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Public Comments Processing
Regulatory Analysis and Development
Animal and Plant Health Inspection Unit
U.S. Department of Agriculture
Attn: Honorable Tom Vilsack, Secretary U.S. Department of Agriculture
Attn: Kevin Shea, Acting Administrator Animal and Plant Health Inspection Service
Station 3A-03.8
4700 River Road, Unit 118
Riverdale, MD 20737-1238

RE: Federal Register No. 2013-18874/ Docket ID: APHIS-2012-0107-0002

Dear Secretary Vilsack and Acting Administrator Shea:

The Committee on Animal Law of the New York City Bar Association (the “Committee”) respectfully submits this response to the request in Federal Register 2013-18874 (August 5, 2013) for comments to the Animal and Plant Health and Inspection Service (the “APHIS”) of the U.S. Department of Agriculture (the “USDA”) on a petition to amend regulations of the Animal Welfare Act (the “AWA”) regarding the handling of big cats, bears, and nonhuman primates by members of the public in the context of exhibitions of such animals, and the separation of big cats, bears, and nonhuman primates from their mothers before weaning absent medical necessity in the context of exhibitions of such animals.

The New York City Bar Association is an independent non-governmental organization of more than 23,000 lawyers, law professors and government officials, predominantly from New York City and also from throughout the United States and fifty other countries. The Committee

is the first committee of its kind in the country and has a history of supporting federal, state and local anti-cruelty legislation.

The Committee urges the Secretary of Agriculture (the “Secretary”) to amend the regulations of the AWA to (i) prohibit public handling of or direct physical contact by the public with big cats, bears, and nonhuman primates of any age in the context of exhibitions of such animals, and (ii) prohibit the separation of big cats, bears, and nonhuman primates from their mothers before weaning unless medically necessary in the context of exhibition of such animals because such conduct is not adequately encompassed by existing AWA regulations and endangers both animal welfare and the public safety and health.

The exhibition of wild animals such as big cats, bears, and nonhuman primates presents serious concerns for animal welfare and public safety. Despite the inherent predatory nature of these animals, lions, tigers, bears and other large carnivores are frequently exhibited to the public in roadside zoos and travelling menageries across the United States where members of the public have the opportunity to make direct physical contact with the animals. For a fee, an individual can pose while holding a baby lion, swim with a tiger or interact with a monkey. In other instances, these wild animals are featured in live television segments where members of the audience can touch, hold and feed them or used as interactive “props” in photo shoots for advertising campaigns.¹ Despite being regulated by the AWA, individuals and entities exhibiting these animals routinely engage in contact, specifically the handling of big cats, bears and nonhuman primates by members of the public and the separation of such animals from their mothers prior to weaning without medical necessity, which endangers both animal welfare and the public safety and health.

I. Statutory Authority and Legal Background

The AWA,² enacted in 1966 under Congress’s commerce power, regulates the care, handling, and treatment of warm-blooded animals used in research, exhibition, commercial sale, and commercial transport. As it pertains to animals used in exhibition, the AWA’s stated purpose is to “insure . . . humane care and treatment” and “to assure the humane treatment of animals during transportation in commerce.”³ In effectuating this purpose, Congress gave the Secretary of Agriculture broad statutory authority to adopt standards governing “the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and

¹ See *In Re Sidney J Yost*, AWA Docket No. 12-0294 (including a claim that the licensee violated the Animal Welfare Act by exhibiting a lion on the Tonight Show before a live audience with insufficient distance and no barrier); see also Bulgari’s Fall/Winter 2010-2011 advertising campaign, available at http://www.huffingtonpost.com/2010/07/14/julianne-moore-nude-with_n_646402.html (featuring the actress Julianne Moore posing with two lion cubs).

² 7 U.S.C. §§ 2131-2159. The AWA requires all exhibitors and dealers to obtain a license from the Secretary of Agriculture, and provides that “no such license shall be issued until the dealer or exhibitor shall have demonstrated that his facilities comply with the standards promulgated by the secretary...” 7 U.S.C. § 2133; 9 C.F.R. § 2.1 (a)(1).

