

April 29, 2020

Kevin Shea, Administrator
USDA-APHIS

Dr. Betty Goldentyer, Deputy Administrator
USDA-APHIS-Animal Care

Re: Petition for Emergency Rulemaking and/or an Interpretive Rule

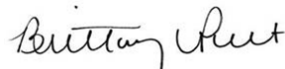
Dear Mr. Shea and Dr. Goldentyer,

On behalf of PETA and its 6.5 million members and supporters worldwide, I hereby submit the following petition pursuant to 5 U.S.C. § 553(e), (b)(A), (b)(B) and 7 C.F.R. § 1.28, to request that the United States Department of Agriculture (USDA) promulgate emergency regulations temporarily suspending all direct physical contact between the public and big cat cubs in response to the COVID-19 pandemic. At a minimum, the USDA should issue an interpretive rule instructing exhibitors regulated under the Animal Welfare Act (AWA) that the agency will consider any direct public contact with big cat cubs during the COVID-19 pandemic as noncompliant with AWA regulations.

On April 5, the first known instance of a captive tiger contracting COVID-19 [was reported](#) at the Bronx Zoo in New York. The four-year-old female tiger is reported to have contracted the disease from an asymptomatic zookeeper. Since that time, four tigers and three lions [at the Bronx Zoo, two domestic cats](#) in New York, and a [domestic dog](#) in North Carolina have all tested positive. As a result of the growing number of cases, the Centers for Disease Control and Prevention (CDC) is [advising](#) the general public not to allow their companion animals to interact with people outside of their household because of the disease transmission threat that humans pose to these animals.

The USDA—as the federal agency tasked with ensuring the humane care and treatment of animals used for exhibition—should either issue emergency regulations or an emergency interpretive rule consistent with the CDC’s advice for companion animals, and temporarily prohibit all public contact with big cat cubs.

Very truly yours,



Brittany Peet
Deputy General Counsel, Captive Animal Law Enforcement

Cc: Sonny Perdu, Secretary of Agriculture, USDA
Stephen Vaden, General Counsel, USDA

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS
FOUNDATION

Washington, D.C.
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

Berkeley
2855 Telegraph Ave.
Ste. 301
Berkeley, CA 94705
510-763-PETA

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AFFILIATES:

- PETA U.S.
- PETA Asia
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**Before the United States Department of Agriculture
Animal and Plant Health Inspection Service**

Petition for Emergency Rulemaking

April 29, 2020

Less than a month after the World Health Organization (WHO) officially declared COVID-19 a pandemic¹, a four-year-old female tiger named Nadia living at the Bronx Zoo in New York tested positive for the disease.² Nadia was not only the first captive tiger known to be infected, but was also the first case of an animal testing positive for COVID-19 in the United States.³ It is believed that she contracted the disease from an asymptomatic zookeeper.⁴ Within weeks, eight big cats at the Bronx Zoo tested positive for COVID-19.⁵

The COVID-19 pandemic is a rapidly evolving national emergency that necessitates acting quickly on new information as it becomes available. The Centers for Disease Control and Prevention (CDC) is now stating that while “there is no evidence that animals play a significant role in spreading the virus that causes COVID-19,” the disease can be transmitted from humans to animals, also known as reverse zoonosis.⁶ In light of this, the CDC is advising that “[u]ntil we learn more about how this virus affects animals” it is important to treat companion animals “as you would other human family to protect them from a possible infection,” including prohibiting interactions with people outside of your household.⁷

The United States Department of Agriculture (USDA) Animal Plant Health Inspection Service (APHIS) is responsible for administering the Animal Welfare Act (AWA), and ensuring animals intended for exhibition purposes “are provided humane care and treatment.” 7 U.S.C. § 2131(1). In the midst of a pandemic, this statutory responsibility includes ensuring that animals intended for exhibition are adequately protected from disease carriers, which in this case are humans.

The CDC’s recommendation for companion animals—prohibiting interactions with people outside of your household—should equally apply to big cat cubs exhibited under the AWA as part of cub petting encounters. These cubs do not have fully developed immune systems and are exposed to an endless stream of paying guests, who could be asymptomatic or pre-symptomatic for COVID-19. It is imperative that the USDA act quickly to implement these recommendations

¹ Proclamation No. 9994, 85 Fed. Reg. 15,337 (March 13, 2020) (President of the United States National Emergency Declaration).

² Ex. 1, Wildlife Conservation Society (WCS) News Release, *A Tiger at Bronx Zoo Tests Positive for COVID-19* (April 5, 2020), <https://newsroom.wcs.org/News-Releases/articleType/ArticleView/articleId/14010/A-Tiger-at-Bronx-Zoo-Tests-Positive-for-COVID-19-The-Tiger-and-the-Zoos-Other-Cats-Are-Doing-Well-at-This-Time.aspx>.

³ Ex. 2, *USDA Statement on the Confirmation of COVID-19 in a Tiger in New York*, April 5, 2020, available at <https://content.govdelivery.com/accounts/USDAAPHIS/bulletins/2850514>.

