

in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the discussions of the committee.

G. Notice of Establishment

After evaluating comments received as a result of this Notice, FTA will issue a notice announcing the establishment and composition of the committee. After the committee is chartered, the negotiations will begin.

H. Administrative Support and Meetings

Staff support will be provided by FTA. Meetings are currently expected to take place in Washington, DC.

I. Notice of Proposed Rulemaking

The committee's objective will be to prepare a report, consisting of its consensus recommendations for the regulatory text of a draft notice of proposed rulemaking (NPRM). This report may also include suggestions for the NPRM preamble, regulatory evaluation, or other supplemental documents. If the committee cannot achieve consensus on some aspects of the proposed regulatory text, it will, pursuant to the "ground rules" the committee has established, identify in its report those areas of disagreement, and provide explanations for any disagreement. FTA will use the information and recommendations from the committee report to draft a notice of proposed rulemaking and, as appropriate, supporting documents. Committee recommendations and other documents produced by the committee will be placed in the rulemaking docket.

In the event that FTA's NPRM differs from the committee's consensus recommendations, the preamble to an NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the decisions to depart from the committee's recommendations.

Following the issuance of NPRM and comment period, FTA will prepare and provide to the committee a comment summary. The committee will then be asked to determine whether the committee should reconvene to discuss changes to the NPRM based on the comments.

J. Committee Procedures

Under the general guidance of the facilitator, and subject to legal requirements, the committee will establish detailed procedures for the meetings. The meetings of the committee will be open to the public. Any person attending the committee meetings may address the committee if

time permits or file statements with the committee.

K. Record of Meetings

In accordance with FACA requirements, the facilitator will prepare summaries of all committee meetings. These summaries will be placed in the public docket for this rulemaking.

L. Tentative Schedule

FTA is seeking to convene the first of the committee's meetings starting in April, 2006. The exact date and location of that meeting will be announced in our notice of establishment of the advisory committee. Meetings are expected to last approximately two days each. The negotiation process will proceed according to a schedule of specific dates for subsequent meetings that the committee devises at its first meeting. We will publish a single notice of the schedule of all future meetings in the **Federal Register**, but will amend the notice through subsequent **Federal Register** notices if it becomes necessary to do so. The interval between meetings will be approximately one month.

The first meeting will commence with an overview of the regulatory negotiation process conducted by the facilitator.

Issued this 24th day of January, 2006, at Washington, DC.

Sandra K. Bushue,

Deputy Administrator, Federal Transit Administration.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018-AT69

Regulations To Implement the Captive Wildlife Safety Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to implement the Captive Wildlife Safety Act (CWSA). The CWSA amends the Lacey Act by making it illegal to import, export, buy, sell, transport, receive, or acquire, in interstate or foreign commerce, live lions, tigers, leopards, snow leopards, clouded leopards, cheetahs, jaguars, or cougars, or any hybrid combination of any of these species, unless certain exceptions are met.

DATES: Submit comments on this proposed rule or on the proposed information collection in this proposed rule by March 2, 2006.

ADDRESSES: Comments and materials concerning this proposed rule should be sent to: Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, Office of Law Enforcement (OLE), 4401 North Fairfax Drive, MS: LE-3000, Arlington, Virginia 22203, or via fax to: (703) 358-2271. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, OLE, 4501 North Fairfax Drive, Suite 3000, Arlington, VA, between the hours of 8 a.m. and 4 p.m., Monday through Friday. You may also submit comments, identified by RIN 1018-AT69, to the Federal eRulemaking portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Send any comments on the information collection contained in this proposed rule to the Office of Management and Budget's (OMB) Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-6566 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358-2269 (fax); or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: Kevin Garlick, Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, OLE, at (703) 358-1949.

SUPPLEMENTARY INFORMATION:

Background

The CWSA was signed into law on December 19, 2003 (Pub. L. 108-191). The purpose of the CWSA is to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species and to protect the public from dangerous animals.

In the early 1900s, Congress recognized the need to support States in protecting their game animals and birds by prohibiting the interstate shipment of wildlife killed in violation of State or territorial laws. Today this legislation is known as the Lacey Act, named for its principal sponsor, U.S. Representative John Fletcher Lacey, R-Iowa. Most significantly amended in 1981, the Lacey Act makes it unlawful to import, export, transport, sell, purchase, receive, or acquire fish, wildlife, or plants taken, possessed, transported, or sold in violation of any Federal, State, foreign, or Native American tribal law, treaty, or

regulation. The Lacey Act applies to all fish and wildlife (including their parts or products), and wild plants (including plant parts) that are indigenous to the United States and are included in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or are listed under a State conservation law.

