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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–IA–2011–0093]

[FF09A30000 123 FXIA16710900000R4]

RIN 1018–AX96

Endangered and Threatened Wildlife and Plants; Publishing Notice of Receipt of Captive-Bred Wildlife Registration Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are amending the regulations that implement the Endangered Species Act (Act) by establishing public notice-and-comment

procedures for applications to conduct certain otherwise-prohibited activities under the Act that are authorized under the Captive-Bred Wildlife (CBW) regulations. This action adds procedural requirements to the processing of applications for registration under the CBW regulations. Notices of receipt of each application will be published in the **Federal Register**, and the Service will accept public comments on each application for 30 days. If the registration is granted, the Service will publish certain findings in the **Federal Register**. In addition, for persons meeting the criteria for registering under the CBW Program, each registration will now remain effective for 5 years rather than 3 years.

DATES: This rule becomes effective on [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: You may obtain information about permits or other authorizations to carry out otherwise-prohibited activities by contacting the U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; telephone: 703-358-2104 or (toll free) 800-358-2104; facsimile: 703-358-2281; e-mail: managementauthority@fws.gov; Web site: http://www.fws.gov/international/index.html.

FOR FURTHER INFORMATION CONTACT: Timothy J. Van Norman, Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 212, Arlington, VA 22203; telephone 703–358–2104; fax 703–358–2281. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et* seq.) (Act), and its implementing regulations prohibit any person subject to the jurisdiction of the United States from conducting certain activities unless authorized by a permit. These activities include take, import, export, and interstate or foreign commerce of fish or wildlife species listed as endangered or threatened under the Act. In the case of endangered species, the Service may permit otherwise-prohibited activities for scientific research or enhancement of the propagation or survival of the species. In the case of threatened species, regulations allow permits to be issued for the above-mentioned purposes, as well as zoological, horticultural, or botanical exhibition; education; and special purposes consistent with the Act.

In 1979, the Service published the Captive-Bred Wildlife (CBW) regulations at 50 CFR 17.21(g) (44 FR 54002, September 17, 1979) to streamline Federal permitting requirements and facilitate captive breeding of endangered and threatened species under certain prescribed conditions. Specifically, under these regulations, the Service promulgated a general regulatory permit to authorize persons to take; export or reimport; deliver, receive, carry, transport, or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce endangered or threatened wildlife bred in captivity in the United States. Qualifying persons and facilities seeking such authorization under the regulations are required to register with the Service. By establishing a more flexible management framework for regulating routine activities related to captive propagation, these regulations have benefited wild populations by, for example, increasing sources of genetic stock that can be used

to bolster or reestablish wild populations, decreasing the need to take stock from the wild, and providing for research opportunities.

The authorization granted under the CBW regulations is limited by several conditions. These conditions include:

(1) The wildlife is of a species having a natural geographic distribution not including any part of the United States, or the wildlife is of a species that the Director has determined to be eligible in accordance with 50 CFR 17.21(g)(5);

(2) The purpose of authorized activities is to enhance the propagation or survival of the affected species;

(3) Activities do not involve interstate or foreign commerce, in the course of commercial activity, with respect to nonliving wildlife;

(4) That each specimen of wildlife to be reimported is uniquely identified by a band, tattoo, or other means that was reported in writing to an official of the Service at a port of export prior to the export from the United States; and

(5) Any person subject to the jurisdiction of the United States who engages in any of the authorized activities does so in accordance with 50 CFR 17.21(g) and with all other applicable regulations.

The regulations also specify application requirements for registration that are designed to provide the Service with information needed to determine whether the applicant has the means to enhance the propagation or survival of the affected species. For example, the application must include a description of the applicant's experience in maintaining and propagating the types of wildlife sought to be covered under the registration; documentation depicting the facilities in which the subject wildlife will be maintained must also be included.

