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OF THE UNITED STATES**

November 27, 2007

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**Via Facsimile and First Class Mail**

Chuck Conner, Secretary  
United States Department of Agriculture  
14<sup>th</sup> Street and Independence Avenue, SW  
Washington, DC 20250-0100

Dr. Ron Dehaven, Administrator  
Animal and Plant Health Inspection Service  
United States Department of Agriculture  
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Washington, DC 20250-0100

**Re: Wildlife Penning and Fighting; Request for Enforcement and Petition  
for Rulemaking**

Dear Secretary Conner and Dr. Dehaven,

On behalf of the nearly 10 million members and supporters of the Humane Society of the United States ("HSUS"), the HSUS respectfully requests that the United States Department of Agriculture ("USDA" or "Department") undertake enforcement action to halt the inhumane practice of penning wildlife, and setting of dogs upon such wildlife, pursuant to the Department's statutorily provided authority under the Animal Welfare Act of 1970, 7 U.S.C. §§ 2131, *et seq.* ("AWA" or "Act").

In addition, the HSUS hereby petitions the agency to revise the Department's final rules implementing the AWA, published at 54 Fed. Reg. 36112 (August 31, 1989), which unlawfully and arbitrarily excluded certain activities, including "field trials [and] coursing events," from the regulation's definition of "exhibitor." The petitioned action is necessary to ensure that the USDA's regulations are consistent with Congress' intent to protect animals exhibited to the public in activities not "intended to advance agricultural arts and sciences," 7 U.S.C. § 2132, and to prevent the illegal and inhumane treatment of thousands of dogs, foxes, coyotes, rabbits and other animals inside currently unregulated penning operations.

*Celebrating Animals, Confronting Cruelty*

## Background

Recent investigations conducted by several state wildlife agencies, including Indiana, Alabama and Virginia, have documented the cruelty inherent in penning operations – which are essentially penned animal fighting venues – as well as the rampant smuggling of wildlife across state lines that these facilities perpetuate. Such exhibitions are cruel, unsporting competitions where dogs are required to chase down and injure or kill animals such as foxes and coyotes. Dogs are judged on their aggression in pursuit, and on their success in killing a trapped animal.

As documented in one recent investigation, once an animal is caught, the dogs often engage in a tug of war over the animal, sometimes literally tearing the animal apart.<sup>1</sup> Before the event, the dogs are trained using small animals in fenced enclosures, and are given stimulants to enhance performance. Moreover, trapped animals sold into the live market are frequently sold illegally across state lines, and endure inhumane cramped, long distance transport before arriving at a pen.<sup>2</sup> None of these actions are currently regulated by USDA under the AWA.

## The Animal Welfare Act

The Animal Welfare Act authorizes the USDA to regulate animal exhibitors to ensure the humane handling, care, treatment and transportation of animals in exhibitions. *See, e.g.*, 7 U.S.C. § 2143. The Act defines “animal” in pertinent part as “any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal as the Secretary [of Agriculture] may determine is being used, or is intended for use, for research, testing, experimentation, or as a pet . . . . With respect to a dog the term [animal] means all dogs including those used for hunting, security, or breeding purposes.” 7 U.S.C. § 2132(g).

“Exhibitors” of animals are covered under the Act, and are defined as:

[a]ny person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as

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<sup>1</sup> A portion of this investigative video is available at: <http://www.myfoxatlanta.com/myfox/pages/News/Detail?contentId=5038251&version=1&locale=EN-US&layoutCode=VSTY&pageId=3.2.1>

<sup>2</sup> Studies have found that transporting live, wild animals for penning purposes has directly led to the spread of rabies, and other devastating diseases dangerous to wildlife, pets, and even people. A recent study published in the *Journal of Wildlife Diseases* examining the disease presence found in captive wildlife kept for dog training enclosures concluded that the common practice of wild canid translocation for penning is “biologically hazardous.” Davidson, W.R. et al. 1992.

determined by the Secretary, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not; but such term excludes retail pet stores, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary.

7 U.S.C. § 2132(h).

The regulations adopted by USDA to implement the Act reproduce the AWA's textual definition of "exhibitor" in its entirety, *but inexplicably add "field trials and coursing events" to the list of animal exhibitions exempt from the AWA.*

There is no explanation or logic to the exclusion. Thus, the USDA's regulatory definition of "exhibitor" reads as follows;

The term "exhibitor" means any person (public or private) exhibiting animals which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, organizations sponsoring and all persons participating in State and county [sic] fairs, livestock shows, rodeos, *field trials, coursing events*, purebred dog and cat shows and any other fairs or exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary.

9 C.F.R. 1.1 (emphasis added).

USDA is required to conform its actions and regulations to the legislation it is charged with administering: To do otherwise is to act *ultra vires*. Here, Congress's intent could hardly be clearer. The AWA was enacted as "a statutory mandate that helpless creatures deserve the care and protection of a strong and enlightened public." H.R. Rep. No. 91-1651 (1970), *reprinted in* 1970 U.S.C.C.A.N. 5103, 5104. Penning dogs and wildlife used as live bait for public exhibition falls within the scope of activities committed to the Department's oversight under the plain language of the AWA. Thus, the Department has ample statutory authority to take action concerning these operations. To the extent the Department believes its regulatory definition of "exhibitor" is an impediment to such action, the regulation should be changed immediately to conform to the statutory text, and to ensure the Department fully discharges its statutory mandate.

Conclusion

For the reasons stated above, the HSUS respectfully request that the USDA enforce the provisions of the Animal Welfare Act with regard to wildlife penning and fighting exhibitions. To the extent necessary, HSUS also petitions the agency to amend the final rule entitled "Animal Welfare; Definition of Terms," published at 54 Fed. Reg. 36112, to remove exemptions for "field trials" and "coursing events." These exemptions are not only inconsistent with the language and purposes of the AWA, but also allow the appalling unconscionable cruelty associated with penning to proliferate in the United States.

Sincerely,



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