However, the Lacey Act did not explicitly address the problem of the increasing trade in large cat species. The large cat species, which include the lion, tiger, leopard, snow leopard, clouded leopard, cheetah, jaguar, and cougar, are extremely effective predators, capable in the wild of taking down prey twice their own size. Severe damage to the prey's nervous system caused by damage to the vertebral column, along with massive blood loss and nearly instant suffocation, all contribute to the prey's certain, and nearly immediate death. The large cats are hunters by nature and, regardless of whether they were raised in captivity, it is impossible to predict when they will revert to instinct. Contemporary experts on large cat behavior and physiology note that humans are not part of the large cats' natural diet, largely because the large cats have learned to treat humans as another predator and to be wary of the dangers of human activity; for example, hunting and habitat encroachment. When large cats and humans do share territory or interact, usually because of human activity, any number of reasons, including hunger, can cause large cats to attack and inflict serious injuries. They are wild creatures that are never completely tamed, nor are they totally predictable, even if they have lived their entire lives with humans.

The ownership of large cat species has dramatically increased in popularity. It is estimated that thousands of individual large cats of various species are kept as pets in the United States. This increase is due, in part, to internet sales and auctions. This increase in popularity has raised concerns for public safety as well as for the welfare of the big cats. As the cats are often purchased when young, many owners are unable to cope with the high maintenance needs of the mature cats. Too often, the owners lack the resources and veterinary knowledge these grown cats require. In the hands of untrained exotic-pet fanciers, large cats are not only a potential danger to people, but are often victims themselves. Additionally, the burden of care often lands on already financially strained sanctuaries or humane societies after the cats are abandoned because they are too

dangerous to keep or too expensive to care for properly.

Over the past 10 years, there have been thousands of incidents of human injury and death documented, involving many different species of wild animals, many of which were large cats. According to the Captive Wild Animal Protection Coalition, in the past 5 years there have been 123 incidents involving large cats, including 87 injuries or deaths to adults and children and 38 animal escapes. Nineteen States (Alabama, Alaska, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Nebraska, New Hampshire, New Mexico, Tennessee, Utah, Vermont, and Wyoming) prohibit the private possession of large cats. Sixteen States (Arizona, Delaware, Indiana, Maine, Mississippi, Montana, New Jersey, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, and Virginia) have a partial ban on possession of large cats or require permits for their possession. Fifteen States (Arkansas, Idaho, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Nevada, North Carolina, Ohio, South Carolina, Washington, West Virginia and Wisconsin) do not address the issue of private ownership of large cats.

In consideration of the above information, Congress has recognized the need to address the issue of ownership of large cat species on a nationwide basis. Therefore, with the passage of the CWSA, Congress amended the Lacey Act to address this issue. The CWSA amends the Lacey Act by adding prohibitions that make it illegal to import, export, buy, sell, transport, receive, or acquire, in interstate or foreign commerce, live lions, tigers, leopards, snow leopards, clouded leopards, cheetahs, jaguars or cougars, or any hybrid combination of any of these species, unless certain listed exceptions apply.

We have reviewed the intent of Congress with regard to the actual species to be included in the definition of prohibited wildlife species under the CWSA, since scientific names were not included in the CWSA. However, scientific names for prohibited wildlife species were included in the report accompanying S. 269, the Senate version of the CWSA. Based upon this report, we conclude that Congress intended to include the lion (*Panthera leo*), tiger (*Panthera tigris*), leopard (*Panthera pardus*), snow leopard (*Uncia uncia*), clouded leopard (*Neofelis nebulosa*), jaguar (*Panthera onca*), cheetah (*Acinonyx jubatus*), and cougar

(*Puma concolor*), including all subspecies of each of these species. Also based upon the statutory language and this report, hybrids of any combination of these species, for example, a liger (a male lion and a female tiger) or a tiglon (a male tiger and a female lion), whether naturally or artificially induced, were also intended by Congress to be included in the definition of prohibited wildlife species.