⁴ *Id.*

⁵ Ex. 3, Wildlife Conservation Society (WCS) News Release, *Update: Bronx Zoo Tigers and Lions Recovering from COVID-19*, April 22, 2020, <https://newsroom.wcs.org/News-Releases/articleType/ArticleView/articleId/14084/Update-Bronx-Zoo-Tigers-and-Lions-Recovering-from-COVID-19.aspx>.

⁶ Ex. 4, CDC, Coronavirus Disease 2019 (COVID-19), If You Have Animals (April 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/animals.html>

⁷ *Id.*

with either an emergency regulation or at a minimum, an interpretive rule before roadside zoos with cub petting programs begin to re-open to the public as some states are already prematurely lifting shelter in place restrictions.

I. LEGAL BACKGROUND

Congress enacted the AWA, in pertinent part, to “insure” that animals used for exhibition are provided with humane care and treatment.⁸ To accomplish this goal, Congress directed the Secretary of Agriculture to promulgate standards for the “humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors.”⁹ These standards must include “minimum requirements for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, [and] adequate veterinary care.”¹⁰

Pursuant to this Congressional directive, the USDA has promulgated regulations requiring veterinary care for and safe handling of animals maintained by licensees, which are set forth at 9 C.F.R. §§ 2.40 and 2.131. These regulations require exhibitors to develop and maintain a Program of Veterinary Care that includes, among other things, “[t]he use of appropriate methods to prevent, control, diagnose, and treat diseases.”¹¹ Any handling of the animals must “be done as expeditiously and carefully as possible in a manner that does not cause trauma . . . behavioral stress, physical harm, or unnecessary discomfort.”¹²

The regulations further specify that animals may be exhibited *only* “under conditions consistent with their good health and well being.”¹³ During exhibition, the animals and the public must be separated by “sufficient distance and/or barriers . . . so as to assure the safety of” both.¹⁴ If the public is allowed direct contact, “[y]oung or immature animals shall not be exposed to . . . excessive public handling or exhibited for periods of time which would be detrimental to their health or well-being.”¹⁵

II. REQUESTED EMERGENCY ACTION

PETA is petitioning the USDA to promulgate an emergency regulation that temporarily suspends any form of public contact with big cat cubs (16 weeks of age or younger). Big cats should be defined to include, lions, tigers, jaguars, leopards, cougars, cheetahs, and any hybrids thereof.

In the alternative, PETA is requesting that the USDA issue an interpretive rule advising licensees that, due to the risk of human transmission of COVID-19 to big cats, any form of public contact with big cat cubs (16 weeks of age or younger) will be considered noncompliant with the following veterinary care and handling requirements of the AWA regulations: 9 C.F.R. §§ 2.40(b)(2), 2.131(b)(1), 2.131(c)(1), 2.131(c)(3), and 2.131(d)(1).

⁸ 7 U.S.C. § 2131(1).

⁹ *Id.* § 2143(a)(1).

¹⁰ *Id.* § 2143(a)(2).

¹¹ 9 C.F.R. § 2.40(b)(2).

¹² *Id.* § 2.131(b)(1).

¹³ *Id.* § 2.131(d)(1).

¹⁴ *Id.* § 2.131(c)(1).

¹⁵ *Id.* § 2.131(c)(3).

Promulgating an emergency regulation is preferable because it has the force and effect of law, which should elicit greater compliance from regulated entities who often view interpretive rules as non-binding.¹⁶ As several members of Congress aptly noted in a recent letter to the USDA, many unaccredited roadside zoos “openly mock the USDA inspection process and flagrantly violate AWA regulations” demonstrating a “need for aggressive enforcement of USDA regulations.”¹⁷ An emergency regulation would allow for more “aggressive enforcement.”

PETA is submitting this petition on an emergency basis, and requests that the USDA take action within 10 days without first providing notice and seeking comment pursuant to 5 U.S.C. § 553(b)(A)-(B), and without waiting 30 days before becoming effective pursuant to 5 U.S.C. § 553 (d)(2)-(3).

III. ARGUMENTS IN SUPPORT OF THE REQUESTED ACTION

The COVID-19 pandemic is a rapidly evolving public health crisis, which means there is much we still do not know about the disease. Because there is no vaccine, treatment, or cure for COVID-19, “[t]he best way to prevent illness is to avoid being exposed to this virus.”¹⁸ Specifically with respect to animals, the CDC has noted that “[f]urther studies are needed to understand if and how different animals could be affected by the virus that causes COVID-19.”¹⁹ Indeed, while symptoms in human patients are relatively well-known, the spectrum of COVID-19 symptoms in animals is not.²⁰ Similar to humans, until a cure or a vaccine becomes available, protecting animals from possible infection means avoiding exposure to the virus.²¹

With the limited information that is available, it is clear that big cats are susceptible to the disease, and that humans can transmit the disease to animals.²² In light of this known information, there is justified concern that big cat cubs used for cub petting—whose immune systems are not fully developed and are already taxed by the stress associated with premature separation from their mothers and the public encounters themselves—are at an increased risk for contracting and developing COVID-19. Under the CDC’s guidelines, the only way to protect big cat cubs from COVID-19 is to limit the risk of exposure to the disease by temporarily prohibiting public contact.

