

Proposed Rule Implementing the Captive Wildlife Safety Act Questions and Answers

What is the Captive Wildlife Safety Act?

The Captive Wildlife Safety Act (CWSA), which was signed on December 19, 2003, addresses concerns about public safety and the growing number of big cats in private hands in this country.

Specifically, the CWSA amends the Lacey Act to make it illegal to import, export, buy, sell, transport, receive or acquire live big cats across State lines or the U.S. border. The Act provides exceptions for certain individuals and entities.

Why is the Fish and Wildlife Service proposing these regulations?

The Act requires the Service to develop regulations that “describe” those “persons” that are exempt. The proposed regulations also define terms that the public must understand to comply with the CWSA and reiterate the law’s prohibitions in a more easily accessible format than that provided by the amended Lacey Act.

How do these regulations implement the CWSA?

The proposed regulations:

- Identify the big cat species covered by scientific name
- Define terms used in the Act to help the public understand it
- Repeat the prohibitions established by the Act
- List and describe the “persons” who are exempt
- Create recordkeeping requirements for exempt wildlife sanctuaries

What species are covered by the CWSA?

The Act’s prohibitions apply to lions, tigers, leopards, snow leopards, clouded leopards, jaguars, cheetahs, and cougars and to any hybrid combination of these species.

What activities will be prohibited?

Unless you are exempt, you may not move live big cats across State lines or the U.S. border. Prohibited activities will include

- Import into or export out of the United States
- Interstate sale and purchase
- Transport across State lines
- Receiving or acquiring big cats if the animals are moved from one State to another

When do these prohibitions go into effect?

CWSA prohibitions will become effective 30 days after the Service publishes a final rule implementing the law.

Does the CWSA make it illegal to own a big cat?

No. This Federal law does not address possession. Nineteen States, however, presently ban private possession of big cats. Another 16 have a partial ban on possession or require a permit. Local laws may also address this issue.

Will CWSA prohibitions apply to big cats that were legally owned before the passage or effective date of the law?

Yes. The law will apply to all big cats (regardless of when they were acquired) and all persons and entities except those specifically identified as exempt. The Act provides no “grandfather clause.”

What will the penalties be for violating the CWSA?

If the violation involves sale, purchase, or offer to do so in interstate commerce of cats with a value of more than \$350 or if the violation involves any import or export, it constitutes a felony offense punishable by a prison term of up to five years and a fine up to \$250,000 for an individual and \$500,000 for an organization. Other violations would be misdemeanors involving lower penalties.

Who is exempt from CWSA prohibitions?

- Persons, facilities, or other entities licensed by APHIS under the Animal Welfare Act to possess big cats (such license-holders typically include zoos, circuses, and those who conduct research with wild animals)
- Persons registered by APHIS under the Animal Welfare Act to transport big cats
- State colleges, universities or agencies
- State-licensed wildlife rehabilitators
- State-licensed veterinarians
- Wildlife sanctuaries that meet specific criteria

What criteria do wildlife sanctuaries have to meet to be exempt?

The CWSA specifies that sanctuaries

- Must be a non-profit entity that is tax exempt under section 501(a) of the Internal Revenue Code
- Cannot engage in commercial trade in big cat species, including their offspring, parts, and products made from them
- Cannot breed big cats
- Cannot allow direct contact between big cats and the public at their facilities

In addition, the Service is proposing that sanctuaries must keep records of any possession, transportation, sale, acquisition, purchase, barter, disposition, importation or exportation of big cats and must allow the Service access to their facilities and the relevant animals for inspection at reasonable hours.

Is the Service proposing any other requirements with respect to sanctuary records?

We are proposing that such records

- Must be up to date and retained for five years
- Must include the dates of transactions and the names and addresses of the persons involved
- Must be made available or copied for Service inspection on request

The CWSA refers to “accredited wildlife sanctuaries” in its exemptions, but no Federal agency or professional group currently accredits such entities. Why has no process been established to do so?

The Service considered options for developing some type of formal accreditation mechanism for wildlife sanctuaries but concluded for a number of reasons that such a step was not practical. The Act itself sets specific conditions that must be met for an “accredited” sanctuary to qualify for exemption (i.e., it must be tax exempt and cannot commercially trade, breed, or allow public contact with the big cats in its care). We have decided that a sanctuary that meets these four criteria is exempted from CWSA prohibitions.

Why did the Service take two years to prepare a proposed rule?

The Service worked diligently with existing resources to craft the required regulations. Our goal was to develop rules that provide an effective and enforceable framework for implementing this law. We believed that a careful, deliberative approach that included consultation with appropriate authorities; that weighed the advantages and disadvantages of different approaches to such issues as sanctuary accreditation; and that attempted to anticipate and address potential enforcement problems (such as the need for recordkeeping by sanctuaries) would best serve the public interest.

Did the Service consult other agencies or groups in drafting these regulations?

Yes. The Service consulted with the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service as directed by the Act. We also reviewed concerns with the Department of the Interior Solicitor’s Office and the Department of Justice.

When will a final rule be published?

The proposed rule gives the public 30 days in which to submit comments. We anticipate that a period of at least three to four months may be needed to fairly and thoroughly evaluate those comments, draft a final rule, coordinate it with APHIS and the other agencies consulted, and secure needed approvals within the Department of the Interior and possibly the Office of Management and Budget. The final regulations will take effect within 30 days of publication in the Federal Register.

Is the Service presently enforcing the CWSA?

No. The law does not take effect until the Service finalizes its regulations.

Has this delay in enforcement jeopardized public safety?

Although we cannot bring charges under the CWSA, we have continued to combat interstate trafficking in big cats under existing Federal laws such as the Endangered Species Act and Lacey Act. The Endangered Species Act, for example, already prohibits interstate commerce in all but two of the eight species covered by the CWSA. The new law would, of course, further restrict the interstate movement of big cat species and hybrids and provide an additional legal mechanism for restricting such trafficking and prosecuting those who engage in it.

We recognize that a number of incidents involving big cat escapes and/or human injuries have been reported since December 2003. However, to our knowledge, many (if not most) of these incidents have involved owners who would be exempt under the CWSA and were not caused by, or related to, an act that would be prohibited under this law.