It is important to note that there are not any pre-Act exemptions to the prohibitions contained in the CWSA. This means that even if you legally acquire any of the prohibited wildlife species in interstate or foreign commerce before we finalize the regulations to carry out the CWSA, you will not be allowed to engage in any of the prohibited activities after we finalize the regulations to carry out the CWSA, unless you qualify under the exceptions.

It is also important to note that the transport prohibition contained in the CWSA applies to any transportation of the prohibited wildlife species in interstate or foreign commerce, not only to transportation that involves commercial activity. This means that any person who owns a live specimen of a prohibited wildlife species and who wants to transport the animal in interstate or foreign commerce as a pet, or even as part of a household move, would not be allowed to do so under the prohibitions contained in the CWSA.

In common usage with regard to animals, "hybrid" is defined as offspring produced by propagation between different varieties, breeds, species, or other types of unlike animals. The most common example is breeding a horse with a donkey to produce a mule. In the case of the CWSA, only specimens produced from the breeding of any combination of the prohibited wildlife species are considered hybrids. Common examples include the liger or the tiglon.

There are several exceptions to the prohibitions of the CWSA including: persons licensed or registered by the United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) under the Animal Welfare Act (AWA); State colleges, universities, or agencies; State-licensed rehabilitators; State-licensed veterinarians; and accredited wildlife sanctuaries.

Wildlife sanctuaries must meet all of the following criteria to qualify as an "accredited wildlife sanctuary" under the CWSA:

(1) Approval by the Internal Revenue Service (IRS) as a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code of

1986, which is described in sections 501(c)(3) and 170(b)(1)(A)(vi) of that code.

(2) No commercial trade in the prohibited wildlife species including offspring, parts, and products;

(3) No propagation of the prohibited wildlife species; and

(4) No direct contact between the public and the prohibited wildlife species.

We are proposing to require that accredited wildlife sanctuaries maintain complete and accurate records of any possession, transportation, sale, acquisition, purchase, barter, disposition, importation, or exportation of the prohibited wildlife species. These records must be kept up to date and include the names and addresses of persons to or from whom any prohibited wildlife species has been purchased, sold, bartered, imported, exported or otherwise transferred; and the dates of these transactions. Accredited wildlife sanctuaries must maintain these records for 5 years, must make these records accessible to Service officials for inspection at reasonable hours, and must copy these records for Service officials, if requested.

We are proposing that accredited wildlife sanctuaries must make these records, their facilities, and their prohibited wildlife specimens accessible to Service officials for inspection at reasonable hours to be consistent with the conditions of permit issuance and acceptance in the Service's general permit procedures contained in 50 CFR 13.21(e)(2). Since many of the wildlife sanctuaries subject to this proposed recordkeeping requirement may have applied for and been issued permits under the general permit procedures contained in 50 CFR 13, we felt it would be in the public interest to be consistent with those procedures.

If met, the above criteria will enable a wildlife sanctuary to determine if they qualify for the "accredited wildlife sanctuary" exemption provided in the CWSA.

Propagating or breeding with the prohibited wildlife species is specifically prohibited for any wildlife sanctuary in order for that sanctuary to qualify for the "accredited wildlife sanctuary" exemption provided in the CWSA. "Propagation" or "breeding" is generally understood to mean the exchange of gametes between sexually reproducing organisms. However, for the purpose of the CWSA, it means the production of offspring or the attempt to produce, or the possibility of the production of offspring of the prohibited wildlife species, by any means. Placing a male and female large cat in the same

cage for any period of time may result in breeding and is considered propagation, whether actual production of offspring is intended or not. Since offspring can also be produced by artificial means, such as artificial insemination or cloning, these activities are also considered propagation.

One of the main purposes of the CWSA is to prevent possible injuries resulting from the direct contact of the prohibited wildlife species with any member of the public. For any wildlife sanctuary to qualify for the "accredited wildlife sanctuary" exemption provided in the CWSA, the sanctuary must prevent the possibility of these injuries. While we understand that the keepers and caregivers for these species might, as part of their job, have limited contact with the animals, the possibility of any contact between the animals and any other member of the public must be eliminated. Activities that might result in contact between the prohibited wildlife species and any member of the public, such as photography, play sessions, or offsite programs, are prohibited for any accredited wildlife sanctuary that would qualify for the exemption to the prohibitions. "Direct contact," therefore, is defined in this proposed rule as any situation in which any member of the public may potentially touch or otherwise come into physical contact with any live specimen of any of the prohibited wildlife species; direct contact is specifically prohibited for accredited wildlife sanctuaries.

