



441 G St. N.W.
Washington, DC 20548

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July 12, 2023

The Honorable Thomas R. Carper
Chairman
The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Bruce Westerman
Chairman
The Honorable Raúl Grijalva
Ranking Member
Committee on Natural Resources
House of Representatives

Subject: *Department of the Interior, Fish and Wildlife Service: Regulations To Implement the Big Cat Public Safety Act*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Interior, Fish and Wildlife Service (FWS) entitled “Regulations To Implement the Big Cat Public Safety Act” (RIN: 1018-BH23). We received the rule on June 30, 2023. It was published in the *Federal Register* as an interim rule on June 12, 2023. 88 Fed. Reg. 38358. The effective date is June 12, 2023.

The interim rule, according to FWS, amends implementing regulations for the Captive Wildlife Safety Act, Pub. L. No. 108-191, 117 Stat. 2871 (Dec. 19, 2003), by incorporating the requirements of the Big Cat Public Safety Act (BCPSA), Pub. L. No. 117-243, 136 Stat. 2336 (Dec. 20, 2022). Specifically, FWS stated that BCPSA amended the Lacey Act Amendments of 1981, Pub. L. No. 97-79, 95 Stat. 1073 (Nov. 16, 1981), to clarify provisions enacted by the Captive Wildlife Safety Act and to further the conservation of certain wildlife species. According to FWS, BCPSA makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce, or in a manner substantially affecting interstate or foreign commerce, or breed or possess prohibited wildlife species, with certain exceptions. FWS stated the BCPSA also requires an entity or individual who does not qualify for one of the other exceptions and is in possession of any prohibited wildlife species to register each such animal with FWS not later than June 18, 2023, allowing pre-BCPSA owners to register their pre-BCPSA big cats to continue to possess them under the pre-BCPSA exception.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its

reasons in the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). Here, FWS stated that it finds good cause to make this interim rule effective immediately under CRA. Specifically, FWS stated that it undermines the public safety and conservation purposes of BCPSA to maintain regulations that do not conform to current law. Further, FWS stated publication of an interim rule will provide entities and individuals who must register their animal(s) with FWS an appropriate amount of time to comply with the requirements. FWS also explained that there is significant risk to public safety posed by prohibited wildlife species and there is a need to ensure clarity on activities with prohibited wildlife species that are prohibited and excepted under BCPSA.

Enclosed is our assessment of FWS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink, reading "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Brian Salem
Regulations Analyst
Fish and Wildlife Service

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE
ENTITLED
“REGULATIONS TO IMPLEMENT THE BIG CAT PUBLIC SAFETY ACT”
(RIN: 1018-BH23)

(i) Cost-benefit analysis

The Department of the Interior, Fish and Wildlife Service (FWS), discussed the costs and benefits of this interim rule implementing the Big Cat Public Safety Act (BCPSA). FWS stated that the Congressional Budget Office (CBO) estimated forgone revenue of approximately \$1.6 million may be incurred by private owners due to the prohibition of breeding, acquiring, and selling big cats, and that CBO expects current owners will have small registration costs if they do not sell or trade big cats. FWS explained it expects benefits due to consistent regulations for big cats, to include increased benefits to the general public in knowing that big cats will be taken care of and individual workers will be protected from risk of injury from big cats for which they provide care. Further, FWS stated there may be reduced costs for sanctuaries supporting big cats if fewer big cats are abandoned. Lastly, FWS stated the rule will decrease risk to public safety.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

FWS stated that it determined for good cause that general notice and opportunity for public comment is impracticable, unnecessary, and contrary to the public interest, and, therefore, FWS is not issuing a notice of proposed rulemaking. FWS stated that rules that are exempt from notice and comment are also exempt from RFA.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

FWS stated that this interim rule will not produce a mandate that will result in the combined expenditures by state, local, or tribal governments of \$100 million or greater in any year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

The Act provides that notice and comment requirements do not apply when an agency, for good cause, finds that they are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. § 553(b). FWS stated it determined for good cause that general notice and opportunity for public comment is impracticable, unnecessary, and contrary to the public interest, and, therefore, FWS did not issue a notice of proposed rulemaking. Specifically, FWS stated that it undermines the public safety and conservation purposes of BCPSA to maintain regulations that do not conform to current law. Further, FWS stated publication of an interim rule will provide entities and individuals who must register their animal(s) with FWS an appropriate amount of

time to comply with the requirements. FWS also explained that there is significant risk to public safety posed by prohibited wildlife species and there is a need to ensure clarity on activities with prohibited wildlife species that are prohibited and excepted under BCPSA.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FWS determined that this interim rule contains information collection requirements under PRA. FWS stated the information collection requirements require approval by the Office of Management and Budget (OMB) under OMB Control Number 1018-0192. FWS further stated that the collection titled “Big Cat Public Safety Act Requirements” has a total estimated annual non-hour burden cost of \$3,016. FWS noted that the total annual burden hours of the amendments to Form 3-200-11, population management and care plan, and recordkeeping requirements under the regulations is 7,263.

Statutory authorization for the rule

FWS promulgated this interim rule pursuant to sections 668, 704, 712, 1382, 1538(d)–(f), 1540(f), 3371–3378, 4223–4244 and 4901–4916 of title 16, United States Code; section 42 of title 18, United States Code; and section 9701 of title 31, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

FWS stated that the Office of Information and Regulatory Affairs has determined that this interim rule is significant. FWS further stated that it is proceeding under the emergency provisions in section 6(a)(3)(D) of the Order based on the need to move expeditiously to implement the new prohibitions and exceptions enacted under BCPSA.

Executive Order No. 13132 (Federalism)

FWS determined that this interim rule will not have significant federalism effects and, therefore, a federalism assessment is not required.