With this final rule, the Service is amending the CBW regulations to provide the public with notice of receipt of applications for CBW registration and an opportunity to comment on an applicant's eligibility to register under the regulations. If we determine that the registration should be granted, we will notify the public by publishing our findings in the **Federal Register** that each registration was applied for in good faith, will not operate to the disadvantage of the affected species, and is consistent with the purposes and policy set forth in section 2 of the Act. These procedures will apply to both original and renewal applications for registration, as well as applications for amendment of the registration. In addition, we will make information we receive as part of each application available to the public upon request, including, but not limited to, information needed to assess the eligibility of the applicant, such as the original application materials, any intervening renewal applications documenting a change in location or personnel, and the most recent annual report.

By incorporating these procedural amendments to the CBW regulations, the Service will increase transparency and openness in the CBW registration process, consistent with Executive Order 13576, "Delivering an Efficient, Effective, and Accountable Government," and the Presidential Memorandum of January 21, 2009, which encourage government agencies to establish a system of transparency, public participation, and collaboration by disclosing information to the public. In addition, with these amendments, we believe that increased public participation in the CBW registration process will lead to better decisions by assisting the Service in assessing whether the applicants are capable of enhancing the propagation or survival of the species. By incorporating these procedures to increase transparency and openness in the registration process, interested persons' perceptions of the fairness of the registration process

will improve, as will their acceptance of our ultimate determination as to whether the registration should be granted.

This rule also announces that the Service will extend the validity of CBW registrations from 3 years to 5 years. This discretionary action is being implemented to reduce the paperwork burden on CBW holders, as well as eliminate redundant reviews by the Service of CBW applications. One condition of all CBW registrations is the requirement that CBW holders provide the Service with an annual report of all activities that have been conducted during the previous calendar year. These reports are reviewed for consistency, including comparing reports from different CBW holders that reported any exchanges. The Service has found that, with the receipt of these reports, we have sufficient oversight of activities to increase the period for which a CBW registration is valid. With the combination of annual reports, renewal applications being submitted every 5 years, and, if necessary, physical inspection of CBW holder's facilities by the Service or other State and Federal agencies, the Service can successfully evaluate the merits of a registered facility. Therefore, we have concluded that requiring CBW holders to re-apply every 3 years is unnecessary.

Summary of Comments and Our Responses

In our proposed rule (February 21, 2012; 77 FR 9884), we asked interested parties to submit comments or suggestions regarding the proposal to incorporate a public comment period into the regulations at 50 CFR 17.21(g). The comment period for the proposed rule lasted for 30 days, ending March 22, 2012. We received 14 individual comments during the comment period. Comments were received from 4 nongovernmental organizations, 3 businesses, and 7 individuals. Of the commenters, two supported the proposal to publish the receipt of CBW

applications in the **Federal Register** and provide for a 30-day comment period, and 12 opposed the proposal. Comments pertained to several key issues. These issues, and our responses, are discussed below.

Issue 1: The majority of commenters expressed concern that the publication of names of CBW applicants and locations of facilities would raise the risk of attacks on breeders or on the animals, putting these individuals or organizations at risk of theft or harassment by individuals opposed to the activities being conducted by the applicant. Several commenters believed that activists would use the permit process as a way to delay or block activities through legal challenges. One commenter felt that it would be necessary to retain a lawyer when applying for a CBW registration to fight against "activist organizations" that would attempt to block or delay the approval of their application.

Our Response: It is true that, with the publication of a notice announcing the receipt of CBW applications, the names of applicants and the city in which they reside will be published. The **Federal Register**, however, does not publish addresses or other private information. While individuals that are interested in reviewing the applicants can request a copy, any private information, including street addresses of individuals, will be redacted or removed. While it is possible that individuals or organizations could harass CBW applicants, such actions may be illegal and, if so, the individuals carrying out those actions may be prosecuted under relevant laws (e.g., trespass). However, the Service does not believe that this potential for illegal harassment is sufficient grounds for failing to publish the receipt of CBW applications. As previously stated, the purpose of publishing the receipt of CBW applications is to allow the public the opportunity to provide the Service with relevant information about the applying facilities and their operations. In addition, for many CBW applicants, information about their

facilities, as well as addresses and contact information, have been made readily available to the public by the facilities themselves through other sources, including through advertising on the Internet, in trade magazines, and in other publications.