³ 7 U.S.C. § 2131(1)-(2).

exhibitors”, directing that such standards shall include “minimum requirements for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation by species where the Secretary finds necessary for humane handling, care, or treatment of animals...”⁴

Pursuant to its statutory authority, the USDA has enacted several regulations pertaining to the handling and exhibition of young and adult animals⁵:

§ 2.131(b)(1) requires that all animals be handled in a manner that prevents trauma, behavioral stress, physical harm, or unnecessary discomfort to them.

§ 2.131(c)(1) places conditions on the public exhibition of animals. It requires that during public exhibition, all animals must be handled with sufficient distance and/or barriers between the animal and the public so as to ensure the safety of the animals and the public.

§ 2.131 (c)(2), (c)(3), and (c)(4) require that performing animals be given rest periods, that young or immature animals cannot be exposed to rough or excessive public handling or exhibited for periods of time that would be inconsistent with their health and well-being, and that drugs, such as tranquilizers, cannot be used to facilitate public handling of any animals.

§ 2.131 (d) requires that animals be exhibited only for periods of time and under conditions consistent with their health and well-being, that responsible, knowledgeable, and identifiable employees or attendants be present at all times during public contact with animals, and specifically requires that dangerous animals such as lions, tigers, wolves, bears, or elephants, be under the direct control and supervision of an experienced handler during public exhibition.

9 CFR § 2.131.

II. Recommendations

The Committee urges the Secretary to amend the regulations of the AWA to (i) prohibit public handling of or direct physical contact by the public with big cats, bears, and nonhuman primates of any age in the context of exhibitions of such animals, and (ii) prohibit the public handling of young or immature big cats, bears, and nonhuman primates and the separation of such animals from their mothers before weaning unless medically necessary in the context of exhibitions of such animals. Such amendments are necessary to (a) ensure uniform interpretation and application of the AWA and associated regulations to prevent exhibitors from allowing the public to directly interact with big cats, bears and nonhuman primates and (b) to adequately address public safety and animal welfare concerns.

⁴ 7 U.S.C. § 2143(a)(1), (2)

⁵ APHIS regulations can be found in 9 CFR § 2.131.

(a) Amended AWA regulations are necessary to prevent exhibitors from allowing the public to directly interact with big cats, bears and nonhuman primates.

When the handling regulations now codified at 9 CFR § 2.131 were proposed in 1989, APHIS emphasized that “exhibitors do not have a right to allow contact between the public and dangerous animals.” 54 Fed. Reg. 10,835, 10,880 (Mar. 15, 1989). However, as enacted, these regulations do not expressly prohibit such contact, which has resulted in inconsistent application of the regulations and lack of clarity as to what activities are prohibited as evidenced by the fact that at least 70 licensed facilities throughout the country (including several in New York State) are engaged in the dangerous practice of allowing members of the public, including children, to directly interact and pose with big cats, bears and nonhuman primates.⁶

APHIS regulations suffer from a lack of clearly defined standards governing the exhibition, handling, and care of animals. For example, § 2.131(c)(1) requires that during public exhibition, animals must be handled so there is “minimal risk of harm to the animal and to the public, with *sufficient distance and/or barriers* between the animal and the general viewing public...” and § 2.131(d)(3) requires that “dangerous animals such as lions, tigers, wolves, bears, or elephants must be under the *direct control and supervision* of a knowledgeable and experienced animal handler” (9 C.F.R. § 2.131, emphasis added). Similarly, § 2.131 (c)(3) provides that “young or immature animals shall not be exposed to *rough or excessive public handling* for periods of time which would be detrimental to their health or well-being.” *Id.* However, the terms “sufficient distance,” “sufficient barrier,” “direct control and supervision,” and “rough or excessive handling” are not defined within the regulations. As evidenced by the significant number of exhibitors allowing members of the public to come into direct contact with big cats, bears and nonhuman primates, including holding, petting, and swimming with such animals,⁷ licensees and inspectors are left to their own subjective determinations as to whether the exhibition of such animals complies with AWA standards.

(b) Amended AWA regulations are necessary to address both animal welfare and public safety concerns.