Individuals and entities that are licensed or registered, and inspected, by the Animal and Plant Health Inspection Service or any other Federal agency with respect to the species regulated are also exempt from the prohibitions of the CWSA. APHIS is currently the only Federal agency that licenses or registers and inspects individuals and entities with respect to the prohibited wildlife species; therefore, only individuals and entities licensed or registered by APHIS under the AWA qualify under this exemption. In addition, for clarity, we have included definitions of "licensed person" and "registered person" to indicate who would qualify under this exemption.

We propose to establish these definitions for the CWSA in Title 50 of the Code of Federal Regulations, part 14, Importation, Exportation, and Transportation of Wildlife, in newly added Subpart K.

Public Comments Requested

We intend that any final action resulting from this proposed rule will be as accurate and effective as possible.

Therefore, we request comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule.

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

This proposed rule has a 30-day comment period. In the interest of public safety, and when considering that both the CWSA and this proposed rule are very short, we believe that 30 days is sufficient time for interested parties to submit comments.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

Executive Order 12866 (Regulatory Planning and Review)

This proposed rule has been reviewed by OMB under Executive Order 12866. Under the criteria in Executive Order 12866, this proposed rule is not a significant regulatory action.

a. This proposed rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, 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 regulate the movement of large cat species and to provide improved safety for the public by prohibiting direct contact with the prohibited wildlife species at accredited wildlife sanctuaries. The Endangered Species Act (ESA) already regulates the interstate sale or movement and international trade of tigers, leopards, snow leopards, clouded leopards, jaguars, and cheetahs. The CWSA would, therefore, have no substantial additional impact on the interstate sale and international trade in these species. Our records indicate that in the period from 2001 through 2003, 164 tigers were imported and 123 were exported, 53 leopards were imported and 39 were exported, 2 snow leopards were imported and 4 were exported, 9 jaguars were imported and 5 were exported, and 43 cheetahs were imported. These specimens were imported or exported by organizations who qualified for exemptions under the ESA and who would also likely qualify for one of the exemptions contained in the CWSA. Therefore, the CWSA would not have any substantial economic effect by restricting importations or exportations of these species. The African lion and the cougar are not protected under the ESA.

Under the ESA, individuals may apply to obtain a captive-bred wildlife (CBW) registration, which authorizes, among other things, the interstate sale, with another CBW holder, and export of live specimens of species listed under the ESA that are not native to the United States. Species that are eligible for a CBW include tigers, leopards, snow leopards, clouded leopards, jaguars, and cheetahs. There are currently 378 approved CBWs, of which fewer than 10 authorize activities with the prohibited wildlife species in the CWSA. Therefore, the CWSA would not have any substantial economic effect on this segment of the live animal industry by restricting activities currently authorized through a CBW registration.

CITES regulates, but does not prohibit, the international trade of African lions and cougars. The CWSA could, therefore, have some impact on limiting imports or exports of African lions and cougars. Our records indicate that in the period from 2001 through 2003, 22 African lions were imported and 15 were exported, and 14 cougars were imported and 19 were exported. Some of these importations or exportations may have been for commercial purposes; however, most, if not all, of the individuals who would be importing or exporting live African lions and cougars would probably qualify for one of the exemptions contained in the CWSA. Therefore, the CWSA would not have any substantial economic effect by restricting importations or exportations of these species.

The CWSA will prohibit the import, export, transport, sale, receipt, acquisition or purchase in interstate or foreign commerce, of African lions and cougars by individuals or businesses that would not qualify for one of the exemptions contained in the CWSA. These restrictions are not expected to have a substantial economic effect on this segment of the live animal industry. However, we ask the public for data on these individuals or small businesses to enable us to determine the impact of this proposed rule on those individuals or small businesses.

The CWSA will have its greatest potential impact on the import, export, transport, sale, receipt, acquisition, or purchase in interstate or foreign commerce, of hybrids produced from the breeding of any combination of the prohibited wildlife species, by individuals who would not qualify for one of the exemptions contained in the CWSA. Hybrids produced from the breeding of any combination of tigers, leopards, snow leopards, clouded leopards, jaguars, or cheetahs would be exempt from the provisions of the ESA but not from the provisions of the CWSA. Generally speaking, the most common hybrids resulting from the breeding of any combination of the prohibited wildlife species would be the liger or the tiglon. Numerous websites promote the existence of these hybrids, suggesting that there may be some demand for these animals for use as pets or for display purposes. We do not maintain domestic trade data on these hybrids; therefore, it is difficult to estimate the impact the CWSA will have on this segment of the live animal industry. However, we ask the public for data on these small businesses to enable us to determine the impact of

this proposed rule on those small businesses.