Issue 2: One commenter felt that politically driven groups would submit biased information, or information that would only support their particular agenda, thus giving the Service an inaccurate picture of a facility's ability to meet the issuance criteria under the CBW regulations.

Our Response: The Service has a long history of receiving comments addressing ESA permit applications. We considered only substantive information that assists us in making sound decisions. Where possible, we attempt to obtain additional information to corroborate any information that may appear biased or based on a particular organization's or individual's views. While we welcome all comments, the comments do not constitute a "popularity contest" in which the majority of commenters dictate the Service's decisions on permit issuance.

Issue 3: Several commenters expressed a concern that the change to the regulation would make the CBW program more restrictive, causing some current CBW holders, as well as future CBW applicants, to discontinue activities with endangered species, thus reducing the potential for conservation-based breeding. Several suggested that, with this reduction in registrants, the conservation benefits provided by CBW holders would be reduced. They were concerned that, with fewer organizations registering, activities authorized under the CBW program would be driven underground, resulting in an increase in inbreeding or diminished conservation value of the breeding activity. One commenter called for a "broader, more inclusive" system that reduces the burdens on CBW applicants. Several commenters expressed a view that, with additional

regulatory requirements and financial burden on applicants, few individuals and organizations would apply to register under the CBW program.

Our Response: The Service encourages individuals or facilities that wish to conduct conservation-based breeding programs with endangered species to apply to be part of the CBW program. We do not believe, however, that the publication of a **Federal Register** notice announcing the receipt of a CBW application, or providing the public an opportunity to comment on the merits of an application, will restrict the CBW program or reduce the number of individuals or organizations that submit applications. Further, we do not believe that this rule will increase the regulatory or financial burden on current or potential CBW holders. While there will be an increase in the processing time by adding a 30-day comment period, we do not see that this creates any significant economic or regulatory burden on CBW holders or applicants. Further, we do not believe that this will result in activities being driven underground. This regulatory change is only to provide the public an opportunity to comment on CBW applications. No new regulatory or paperwork burdens are imposed on applicants or registrants. We do not believe that law-abiding breeding operations will begin conducting illegal activities solely to avoid having the Service notify the public that an application has been received.

Issue 4: One commenter stated that the Service already had a sufficient level of regulation in place to adequately carry out the purposes of the CBW program.

Our Response: These changes to the CBW regulations will not change how the CBW program is managed or the requirements placed on CBW holders. We do not believe that publishing the receipt of all CBW applications will increase the regulatory burden on any applicant or CBW holder. The intent of the revision to the CBW regulations is to increase the transparency of the CBW program and to encourage the public to provide us with the best

available information about an applicant or, possibly, about requirements for keeping the particular species involved or some other information that would be relevant to evaluating the application.

Issue 5: The two commenters who supported the proposed change to the regulation expressed concerns that the CBW program was allowing for activities that were not consistent with the Act. They called for greater oversight of CBW holders and commercial activities to ensure that CBW holders were carrying out conservation efforts and that they were conducting their activities in a humane manner.

Our Response: This change to the regulation is intended to provide the public an opportunity to comment on the merits of CBW applications received by the Service. The rule does not address or alter any current practices carried out by the Service on how CBW holders are regulated. While this comment is outside the scope of the rule, the Service is interested in ensuring that any operation that is registered under the CBW program uses proper breeding methods and humane treatment of their animals. To the extent possible, the Service does determine whether a breeding operation is in compliance with all regulations and laws addressing humane treatment of animals and that the activities being carried out by the operation meet the purposes of the Act. Inhumane treatment which falls within the definition of "harass" (50 CFR 17.3) would be considered a "take" under the Act and thus a violation if the activity had not specifically been authorized. Providing for a 30-day comment period will allow the public to identify any concerns that they may have and provide the Service with substantive information to support any claims of inappropriate activities.