¹⁶ *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 92 (2015) (explaining the difference between regulations that have the “force and effect of law” and interpretive rules that are “issued. . .to advise the public of the agency’s construction of the statutes and rules which it administers,” and that “do not have the force and effect of law”)(internal citations omitted).

¹⁷ Ex. 50, Letter from Congressman Mike Quigley, et al., to Kevin Shea Administrator of the USDA (April 27, 2020), https://quigley.house.gov/sites/quigley.house.gov/files/04.27.20_Congressional%20Letter%20to%20Administrator%20Shea.pdf.

¹⁸ Ex. 5, CDC, Coronavirus Disease 2019 (COVID-19), How to Protect Yourself & Others (April 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

¹⁹ Ex. 4.

²⁰ Ex. 6, CDC, Coronavirus Disease 2019 (COVID-19), Evaluation for SARS-CoV-2 Testing in Animals (April 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/php/animal-testing.html>.

²¹ *Id.*

²² *Id.*; see also Ex. 3 (noting that 8 big cats tested positive for COVID-19).

A. Humans Can Transmit COVID-19 to Felids

According to the CDC, the COVID-19 virus “can spread from people to animals in some situations.”²³ To date, the reported human-to-animal transmission situations in the United States include:

- Five tigers and three lions who tested positive for COVID-19 at the Bronx Zoo were reportedly “infected by a staff person who was asymptotically infected with the virus or before that person developed symptoms.”²⁴ At least seven of these animals reportedly exhibited respiratory symptoms.²⁵
- Two domestic cats in two separate households in New York tested positive for COVID-19. One of the cats lived in a household with a confirmed case of COVID-19. It is suspected that the other cat caught the virus from an “asymptomatic household member or through contact with an infected person outside its home.”²⁶ Both cats were tested after exhibiting signs of a respiratory illness.²⁷
- A domestic dog in North Carolina tested positive for COVID-19 along with three human members of his household.²⁸ The dog was exhibiting mild respiratory symptoms and loss of appetite.²⁹

The World Organisation for Animal Health (OIE) is reporting an increasing number of domestic animals (dogs and cats) that have tested positive for COVID-19 “following close contact with infected humans” and are thus suspected to be human-to-animal transmission incidents.³⁰ The OIE has also reported that laboratory studies indicate that “cats are the most susceptible species for COVID-19.”³¹

While the CDC is not recommending routine testing of animals at this time, it has set out guidelines—similar to testing guidelines established for humans—to delineate under what circumstances an animal is at risk and should be tested for COVID-19.³² Veterinarians are supposed to “use their best judgement to determine if an animal has been exposed to people with

²³ Ex. 4.

²⁴ Ex. 3.

²⁵ *Id.*; Ex. 2.

²⁶ Ex. 7, USDA News Release, *Confirmation of COVID-19 in Two Pet Cats in New York* (April 22, 2020), https://www.aphis.usda.gov/aphis/newsroom/news/sa_by_date/sa-2020/sars-cov-2-animals.

²⁷ *Id.*

²⁸ Ex. 48, *Pug in North Carolina Tests Positive for Coronavirus, May Be First for Dog in U.S.*, NBC News (April 28, 2020), <https://www.nbcnews.com/news/animal-news/pug-north-carolina-tests-positive-coronavirus-may-be-first-dog-n1194096>.

²⁹ *Id.*

³⁰ Ex. 8, World Organisation for Animal Health (OIE), Questions and Answers on the 2019 Coronavirus Disease (COVID-19), <https://www.oie.int/en/scientific-expertise/specific-information-and-recommendations/questions-and-answers-on-2019-novel-coronavirus/>; Ex. 4 (“CDC is aware of a small number of pets, including dogs and cats, reported to be infected with the virus that causes COVID-19, mostly after close contact with people with COVID-19.”).

³¹ Ex. 8.

³² Ex. 6.

suspected or confirmed COVID-19.”³³ For an animal, the CDC has determined that “close contact” that can result in exposure to the virus includes, “[b]eing within approximately 6 feet (2 meters) of a person with suspected or confirmed COVID-19 for a prolonged period of time,” which can occur while the animal is “living with, being petted, snuggled, giving kisses or licks, and/or sharing food or bedding.”³⁴ Close contact also includes “[h]aving direct contact with infectious secretions from a person with suspected or confirmed COVID-19,” such as “being coughed on, [or] consuming food or objects contaminated with a human patient’s mucous or saliva.”³⁵ To assist veterinarians in assessing this risk of exposure and determining when to test an animal for COVID-19, the CDC has developed the following chart of “epidemiological risk factors and clinical features.”³⁶

Criteria	Epidemiological Risk		Clinical Features
A	Animal with history of close contact with a person with suspected or confirmed COVID-19.	AND	Animal has clinical signs of a new, concerning illness that is suspicious of an infectious disease.
B	Animal with exposure to a known high-risk environment (i.e., where a human outbreak occurred), such as a residence, facility, or vessel (e.g. nursing home, prison, cruise ship).		
C	Threatened, endangered or otherwise imperiled/rare animal in a rehabilitation or zoological facility with possible exposure to SARS-CoV-2 through an infected person or animal.	AND	Animal is asymptomatic; OR Animal has clinical signs of a new, concerning illness that is suspicious of an infectious disease.
D	Animals in a mass care or group setting (e.g., animal shelter, boarding facility, animal feeding operation, zoo) including companion animals, livestock, and other species, where their exposure history to people with COVID-19 is unknown.	AND	A cluster of animals show clinical signs of a new, concerning illness that is suspicious of an infectious disease.

