their facilities approved by us, including individuals or institutions that are likely to receive a specimen within 1 year of it arriving in the country.

(2) You, 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 look at all possible uses of the specimen, including the possibility of offspring being produced even though breeding is not the main purpose of the import or introduction.

(4) We use the best available information on the requirements of the species in making a decision, and will consult with other Federal and State agencies and experts, as appropriate.

(5) The degree of scrutiny that we give an application is based on 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) Sufficient space, both indoors and outdoors if appropriate, to allow the wildlife to move, behave in a normal manner, and interact with other members of its species, as necessary.

(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 that can house the wildlife on a long-term basis.

(4) A plan to house and care for any offspring and disposition of any offspring that will not remain at the facility.

(5) Provision of water and nutritious food of a nature and in a way that are appropriate for the species.

(6) An individual or staff that is properly trained and experienced in providing daily care and maintenance for the species being imported or introduced, or closely related species.

(7) Readily available veterinarian care or veterinary staff experienced with the species or a closely related species, including emergency care.

(d) *Specific factors considered for plants.* (1) Sufficient space, appropriate lighting, and environmental conditions to ensure proper growth and reproduction.

(2) An individual or 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 paragraph (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 closely related species at the facility, including number of births or plants propagated, mortalities for the previous 5 years, significant injuries to wildlife or damage to plants, and occurrence of significant disease outbreaks over the previous 5 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 reoccurring (more than twice in the previous 5 years) or which affect behavior, breeding, educational use, or other conservation uses of the specimen.

(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 specimens are completed or the staff is identified or properly trained:

(1) We will review all available information, including construction plans or intended staffing, and make a finding based on this information.

(2) We will place a condition in any positive finding that the import cannot

occur until the facility has been completed or the staff hired and/or trained and approved by us.

**Subpart E—International Trade in Certain Specimens**

**§ 23.60 How can I trade internationally in American ginseng?**

(a) *General provisions.* Whole plants and roots (whole, sliced, and parts, excluding manufactured parts or products, such as powders, pills, extracts, tonics, teas, and confectionery) of American ginseng (*Panax quinquefolius*), whether wild or artificially propagated, are included in Appendix II.

(1) Wild ginseng categories include:

	Wild	Wild simulated	Wild cultivated
Cultivation .....	None .....	Planting of seeds or roots only.	Intensive. .
Fungicide use .....	None .....	None .....	Extensive.
Habitat .....	Within natural range, in suitable ginseng habitat.	Within natural range, in suitable ginseng habitat.	Grown in fields, whether within the natural range, or not.
Harvest Methods .....	Dug by hand .....	Dug by hand .....	Often dug by mechanical means.
Origin .....	Naturally occurring .....	Wild seeds or roots planted in natural habitat.	Wild seeds or roots.

(2) Artificially propagated ginseng (also referred to as cultivated ginseng) categories include:

	Cultivated	Cultivated Woodsgrown
Cultivation .....	Intensive .....	When planted, largest rocks removed and drainage ditches may be dug around beds.
Fungicide use .....	Extensive .....	Extensive.
Habitat .....	Grown in fields, whether within the natural range or not..	Grown in woods similar to natural habitat, whether within the natural range or not.
Harvest Methods .....	Often dug by mechanical means .....	Dug by hand.
Origin .....	Cultivated seeds or roots .....	Cultivated seeds or roots.

(b) *Approved export.* States and Tribes set up and maintain ginseng management and harvest programs designed to monitor and protect American ginseng from over-harvest. For States and Tribes with management programs that provide us with the necessary information, we make administrative findings on a State-wide or reservation-wide basis. States and Tribes for which these administrative findings have been made are requested to complete and submit form 3–200–61 as an annual report to provide

information on the previous year’s harvest to us by May 31 of each year. Annual reports should include at least the following:

(1) Pounds of wild ginseng and artificially propagated ginseng harvested.