Issue 6: One commenter, while agreeing with the action, pointed out that the Service does not need to propose a change to the CBW regulations to increase the validity period of a

CBW registration from 3 to 5 years. Another commenter objected to this change because it would weaken the Service's ability to carry out appropriate oversight of registered facilities. The commenter was concerned that this increase would reduce the level of oversight that we have over CBW holders, making it easier for them to carry out activities that would be outside the purposes for which the registration was granted.

Our Response: The first commenter is correct that no changes need to be made to the regulations to extend the validity period to 5 years, nor did the Service propose such a change to actual regulations. The proposed rule merely provided an opportunity for the Service to announce that it would take this step, as part of its discretionary permit-processing actions, to reduce the application burden on CBW holders in a manner that will not lower the Service's ability to ensure that CBW holders are complying with all aspects of their registration. Extending the period of validity of a CBW registration will not have a significant effect on the Service's ability to monitor registrants because each CBW holder must submit an annual report outlining all activities carried out during the previous year. The annual reports are reviewed to ensure that the reported activities comply with the Act and any permit conditions placed on the registered facility. If, when reviewing reports, the Service discovers some concerns or issues with a CBW holder, we have the ability to take action at that time. In addition, if necessary, the Service or other State or Federal agencies can conduct physical inspections of a CBW holder to investigate any concerns. Further, many CBW holders apply for authorization to conduct other activities that are outside the scope of their CBW registration. In those instances, the Service has a second opportunity to evaluate the merits of the new application and determine if any concerns regarding their CBW registration exist. Extending the validity time of a CBW registration means that the holder only needs to reapply every 5 years, reducing their workload to reapply.

Extending the validity time also reduces unnecessary workload currently faced by the Service in processing CBW applicants every 3 years.

Issue 7: Several commenters did not believe that the Service provided the public with any evidence that publishing a notice announcing the receipt of a CBW application would improve the effectiveness of the CBW program. Further, these commenters saw the change to be unnecessary and not represent good policy. One commenter expressed their belief that there was no need to notify the public of the receipt of CBW applications and allow for a comment period because the applications would be available through Freedom of Information Act (FOIA) requests submitted to the Service by interested parties.

Our Response: We disagree with the view that this change in the regulation is unsupported and is bad policy. Allowing the public an opportunity to comment on the merits of an application increases the level of transparency that the Service can offer in this matter, and therefore should strengthen the CBW program. The comment regarding the availability of CBW applications through the FOIA process is correct. However, FOIA requesters must first be aware that specific files are available to request or must make such broad and vague requests that our efforts to meet these requests become very time-consuming. By publishing the receipt of CBW applications, we are providing potential FOIA requesters the opportunity to satisfy any potential interest in a file before a FOIA request is necessary or to better define their FOIA request to minimize the burden on the Service.

Issue 8: Two commenters felt this regulation fails to meet the requirements of Executive Order 13576. One commenter claimed this regulation accomplishes the opposite of the Executive Order, whereas another stated that the Executive Order is irrelevant to permits.

Our Response: The Service disagrees with these statements. The purpose of the Executive Order is to increase transparency across all aspects of government, including the Service's permitting process. While the Executive Order does focus on rulemaking, we believe that providing the public with the opportunity to comment on applications that the Service receives does improve our permit processing and can provide a benefit to the conservation work that applicants and the Service are carrying out through the CBW program.

Issue 9: One commenter stated that the Act is an archaic piece of legislation and needs "a total revamp."

Our Response: Whether changes should be made to the legislation is a matter for Congress to address and is outside the scope of this rulemaking.