In addition to amending the Lacey Act by adding prohibitions that make it illegal to import, export, buy, sell, transport, receive, or acquire, in interstate or foreign commerce, the prohibited wildlife species, the CWSA provides exemptions to these prohibitions for certain persons. Becoming eligible for these exemptions should not have any substantial economic effect on this segment of the live animal industry.

The only direct costs to be assumed by individuals who seek an exemption to the prohibitions of the CWSA would be the costs associated with the application process and meeting compliance requirements in order to become licensed or registered under the AWA with APHIS and the costs associated with meeting compliance requirements in order to become a State-licensed wildlife rehabilitator.

The costs for meeting APHIS compliance requirements under the AWA are difficult to quantify because these costs are extremely variable, depending on the nature of the business of the individual who seeks to become licensed or registered. Application costs will vary, depending on the nature of the business of the individual. Licenses issued by APHIS under the AWA must be renewed every year with a standard application fee of \$10.00. Additional application costs are based upon the nature of the business of the individual and the size of that business. Additional application costs for animal exhibitors can range from \$30.00 to \$300.00 per year, depending on the number of animals on exhibit. Additional application costs for animal dealers can range from \$30.00 to \$500.00 per year, depending on the anticipated annual income of the business.

In addition to application fees, the costs for meeting APHIS compliance requirements can vary, depending on the current facilities maintained by the individual and to what degree those facilities meet those requirements. Construction costs for new facilities may also need to be increased in order to achieve compliance.

The costs for meeting compliance requirements in order to become a State-licensed wildlife rehabilitator are difficult to quantify because these costs are extremely variable, depending on the State where the applicant resides and the current facilities maintained by the individual and to what degree those facilities meet those requirements.

We ask the public for data to further define the costs to be assumed by

individuals who seek an exemption to the prohibitions of the CWSA.

Each wildlife sanctuary that intends to qualify under the exemption to the prohibitions of the CWSA is prohibited from commercially trading in the prohibited wildlife species or the species' offspring, parts, or byproducts, and from propagating any of the prohibited wildlife species. Though this requirement may result in lost revenue for the sanctuary, it is not expected to result in a substantial negative economic effect for sanctuaries as a whole. In addition, if the owner of a sanctuary chooses to commercially trade in the prohibited wildlife species, he or she should become licensed or registered with APHIS under the AWA, and would thus qualify for the exemption in the CWSA.

The CWSA provides an exemption, for individuals transporting live specimens of the prohibited wildlife species, to individuals who qualify for one of the other exemptions provided in the CWSA. This proposed rule requires that the transporting individuals produce evidence to prove that they are transporting specimens between other exempted individuals. However, these requirements would not increase costs for the transporting individuals because APHIS already requires these individuals to be registered by meeting similar requirements.

In addition to amending the Lacey Act by adding prohibitions that make it illegal to import, export, buy, sell, transport, receive, or acquire, in interstate or foreign commerce, the prohibited wildlife species, the CWSA provides improved safety for the public by prohibiting direct contact with the prohibited wildlife species at accredited wildlife sanctuaries. Activities that might result in direct contact between the prohibited wildlife species and any member of the public, such as photography, play sessions, or offsite programs, have been prohibited for accredited wildlife sanctuaries. Though this requirement may result in lost revenue for sanctuaries, it is not expected to result in a substantial negative economic effect for wildlife sanctuaries as a whole.

b. This proposed rule will not create inconsistencies with other agencies' actions. We are the lead agency regulating international wildlife trade, the issuance of permits to conduct activities affecting federally protected wildlife and their habitats, and carrying out the United States' obligations under CITES. Therefore, this proposed rule has no effect on other agencies' responsibilities and will not create

inconsistencies with other agencies' actions.