(2) For wild ginseng, average number of roots per pound.

(3) Average age of wild-harvested plants estimated by counting bud scars or converting dry weight to age.

(4) Trends in abundance of wild ginseng populations, preferably as measured in field surveys.

(5) Information that the export of ginseng will not be detrimental to the survival of the species in the wild in that State or on tribal lands.

(6) Information on, and a copy of, any changes in ginseng laws or regulations.

(c) *New State-wide or reservation-wide export approval for wild ginseng.* States or Tribes that wish to set up a new management program for wild ginseng to obtain export approval on a



State or tribal basis must provide us with sufficient information to determine that the export of ginseng will not be detrimental to the survival of the species in the wild in that State or on tribal lands, and that the ginseng was legally obtained.

(d) *New State-wide or reservation-wide export approval for cultivated*

*ginseng.* States or Tribes that wish to set up a new management program for cultivated ginseng to obtain export approval on a State or tribal basis must be able to document the source of the ginseng used. In addition, they should develop procedures to minimize the risk that wild-collected plants would be claimed as cultivated.

(e) *U.S. application forms.* A list of approved States and Tribes and application forms can be obtained from our website or by contacting us. Complete and submit the applicable form to the Office of Management Authority (see § 23.7):

Type of application for export or re-export of Ginseng	Form No.
(1) Artificially Propagated Ginseng from an Approved State or Tribe (see § 23.29 for export requirements) .....	3-200-32
(2) Wild Ginseng from an Approved State or Tribe .....	3-200-33
(3) Wild or Artificially Propagated Ginseng NOT from an Approved State or Tribe .....	3-200-34

**§ 23.61 How can I trade internationally in furs of bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear?**

(a) *Approved export.* States and Tribes set up and maintain management programs for certain native furbearers that are included in CITES based on Article II(2)(b) of the Treaty (see § 23.85). For States and Tribes whose programs provide us with sufficient information to determine that the export of the specimens from that State or Tribe will not be detrimental to the survival of the species in the wild that the species was listed to protect, that the species does not decline to a point that it might qualify for listing itself, and that the specimens were legally obtained, we make administrative findings on a State-wide or reservation-wide basis. States and Tribes for which these administrative findings have been made are requested to complete and submit to us by April 30 of each year form 3-200-62 as an annual report containing information on the previous harvest season. Annual reports can refer to information provided in previous

years if there has been no change and should include at least the following:

(1) For each furbearer species, the number of specimens taken (by trapping as well as other methods) and the number of animals tagged (if different).

(2) A statement based on the State's or Tribes's professional assessment of the status of each species involved, including whether the population is stable, increasing, or decreasing, and at what rate; and whether the harvest will not be detrimental.

(3) A description of the types of information on which the assessment is based; for example, an analysis of carcass demographics; population models; analysis of past harvest levels as a function of fur prices or trapper effort; or indices of abundance independent of harvest information, such as scent station surveys, archer surveys, track or scat surveys, or road kill counts.

(4) Copies of any relevant reports for any furbearer species that the State or Tribe has prepared for the year in question as part of its existing management program for the species.

(5) Information on, and a copy of, any changes in furbearer laws or regulations.

(b) *CITES export tags.* We provide CITES export tags to States and Tribes for which administrative findings have been made. Each fur, including skins and pelts, to be exported must have a CITES export tag permanently attached.

(1) The tag must be inserted through the fur and permanently locked in place using the locking mechanism of the tag.

(2) The legend on CITES export tags include a CITES logo, an abbreviation for the State or Indian Tribe of harvest and the species (BCAT = bobcat, ROTR = river otter, LYNX = Alaska lynx, WOLF = Alaska gray wolf, and GBR = Alaska brown bear), the season of taking, and a unique serial number.