As noted in this chart, close contact with or unknown exposure to humans with suspected or confirmed COVID-19 is a key epidemiological risk factor for animals.³⁷

Collectively, this emerging information suggests that captive big cats are at risk of contracting COVID-19 from humans and that close contact with the general public increases their risk of

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Most big cat species are listed as threatened or endangered under the federal Endangered Species Act. 9 C.F.R. § 17.11(h) (listing: (1) lion subspecies *panthera leo leo* as endangered and subspecies *panthera leo melanochaita* as threatened; (2) tigers (*panthera tigris*) as endangered; (3) jaguars (*panthera onca*) as endangered; (4) leopards (*panthera pardus*) as endangered; (5) cougar subspecies *puma concolor coryi* as threatened and subspecies *puma concolor costaricensis* as endangered; and (6) cheetahs (*acinonyx jubatus*) as endangered). Any public exposure to these animals could expose them to a person possibly infected with COVID-19, and thus would meet the CDC’s testing criteria.

exposure. Because there is no treatment or vaccine for this disease, protecting these animals means minimizing their risk of exposure to the virus.

B. Big Cat Cubs Used for Cub Petting are Particularly Vulnerable, and Prohibiting Public Contact is the Only Way to Minimize the Risk of Exposure

The USDA considers juvenile (12-16 weeks or older) and adult big cats dangerous and the AWA handling regulations (9 C.F.R. § 2.131(c)(1)) already prohibit direct public contact with these animals.³⁸ The USDA also prohibits public handling of big cat cubs who are four weeks of age or younger because at this age the cubs “lack a fully functioning immune system,” which means “their health is at risk if they are. . . offered for public contact.”³⁹ While the USDA “do[es] not encourage public contact with cubs, it is possible for an exhibitor to exhibit cubs over approximately 8 weeks of age (i.e., when their immune systems have developed sufficiently to protect them from most communicable disease), to the public, and still comply with all the regulatory requirements.”⁴⁰ Thus, big cat cubs between 8 weeks and 16 weeks old used in public encounters are at an increased risk of contracting and developing COVID-19.

Big cat cubs who are used for public contact encounters are often taken from their mothers when they are very young so that they can be hand-reared.⁴¹ Infant animals have weakened immune systems, particularly when they are taken from their mothers prematurely⁴², which leaves them particularly susceptible to health issues.⁴³ Cubs prematurely taken from their mothers often suffer from debilitating nutritional deficiency⁴⁴—possibly due to the fact that they were weaned too early and failed to get the nourishment they require from nursing⁴⁵, and is often exacerbated

³⁸ Ex. 9, USDA, Big Cat Question and Answer, https://www.aphis.usda.gov/animal_welfare/downloads/big_cat/big_cat_q&a.pdf; see also Ex. 10, Excerpt, USDA, Animal Welfare Inspection Guide (March 2020), 4-59, https://www.aphis.usda.gov/animal_welfare/downloads/Animal-Care-Inspection-Guide.pdf (“At approximately 12 - 16 weeks of age dangerous animals, such as, tigers, lions, bears, and wolves, become too big, too fast and too strong to be used for public contact.”)

³⁹ Ex. 11, USDA, Tech Note, *Handling and Husbandry of Neonatal Nondomestic Cats* (2016), https://www.aphis.usda.gov/publications/animal_welfare/2016/tech-neonatal-nondomestic-cats.pdf.

⁴⁰ Ex. 9.

⁴¹ See e.g., Ex. 12, USDA Inspection Report, Joe Schreivogel, Aug. 5, 2015 (citing Joe for prematurely removing cubs from their mother and subjecting them to excessive handling, stating, “[a]nimals this young [19 days old] in the absence of their parents are not able to adequately thermoregulate and exposure to... an excessive number of people and other animals at this young age poses a disease risk to the cub. Even indirect exposure via the licensee who has contact with the members of the public and other animals can pose a similar risk to the cub of this age.”).

⁴² Big cat cubs rely on their mother’s milk until 3-6 months of age, and stay with their mothers for almost three years. Ex. 13, M.C. Hampson and C. Schwitzer, *Effects of Hand-Rearing on Reproductive Success in Captive Large Cats Panthera tigris altaica, Uncia uncia, Acinonyx jubatus and Neofelis nebulosi*, PLoS One (May 23, 2016).

⁴³ Ex. 11.

⁴⁴ See e.g., Ex. 14, USDA Inspection Report, Natural Bridge Zoo (May 19, 2015) (describing how four cubs were removed from their mother within one hour of birth and were fed a diet that was inappropriate for their age. The one cub still remaining at the facility had a rough hair coat, prominent pelvis, and pot-bellied appearance).