Animal Welfare Concerns

⁶ Amended Petition for Rulemaking to Prohibit Public Contact with Big Cats, Bears and Nonhuman Primates, January 7, 2013, Docket ID: APHIS-2012-0107 (the “Amended Petition”), available at <http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0107-0002> (last visited Oct. 1, 2013).

⁷ *Id.*; see also *In Florida, Who Needs Alligators When You Can Swim With Tiger Cubs?*, Fox News (Oct. 9, 2012), available at <http://www.foxnews.com/us/2012/10/09/in-florida-who-needs-alligators-when-can-swim-with-tiger-cubs/> (last visited Oct. 1, 2013); Chestatee Wildlife Preserve & Zoo of Dohlongega, GA offers “animal encounters” with baby tigers and other wildlife, and features a photo of a small child holding a baby tiger, available at http://www.chestateewildlife.com/Hours_and_Contact_Info.html (last visited Oct. 1, 2013).

Animals used for physical interaction with the public are often physically and psychologically abused. The tricks and interactions that these exhibited animals are forced to perform or endure, such as swimming with children and allowing members of the public, including small children to pet and hold them, are not behaviors these wild animals would perform in nature. In order to make the animals compliant with such direct public contact, it has been reported that some exhibitors use extreme physical coercion and body modification that results in trauma, physical injury and, in extreme circumstances, death.⁸

While some of the big cats, bears and nonhuman primates made available for physical interaction with the public are housed in permanent facilities, others are part of traveling zoos, circuses or menageries which travel around the country to shopping malls, state fairs and other public venues. Animals in these traveling exhibitions often live in inadequate housing and/or may travel for extremely long periods of time, and suffer harsh conditions on the road as they are transported to different venues.⁹ Additionally, young animals used for physical interaction with the public are often forcibly and prematurely separated from their mothers prior to weaning, which can cause physical and psychological trauma.¹⁰ Such premature separation compromises the developing immune systems of these young animals, increasing their susceptibility to disease, which may ultimately be transferred to members of the public.

⁸ See Association of Zoos and Aquariums, White Paper: Apes in Media and Commercial Performances, available at <http://www.aza.org/white-paper-apes-in-media-and-commercial-performances/> (last visited Oct. 1, 2013) (finding that "handlers of ape performers, often must use food deprivation, physical abuse, continuous tranquilization, or even electric shock to maintain control. Additionally, the animals may be modified to reduce their ability to cause harm, for example by removing their teeth" or claws.).

⁹ See Amended Petition at 35-37. Records show that performing animals have been being confined to train boxcars for periods of over 24 hours, including a trip of 36 hours through the California and Arizona desert region. See Memo from Michael Smith to Dr. Garland regarding a 7/12/04 Ringling Brothers train arrival inspection (documenting a 36-hour train ride), available at <http://c206728.r28.cf1.rackcdn.com/Plaintiffs-Will-Call-Exhibit-48.pdf>; J. William Misiura, Ringling Director of Transportation, Blue Unit Transportation Order Memos (2000-2008), available at <http://c206728.r28.cf1.rackcdn.com/Plaintiffs-Will-Call-Exhibit-49A.pdf> (last visited Oct. 1, 2013); In 2004, a baby lion died while traveling in a boxcar en route to a performance. See Marc Kaufman, *USDA Investigates Death of Circus Lion*, WASHINGTON POST (Aug. 8, 2004) A3, at <http://www.washingtonpost.com/wp-dyn/articles/A48042-2004Aug7.html> (last visited Oct. 1, 2013).

¹⁰ See Karen Parker & Dario Maestripieri, *Identifying Key Features of Early Stressful Experiences, that Produce Stress Vulnerability and Resilience in Primates*, Neuroscience and Biobehavioral Reviews Vol. 35, 1466-1483 (2011) ("the stress of early parental loss, neglect or abuse produces enhanced fear and anxiety, increased anhedonia, impaired cognition, abnormal brain neurochemistry and neurobiology, and alterations in baseline activity as well as stress reactivity"); Association of Zoos and Aquariums, *Polar Bear Care Manual*, available at http://www.aza.org/uploadedfiles/animal_care_and_management/husbandry_health_and_welfare/husbandry_and_animal_care/polarbearcaremanual.pdf (last visited Oct. 1, 2013) (recommending limited interference between a mother and her cubs and noting the prevalence of disease among hand-reared cubs).