(c) *U.S. application forms.* A list of approved States and Tribes and application forms can be obtained from our website or by contacting us. Complete and submit the applicable form to the Office of Management Authority or to the appropriate Law Enforcement office (see § 23.7):

Type of application for export or re-export of bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear	Submit to	Form No.
(1) Export or re-export of furs from an approved State or Tribe (you must include a list of tag numbers with your application for export).	Law Enforcement or Office of Management Authority.	3-200-26 or 3-200-27
(2) Export of furs NOT from an approved State or Tribe (see § 23.29 for export requirements).	Office of Management Authority.	3-200-27
(3) Re-export of furs NOT from an approved State or Tribe (see § 23.29 for export requirements).	Law Enforcement or Office of Management Authority.	3-200-26 or 3-200-27
(4) Export of live specimens (see § 23.29 for export requirements).	Office of Management Authority.	3-200-27
(5) Re-export of live specimens .....	Law Enforcement or Office of Management Authority.	3-200-26 or 3-200-27

Type of application for export or re-export of bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear	Submit to	Form No.
(6) Export of manufactured products .....	Office of Management Authority.	3-200-27
(7) Re-export of manufactured products .....	Law Enforcement or Office of Management Authority.	3-200-26 or 3-200-27

(d) *Broken CITES export tags.* Furs with broken tags may not be exported.

(1) When a tag breaks and the State of harvest cannot replace it, you may apply to us for a replacement tag before or when you apply for an export permit. You must provide information to show that the fur was legally acquired and give us the broken tag.

(2) If we are satisfied that the fur was legally acquired, we will replace the broken tag with a CITES replacement tag.

(e) *Finished furs and manufactured products.* A finished fur or manufactured fur product is not required to have a tag attached, but you must surrender the tag from the fur used to make the product when you apply for a CITES export permit.

**§ 23.62 How can I trade internationally in crocodilians skins and parts of skins, including American alligator skins?**

(a) *General.* For the purposes of this section, crocodilian refers to all species of alligator, caiman, crocodile, and gavia.

(b) *Crocodilian skins.* Skins includes whole or partial skins or flanks. You may import, export, or re-export crocodilian skins, including unmounted sport-hunted trophies, only if each skin is tagged prior to export. The tag must be non-reusable, inserted through the skin, and permanently locked in place using the locking mechanism of the tag. Unless a replacement tag under paragraph (d) of this section has been authorized, the tag must:

(1) Be self-locking, heat resistant, and inert to chemical and mechanical processes.

(2) Be permanently stamped with the two-letter code for the country of origin, a unique serial number, a standardized species code, and the year of production or harvest.

(c) *Parts of crocodilian skins.* You may import, export, or re-export crocodilian parts, including tails, throats, feet, backstrips, and other parts when the following conditions are met:

(1) Parts must be packed in transparent sealed containers.

(2) The containers must be clearly marked with a parts tag or label that includes a description of the contents, the total weight (contents and

container), and the number of the CITES document.

(d) *Skins with broken, cut, or missing tags.* Skins with broken, cut, or missing tags may not be imported, exported, or re-exported.

(1) Replacement tags must meet all the requirements in paragraph (b) of this section except they do not require the country of origin code or the species code.

(2) In the United States, when a tag breaks and the State of harvest cannot replace it, you may apply to us for a replacement tag before or when you apply for an export permit. You must provide information to show that the skin was legally acquired and give us the broken tag. If we are satisfied that the skin was legally acquired, we will replace the broken tag with a CITES replacement tag.

(e) *Manufactured crocodilian products and meat.* A manufactured crocodilian product is not required to have a tag attached. When you apply for an export permit for an item manufactured in the United States, you must surrender the tags from the skins used to make the item. The export of meat does not require a tag.

(f) *Documentation requirements.* CITES documents for crocodilian skins must contain all information that is given on the tag. This information must be included on the CITES document itself or on an annex (see § 23.20(e)(2)).