In addition, 19 States prohibit the private possession of large cats, and 16 States have a partial ban on possession of large cats or require permits for their possession. Therefore, the CWSA does not create inconsistencies with these State's restrictions, but rather supports them.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This proposed rule will not change the fee schedule for any permits issued by us or any licenses or registrations issued by APHIS.

d. This proposed rule will not raise novel legal or policy issues. This proposed rule will not raise novel legal or policy issues because it is based upon Congress's passage of the CWSA, which reflects a heightened concern for public safety resulting from the increased trade in the prohibited wildlife species for use as pets and the increased risk of danger to members of the public when given opportunities for direct contact with the prohibited wildlife species.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The Department of the Interior has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. In addition, a Small Entity Compliance Guide is not required.

This proposed rule regulates businesses that commercially trade in the prohibited wildlife species in interstate or foreign commerce. The purpose of this proposed rule is to regulate the movement of large cat species and to provide improved safety for the public by prohibiting direct contact with the prohibited wildlife species at accredited wildlife sanctuaries.

Most of the businesses that commercially trade in the prohibited wildlife species, in interstate or foreign commerce, would be considered small businesses as defined under the Regulatory Flexibility Act. These businesses are most logically placed in three primary industries: Zoos and Botanical Gardens; Nature Parks and Other Similar Institutions; and All Other Animal Production. The SBA size standard for the first two industries is \$6 million in average annual receipts, and the SBA size standard for the third industry is \$.75 million in average annual receipts. However, it should be

noted that the nature of these businesses would require that most, if not all, of them must be licensed or registered under the AWA by APHIS, making them eligible for one of the exemptions provided in the CWSA. However, we recognize that there may be small businesses that do not fit into any of the above categories and are not eligible for one of the exemptions provided in the CWSA. We ask the public for data on these small businesses to enable us to determine the impact of this proposed rule on those small businesses.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

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

a. This proposed rule does not have an annual effect on the economy of \$100 million or more. For the reasons described above, we have determined that this proposed rule will not have an annual effect on the economy of \$100 million or more. It is not anticipated that the restrictions imposed by the CWSA and the costs to become eligible for the exemptions contained in the CWSA will amount to an annual effect on the economy of \$100 million or more.

b. This proposed rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The CWSA provides exemptions to its prohibitions for certain persons. Becoming eligible for these exemptions will increase costs for the live animal industry; however, as described above, we do not expect these increased costs to be major. The only direct costs to be assumed by individuals who seek an exemption to the prohibitions of the CWSA would be the costs associated with the application process and meeting compliance requirements in order to become licensed or registered under the AWA with APHIS and the costs associated with meeting compliance requirements in order to become a State-licensed wildlife rehabilitator. We ask the public for data to further define the costs to be assumed by individuals who seek an exemption to the prohibitions of the CWSA.

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. The CWSA will not have significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises because

foreign-based enterprises that are subject to U.S. jurisdiction must comply with the same regulatory requirements as U.S.-based enterprises who buy or sell the prohibited wildlife species in interstate or foreign commerce.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), this proposed rule will have no effects.

a. This proposed rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. We are the lead agency regulating international wildlife trade, the issuance of permits to conduct activities affecting federally protected wildlife and their habitats, and carrying out the United States' obligations under CITES. No small government assistance or impact is expected as a result of this proposed rule.

b. This proposed rule will not produce a Federal requirement that may result in the combined expenditure by State, local, or tribal governments of \$100 million or greater in any year, so it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This proposed rule will not result in any combined expenditure by State, local, or tribal governments.

Executive Order 12630 (Takings)

Under Executive Order 12630, this proposed rule does not have significant takings implications. Under Executive Order 12630, this proposed rule does not affect any constitutionally protected property rights. The purpose of this proposed rule is to regulate the movement of large cat species and to provide improved safety for the public by prohibiting direct contact with the prohibited wildlife species at accredited wildlife sanctuaries. This proposed rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. Though interstate sale of large cat specimens is prohibited, the impact of this prohibition should be minimal because intrastate sales are not prohibited. A takings implication assessment is not required. Therefore, this proposed rule does not have significant takings implications.

Executive Order 13132 (Federalism)

Under Executive Order 13132, this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. This proposed rule will not have a substantial direct effect on the States, on

the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988 (Civil Justice Reform)

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not overly burden the judicial system and that it 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 lawsuits, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

Paperwork Reduction Act

This proposed rule contains new information collection requirements for which OMB approval is required under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.