Public Safety Concerns

In addition to the animal welfare concerns, direct physical contact of the public with wild animals can undermine public health and safety. Big cats, bears, and nonhuman primates are unpredictable by their very nature, and physical interaction with these animals poses a serious threat to public safety. Reports too numerous to list here document escapes and attacks by exhibited wild animals that put the public and the animal's safety at risk. In 2005, a Kansas teenager was mauled to death by a Siberian tiger while posing with it for a photograph at a local animal facility; the attack occurred in the presence of a handler, who was unable to restrain the tiger.¹¹ In 2011, the Humane Society of the United States conducted an undercover investigation of GW Exotic Animal Park, an Oklahoma exotic animal facility that houses approximately 200 tigers and other dangerous exotic animals for the purpose of public exhibition and interaction.¹² The investigation documented several incidents involving dangerous public interactions at the Park, including six cases where visitors were bitten or scratched; undercover footage even revealed one boy being suddenly attacked while interacting with a young tiger.¹³ As of May 2012, the facility was under investigation by the USDA for deaths of 23 tiger cubs between 2009 and 2010.

Exacerbating the risk of physical injury, many wild and exotic animals used in exhibition are carriers of communicable diseases, which are easily transmittable to humans. The types of diseases associated with animal contact include rabies, pox viruses, and multiple bacterial, viral, fungal and parasitic infections.¹⁴ Juvenile animals in particular are more likely to shed pathogens when these animals are exposed to constant sources of stress, such as frequent and continuous public handling or separation from their mothers; these pathogens, in turn, can be passed on to humans who come in contact with these animals.¹⁵ As recognized by the National Association of State Public Health Veterinarians, certain wild animals – including nonhuman primates, big cats

¹¹ C. Siemaszko, *Tiger Kills Kansas Teen; Mauled While Posing For Pic*, New York Daily News (August 20, 2005), available at <http://www.nydailynews.com/archives/news/tiger-kills-kansas-teen-mauled-posing-pic-article-1.616836> (last visited October 1, 2013).

¹² *HSUS Undercover Investigation Reveals Dead Tigers, Safety Threats at Oklahoma's GW Exotic Animal Park*, The Humane Society of the United States (May 16, 2012) available at http://www.humanesociety.org/news/press_releases/2012/05/ok_exotics_investigation.html (last visited October 1, 2013).

¹³ *Id.*; see also Armen Keteyian, *Alleged Abuse at GW Exotic Animal Park Seen On Tape*, CBS News (May 2012), available at http://www.cbsnews.com/8301-505263_162-57435200/alleged-abuse-at-gw-exotic-animal-park-seen-on-tape (last accessed October 2, 2013).

¹⁴ The National Association of State Public Health Veterinarians, *Compendium of Measures to Prevent Disease Associated with Animals in Public Settings*, CDC Morbidity and Mortality Weekly Report, Vol. 60(4) (May 6, 2011).

¹⁵ See Amended Petition at 43 citing Kim Haddad, *Risks Associated with Handling Juvenile Non-Domestic Felids*, Captive Wild Animal Project Campaign (CWAPC) Statement of Concern, available at http://bigcatrescue.org/wp-content/uploads/2011/01/FactsheetBigCatsHandling_rev.1.pdf (last visited October 3, 2013).

and bears—“should be prohibited in exhibit settings where a reasonable possibility of animal contact [with these species] exists...[b]ecause of their strength, unpredictability, venom or the pathogens that they might carry.”¹⁶

III. Conclusion

For the foregoing reasons, we urge the Secretary to amend the regulations of the AWA to (i) prohibit public handling of or direct physical contact with big cats, bears, and nonhuman primates of any age in the context of exhibitions of such animals, and (ii) prohibit the separation of such animals from their mothers before weaning unless medically necessary in the context of exhibitions of such animals.

Yours truly,



Christine Mott
Chair, Committee on Animal Law

¹⁶The National Association of State Public Health Veterinarians, *Compendium of Measures to Prevent Disease Associated with Animals in Public Settings*, CDC Morbidity and Mortality Weekly Report, Vol. 60(4) (May 6, 2011).