(g) *Approved export for American alligator (*Alligator mississippiensis*).* States and Tribes set up and maintain alligator management programs. For States and Tribe with programs that provide us with sufficient information to determine that the export of the alligator skins, parts, or products will not be detrimental to the survival of the species in the wild in that State or on tribal lands, and that the alligators were legally obtained, we are able to make administrative findings on a State-wide or reservation-wide basis. States and Tribes for which administrative findings have been made are requested to complete and submit to us by May 31 of each year form 3-200-63 as an annual report containing information on the previous harvest season. Annual reports can refer to information

provided in previous years if it has not changed. Annual reports should include at least the following:

(1) The number of skins from wild, ranched, and farmed alligators tagged in the State or Tribe.

(2) A statement, based on the State's or Tribe's professional assessment of the status of their alligator population, such as whether the population is stable, increasing, or decreasing, and at what rate; and whether the harvest will not be detrimental.

(3) For wild alligators, information on harvest of nuisance alligators, whether there is a wild alligator hunt, 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.

(4) For ranched alligators, information on whether collecting and rearing of eggs or hatchlings is allowed, what factors are used to set the harvest level, and whether or not any alligators are returned to the wild.

(5) For captive-bred (see § 23.53) alligators, information on the sources of the breeding stock, numbers of alligators produced through captive breeding, and whether any captive-bred alligators are returned to the wild.

(6) Copies of any relevant reports that the State or Tribe has prepared for the year in question as part of its existing management program for the American alligator.

(7) Information on, and a copy of, any changes in American alligator laws or regulations.

(h) *American alligator export tags.* We provide CITES export tags to States and Tribes for which administrative findings have been made. The CITES export tags include a CITES logo, an abbreviation for the State or Indian Tribe of harvest and the species (MIS = *Alligator mississippiensis*), the season of taking, and a unique serial number.

(i) *U.S. application forms.* A list of approved States and Tribes and application forms can be obtained from our website or by contacting us. Complete and submit the applicable form to the Office of Management Authority or to the appropriate Law Enforcement office (see § 23.7):

Type of application for export or re-export of crocodilians, including american alligator	Submit to:	Form no.
(1) Export or re-export of American alligator skins, parts, or products from an approved State or Tribe: (i) For export or re-export of skins, you must include all of the information on the CITES tags (species, year of take, and unique serial number). (ii) For export of parts or products, you must include Authority the information on the CITES tags that were on the skins from which the parts or products originated.	Law Enforcement or Office of Management Authority.	3-200-26 or 3-200-27
(2) Export of American alligator skins, parts, or products NOT from an approved State or Tribe (see § 23.29 for export requirements).	Office of Management Authority.	3-200-27
(3) Re-export of American alligator skins, parts, or products NOT from an approved State or Tribe.	Law Enforcement or Office of Management Authority.	3-200-26 or 3-200-27
(4) Export of live specimens of American alligator and other crocodilians (see § 23.29 for export requirements).	Office of Management Authority.	3-200-27
(5) Re-export of live specimens of American alligator and other crocodilians.	Law Enforcement or Office of Management Authority.	3-200-27
(6) Export of other crocodilian skins, parts, or products .....	Office of Management Authority.	3-200-27
(7) Re-export of other crocodilian skins, parts, or products .....	Law Enforcement or Office of Management Authority.	3-200-26 or 3-200-27

**§ 23.63 How can I trade internationally in sturgeon caviar?**

(a) *Pre-Convention.* Sturgeon caviar may not be imported, exported, or re-exported under a pre-Convention certificate.

(b) *General provision.* Except as provided for personal effects in § 23.12(f) and for on-board passenger consumption in paragraph (c) of this section, the import, export, or re-export of Appendix-II sturgeon (Order Acipenseriformes and not listed under the ESA) caviar requires valid CITES documents (see § 23.29 for export permits and re-export certificates).

(c) *On-board passenger consumption.* An airplane or cruise ship may export or re-export sturgeon caviar from the United States without a CITES document if the following conditions are met:

(1) The caviar is legally acquired and only for passenger consumption during each specific flight or cruise.