We are proposing to require that wildlife sanctuaries that seek to qualify as an "accredited wildlife sanctuary" under the CWSA must maintain complete and accurate records of any possession, transportation, sale, acquisition, purchase, barter, disposition, importation, or exportation of the prohibited wildlife species. These records must be up to date, and include: (1) The names and addresses of persons to or from whom any prohibited wildlife species has been purchased, sold, bartered, imported, exported or otherwise transferred; and (2) the dates of these transactions. Accredited wildlife sanctuaries must maintain these records for 5 years, must make these records accessible to Service officials for inspection at reasonable hours, and must copy these records for Service officials, if requested. This proposed rule does not contain any requirement that wildlife sanctuaries must submit an application to qualify as an "accredited wildlife sanctuary."

The requirement to make records available will only be initiated on an as-needed basis. We estimate that there are no more than 750 wildlife sanctuaries that could qualify for the "accredited wildlife sanctuary" exemption.

We do not anticipate that this proposed recordkeeping requirement will impose any significant burden because the maintenance of these records is typically a normal business practice. Most wildlife sanctuaries will likely only have custody of a limited number of specimens of the prohibited wildlife species. Therefore, complying

with the requirement to make records available can likely be met by making available and copying, if needed, a small number of documents pertaining to the possession, transportation, sale, acquisition, purchase, barter, disposition, importation, or exportation of the prohibited wildlife species, which we estimate can be completed in an hour or less. The total estimated annual burden for complying with this proposed recordkeeping requirement should be 750 hours or less. We estimate that the average wage of individuals likely to be providing these documents is \$20.00 per hour. Therefore, the total estimated annual dollar value of this proposed recordkeeping requirement is \$15,000.00.

OMB regulations at 5 CFR part 1320 require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities. You should send comments that you may have on the information collection contained in this proposed rule to the Desk Officer for the Interior Department at OMB-OIRA at (202) 395-6566 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358-2269 (fax); or hope_grey@fws.gov (e-mail). OMB has 60 days to approve or disapprove the information collection contained in this proposed rule but may respond in 30 days. You should submit your comments to OMB by the date specified above in **DATES** to assure their consideration.

We are specifically seeking public comments as to: (a) Whether or not this collection of information is necessary for the proper performance of the functions of the Service, including whether or not the information will have practical utility; (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

This proposed rule has been analyzed under the criteria of the National Environmental Policy Act and 318 DM

2.2 (g) and 6.3 (D). This proposed rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/evaluation is not required. This proposed rule is categorically excluded from further National Environmental Policy Act requirements, under part 516 of the Departmental Manual, Chapter 2, Appendix 1.10.

Executive Order 13175 (Tribal Consultation) and 512 DM 2 (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), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no adverse effects. Individual tribal members must meet the same regulatory requirements as other individuals who import, export, buy, sell, transport, receive, or acquire the prohibited wildlife species in interstate or foreign commerce.

Executive Order 13211 (Energy Supply, Distribution, or Use)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The purpose of this proposed rule is to regulate the movement of large cat species and to provide improved safety for the public by prohibiting direct contact with the prohibited wildlife species at accredited wildlife sanctuaries. This proposed rule is not a significant regulatory action under Executive Order 12866 and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Author

The originator of this proposed rule is Mark Phillips, OLE, U.S. Fish and Wildlife Service, Washington, DC.

List of Subjects in 50 CFR Part 14

Animal welfare, Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons described above, we propose to amend part 14, subchapter B of Chapter I, title 50 of the Code of Federal Regulations as set forth below.

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for part 14 continues to read as follows:

Authority: 16 U.S.C. 668, 704, 712, 1382, 1538(d)–(f), 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 9701.

2. Revise § 14.3 to read as follows:

§ 14.3 Information collection requirements.

The Office of Management and Budget approved the information collection requirements contained in this part 14 under 44 U.S.C. 3507 and assigned OMB Control Numbers 1018–0092 and 1018–0XXX. The Service may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. We are collecting information about wildlife imports or exports, including products and parts, to facilitate enforcement of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*) and the Captive Wildlife Safety Act (117 Stat. 2871), and to carry out the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. We estimate the burden for the reporting requirements associated with OMB Control Number 1018–0092 to vary from 10 to 15 minutes per response, and for the recordkeeping requirements associated with OMB Control Number 1018–0XXX to be 1 hour or less. Direct comments regarding the burden estimate or any other aspect of these requirements to the Service Information Collection Control Officer, MS–222 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240.

3. Add a new subpart K to read as follows:

Subpart K—Captive Wildlife Safety Act

Sec.