⁴⁵ Ex. 15, F. Najera, L. Revuelta, and K. J. Kaufman, *Veterinary Aspects of Hand-rearing Two Orphaned African Lion (Panthera leo) Cubs: A Revision of Procedures*, J. Wildlife Rehab (2011) (Cubs receive colostrum from their mothers’ milk, which contains proteins, amino acids, and antibodies that build the cubs’ immune systems. Without it, they may never develop a well-functioning immune system.); see also e.g., Ex. 16, USDA Inspection Report, Animal Adventures (June 9, 2011) (describing that tiger cubs were removed from their mother shortly after birth, deprived of natural nursing opportunities and colostrum, and one cub developed aspiration pneumonia and died); Ex.

by inadequate nutrition from bottle feeding.⁴⁶ Exposing young animals who were prematurely separated from their mothers to unnecessary handling by strangers could lead to illness⁴⁷ or the transmission of contagious diseases that the cubs are ill-equipped to fend off.

Public handling itself also takes a toll on a cub's psychological well-being, and that added stress further taxes the animals already underdeveloped immune system. The demands of public contact deprive animals of their natural and instinctual behavioral, eating, and sleeping patterns⁴⁸, and this disruption can lead to exhaustion or psychological distress.⁴⁹ Across species, stress has been shown to negatively impact the immune system resulting in increased susceptibility to infection, and reducing the ability to respond to that infection contributing to

17, USDA Inspection Report, Nick Sculac (May 23, 2013) (describing how two 3-day-old tiger cubs died within two days of their transfer to the facility. The USDA stated that “[t]ransportation and handling of very young and unhealthy animals may cause trauma, behavioral stress, and unnecessary discomfort and may have contributed to these animals’ deaths.”); Ex. 18, USDA Inspection Report, Plumpton Park Zoo (July 27, 2010) (describing a tiger who, after dying from ingesting plastic materials, was found to also be suffering from metabolic bone disease and anemia).

⁴⁶Ex. 19, Excerpt, Association of Zoos and Aquariums (AZA) Tiger Care Manual (2016), at 66-69, https://assets.speakcdn.com/assets/2332/tiger_care_manual_2016.pdf (Cubs removed from their mothers are bottle-fed with formula that lacks necessary nutrients, such as taurine); see also Ex. 20, Big Cat Sanctuary Alliance, *Cub Petting and Photos with Captive Wild Cats*, https://www.bigcatalliance.org/wp-content/uploads/2019/07/Cub-petting-white-paper_FINAL.pdf (“In cub petting operations, babies are often fed a formula diet that lacks the essential nutrients and antibodies they would otherwise receive from their mother’s colostrum during early feeding.”).

⁴⁷See, e.g., Ex. 21, USDA Complaint No. W11-009 regarding G.W. Exotic Animal Foundation and Beth Corely (Oct. 26, 2010) (reporting a cub exhibited by licensee Beth Corley who became seriously ill—he or she had vomit and diarrhea—after, according to the handler, the animal licked hand sanitizer from a public member’s hands on Oct. 20, 2010; Ex. 22, *Inside Edition Investigates Tigers as Shopping Mall Attractions*, Inside Edition, Nov. 28, 2011, <https://www.insideedition.com/investigative/3426-inside-edition-investigates-tigers-as-shopping-mall-attractions> (describes a reporter posing with a cub from G.W. Exotics who was “obviously sick and barely moved,” and when asked why the cub was sick, the handler stated “I don’t know. Maybe he’s just tired or stressed”); Ex. 23, PETA, *Tiger Cub Incidents in the United States*, available at <http://www.mediapeta.com/peta/PDF/TigerCubIncidentsFactsheet.pdf>.

⁴⁸Tigers and lions are nocturnal and sleep up to 20 hours a day. Ex. 24, M. Pfleiderer, *Sleeping Cats in the Zoo*, Der Zoologische Garten N.F. (1990); see also Ex. 25, D. Zambelli, *Feline Neonatal Physiology, Behavior, and Socialization*, Management of Pregnant and Neonatal Dogs, Cats, and Exotic Pets, First Edition (2012) (“During the first 14 days of life, sleeping and nursing represent the main activities of kittens.”); Ex. 49, Excerpt, Hearing Testimony of Dr. Laurie Gage, USDA, Big Cat Specialist, AWA Dkt. Nos. 16-0124/16-0125 (Oct. 5, 2018), 61:13-61:16 (“Well typically adult tigers sleep somewhere between 18 and 20 hours a day. And so -- and young tigers, it’s – it’s similar. They sleep a lot.”). Sleep disruption is associated with chronic activation of stress hormones and immune dysfunction. Ex. 26, G. Medic, et al., *Short- and long-term health consequences of sleep disruption*, Nature and science of sleep (2017); see also Ex. 27, L. AlDabal and A.S. BaHammam, *Metabolic, Endocrine, and Immune Consequences of Sleep Deprivation*, The Open Respiratory Medicine Journal (2011).