(2) The quantity of caviar placed on board for each specific flight or cruise cannot exceed 250 grams per passenger intended to be served caviar (such as first class passengers), and must be consumed or disposed of before arrival in another country.

**§ 23.64 How can I trade internationally in timber?**

(a) *General provisions:* Trade in timber species listed in Appendix II or

III and annotated to include only logs, sawn wood, and veneer sheets must follow the CITES requirements of this part, except as provided in paragraphs (b) and (c) of this section.

(b) *Change in destination.* A Management Authority may change the name and address of the importer (consignee) indicated on the CITES document after the shipment has left the exporting or re-exporting country under the following conditions:

(1) The quantity imported is the same as the quantity certified by a stamp or seal and signature of the Management Authority on the CITES document at the time of export or re-export.

(2) The number of the bill of lading of the shipment is on the CITES document, and the bill of lading is presented at the time of import.

(3) The import takes place before the CITES document expires, and the period of validity has not been extended.

(4) The Management Authority includes the following statement in block 5 of the CITES document: "Import into the [country] permitted in accordance with Resolution Conf. 10.2 (section VII.) on [date]." The modification is certified with an official stamp and signature.

(5) The Management Authority sends a copy of the amended CITES document to the country of export or re-export and the Secretariat.

(c) *Extension of CITES document validity.* A Management Authority 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:

(1) 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.

(2) The time extension does not exceed 6 months from the date of expiration of the CITES document and no previous extension has been granted.

(3) The Management Authority has included in block 5 of the CITES document the date of arrival and the new date of expiration on the document, certifying the modification with an official stamp and signature.

(4) The shipment is imported into the country from the port where the Management Authority granted the extension and before the amended CITES document expires.

(5) The Management Authority sends a copy of the amended CITES document to the country of export or re-export and to the Secretariat.

**§ 23.65 How can I trade internationally in personal sport-hunted trophies?**

(a) *General provisions.* Except as provided for personal and household effects in § 23.12, the import, export, or

re-export of personal sport-hunted trophies requires valid CITES documents.

(b) *Definition.* Your trophy must meet the definition of “sport-hunted trophy” in § 23.5.

(c) *Use after import.* You may use your sport-hunted trophy for the following purpose after import:

If the species is listed in	Allowed use once imported is:
(1) Appendix I .....	Only personal; may not be used or transferred for a commercial purpose.
(2) Appendix II with a species’ annotation for sport-hunted trophies where other specimens of that species are treated as included in Appendix I.	Only personal; may not be used or transferred for a commercial purpose.
(3) Appendix II (other than paragraph (c)(2) of this section) or Appendix III.	Any purpose.

(d) *Leopard (Panthera pardus) conditions.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) You may import no more than two trophies in any calendar year.

(2) Each raw or tanned skin imported or re-exported must have a self-locking tag attached which indicates the county of export, the number of the specimen in relation to the annual quota, and the calendar year in which the specimen was taken in the wild.

(3) The export permit or re-export certificate must contain the information from the tag.

**Subpart F—Disposal of Confiscated Live Wildlife and Plants**

**§ 23.70 How do we dispose of confiscated live wildlife and plants?**

(a) *Purpose.* Article VIII of the Treaty requires that Parties confiscate specimens that are traded in violation of CITES or return them to the country of export.

(b) *Consultation process.* Before making a decision on the disposal of confiscated specimens, the Management Authority may consult with the Scientific Authority, the Management Authority in the country of export, and other relevant governmental and non-governmental experts.

(c) *Disposal options.* 50 CFR part 12 provides the options on how we dispose of forfeited and abandoned 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, sale of certain Appendix-II or -III specimens, euthanasia, or destruction.

(d) *Action plans.* CITES Parties are urged to develop action plans for the disposal of confiscated specimens.