14.250 What is the purpose of these regulations?

14.251 What other regulations may apply?

14.252 What definitions do I need to know?

14.253 What are the restrictions contained in these regulations?

14.254 What are the requirements contained in these regulations?

14.255 Are there any exemptions to the restrictions contained in these regulations?

Subpart K—Captive Wildlife Safety Act

§ 14.250 What is the purpose of these regulations?

The regulations in this subpart carry out the Captive Wildlife Safety Act (CWSA), 117 Stat 2871, which amended the Lacey Act Amendments of 1981, 16 U.S.C. 3371–3378, by adding paragraphs 2(g), 3(a)(2)(C), and 3(e) (16 U.S.C. 3371, 3372).

§ 14.251 What other regulations may apply?

The provisions of this subpart are in addition to, and are not in place of, other regulations of this subchapter B which may require a permit or describe additional restrictions or conditions for the importation, exportation, acquisition, sale, receipt, purchase, or transportation of wildlife in interstate or foreign commerce.

§ 14.252 What definitions do I need to know?

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

Accredited wildlife sanctuary means a facility that cares for live specimens of one or more of the prohibited wildlife species and:

(1) Is approved by the United States Internal Revenue Service as a corporation that is exempt from taxation under § 501(a) of the Internal Revenue Code of 1986, which is described in §§ 501(c)(3) and 170(b)(1)(A)(vi) of that code;

(2) Does not commercially trade in prohibited wildlife species, including offspring, parts and products;

(3) Does not propagate any of prohibited wildlife species; and

(4) Does not allow any direct contact between the public and the prohibited wildlife species.

Direct contact means any situation in which any individual other than an authorized keeper or caregiver may potentially touch or otherwise come into physical contact with any live specimen of the prohibited wildlife species.

Licensed person means any individual, facility, agency, or other entity that holds a valid license from and is inspected by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) (See definition of "licensee" in 9 CFR 1.1.).

Prohibited wildlife species means a specimen of any of the following eight species: lion (*Panthera leo*), tiger (*Panthera tigris*), leopard (*Panthera*

pardus), snow leopard (*Uncia uncia*), clouded leopard (*Neofelis nebulosa*), jaguar (*Panthera onca*), cheetah (*Acinonyx jubatus*), and cougar (*Puma concolor*) or any hybrids resulting from the breeding of any combination of these species, for example, a liger (a male lion and a female tiger) or a tiglon (a male tiger and a female lion), whether naturally or artificially produced.

Propagate means to allow or facilitate the production of offspring of any of the prohibited wildlife species, by any means.

Registered person means any individual, facility, agency, or other entity that is registered with and inspected by APHIS under the AWA (See definition of “registrant” in 9 CFR 1.1.).

§ 14.253 What are the restrictions contained in these regulations?

Except as provided in § 14.255, you may not import, export, transport, sell, receive, acquire, or purchase, in interstate or foreign commerce, any live prohibited wildlife species.

§ 14.254 What are the requirements contained in these regulations?

Accredited wildlife sanctuaries must maintain complete and accurate records of any possession, transportation, sale, acquisition, purchase, barter, disposition, importation, or exportation of the prohibited wildlife species. These records must be up to date, and must include the names and addresses of persons to or from whom any prohibited wildlife species has been purchased, sold, bartered, imported, exported or otherwise transferred; and the dates of these transactions. Accredited wildlife sanctuaries must maintain these records for 5 years, must make these records accessible to Service officials for inspection at reasonable hours, and must copy these records for Service officials, if requested. In addition, by declaring itself to be accredited, a wildlife sanctuary agrees to allow access to its facilities and its prohibited wildlife specimens by Service officials at reasonable hours.

§ 14.255 Are there any exemptions to the restrictions contained in these regulations?

Yes. The prohibitions of § 14.253 do not apply to:

- (a) A licensed person or registered person;
- (b) A State college, university, or agency;
- (c) A State-licensed wildlife rehabilitator;
- (d) A State-licensed veterinarian;
- (e) An accredited wildlife sanctuary;

or

- (f) A person who:
 - (1) Can produce documentation showing that he or she is transporting live prohibited wildlife species between persons who are exempt from the prohibitions in § 14.253; and
 - (2) Has no financial interest in the prohibited wildlife species other than payment received for transporting them.

Dated: December 19, 2005.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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