⁴⁹Ex. 28, USDA Inspection Report, Tim Stark (Sep. 13, 2015) (Timothy Stark was cited for a violation of 9 C.F.R. § 2.131(c)(2) after exhibiting tiger cubs for so long that the animals were suffering from total exhaustion); Ex. 29, AWA Docket No. 15-0146 (July 17, 2015) (Dade City Wild Things (DCWT) was cited for a violations of 9 C.F.R. § 2.131(b)(1) on September 30, 2011, for keeping a young tiger in a pool despite “obvious discomfort” and again on October 10, 2012, after a correspondent from a television show was seen repeatedly pulling a tiger back into a pool despite repeated attempts by the animal to leave the pool. On October 13, 2012, and again on October 18, 2012, DCWT was cited for keeping tigers in pools despite obvious discomfort, vocalizing, and repeated attempts to exit the pool.); Ex. 30, AWA Docket Nos. 15-0119 and 15-0120 (May 29, 2015) (Nick Sculac, dba “Big Cats of Serenity Springs” was cited for violating 9 C.F.R. § 2.131(c)(3) and (d)(1) on September 13, 2014, for using an infant tiger for photo shoots constantly over a six hour period without any breaks, despite the fact that the cub was “observed to be in distress and/or discomfort ... throughout the day.”)

more severe disease and prolonged recovery, which can further increase susceptibility to other pathogens.⁵⁰

Big cat cubs who are exposed to numerous stressors including, premature separation from their mothers, excessive and unnatural human handling, and other physical disturbances such as noise⁵¹, smells, and lights are likely highly immunocompromised. The CDC has advised that humans “with a weakened immune system have reduced ability to fight infectious diseases” and that “there is concern that immunocompromised patients may remain infectious for longer than other COVID-19 patients.”⁵² This same advice is true for animals. Domestic cats in crowded and stressful environments are particularly susceptible to respiratory infections, and recent studies have shown a correlation between stress, reduced levels of IgA—an immunoglobulin found in mucosa that is an important first line of defense of the immune system to protect against pathogens, including respiratory pathogens and viruses—and increased incidence of respiratory infections.⁵³ Big cat cubs whose immune systems are not yet fully developed and who are exposed to numerous stressors at cub petting operations may exhibit a similar reduction in IgA, making them more susceptible to respiratory infections like COVID-19.

Not only are they more susceptible to the disease, but they are also more likely to be exposed to it. Big cat cubs at petting operations are exposed to large numbers of people whose health status is unknown and who may be asymptomatic, pre-symptomatic, or even symptomatic for COVID-19, posing a significant risk of human-to-animal transmission. Since members of the public are allowed in “close contact” with these cubs during an encounter—which typically involves petting, handling, and holding the cubs—direct transmission from person-to-cub is possible.⁵⁴ The big cat cubs could contract the disease by direct inhalation of infected respiratory particles, or transfer of infected respiratory particles from someone’s contaminated hands, clothing, or other fomites.⁵⁵ Due to their natural behavior of grooming, there is added risk of mucosal exposure when cubs groom themselves or each other after each petting event. As

⁵⁰ Ex. 31, R. Glaser and JK Kiecolt-Glaser, *Stress-induced immune dysfunction: implications for health*, Nature Reviews (2005); Ex. 32, G.P. Moberg, *Biological Response to Stress: Implications for Animal Welfare*, The Biology of Animal Stress: basic principles and implications for animal welfare (2000).

⁵¹ Noise can provoke a stress response in animals. Ex. 33, Nadja C. Wielebnowski, et al., *Noninvasive Assessment of Adrenal Activity Associated with Husbandry and Behavioral Factors in the North American Clouded Leopard Population*, Zoo Biology (2002). One source of noise for cubs in petting operations is large crowds of people. See e.g., Video 1 (April 15, 2017 cub petting encounter at Wildlife in Need). Crowds can also cause significant behavioral changes in big cats associated with chronic stress, such as high rates of pacing, increased hiding behavior, and aggression. Ex. 34, R. L. Sellinger and J. C. Ha, *The Effects of Visitor Density and Intensity on the Behavior of Two Captive Jaguars (Panthera onca)*, Journal of Applied Animal Welfare Science (2010).

⁵² Ex. 35, CDC, Coronavirus Disease 2019 (COVID-19), Groups at Higher Risk for Severe Illness (April 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html#immunocompromised>.

⁵³ Ex. 36, M. Staley, et al., *Linking stress and immunity: Immunoglobulin A as a non-invasive physiological biomarker in animal welfare studies*, Hormones and Behavior (2018); Ex. 37, N. Gourkow, et al., *Associations of behavior with secretory immunoglobulin A and cortisol in domestic cats during their first week in an animal shelter*, Applied Animal Behavior Science (2014); Ex. 38, N. Gourkow, et al., *Effect of gentle stroking and vocalization on behaviour, mucosal immunity and upper respiratory disease in anxious shelter cats*, Preventive Veterinary Medicine (2014).

⁵⁴ Ex. 6 (identifying “close contact” with humans as an epidemiological risk factor for contracting COVID-19, and defining “close contact” to including petting and snuggling).

⁵⁵ *Id.* (further defining “close contact” to include inhaling or consuming infections secretions)

these cubs are passed around throughout the day, there is a high risk of exposure from multiple people, multiple times daily.⁵⁶ With the number of reported COVID-19 cases in the United States soaring to over 1 million⁵⁷, there is an undeniable risk that big cat cubs who are exposed to an unknown number of people during public encounters will be exposed to and develop the disease.