(1) We use a plant rescue center program for confiscated plants. Participants in this program may also assist APHIS 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 consider the quantity, protection level, and husbandry needs of the wildlife.

**§ 23.71 How may I participate in the Plant Rescue Center Program?**

(a) *Purpose.* We have established the Plant Rescue Center Program to dispose of confiscated live plants as quickly as possible to prevent damage to or loss of the plants.

(b) *Criteria.* Institutions interested in participating in this program must:  
 (1) Be a public institution (see 50 CFR 10.12), such as a public, non-profit botanical garden, arboretum, zoological park, or research institution.

(2) Be willing to transfer confiscated plants from the port where they were confiscated to their facilities at their own expense.

(3) Accept and maintain a plant shipment as a unit for a minimum of 30 days in the event the country of export or re-export requests return of the shipment.

(c) *Application.* Institutions wishing to participate must complete and submit application Form 3–200–60 to the Office of Management Authority (see § 23.7).

**Subpart G—CITES Administration**

**§ 23.75 What are the roles of the Secretariat and the committees?**

(a) *Secretariat.* The Secretariat is headed by the Secretary General and implements the policies of the COP and the Standing Committee. The functions of the Secretariat are listed in Article XII of the Treaty and include, in part:

- (1) Providing Parties with trade information and technical support.
- (2) Acting as a liaison among Parties.
- (3) Contracting scientific and technical studies.

(4) Informing governments and the public about CITES wildlife and plant trade developments.

(5) Investigating possible CITES violations and threats to wildlife and plants due to trade.

(6) Organizing meetings of the COP.

(7) Providing coordination and consultation on proposed amendments to Appendix I or II, notifying the Parties of Appendix-III listings, and periodically publishing current lists of species included in the appendices.

(8) Preparing annual reports to the Parties.

(9) Carrying out tasks directed by the COP or technical committees.

(10) Making recommendations for effective implementation of CITES.

(b) *Committees.* The Parties have established five 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 COP’s. This Committee oversees development and execution of the Secretariat’s budget, coordinates and advises other committees, appoints working groups, and carries out activities on behalf of the Parties between COP’s. Regional representatives are elected by the COP as members of this Committee.

(2) The Animals Committee and the Plants Committee compile and evaluate data on Appendix-II species that are considered significantly affected by trade; periodically review the status of wildlife and plant species included in the appendices; advise range countries on management techniques when requested; draft resolutions on wildlife and plant matters for consideration by the Parties; assist the Nomenclature and Identification Manual Committees on issues concerning wildlife and plant species; and report to the COP and the Standing Committee. The Animals Committee also deals with the transport of live animals.

(3) The Identification Manual Committee provides guidance and

coordination in the preparation of identification manuals for wildlife and plant species to assist Parties in the accurate identification of specimens listed in the CITES appendices.

(4) The Nomenclature Committee is responsible for developing or identifying standard nomenclature references for wildlife and plants and making recommendations on nomenclature to the COP, other Committees, working groups, and the Secretariat.

#### **§ 23.76 What is a Conference of the Parties (COP)?**

(a) *Purpose.* Article XI of the Treaty provides general guidelines for meetings of the Parties. The Parties currently meet for 2 weeks every 2 to 3 years. At these meetings, the Parties consider amendments to the appendices and resolutions to improve 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, that country works with the Secretariat to set the date. The Parties are then notified 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 should apply to the CITES Secretariat for approval of observer status.

(2) National organizations must apply to the Management Authority of the country where they are located for approval of observer status.

#### **§ 23.77 How can I obtain information on a COP?**

(a) As we receive information on an upcoming COP from the CITES Secretariat, we will publish notices in the **Federal Register**. The notices will provide:

(1) 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.

(2) Information on times, dates, and locations of public meetings.

(b) We will post information concerning upcoming COP's on our website.