Issue 10: Many commenters expressed a view that this change to the CBW regulations would create unnecessary delays in the processing of applications. One commenter stated that increasing processing time by 35–40 days is unrealistic. Several commenters felt that public notice will also drastically increase processing time if comments that are received result in the Service making additional inquiries to investigate any claims made during the public comment period. Several commenters expressed the opinion that CBW applications do not need to be given the same level of scrutiny as applications for the import or export of animals from the wild, because CBW applications only deal with captive wildlife.

Our Response: Opening a 30-day comment period will certainly increase the overall processing time for first-time CBW applications, thus delaying the authorization of any activities under the Act until the application process is complete. The comment period would typically add the 35 to 40 days that one commenter identified. However, once a CBW has been approved, providing for a comment period on a renewal application will not result in a registered facility

stopping all activities previously approved under the CBW registration. The Service's permitting regulations (50 CFR 13) allow for an applicant who is renewing or amending a registration to continue carrying out previously approved activities while the Service is considering their application request, provided that they submit their renewal application at least 30 days before their current registration expires. This means that a facility that is currently registered could continue carrying out previously approved activities while the Service considers their renewal request without a break in activities, such as interstate commerce. This will not apply to new requests, including the addition of new species to an existing CBW registration. Therefore, providing a public comment period should not significantly affect current CBW holders, and while increasing the processing time for new CBW applicants, the increase is not significant and should result in an improvement in the basis for issuing CBW registrations because we will have provided the public with an opportunity to augment the information used to evaluate CBW applications.

The commenters who were concerned that comments from the public could affect their CBW applications are correct, if the public provides thoughtful comments that provide substantive information that either supports or questions the merits of an application. That is the very purpose of a comment period. We would like to assure the commenters, however, that the receipt of a comment on an application does not mean that all processing is stopped or that we will not verify information provided by a commenter, whether in support or opposition to an application. The Service will evaluate the factual basis of each comment and the scientific or commercial value of the information provided. Comments that express only a personal opinion do not have the same value as comments that provide clear scientific information relating to the merits of an application.

Finally, the Act treats all listed species the same whether they are captive-bred or removed from the wild. All applications for permits or registrations are evaluated according to the issuance criteria established in our regulations at Chapter I of Title 50 of the Code of Federal Regulations.

Issue 11: One commenter accused FWS of "turning a blind eye" to the benefits to conservation that U.S.-based captive-breeding and display programs provide to listed species.

Our Response: The Service recognizes that captive breeding can provide a benefit to listed species by increasing the scientific knowledge of a species' behavior or biology. Further, conservation-based breeding programs can provide animals for reintroduction programs and provide a level of assurance against catastrophic events that could adversely affect wild populations. The Service is not turning a "blind eye" to any conservation value a captive-breeding program can provide; we are only working to ensure that any otherwise-prohibited activities that are authorized provide conservation value. We believe that providing an opportunity for the public to comment will improve our application review process.

Issue 12: Several commenters stated that they had also commented on another proposed rule published by the Service on August 22, 2011, that would remove the "generic" tiger from a list of specimens that do not require facilities that hold them to register with the Service under the CBW program in order to carry out otherwise-prohibited activities. These commenters expressed concern that the combination of the two regulatory changes would adversely affect their activities.

Our Response: The Service is still evaluating the comments received during the two comment periods provided for the "generic" tiger proposed rule and will finalize our decision in the coming months. While there are some similarities between the "generic" tiger rule and this rule, they are separate actions being taken by the Service and are being treated as such.

Comments made during the comment period for the "generic" tiger proposed rule cannot be considered part of the comments received for this proposed rule.

We have, therefore, made no changes to the proposed rule as a result of the comments received.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563): Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes

the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq*.). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. We expect that the majority of the entities involved in activities authorized under the CBW program would be considered small as defined by the SBA.