Similarly, cub-petting encounters necessitate that handlers have prolonged and persistent direct physical contact with big cat cubs. While the health status of these handlers would be easier to track than the general public, they still may be asymptomatic or pre-symptomatic carriers of the disease. Indeed, it is suspected that the big cats at the Bronx Zoo contracted the disease from an asymptomatic zookeeper.⁵⁸ The precise amount and nature of the “close contact” that the keeper at the Bronx Zoo had with the adult big cats is unknown. However, whatever amount of “close contact” this keeper had it would be significantly less than the “close contact” required for a cub-petting operation and it almost certainly would not have involved persistent direct physical contact with the animals.⁵⁹ An asymptomatic handler could transmit COVID-19 to a vulnerable big cat cub through direct physical contact, or by contaminating surfaces with infectious secretions, such as the bottles used for cub feeding, collars and leashes⁶⁰, or any other objects that are touched by a potentially infected handler and then used with or provided to the cub during encounters.⁶¹

Standard surgical masks, gloves, and other disinfection protocols should certainly be utilized to reduce the risk of keeper-to-animal transmission because keepers, unlike members of the public, have to be in “close contact” with the animals in order to provide necessary care. However, because these measures do not eliminate the risk of spreading COVID-19, they should not be used as basis for allowing public contact with vulnerable big cat cubs to continue during the pandemic. The CDC has made clear that masks are “not a substitute for social distancing” and

⁵⁶ See e.g., Video 2 (Jan. 26, 2020 cub petting encounter at Walnut Prairie Wildside in Illinois); Video 3 (Oct. 20, 2018 cub petting encounter at Zootastic in North Carolina); and Video 1 (April 15, 2017 cub petting encounter at Wildlife in Need in Indiana).

⁵⁷ John Hopkins Coronavirus Resource Center, World Map of Case (April 28, 2020), <https://coronavirus.jhu.edu/map.html> (showing 1,010,717 case in the U.S.).

⁵⁸ Ex. 3.

⁵⁹ Ex. 19, Excerpt, Association of Zoos & Aquariums, Tiger Care Manual (2016), at 15 (recommending that AZA accredited facilities use “hands off management” with tigers because they are dangerous)

⁶⁰ Ex. 39, American Veterinary Medical Associations (AVMA), COVID-19: FAQs for Pet Owners (April 25, 2020), <https://www.avma.org/resources-tools/animal-health-and-welfare/covid-19/covid-19-faqs-pet-owners> (Because COVID-19 can be transmitted by touching a contaminated surface or object, there is at least a small risk of disease transfer from collars, leashes, and carriers such that routine cleaning of these items is recommended.)

⁶¹ COVID-19 has been shown to survive on fomites, such as clothing, plastic, metal, and other materials for hours to days. See e.g., Ex. 40, CDC, Coronavirus Disease 2019 (COVID-19), Cleaning and Disinfection for Households (April 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfection.html> (“Current evidence suggests that SARS-CoV-2 may remain viable for hours to days on surfaces made from a variety of materials.”); Ex. 41, *Disinfecting clothes: How to Prevent COVID-19*, Medical News Today, <https://www.medicalnewstoday.com/articles/how-to-disinfect-clothes> (reporting that COVID-19 “remained infectious for 3–7 days on glass, stainless steel, and plastic surfaces, and less than 2 days on wood and cloth”); Ex. 42, *Studies Analyze How Long COVID-19 Lives on Surfaces*, Healthcare Purchasing News, March 17, 2020, <https://www.hponline.com/infection-prevention/article/21129986/studies-analyze-how-long-covid19-lives-on-surfaces> (“the results indicate that aerosol and fomite transmission of Covid-19 are plausible, as the virus can remain viable in aerosols for multiple hours and on surfaces up to days”).

that the best way to prevent illness is avoiding exposure.⁶² Notably, standard surgical masks and homemade masks are not tight fitting, which allows respiratory particles—the primary way COVID-19 spreads—to escape through gaps along the sides, top, and bottom of the mask, or even through the mask itself.⁶³ In addition, unless people are trained in how to properly put on and wear the mask, there is a high risk that the outside of the mask will be contaminated and it is possible for cubs to come into direct contact with that contaminated mask surface when being handled.⁶⁴ Similarly, standard gloves used by the public are not sterile and unless medically trained, members of the general public do not know how to put on and wear gloves in a manner that minimizes contamination and are at high risk of touching contaminated surfaces as well as their own clothing or masks, which can then transfer infected particles to the cubs.⁶⁵

The *only* way to protect vulnerable big cat cubs and minimize their risk of exposure to COVID-19 is to prevent direct contact between the cubs and the public. This is consistent with the CDC’s current guidelines for companion animals, which advises not to allow animals to have contact with people outside of their household.⁶⁶ Much is currently unknown about how COVID-19 affects and spreads in animals. From an infectious disease standpoint, this lack of a complete understanding about COVID-19 requires taking a cautious approach to minimizing transmission of the disease to vulnerable/at-risk/immunocompromised individuals, which in this case are big cat cubs. The USDA must act now to protect these vulnerable animals from disease.