#### **§ 23.78 How does the United States develop negotiating positions for a COP?**

(a) In developing negotiating positions for a COP, we:

(1) Consult with appropriate Federal and State agencies, foreign governmental agencies, and others.

(2) Review the comments received in response to **Federal Register** notices concerning proposals related to an upcoming COP.

(3) Publish a notice that includes a summary of the information and comments that we received, a summary of our proposed negotiating positions, and the reasons for those proposed positions.

(4) Request public input and comments on the proposed positions.

(5) Schedule at least one public meeting.

(6) Submit all draft resolutions and other documents to the Secretariat at least 150 days before the COP.

(7) Submit proposals for amendment of the appendices, if all range countries have been consulted, 150 days before the meeting. If the range countries are not consulted, the proposal must be submitted 330 days before the COP.

(8) Provide the public with our final negotiating positions.

(b) The Director may publish a notice in the **Federal Register** that modifies or suspends any of these procedures if following the procedures would interfere with the timely or appropriate development of negotiating positions.

(c) We may receive additional information at a COP or circumstances may develop that have an impact on our published negotiating positions. As a result, the United States representatives to a COP may find it necessary to modify, reverse, or abandon any of those positions where to do so would be in the best interests of the United States.

#### **Subpart H—Lists of Species**

##### **§ 23.85 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 appropriate biological and trade criteria to be listed.

(b) *Listing a species in Appendix I.* Any species that meets at least one biological criterion specified in the CITES listing criteria resolution and is known to be in trade, is probably in trade, has a potential international

demand, or might enter trade if not subject to strict controls should be included in Appendix I.

(1) When determining whether a species qualifies for inclusion in Appendix I, we will utilize the best available scientific and biological information, and evaluate that information against the criteria adopted by the Parties.

(2) Those criteria include factors pertaining to: the size of the wild population; ongoing, past, or potential population or distribution declines; population fragmentation; habitat availability or quality; area of distribution, range fragmentation; species-specific vulnerabilities due to biology, behavior, or other factors, including migration; patterns of exploitation; threats from factors such as the effects of pathogens, competitors, parasites, predators, hybridization, introduced species and the effects of toxins and pollutants; or decreases in reproductive potential.

(c) *Listing a species in Appendix II due to potential threats.* Any species that meets either of the criteria identified in the CITES listing criteria resolution for Appendix II qualifies for inclusion in Appendix II. Those criteria are:

(1) It is known or expected that unless trade in the species is subject to strict regulation, it will meet at least one of the criteria for inclusion in Appendix I in the near future.

(2) It is known or expected that the harvesting of specimens from the wild for international trade has or will have a detrimental impact on the species by either exceeding the level that can be sustainably harvested or reducing it to a population size where its survival would be threatened by other influences.

(d) *Listing a species in Appendix II due to similarity of appearance.* Any species that meets either of the criteria identified in the CITES listing criteria resolution for Appendix II due to similarity of appearance and related factors qualifies for inclusion in Appendix II. Those criteria are:

(1) The specimen resembles specimens of a species included in Appendix II due to criteria in paragraph (c) of this section or in Appendix I, such that a non-expert, with reasonable effort, is unlikely to be able to distinguish between them.

(2) The species is a member of a taxon of which most of the species are included in Appendix II due to criteria in paragraph (c) of this section or in Appendix I, and the unlisted species should be listed to bring trade in listed ones under effective control.

(e) *Other issues.* The Parties have addressed other issues pertaining to listing of species in the CITES appendices. We will evaluate any potential changes to the appendices taking those other issues (as specified in the CITES listing criteria resolution) into consideration, including but not limited to: split-listing, listing of higher taxa, specific plant-related listing issues, use of subspecies, and the listing of hybrids.

(f) *Precautionary measures.* When considering changes to the CITES appendices, in the case of uncertainty in regard to the status of a species or the impact of trade on the conservation of a species, we will act in the best interest of the conservation of the species. We will evaluate any potential transfers from Appendix I to II or removal of species from the appendices in the context of the precautionary measures in the CITES listing criteria resolution.