This rule requires the Service to publish notices in the **Federal Register** announcing the receipt of all CBW applications and provide the public with a 30-day comment period to provide the Service with any relevant information about the applicant or their operation. In addition, the rule requires the Service to publish a notice in the **Federal Register** of specified findings for approved registrations. The regulatory change is not major in scope and will create no financial or paperwork burden on the affected members of the public. In fact, the extension of the effective period of a CBW registration from 3 to 5 years, taken as a discretionary action under the Service's permitting procedures, will result in a reduction of the paperwork burden on the public because of the reduced frequency of completing a renewal application.

We, therefore, certify that this 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 Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

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

a. Will not have an annual effect on the economy of $100 million or more. This rule codifies a public notice-and-comment process for the receipt of CBW applications and requires the publication of certain findings for registrations granted under the CBW regulations. The Service will publish no more than two notices in the **Federal Register**, and will require nothing from the applicant as far as additional cost or paperwork. This rule will not have a negative effect on this part of the economy. It will affect all businesses, whether large or small, the same. There is not a disproportionate share of benefits for small or large businesses.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions. This rule will not result in an increase in the number of applications for registration to conduct otherwise-prohibited activities with endangered and threatened species.

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

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

a. This rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required.

b. This 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 rule would not have significant takings implications. A takings implication assessment is not required. This rule is not considered to have takings implications because it allows individuals to register under the CBW Registration program when issuance criteria are met.

Federalism: This revision to part 17 does not contain significant Federalism implications. A Federalism summary impact statement under Executive Order 13132 is not required.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of subsections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act: The Office of Management and Budget approved the information collection in part 17 and assigned OMB Control Number 1018–0093, which expires February 28, 2014. This rule does not contain any new information collections or recordkeeping requirements for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA): The Service has determined that this action is a regulatory change that is administrative and procedural in nature. As such, the amendment is categorically excluded from further NEPA review as provided by 43 CFR 46.210(i) of the

Department of the Interior Implementation of the National Environmental Policy Act of 1969. No further documentation will be made.

Government-to-Government Relationship with Tribes: Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951; May 4, 1994) and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects.

Energy Supply, Distribution, or Use: Executive Order 13211 pertains to regulations that significantly affect energy supply, distribution, and use. This rule will not significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Captive-bred wildlife, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, we are amending part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

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

2. Amend § 17.21 by revising paragraph (g)(3) to read as follows:

§ 17.21 Prohibitions.

* * * * *

(g) * * *

(3) Upon receipt of a complete application for registration, or the renewal or amendment of an existing registration, under this section, the Service will publish notice of the application in the **Federal Register**. Each notice will invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. All information received as part of each application will be made available to the public, upon request, as a matter of public record at every stage of the proceeding, including, but not limited to, information needed to assess the eligibility of the applicant, such as the original application, materials, any intervening renewal applications documenting a change in location or personnel, and the most recent annual report.

(i) At the completion of this comment period, the Director will decide whether to approve the registration. In making this decision, the Director will consider, in addition to the general criteria in §13.21(b) of this subchapter, whether the expertise, facilities, or other resources available to the applicant appear adequate to enhance the propagation or survival of the affected wildlife. Public education activities may not be the sole basis to justify issuance of a registration or to otherwise establish eligibility for the exception granted in paragraph (g)(1) of this section.

(ii) If the Director approves the registration, the Service will publish notice of the decision in the **Federal Register** that the registration was applied for in good faith, that issuing the registration will not operate to the disadvantage of the species for which registration was sought, and that issuing the registration will be consistent with the purposes and policy set forth in section 2 of the Act.

(iii) Each person so registered must maintain accurate written records of activities conducted under the registration and allow reasonable access to Service agents for inspection purposes as set forth in §§ 13.46 and 13.47 of this chapter. Each person so registered must also submit to the Director an individual written annual report of activities, including all births, deaths, and transfers of any type.

* * * * *

July 17, 2012 _____

Date

Eileen Sobeck

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 2012-17944 Filed 07/23/2012 at 8:45 am; Publication Date: 07/24/2012]