C. There is Good Cause for the USDA to Act on an Emergency Basis

Notice and comment rulemaking is not required “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. § 553(b)(B). The good cause exception “excuses notice and comment in emergency situations, where delay could result in serious harm.” *Chamber of Commerce v. SEC*, 443 F.3d 890, 908 (D.C. Cir. 2006)(citations omitted); *Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95, 114 (2d Cir. 2018)(the exception “is generally confined to emergency situations in which a rule would respond to an immediate threat to safety”). The exception is “essentially an emergency procedure.” *United States v. Valverde*, 628 F.3d 1159, 1164-65 (9th Cir. 2010).

⁶² Ex. 5.

⁶³ Ex. 43, *Surgical and Cotton Face Masks Ineffective at Blocking SARS-COV-2 Particles When COVID-19 Patients Cough, Study Finds*, Newsweek, April 4, 2020, <https://www.newsweek.com/surgical-cotton-face-masks-ineffective-blocking-sars-cov-2-particles-when-covid-19-patients-1496476> (“In conclusion, both surgical and cotton masks seem to be ineffective in preventing the dissemination of SARS-CoV-2 from the coughs of patients with COVID-19 to the environment and external mask surface.”).

⁶⁴ Ex. 44, *5 Mistakes People Make When Wearing Face Masks for Coronavirus*, Huffpost (April 20, 2020), https://www.huffpost.com/entry/mistakes-wearing-face-masks-coronavirus_1_5e99d8eac5b67370b2133f65.

⁶⁵ Ex. 45, *You Shouldn’t Be Wearing Gloves to Go Grocery Shopping*, Men’s Health (March 31, 2020), <https://www.msn.com/en-us/health/wellness/you-shouldnt-be-wearing-gloves-to-go-grocery-shopping/ar-BB11YPuZ> (“If you touch a contaminated surface with gloves, and touch something else, you’re as likely to spread it as you are if you touch things with your bare hands.”).

⁶⁶ Ex. 4 (“Do not let pets interact with people or other animals outside the household” and “Keep cats indoors when possible to prevent them from interacting with other animals or people”).

The United States is in an emergency situation. On March 11, 2020, the WHO officially declared COVID-19 a pandemic.⁶⁷ Two days later the President of the United States declared a national emergency, at which time only 1,654 people had tested positive for the disease.⁶⁸ By April 11, the President had declared states of emergency in all 50 states.⁶⁹ The United States now has more than 1 million people who have tested positive for COVID-19 and more than 58,000 who have reportedly died from the virus.⁷⁰ As this crisis has unfolded, states and localities have been forced to put in place emergency health mandates implementing strict social distancing measures because without a vaccine or treatment the only way to protect the public is to stop the spread of the disease.⁷¹

After weeks of essentially being shut down, states and localities are starting to ease up on restrictions because the economic toll has been staggering.⁷² At the same time, the number of animals in the United States who have tested positive for COVID-19—almost all of which are felids and all of which are believed to be human-to-animal transmission—increased tenfold. While states rush to re-open their economies for financial reasons and not because the virus has been contained, the risk of human-to-animal transmission at roadside zoos that allow cub petting will grow exponentially. For example, Doc Antle’s Myrtle Beach Safari in Myrtle Beach South Carolina has a cub petting program. This facility was forced to close in early April due to a state health mandate, however on April 22 they re-opened.⁷³ The USDA must act quickly to implement restrictions on public contact with vulnerable big cat cubs before more states begin to re-open prematurely.

IV. INTERESTS OF THE PETITIONERS

PETA is a non-profit organization dedicated to protecting animals from abuse, neglect, and cruelty, and undertakes these efforts through public education, investigations, research, animal rescue, legislation, special events, celebrity involvement, and protest campaigns. Since its inception in 1980, PETA has championed ending the use of wild and exotic animals for human amusement, including the exploitation of big cats in roadside zoos and circuses. PETA submits this petition on its own behalf with an interest in protecting big cats cubs under the Animal Welfare Act (AWA) who are used for public contact interactions, and thus subjected to abuse, exploitation, and possible disease transmission.

⁶⁷ Proclamation No. 9994, 85 Fed. Reg. 15,337 (March 13, 2020) (President of the United States National Emergency Declaration).

⁶⁸ *Id.*

⁶⁹ Ex. 46, *All 50 States Under Disaster Declaration for First Time in US History*, The Hill (April 12, 2020), <https://thehill.com/policy/healthcare/public-global-health/492433-all-50-states-under-disaster-declaration-for-first>

⁷⁰ John Hopkins Coronavirus Resource Center, World Map of Case (April 28, 2020), <https://coronavirus.jhu.edu/map.html> (reporting 1,012,399 confirmed case and 58,348 deaths).

⁷¹ See *Which States and Cities Have Told Residents to Stay at Home*, The New York Times (April 20, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html> (“In a desperate race to stunt the spread of the coronavirus, millions of Americans have been asked to do what would have been unthinkable only a few months ago: Don’t go to work, don’t go to school, don’t leave the house at all, unless you have to.”).

⁷² See *Which States Are Reopening and Which Are Still Shut Down*, The New York Times (April 24, 2020), <https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html>.

⁷³ Ex. 47, Doc Antle’s Myrtle Beach Safari Homepage (April 25, 2020), <https://myrtlebeachsafari.com>.