(g) *Proposal.* If it is felt that a species qualifies for inclusion or removal from the CITES appendices, a proposal must be submitted to the Secretariat for consideration by the COP. The proposal should indicate the intent of the specific action (such as inclusion in Appendix I or II, or transfer from Appendix I to II) and the criteria against which the proposal is to be judged. The proposal must be in a prescribed format with all of the components addressed in the CITES listing criteria resolution. Contact the Office of Scientific Authority (see § 23.7) for either a copy of the format or the resolution which includes the prescribed format. Any proposal submitted by the United States will conform with the proposal format in the CITES listing criteria resolution.

**§ 23.86 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 species to be included in Appendix III

to the CITES Secretariat. The Secretariat will notify the Parties.

(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 regulations to prevent or restrict exploitation and control trade, and the 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 opinion on the potential effects of the listing.

(d) *Annotation.* The listing Party may annotate the Appendix-III listing to include only specific parts, products, derivatives or life stages, as long as the Secretariat is notified of the annotation.

(e) *U.S. procedure.* The procedure to list a species native to the United States in Appendix III is as follows:

(1) We will consult with and solicit comments from all States where the species occurs and all other range countries.

(2) We will publish a proposed listing in the **Federal Register** to solicit comments from the public.

(3) If after evaluating the comments and available information we determine the species should be included in Appendix III, we will notify the Secretariat of the listing and publish a notice in the **Federal Register**.

(4) The listing will become effective 90 days after the Secretariat notifies the Parties of our request.

(f) *Removing a species from Appendix III.* We will monitor the international trade in Appendix-III species listed by us and periodically evaluate whether the species continues to meet the listing criteria in paragraph (b) 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 (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 § 23.85(b), (c), or (d) for listing in Appendix I or II, we will consider whether to submit a proposal to amend the listing at the next COP.

**§ 23.87 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 ([www.cites.org](http://www.cites.org)).

(b) *Unofficial list.* For your convenience, we maintain an unofficial list in an easy-to-use format that is available from our website or as a printed publication (see § 23.7).

**§ 23.88 Are any wildlife or plants, and their parts or products, exempt?**

All living or dead wildlife and plants in Appendix I, II, and III and all their readily recognizable parts and products must meet the requirements of CITES and this part, except:

(a) Parts and products of Appendix-III wildlife or Appendix-II or -III plants that are specifically included by annotation.

(b) An Appendix-II or -III plant hybrid may be excluded from CITES controls by an annotation in the CITES list.

(c) The following plant materials are exempt:

Plant listing	Exempt parts or products
(1) Appendix-II and -III plants <sup>1</sup> .	(i) Flashed seedlings or tissue culture. (ii) Spores and pollen (including pollinia). (iii) Seeds (other than Mexican Cactaceae originating from Mexico). (iv) Cut flowers of artificially propagated plants.
(2) In addition, for Appendix-II Cactaceae species <sup>1</sup> .	From artificially propagated or naturalized plants: (i) Separate stem joints (pads) and their parts and products of the genus <i>Opuntia</i> subgenus <i>Opuntia</i> . (ii) Fruits and their parts and products.

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Plant listing	Exempt parts or products
(3) In addition, for Appendix-II Orchidaceae species <sup>1</sup> .	Fruits and their parts and products for artificially propagated plants of <i>Vanilla</i> species.
(4) For Appendix-I Orchidaceae species.	Flasked seedlings or tissue culture.

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<sup>1</sup> An artificially propagated hybrid of one or more unannotated Appendix-I species is treated as if listed in Appendix-II if no individual plant in its lineage is an annotated Appendix-I species.

Dated: November 30, 1999.

**Donald J. Barry,**

*Assistant Secretary, Fish and Wildlife and  
Parks, Department of the Interior.*

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